

Annexe A - The International Practising Rules

1. "International work" means practice as a barrister:
 - (a) where the work(i) relates to matters or proceedings essentially arising taking place or contemplated outside England and Wales and (ii) is to be substantially performed outside England and Wales; or
 - (b) where the lay client carries on business or usually resides outside England and Wales provided that(i) the instructions emanate from outside England and Wales; and (ii) the work does not involve the barrister in providing advocacy services.
2. In connection with any International work, a barrister must comply with any applicable rule of conduct prescribed by the law or by any national or local Bar of (a) the place where the work is or is to be performed (b) the place where any proceedings or matters to which the work relates are taking place or contemplated, unless such rule is inconsistent with any requirement of Part III of this Code ("Fundamental Principles").
3. Paragraphs 401(a) and 602 of the Code shall not apply to International work.
4. In relation to International work substantially performed outside England and Wales:
 - (a) a practising barrister may enter into any association (including partnership) with any lawyer other than a person who is authorised to practise by another approved regulator for the purpose of sharing any office, services or fees;
 - (b) paragraphs 401(b) and 402.1 of the Code shall not apply;
 - (c) paragraph 405 of the Code shall apply on the basis that the applicable law is that of the place where the work is performed; and
 - (d) a practising barrister employed by a foreign lawyer or foreign legal practice may supply legal services to any client of his employer.
 - (e) notwithstanding paragraph 201, a barrister who is practising as a foreign lawyer and who does not:
 - (i) give advice on English law, or
 - (ii) supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law),shall not be treated as a practising barrister for the purposes of the Code.
5. In respect of a barrister who is exercising a right to practise in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland, or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a person shall be a qualified person for the purpose of paragraph 203.1(b) of the Code if he:
 - (a) has been designated by the Bar Council as possessing qualifications and experience in that State or country which are equivalent to the qualifications and experience required by sub-paragraphs (a) and (b) of paragraph 203.3 of the Code;
 - (b) is not acting as a qualified person in relation to more than two other people; and
 - (c) has not been designated by the Bar Council as unsuitable to be a qualified person.

6. A practising barrister who supplies legal services as a barrister (other than to his employer) outside England and Wales must be covered (and in the case of an employed barrister his employer must be covered) by insurance against claims for professional negligence arising out of the supply of his services in an amount not less than the minimum level of insurance cover required by law or by the rules of the Bar in the place where the services are supplied or, if there is no such minimum, the current minimum sum insured for barristers practising in England and Wales.
7. A barrister who solicits work in any jurisdiction outside England and Wales must not do so in a manner which would be prohibited if the barrister were a member of the local Bar.

Annexe B - The Registered European Lawyers Rules

1. A European Lawyer who wishes to practise on a permanent basis in England and Wales under a Home Professional Title may apply to the Board to be registered as a Registered European Lawyer.
2. An application for registration must be made in such form as may be prescribed by the Board and be accompanied by:
 - (a) a certificate, not more than three months old at the date of receipt of the application by the Board, that the applicant is registered with the competent authority in a Home State as a lawyer qualified to practise in that Home State under a Home Professional Title.
 - (b) a declaration that:
 - (i) he has not on the ground of professional misconduct or the commission of a criminal offence been prohibited from practicing in his home State and is not currently suspended from so practising;
 - (ii) no bankruptcy order or directors disqualification order has been made against him and he has not entered into an individual voluntary arrangement with his creditors;
 - (iii) he is not aware of any other circumstances relevant to his fitness to practice under his home professional title in England and Wales; and
 - (iv) he is not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland.and
 - (c) the prescribed fee.
3. Provided it is satisfied that the application complies with the requirements of paragraph 2, the Board will:
 - (a) register the applicant as a Registered European Lawyer; and
 - (b) so inform the applicant and the competent authority in the applicant's Home State which has issued the certificate referred to in paragraph 2(a).
4. A registered European lawyer may supply legal services, including the exercise of rights of audience, under these Rules provided that:
 - (1) he has a current practising certificate issued by the Bar Council in accordance with the Practising Certificate Regulations;
 - (2) in the case of a registered European lawyer who supplies legal services to the public, unless exempted by the Board he is covered by insurance against claims for professional negligence arising out of the supply of his services in England and Wales in such amount and upon such terms as are currently required by the Board, and has delivered to the Board a copy of the current insurance policy or the current certificate of insurance issued by the insurer;

- (3) where the professional activities in question may (but for the European Communities (Lawyer's Practice) Order 1999) be lawfully provided only by a solicitor or barrister, he must act in conjunction with a solicitor or barrister who is entitled to practise before the Court, tribunal or public authority concerned and who could lawfully provide those professional activities.
5. The Board may exempt a Registered European Lawyer from the requirement to take out professional indemnity insurance:
 - (a) A Registered European Lawyer who wishes to apply for such an exemption must provide to the Board evidence to show that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his Home State.
 - (b) If the Board is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover required by the Code of Conduct, the Board may exempt the Registered European Lawyer wholly from the requirement to take out professional indemnity insurance in accordance with the Code of Conduct.
 - (c) If the Board is satisfied that the equivalence is only partial, the Board may require the Registered European Lawyer to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by him in accordance with the rules of his Home State.
6. A registered European lawyer in connection with all professional work undertaken in England and Wales must comply with all of the provisions of the Code (except paragraphs 201 to 204, 401, 402 and 801 to 804) as if he were a self-employed barrister or an employed barrister as the case may be and as if references in the Code to barristers included reference to registered European lawyers.
7. A Registered European Lawyer must not hold himself out to be a barrister.
8. A Registered European lawyer must in connection with all professional work undertaken in England and Wales:
 - (1) use his Home Professional Title;
 - (2) indicate the name of his home professional body or the Court before which he is entitled to practise in that Member State; and
 - (3) indicate that he is registered with the Board as a European lawyer.
9. A registered European lawyer must inform the Bar Council of:
 - (1) any investigation into his conduct by his home professional body;
 - (2) any findings of professional misconduct made by his professional body; and
 - (3) the withdrawal or suspension of his authorisation in his home state to pursue professional activities under his home professional title.
10. The Board will:
 - (1) remove a European Lawyer from the register:
 - (i) pursuant to a sentence of a Disciplinary Tribunal; or
 - (ii) if the Registered European Lawyer ceases to be a European Lawyer;

- (2) suspend a European Lawyer from the register:
 - (i) pursuant to a sentence of either a Disciplinary Tribunal or a Summary Procedure Panel; or
 - (ii) if the European Lawyer's authorisation in his Home State to pursue professional activities under his Home Professional Title is suspended; and
- (3) notify the European Lawyer's home professional body:
 - (i) of his removal or suspension from the register; and
 - (ii) of any criminal conviction or bankruptcy order of which it becomes aware against a Registered European Lawyer.

Annexe C - The CPD Regulations

Application

1. These Regulations apply:
 - (a) to all barristers who have commenced practice on or after 1 October 1997;
 - (b) from 1 January 2003, to all barristers who were called to the Bar in or after 1990;
 - (c) from 1 January 2004, to all barristers who were called to the Bar between 1980 and 1989; and
 - (d) from 1 January 2005, to all barristers who were called to the Bar before 1980.

The Mandatory Continuing Professional Development Requirements

2. For the purpose of these Regulations
 - (a) "calendar year" means a period of one year commencing on 1 January in the year in question;
 - (b) the "mandatory requirements" are those set out in paragraphs 3 to 7 below.
 - (c) a "pupillage year" is any calendar year in which a barrister is at any time a pupil.¹
3. Any barrister to whom these Regulations apply and who as at 1 October 2001 had commenced but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of continuing professional development during that period.
4. Any barrister to whom these Regulations apply who commences practice on or after 1 October 2001 must during the first three calendar years in which the barrister holds a practising certificate after any pupillage year complete a minimum of 45 hours of continuing professional development.¹
5. Any barrister to whom these Regulations apply:
 - (a) must, if he holds a practising certificate or certificates throughout the whole of any calendar year, complete a minimum of 12 hours of continuing professional development during that period; and
 - (b) must, if he holds a practising certificate or certificate for part only of a calendar year, complete one hour of continuing professional development during that calendar year for each month for which he holds a practising certificate.
6. Regulation 5 does not apply:
 - (a) in the case of a barrister to whom regulation 3 applies, to any calendar year forming or containing part of the period of 3 years referred to in regulation 3; or
 - (b) in the case of a barrister to whom regulation 4 applies, during any pupillage year or during¹ the first three calendar years in which the barrister holds a practising certificate.

7. Any barrister to whom these Regulations apply must submit details of the continuing professional development he has undertaken to the Bar Council in the form prescribed, and at the time specified, by the Bar Council.
8. The Bar Council may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or any category of barristers) in order to satisfy the mandatory requirements.
9. The Bar Council may, by resolution and following consultation with the Inns, Circuits and other providers as appropriate, increase the minimum number of hours of continuing professional development which must be completed in order to satisfy any of the mandatory requirements.

Waivers

10. The Bar Council shall have the power in relation to any barrister to waive any or all of the mandatory requirements in whole or in part or to extend the time within which the barrister must complete any of the mandatory requirements.
11. Any application by a barrister to the Bar Council for a waiver of any of the mandatory requirements or to extend the time within which to complete any of the mandatory requirements must be made in writing, setting out all mitigating circumstances relied on and supported by all relevant documentary evidence.

¹Amended 22nd April 2010

PRACTISING CERTIFICATE RULES

The Practising Certificate Year

1. In these rules, “practising certificate year” refers to the period from 1 April in any calendar year to 31 March in the next calendar year.

Eligibility for Practising Certificates

2. You are eligible for a practising certificate if:

2.1 you are a barrister or a registered European lawyer and you are not currently suspended from practice and have not been disbarred;

2.2 you meet the requirements of rule 3.1, 3.2, 3.3 or 3.4 below; and

2.3 if you are a barrister and 5 or more years have elapsed since:

(a) you last held a practising certificate; or

(b) you satisfactorily completed (or were exempted from the requirement to complete) either the non-practising period of 6 months of pupillage or 12 months of pupillage

you have complied with such training requirements as may be imposed by the Bar Standards Board.¹

3. You are eligible for:

3.1 a full practising certificate if either:

(a) you have satisfactorily completed 12 months pupillage; or

(b) you have been exempted from the requirement to complete 12 months of pupillage; or

(c) on 30 July 2000, you were entitled to exercise full rights of audience by reason of being a barrister; or

(d) you were called to the Bar before 1 January 2002 and you complied with sub-paragraphs 1102(a) and (b) of the 8th Edition of this Code before 31 March 2012;

3.2 a provisional practising certificate if you have satisfactorily completed (or have been exempted from the requirement to complete) the non-practising period of 6 months of pupillage and at the time when you apply for a practising certificate you are registered as a pupil;

¹ Rule 2.3 does not take effect until 1 April 2014

- 3.3 a limited practising certificate if:
- (a) you have not completed (or been exempted from the requirement to complete) 12 months of pupillage; but
 - (b) you were called to the Bar before 1 January 2002; or
- 3.4 a registered European lawyer's practising certificate if you are a registered European lawyer.

Applications for Practising Certificates

4. You may apply for a practising certificate by:

- 4.1 completing the application form supplied by the Bar Council (acting by the Bar Standards Board) and submitting it to the Bar Council (acting by the Bar Standards Board); and
- 4.2 submitting such information in support of the application as may be prescribed by the Bar Council (acting by the Bar Standards Board); and
- 4.3 paying (or undertaking to pay in a manner determined by the Bar Council) the appropriate practising certificate fee in the amount determined in accordance with rule [9] below (subject to any reduction pursuant to rule [8] below).

before the practising certificate is issued.

5. An application will only have been made once the Bar Council (acting by the Bar Standards Board) has received the application form in full, with payment in accordance with rule 4.3, together with all the information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.
6. On receipt of the application, the Bar Council (acting by the Bar Standards Board) may require, from you or a third party, such additional information, documents or references as it considers appropriate to the consideration of your application.
7. You are personally responsible for the contents of your application and any information submitted to the Bar Council (acting by the Bar Standards Board) by you or on your behalf and you must not submit (or cause or permit to be submitted on your behalf) information to the Bar Council (acting by the Bar Standards Board) which you do not believe is full and accurate information.
8. When applying for the renewal of a practising certificate, you may, by completing the form supplied for that purpose by the Bar Council, apply to the Bar Council for a reduction in the practising certificate fee payable by you if your gross fee income or salary is less than such amount as the Bar Council may decide from time to time.

Practising Certificate Fees

9. The practising certificate fee shall be the amount or amounts prescribed in the Schedule of Practising Certificate Fees issued by the Bar Council from time to time, and any reference in these Rules to the “appropriate practising certificate fee” or the “practising certificate fee payable by you” shall refer to the amount payable by you pursuant to that Schedule, having regard, inter alia, to:

9.1 the different annual practising certificate fees which may be prescribed by the Bar Council for different categories of barristers, e.g. for Queen’s Counsel and junior counsel, for barristers of different levels of seniority, and/or for barristers practising in different capacities (i.e. self-employed barristers, employed barristers, managers or employees of authorised bodies or barristers practising with dual capacity);

9.2 any reductions in the annual practising certificate fees which may be permitted by the Bar Council in the case of practising certificates which are valid for only part of a practising certificate year;

9.3 any discounts from the practising certificate fee which may be permitted by the Bar Council in the event of payment by specified methods;

9.4 any reduction in or rebate from the practising certificate fee which may be permitted by the Bar Council on the grounds of low income, change of category or otherwise; and

9.5 any surcharge or surcharges to the practising certificate fee which may be prescribed by the Bar Council in the event of application for renewal of a practising certificate being made after the end of the practising certificate year.

10. If you have given an undertaking to pay the practising certificate fee, you must comply with that undertaking in accordance with its terms.

Issue of Practising Certificates

11. The Bar Council (acting by the Bar Standards Board) shall not issue a practising certificate to a barrister or a registered European lawyer:

11.1 who is not eligible for a practising certificate, or for a practising certificate of the relevant type;

11.2 who has not applied for a practising certificate; or

11.3 who has not paid (or undertaken to pay in a manner determined by the Bar Council) the appropriate practising certificate fee; or

11.4 who is not insured against claims for professional negligence as provided for in paragraph 204(c) of the Code of Conduct and, if and insofar as applicable, paragraph 6 of the International Practice Rules or paragraph 4(2) of the Registered European Lawyers Rules.

12. The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate, or may revoke a practising certificate, if it is satisfied that the information submitted in support of the application for the practising certificate is incomplete, inaccurate or incapable of verification, or that the barrister or registered European lawyer:

12.1 is not insured against claims for professional negligence as provided for in paragraph 204(c) of the Code of Conduct and, if and insofar as applicable, paragraph 6 of the International Practice Rules or paragraph 4(2) of the Registered European Lawyer Rules;

12.2 in the case of a barrister who is insured by the Bar Mutual Indemnity Fund, has failed to pay any insurance premium when due;

12.3 has failed and continues to fail to pay a practising certificate fee when due;

12.4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to him; or

12.5 would be, or is, practising in breach of the provisions of paragraphs 203, 204, 205, 401, 501, 502 or 503 of the Code of Conduct.

13. When the Bar Council (acting by the Bar Standards Board) issues a practising certificate, it shall:

13.1 inform the barrister or registered European lawyer of that fact; ; and

13.2 publish that fact, the name and address of the barrister or registered European lawyer and the other details specified in rule 14 below in the register on the Bar Standards Board's website

14. A practising certificate shall state:

14.1 the name of the barrister or registered European lawyer;

14.2 the period for which the practising certificate is valid;

14.3 the reserved legal activities which the barrister or registered European lawyer to whom it is issued is thereby authorised to carry on;

14.4 the capacity (or capacities) in which the barrister or registered European lawyer practises; and

14.5 whether the barrister or registered European lawyer is registered with the Bar Council as a Public Access practitioner.

15. A practising certificate may be valid for a practising certificate year or part thereof and for one month after the end of the practising certificate year.

16. A full practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.
17. A provisional practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.
18. A limited practising certificate shall not authorise a barrister to exercise a right of audience, save that it shall authorise a barrister to exercise any right of audience which he had by reason of being a barrister and was entitled to exercise on 30 July 2000.
19. A practising certificate issued to an employed barrister or to a barrister who is a manager or an employee of an authorised body (or to a registered European lawyer who is employed or who is a manager or an employee of an authorised body) shall authorise the barrister (or the registered European lawyer) to conduct litigation in relation to every court and all proceedings if the barrister:
- 19.1 has spent a period of at least twelve weeks working under the supervision of a qualified person (as defined in rule 3 of the Employed Barristers (Conduct of Litigation Rules)); or
 - 19.2 has been exempted from this requirement by the Bar Standards Board on the grounds of his relevant experience.
20. Every practising certificate issued to a barrister shall authorise the barrister to carry on:
- 20.1 reserved instrument activities;
 - 20.2 probate activities; and
 - 20.3 the administration of oaths; and
 - 20.4 immigration advice and services
21. A registered European lawyer's practising certificate shall authorise a registered European lawyer to carry on the same reserved activities as a full practising certificate issued to a barrister, save that:
- 21.1 A registered European lawyer is only authorised to exercise a right of audience or a right to conduct litigation if he acts in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right.
 - 21.2 Unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia, a registered European lawyer is not authorised to prepare for remuneration any instrument creating or transferring an interest in land.

Amendment and Revocation of Practising Certificates

22. You must inform the Bar Council (acting by the Bar Standards Board) as soon as reasonably practicable, and in any event within 28 days if any of the information submitted in support of your practising certificate application form:

22.1 was incomplete or inaccurate when the application form was submitted; or

22.2 changes before the expiry of your practising certificate.

23. If you change the capacity in which you practise before the expiry of your practising certificate (e.g. if you change from being an employed barrister or a manager or employee of an authorised body to a self-employed barrister, or vice versa, or if you commence or cease practice in a dual capacity), you must within 14 days of demand by the Bar Council pay to the Bar Council the amount (if any) by which the practising certificate fee which would apply to you in your current status exceeds the practising certificate which you have already paid (or undertaken to pay) to the Bar Council.

24. The Bar Council (acting by the Bar Standards Board) may amend a practising certificate if it is satisfied that any of the information contained in the relevant application form was inaccurate or incomplete or has changed, but may not amend a practising certificate without first:

24.1 giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be amended; and

24.2 giving the barrister or registered European lawyer a reasonable opportunity to make representations.

25. The Bar Council (acting by the Bar Standards Board) shall endorse a practising certificate to reflect any qualification restriction or condition imposed on the barrister by the Bar Council (acting by the Bar Standards Board) or by a Disciplinary Tribunal, Informal Panel, Interim Suspension Panel or Fitness to Practise Panel.

26. The Bar Council (acting by the Bar Standards Board):

26.1 shall revoke a practising certificate:

(a) if the barrister or registered European lawyer is disbarred or suspended from practice as a barrister or registered European lawyer;

(b) if the barrister has notified the Bar Council or the Bar Standards Board that he no longer wishes to have a practising certificate; and

26.2 may revoke a practising certificate:

(a) in the circumstances set out in rule 12 above; or

(b) if the barrister or registered European lawyer has given an undertaking to pay the practising certificate fee and fails to comply with that undertaking in accordance with its terms;

but in either case only after:

- (i) giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be revoked; and
- (ii) giving the barrister or registered European lawyer a reasonable opportunity to make representations.

Applications for Review

27. If you contend that the Bar Council (acting by the Bar Standards Board) has:

27.1 wrongly failed or refused to issue or amend a practising certificate; or

27.2 wrongly amended or revoked a practising certificate, pursuant to these Rules

then you may lodge an application for review with the Qualifications Committee of the Bar Standards Board using the form supplied for that purpose by the Bar Standards Board. For the avoidance of doubt, this paragraph does not apply to any amendment or revocation of a practising certificate made by order of Medical or Review Panel, a Disciplinary Tribunal or the Visitors to the Inns of Court.

28. The Bar Council (acting by the Bar Standards Board) may issue a temporary practising certificate to a barrister who has lodged an application for review.

29. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to issue a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall issue such practising certificate as ought to have been issued.

30. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to amend a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall make such amendment to the practising certificate as ought to have been made.

31. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly amended a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall cancel the amendment.

32. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly revoked a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall re-issue the practising certificate.

Annexe E - Opinions under the Funding Code

Status of these Guidelines

1. These Guidelines are prepared by the Legal Services Commission. They are intended as statements of good practice to be followed when opinions are prepared on the merits of applications or certificates issued under the Funding Code. As statements of good practice these Guidelines should not be too rigidly applied. An opinion will, however, be rejected if it does not contain the information necessary for the Commission to make its decision under the Code.
2. These Guidelines have been agreed by the Bar Council for incorporation in the Code of Conduct of the Bar of England and Wales.

Scope

3. These Guidelines apply to legal opinions sent to the Legal Services Commission for the purpose of decisions made in individual cases under the Funding Code. The Guidelines are most relevant to decisions made under certificates or contracts covering Legal Representation or Support Funding, but also may be relevant to other levels of service.

The Guidelines apply to counsel and to solicitors with higher rights of audience who are instructed to give an independent opinion on the merits of a case. The term "counsel" in the Guidelines therefore includes a solicitor with higher rights of audience.
4. The Guidelines do not apply directly to solicitors giving a report to the regional office in a case which they are conducting or proposing to conduct. Such a report may be shorter and more informal than an opinion on the merits, but these Guidelines should still be borne in mind by solicitors when such reports are prepared.

Preliminary Considerations

5. All opinions must be prepared in accordance with the Funding Code and having regard to the Funding Code guidance prepared by the Commission. This guidance is set out in the Commission's Manual, and on the Commission's website at www.legalservices.gov.uk. Every person preparing an opinion must have access to and consult the guidance as necessary.
6. When counsel is instructed to provide an opinion in writing, counsel should first consider whether it is necessary to have a conference, for example to enable counsel to assess the reliability of the client's evidence in a case where that evidence is likely to be contested. Where counsel considers that a conference is necessary and would be cost effective, the costs of such a conference may be covered by the certificate provided it is within any overall cost limitation on the certificate and is justified as reasonable on assessment at the end of the case. In the case of a high cost case contract, any conference must be justified within the agreed case plan for the action.

Contents of Opinions

Issues to be Covered

7. The primary purpose of an opinion is to provide the Commission with the information and legal opinion necessary to apply all relevant Funding Code criteria, rather than to provide a personal opinion on what the funding decision should be.
8. Each opinion should state at the outset:
 - (a) the level of service under which the opinion is given and if appropriate, the level of service being applied for;
 - (b) the case category into which the proceedings fall, giving reasons if there is likely to be an issue as to which case category is appropriate.
9. In every opinion counsel should identify any potentially excluded work in the case, i.e. aspects of the case which may fall within the excluded categories in paragraph 1 of Schedule 2 of the Access to Justice Act 1999. Where excluded work arises counsel should specify any of the Lord Chancellor's directions which may bring the case back into scope.
10. It is not necessary for an opinion to discuss separately every criterion relevant to the decision. For example, it is not usually necessary for counsel to refer to the standard criteria in section 4 of the Code unless, in the particular circumstances of the case, one or more of these criteria is likely to be material to the Commission's decision. Unless otherwise instructed an opinion should always cover the following:
 - (a) Prospects of success (except for special Children Act proceedings or other proceedings which do not have a prospect of success criterion). The opinion should specify what constitutes a successful outcome for the client, having regard to guidance, and must specify with reasons the prospects in one of the six categories provided for in the Code. Where prospects are "borderline", the issues of fact, law or expert evidence which give rise to that assessment must be identified. Where prospects of success are "unclear" the necessary work to clarify prospects of success must be identified.
 - (b) Cost benefit (save for those cases which do not have a cost benefit criterion). The opinion must identify the benefit to the client from the proceedings and, for quantifiable claims, provide a figure for "likely damages" as defined in the Code. See paragraph 14 below as to estimates of "likely costs".
 - (c) Where the application is for Investigative Help to be granted or continued, the opinion must deal with matters relevant to criteria 5.6.2 (the need for investigation) and 5.6.4 (prospects after investigation). The opinion should explain why there are reasonable grounds for believing that when the investigative work has been carried out the claim will be strong enough, in terms of prospects of success and cost benefit, to satisfy the relevant criteria for full representation.
 - (d) Where the issue is whether funding should be withdrawn on the merits, the opinion should cover matters relevant to applying criteria 14.2 to 14.4, taking into account the interests of the client, the interests of the Community Legal Service Fund and relevant guidance.
11. An opinion on merits should:
 - (a) where factual issues are involved (a) set out in sufficient detail, (although not necessarily at great length), the rival factual versions to enable the Commission to

assess their relative strengths, and (b) express a clear opinion as to the likelihood of the applicant's version being accepted by a court and why;

- (b) where legal issues or difficulties of law are involved (a) summarise those issues or difficulties in sufficient detail to enable the Commission to come to a view about them without looking outside the opinion, and (b) express a clear view as to the likelihood of the applicant's case on the law being accepted by a court and why;
- (c) draw attention to (a) any lack or incompleteness of material which might bear on the reliability or otherwise of the applicant's version, and (b) any other factor which could-whether now or in the future-materially affect the assessment of the outcome of the case.

12. Where appropriate an opinion should suggest or formulate for the Commission any limitation or condition, whether as to the scope of work that should be covered, or as to costs, which ought to be imposed on the grant of funding in order to safeguard the Fund. In complex cases, including cases proceeding on the multi-track, the opinion should, specify any future point in the proceedings at which it is likely to be sensible to re-assess the merits.

Information From Other Sources

13. There will often be information relevant to a merits decision which is not readily available to counsel. Where such information is not included in counsel's instructions, the opinion should specify the information which should be provided by the instructing solicitors, usually in the form of a covering letter to accompany counsel's opinion.
14. The following issues should usually be dealt with by instructing solicitors:
- (a) estimates of likely costs. This includes estimates of whether costs incurred to date, likely future costs to disposal, or future costs to trial. Assessments of likely costs may be relevant not just to any cost benefit criteria, but also to other criteria such as the thresholds for support funding, or the affordability of a high cost case. Such estimates will sometimes best be made in the light of counsel's opinion as to prospects of success and the future conduct of the case. Alternatively instructing solicitors may provide relevant estimates of costs to counsel with counsel's instructions so that such figures may be incorporated in the body of the opinion;
 - (b) assessments of whether a case is suitable for a Conditional Fee Agreement and whether affordable insurance is available, in cases which are being considered under the General Funding Code.

Specific Issues

15. Where it is suggested that a case has a significant wider public interest counsel's opinion should:
- (a) identify the nature of the benefits which the case might bring to persons other than the client;
 - (b) identify the group or section of the public who might benefit from the case, if possible giving at least a rough estimate of likely numbers;

- (c) where people may benefit indirectly from a test case, explain the individual issues which other clients would need to establish in order to succeed with their claims;
 - (d) where the public interest of the case derives from establishing an important point of law, set out that legal issue clearly and explain the likelihood of the court resolving the issue one way or another for the benefit of other cases.
16. Where it is suggested that a judicial review or claim against a public authority raises significant human rights issues, the opinion should identify the specific articles of the Convention which may have been breached by the public body and the importance of those issues to the client and the general public.
 17. Where it is suggested that a case has overwhelming importance to the client as this is defined in the Code, the nature of the importance to the client must be identified in the opinion having regard to the Commission's guidance on this issue.
 18. In cases involving more than two parties, counsel should consider carefully whether separate representation for each client is justified (criterion 5.4.5). This is particularly important in many family cases and in appeals where the points at issue in the appeal may not require separate representation from every party to the proceedings at first instance. Counsel should consider whether the arguments on which his or her client relies will be put forward on behalf of another party whose interests in the proceedings are substantially the same. Counsel should report to the Commission with proposals for minimising representation by solicitors and counsel.
 19. In high cost cases in which the Commission will be considering whether the action is affordable in the light of available resources (criterion 6.4) counsel's opinion should address those aspects of the case which, in accordance with the Commission's guidance, are relevant to the affordability decision. It will not be possible or appropriate for counsel to consider the question of the resources available to the Commission, or the reasonableness of funding the individual case as against other cases, as these are matters solely for the Commission.

Continuing Duties to the Fund

20. A barrister is under a specific duty to comply with the provisions of the Access to Justice Act 1999 and any regulations or code in effect under that Act (paragraph 304 of the Bar Code of Conduct). Since these duties are directed at ensuring that public funding is granted and continued only in justifiable cases, it follows that counsel acting under a funding certificate is under a duty to bring to the attention of the Commission any matter which might affect the client's entitlement to funding, or the terms of his or her certificate, at whatever stage of the proceedings that might occur.
21. Counsel and any other legal representative acting under a certificate or contract are also subject to the specific obligations set out in Rule C44 of the Code Procedures. This includes a general obligation to inform the Regional Director of new information or a change of circumstances which has come to light which may affect the terms or continuation of a certificate.
22. Where counsel is under an obligation to draw matters to the attention of the Commission, he or she may do so by drawing matters to the attention of his or her instructing solicitors and

asking that they be passed on to the Commission, or counsel may contact the Commission directly if that is appropriate in the particular circumstances of the case.

Annexe F1 - Licensed Access and Recognition

The Licensed Access Rules

1. Subject to these rules and to compliance with the Code of Conduct (and in particular to paragraphs 401 and 403) a barrister in self-employed practice may accept instructions from a licensed access client in circumstances authorised in relation to that client by the Licensed Access Recognition Regulations (reproduced in this Annexe) whether that client is acting for himself or another.
2. These rules apply to every matter in which a barrister in self-employed practice is instructed by a licensed access client save that paragraphs 4(b) 6 7 and 9 of these rules do not apply to any matter in which a licensed access client is deemed to be a licensed access client by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations.
3. Not used.
4. A barrister is only entitled to accept instructions from a licensed access client if at the time of giving instructions the licensed access client
 - (a) is identified; and
 - (b) sends the barrister a copy of the Licence issued by the Bar Standards Board.
5. A barrister must not accept any instructions from a licensed access client
 - (a) unless the barrister and his Chambers are able to provide the services required of them by that licensed access client;
 - (b) if the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with or in place of the barrister.
6. A barrister who accepts instructions from a licensed access client otherwise than on the terms of the Licensed Access Terms of Work as approved from time to time by the Bar Standards Board:
 - (a) must first agree in writing the terms upon which he has agreed to do the work and the basis upon which he is to be paid;
 - (b) must keep a copy of the agreement in writing with the licensed access client setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid.
7. A barrister who accepts instructions from a licensed access client
 - (a) must promptly send the licensed access client
 - (i) a statement in writing that the instructions have been accepted (as the case may be) (1) on the standard terms previously agreed in writing with that licensed access client or (2) on the terms of the Licensed Access Terms of Work (and thereafter if requested a copy of the Licensed Access Terms of Work); or
 - (ii) if he has accepted instructions otherwise than on such standard terms or on the terms of the Licensed Access Terms of Work, a copy of the agreement in

writing with the licensed access client setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid;

- (b) unless he has accepted instructions on the terms of the Licensed Access Terms of Work or on terms which incorporate the following particulars must at the same time advise the licensed access client in writing of:
 - (i) the effect of paragraph 401 of the Code of Conduct as it relevantly applies in the circumstances;
 - (ii) the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations disclosure obligations and other obligations arising out of or related to the conduct of litigation;
 - (iii) the fact that circumstances may require the client to retain a solicitor or other authorised litigator at short notice and possibly during the case.
8. If at any stage a barrister who is instructed by a licensed access client considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with or in place of the barrister:
- (a) the barrister must forthwith advise the licensed access client in writing to instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be); and
 - (b) unless a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) is instructed as soon as reasonably practicable thereafter the barrister must cease to act and must return any instructions.
9. If at any stage a barrister who is instructed by a licensed access client considers that there are substantial grounds for believing that the licensed access client has in some significant respect failed to comply either with the terms of the Licence granted by the Bar Standards Board or (where applicable) with the terms of the Licensed Access Terms of Work the barrister must forthwith report the facts to the Bar Standards Board.
10. A barrister who accepts instructions from a licensed access client must keep a case record (whether on card or computer) which sets out:
- (a) the date of receipt of the instructions, the name of the licensed access client, the name of the case, and any requirements of the licensed access client as to time limits;
 - (b) the date on which the instructions were accepted;
 - (c) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations;
 - (d) when agreed, the fee.
11. A barrister who accepts instructions from a licensed access client must either himself retain or take reasonable steps to ensure that the licensed access client will retain for six years after the date of the last item of work done:
- (a) copies of instructions (including supplemental instructions);

- (b) copies of all advices given and documents drafted or approved;
- (c) a list of all documents enclosed with any instructions;
- (d) notes of all conferences and of all advice given on the telephone.

THE LICENSED ACCESS RECOGNITION REGULATIONS

1. Authorised licensed access clients are those persons and organisations and/or their members and/or their or their members' employees (as the case may be) who have from time to time been approved as such by the Bar Standards Board.
2. Any person or organisation wishing to be approved as an authorised licensed access client shall apply in writing to the Bar Standards Board by completing an application form in such form and supplying such other information as the Bar Standards Board may from time to time or in any particular case require.
3. In approving any person or organisation as an authorised licensed access client the Bar Standards Board may grant such approval in each case as the Bar Standards Board may think appropriate:
 - (a) (i) on a provisional basis or
(ii) on a full basis;
 - (b) (i) for a fixed period or
(ii) for a fixed period subject to extension or
(iii) indefinitely;
 - (c) (i) to the person or organisation and/or
(ii) to some or all of the members of the organisation and/or
(iii) to some or all of the employees of the person or organisation or its members;
 - (d) in relation to matters concerning
 - (i) the person or organisation and/or its members (as the case may be) and/or
 - (ii) his or its or its members' employees and/or
 - (iii) his or its or its members' clients or customers;
 - (e) subject to such limitations or conditions as the Bar Standards Board may think appropriate relating to
 - (i) the matters in relation to which the authorised licensed access client may instruct a barrister and/or
 - (ii) the courts or tribunals before which a barrister so instructed may exercise a right of audience and/or
 - (iii) such other matters (including the means by which the authorised licensed access client shall instruct a barrister) as seem relevant in the circumstances.
4. The Bar Standards Board shall issue to every person or organisation approved as an authorised licensed access client a Licence in such form as the Bar Standards Board may from time to time or in the particular case think appropriate. Such Licence (which may be a provisional Licence or a full Licence):
 - (a) shall specify (i) the name of the person or organisation who has been approved as an authorised licensed access client (ii) the period (if any) for which the Licence has been granted or (as the case may be) that the Licence has been granted indefinitely and (iii) the limitations or conditions (if any) subject to which the Licence has been granted;
 - (b) may if the Bar Standards Board think appropriate provide that unless otherwise first agreed in writing with an individual barrister or chambers all instructions accepted by

any barrister from the authorised licensed access client will be deemed to be given and accepted on the terms of the Licensed Access Terms of Work as approved from time to time by the Bar Standards Board;

- (c) may if the Bar Standards Board think appropriate provide that a copy of the Licence shall be sent with every set of instructions to any barrister instructed by the authorised licensed access client;
- (d) shall remain at all times the property of the General Council of The Bar to whom (or to whose duly appointed officer) it shall be surrendered on demand.

5. The Bar Standards Board may from time to time:

- (a) approve additional persons or organisations as authorised licensed access clients;
- (b) withdraw approval (either wholly or in part) from any person or organisation as an authorised licensed access client;
- (c) increase reduce or otherwise alter the period for which a person or organisation is approved as an authorised licensed access client;
- (d) alter or revoke the limitations or conditions (if any) attached to any approval of a person or organisation as an authorised licensed access client or impose new or additional limitations or conditions;
- (e) cancel and demand the surrender of any Licence issued under paragraph 4 of these regulations.

6. In exercising their functions under paragraphs 1 2 3 4 and 5 of these regulations the Bar Standards Board shall comply with the statutory objectives referred to in section 17(1) of the Courts and Legal Services Act 1990 and section 1(2) of the Access to Justice Act 1999 may consult with such persons organisations or bodies as they think appropriate and shall to such extent as they may think appropriate in the particular case have regard to the following matters:

- (a) the fact that barristers in independent practice operate as a referral profession of specialist consultants;
- (b) the extent to which the person or organisation or its members (as the case may be) are likely to have a significant requirement to retain the services of a barrister for their own benefit or for the benefit of their employers employees members clients or customers (as the case may be);
- (c) the extent to which whether as a result of professional or other relevant training or by reason of practice and experience the person or organisation or its employees or members (as the case may be) are or may reasonably be expected to be
 - (i) providers of skilled and specialist services
 - (ii) competent in some identifiable area of expertise or experience
 - (iii) familiar with any relevant area of law
 - (iv) possessed of the necessary skills to obtain and prepare information and to organise papers and information sufficiently to enable the barrister to fulfill his duties in a non-contentious matter to the client and in a contentious matter both to the client and to the court

- (v) possessed of the necessary skills to take charge and have the general conduct of the matters in respect of which they wish to retain the services of a barrister;
 - (d) the extent to which the affairs and conduct of the person or organisation or its members (as the case may be) are subject to some appropriate professional disciplinary regulatory or other organisational rules;
 - (e) the extent to which the person or organisation or its members (as the case may be)
 - (i) are insured against claims for negligence in relation to their handling of matters in respect of which they wish to retain the services of a barrister
 - (ii) have made and continue to comply with satisfactory arrangements for holding in separate accounts and maintaining as trust monies any monies received from third parties
 - (iii) have made and continue to comply with satisfactory arrangements for ensuring that barristers' fees are promptly paid;
 - (f) such other facts and matters (if any) as seem to them to be relevant in the circumstances.
7. Notwithstanding paragraphs 2, 3 and 4 of these regulations any member of any of the bodies referred to in the First Schedule to these regulations shall be deemed to be an authorised licensed access client (including in relation to matters concerning that member's clients or customers) but
- (a) only in a matter of a kind which falls generally within the professional expertise of the members of the relevant body; and
 - (b) not for the purpose of briefing counsel to appear in or exercise any right of audience before the Judicial Committee of the House of Lords the Privy Council the Supreme Court the Crown Court a County Court or the Employment Appeals Tribunal.
8. Notwithstanding paragraphs 2, 3 and 4 of these regulations any of the following shall be deemed to be an authorised licensed access client:
- (a) an arbitrator (including for these purposes an adjudicator under the Housing Grants Construction and Regeneration Act 1996) but only when instructing counsel for the purpose of advising on any point of law practice or procedure arising in or connected with an arbitration in which he has been or may be appointed;
 - (b) any person who has been appointed to one of the offices of Ombudsman referred to in the Second Schedule to these regulations but only when instructing counsel for the purpose of advising on any point of law practice or procedure arising in the course of the performance of his duties.
9. Nothing in paragraphs 7 and 8 of these regulations shall prevent
- (a) any person to whom paragraph 7 or paragraph 8 applies making an application in accordance with paragraph 2 of these regulations (in which event paragraphs 3 4 5 and 6 of these regulations shall apply to such application and to any Licence issued pursuant to such application);

- (b) the Bar Standards Board exercising in relation to any person to whom paragraph 7 or paragraph 8 applies the powers conferred by paragraphs 5(b) 5(c) and 5(d) of these regulations (in which event paragraph 6 of these regulations shall apply).

THE FIRST SCHEDULE

Part I - Accountants and taxation advisers

1. The Association of Authorised Public Accountants
2. Association of Taxation Technicians
3. The Association of Chartered Certified Accountants
4. The Chartered Institute of Management Accountants
5. Institute of Chartered Accountants
6. The Institute of Chartered Accountants in Ireland
7. Institute of Chartered Accountants in Scotland
8. The Chartered Institute of Taxation
9. The Institute of Financial Accountants
10. The Institute of Indirect Taxation

Part II - Insolvency practitioners

1. Insolvency Practitioners Association

Part III - Architects surveyors and town planners

2. The Architects Registration Council of the UK
3. The Architects and Surveyors Institute
4. Association of Consultant Architects
5. The Royal Institute of British Architects
6. The Royal Institution of Chartered Surveyors
7. The Royal Town Planning Institute

Part IV - Engineers

1. The Institution of Chemical Engineers
2. The Institution of Civil Engineering Surveyors
3. The Institution of Civil Engineers
4. The Institution of Engineering and Technology
5. Institution of Mechanical Engineers
6. The Institution of Structural Engineers

Part V - Valuers

1. The Incorporated Society of valuers & Auctioneers

Part VI - Actuaries

1. The Faculty of Actuaries
2. Institute of Actuaries

Part VII - Chartered secretaries and administrators

1. The Institute of Chartered Secretaries and Administrators

Part VIII - Insurers

1. The Association of Average adjusters
2. The Chartered Institute of Loss Adjusters
3. The Chartered Insurance Institute

THE SECOND SCHEDULE

1. Parliamentary Commissioner for Administration
2. Commissioner for Local Administration (England)
3. Commissioner for Local Administration (Wales)
4. Health Service Commissioner
5. Banking Ombudsman
6. Building Society Ombudsman
7. Insurance Ombudsman Bureau
8. The Personal Investment Authority Ombudsman Bureau Ltd
9. The Legal Services Ombudsman

Annexe F2 - Public Access Rules

1. These rules apply to barristers instructed by or on behalf of lay clients (other than licensed access clients) pursuant to paragraph 401(a)(iii) of the Code of Conduct.
2. Before accepting any public access instructions from or on behalf of a lay client who has not also instructed a solicitor or other professional client, a barrister must:-
 - (i) Be properly qualified by having been issued with a full practising certificate, by having undertaken and satisfactorily completed the appropriate training required by the Bar Standards Board from time to time, and by registering with the Bar Council as a Public Access practitioner;
 - (ii) From 4 October 2013 a barrister must have successfully completed a training programme approved by the Bar Standards Board as valid for these purposes from that date unless:

the barrister was already registered with the Bar Council to undertake public access on that date, in which case he must undertake any additional training required by the Bar Standards Board within 24 months or cease to undertake public access work.
 - (iii) Take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client; and
 - (iv) Take such steps as are reasonably necessary to ensure that the client is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.
3. From 4 October 2013 a barrister with less than three years' standing (as defined at paragraph 203.2) who has completed the necessary training must:
 - (i) have a public access qualified person (a qualified person as defined at paragraph 203.3) readily available to provide guidance to the barrister;
 - (ii) maintain a log of public cases they have dealt with, including any issues or problems which have arisen (a pro forma for recording this information is included in the guidance for barristers published by the Bar Standards Board);
 - (iii) seek appropriate feedback from their public access clients on the service provided;
 - (iv) make this log available, on request, to the Bar Standards Board for review.
4. A barrister may not accept direct instructions from or on behalf of a lay client in or in connection with any matter or proceedings in which, in all the circumstances, it would be in the interests of the client or in the interests of justice for the client to instruct a solicitor or professional client.
5. In any case where a barrister is not prohibited from accepting instructions, the barrister must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client. If, after accepting direct instructions a barrister forms the view that circumstances are such that it would be in the best interests of the client, or in the interests of justice for the lay client to instruct a solicitor or other professional client the barrister must:

- (a) inform the client of his view; and
 - (b) withdraw from the case in accordance with the provisions of paragraph 608(a) of the Code unless the client instructs a solicitor or other professional client to act in the case.
6. A barrister must have regard to guidance published from time to time by the Bar Standards Board in considering whether to accept and in carrying out any public access instructions.
7. A barrister who accepts public access instructions must forthwith notify his lay client in writing, and in clear and readily understandable terms, of:
- (a) the work which the barrister has agreed to perform;
 - (b) the fact that in performing his work the barrister will be subject to the requirements of the Code of Conduct and, in particular, paragraphs 401(b), 603 (a) and 608;
 - (c) the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the conduct of litigation;
 - (d) the fact that the barrister is a sole practitioner, is not a member of a firm and does not take on any arranging role;
 - (e) in any case where the barrister has been instructed by an intermediary:
 - (i) the fact that the barrister is independent of and has no liability for the intermediary; and
 - (ii) the fact that the intermediary is the agent of the lay client and not the agent of the barrister;
 - (f) the fact that the barrister may be prevented from completing the work by reason of his professional duties or conflicting professional obligations, and what the client can expect of the barrister in such a situation;
 - (g) the fees which the barrister proposes to charge for that work, or the basis on which his fee will be calculated;
 - (h) the barrister's contact arrangements; and
 - (i) the barristers' complaints procedure and that of the General Council of the Bar.
8. Save in exceptional circumstances, a barrister will have complied with rule 6 above if he has written promptly to the lay client in the terms of the model letter provided on the Bar Council's website.
9. In any case where a barrister has been instructed by an intermediary, he must give the notice required by rule 6 above both:
- (a) directly to the lay client; and
 - (b) to the intermediary.
10. A barrister who accepts public access instructions must keep a case record which sets out:
- (a) the date of receipt of the instructions, the name of the lay client, the name of the case, and any requirements of the client as to time limits;

- b) the date on which the instructions were accepted;
 - (c) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations;
 - (d) when agreed, the fee.
11. A barrister who accepts public access instructions must either himself retain or take reasonable steps to ensure that the lay client will retain for at least seven years after the date of the last item of work done:
- (a) copies of all instructions (including supplemental instructions);
 - (b) copies of all advices given and documents drafted or approved;
 - (c) the originals, copies or a list of all documents enclosed with any instructions;
 - (d) notes of all conferences and of all advice given on the telephone.
12. A barrister who has accepted public access instructions may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the Bar Council.
13. Save where otherwise agreed:
- (a) A barrister shall be entitled to copy all documents received from his lay client, and to retain such copies permanently.
 - (b) A barrister shall return all documents received from his lay client on demand, whether or not the barrister has been paid for any work done for the lay client.
 - (c) A barrister shall not be required to deliver to his lay client any documents drafted by the barrister in advance of receiving payment from the lay client for all work done for that client.

A barrister who has accepted public access instructions in any civil matter may take a proof of evidence from his client in that matter.

Annexe G1 - Services to solicitors, withdrawal of credit

This annexe will be deleted from 31 January 2013 and will be replaced by annexe T.

The Terms of work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988

(As authorised by the General Council of the Bar on 16 July 1988 and amended by authority of the General Council of the Bar on 10 November 1990, 17 July 1999, and 24 March 2001 and 21 November 2001)

WHEREAS:

1. These Terms have been authorised by the General Council of the Bar and are intended to apply (save as hereinafter provided) in any case where a barrister is instructed by a solicitor;
2. Any solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms;

AND WHEREAS:

3. By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
4. Except in publicly funded cases a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
5. Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
6. The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

General

1. A solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct a barrister.
2. In any case where a barrister accepts a brief or instructions from a solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:
 - (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;

- (2) the obligations of the solicitor under these Terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

Instructions

3. A barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these Terms will apply only where the barrister has accepted the brief or instructions.
4. Notwithstanding that a brief or instructions have been delivered to a barrister the barrister shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:
 - (1) to peruse them;
 - (2) in the case of a brief to agree a fee with the solicitor.
5. A barrister accepts a brief or instructions upon the understanding:
 - (1) that he must and will comply with the Bar Code of Conduct;
 - (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work
 - (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.
6.
 - (1) Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent".
 - (2) In the case of publicly funded work, the solicitor must at the time when he delivers the brief or instructions (or if any relevant certificate is not then available to him as soon as reasonably practicable thereafter) supply the barrister with copies of any relevant public funding certificates.

Copies of Briefs and Instructions and Records of Advice

7. A barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle a barrister to exercise any lien over any brief instructions or papers.

Fees

8. Save in the case of publicly funded work or in the case of a Notified Solicitor a barrister and solicitor may (subject to any rules regarding contingent fees) make such agreement or

arrangement between them as to the time or times whether at the time of delivery of the brief or instructions or subsequently thereto or otherwise at which the barrister's fees shall be paid as they may think fit and the barrister's fees shall be paid by the solicitor accordingly PROVIDED that every such agreement or arrangement shall be in writing.

9. Save in the case of publicly funded work or in the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court a barrister may and in the case of fees payable by a Notified Solicitor a barrister (unless and except as otherwise previously authorised in writing by the Chairman) must require his fees to be agreed and paid before he accepts the brief or instructions to which the fees relate.
10.
 - (1) Fees and/or charging rates shall be (i) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (ii) a reasonable professional rate for the barrister instructed
 - (2) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.
 - (3) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
 - (4) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number, the barrister's relevant account number for the purpose of receiving payment in publicly funded cases and (if known to the barrister) any relevant public funding certificate number and date of issue.
 - (5) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.
11. In the case of publicly funded work:
 - (1) The solicitor and barrister shall respectively take such steps as may be open to each of them to take under the applicable Regulations for the time being in force for the purpose of obtaining payment of the barrister's fees as soon as reasonably practicable;
 - (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by (i) notifying the barrister of the date of issue and number and supplying the barrister with copies of any relevant public funding certificates (ii) notifying the barrister of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment (iii) informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
 - (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.
12. In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:
 - (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;

- (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 12(1) hereof;
 - (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman;
 - (4) Subject to paragraph 12(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
 - (5) In the event of any breach by the solicitor of his obligations under paragraph 12(1) and/or 12(2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment.
13. (1) Subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister's fees if and to the extent that such fees have not been previously paid shall unless challenged by the solicitor as hereinafter provided be paid by the solicitor within one month after the fee note relating thereto has been sent to the solicitor whether or not the solicitor has been placed in funds by his client and whether or not the case is still continuing.
- (2) In the event that the barrister's fees are not paid in full in accordance with subparagraph (1) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment if that letter includes a statement to that effect.
14. (1) Any challenge by a solicitor to a barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 15(1) hereof has been sent to him whichever is the later.
- (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
- (a) the challenge was made in accordance with paragraph 14(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in writing (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal and (ii) to abide by and forthwith give effect to the decision of the Tribunal.
- (3) If a dispute is referred to a Tribunal in accordance with paragraph 14(2) above:
- (i) The Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (ii) No payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.

- (iii) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 13(2) above shall apply to that sum as if it had become payable when it would have become payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
 - (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 14(1) and (2), the fees will be payable in full, without any set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 13(1) above.
15. Save as aforesaid and subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister if and to the extent that his fees have not been previously paid:
- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof;
 - (2) unless an explanation for non-payment satisfactory to the barrister has been received shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and
 - (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

Withdrawal of Credit

16. In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) 12(3) or 15(3) hereof or under the equivalent terms of any contract and in any other case in which he is satisfied that it is appropriate to do so, the Chairman may write a letter in the form of one of the letters annexed hereto and marked "C" or some reasonable adaptation thereof.
17. (1) This paragraph applies where the following conditions are satisfied namely where:
- (a) such a letter as is referred to in paragraph 16 hereof has been sent and no explanation for non-payment satisfactory to the Chairman has been received; and
 - (b) either (i) any fees referred to in such letter which are in the opinion of the Chairman properly payable remain unpaid or (ii) in the event that all such fees have been paid not more than twelve months have elapsed since payment; and
 - (c) circumstances have arisen in which the Chairman would otherwise have occasion to send to any person liable for the fees or to any connected person a further letter such as is referred to in paragraph 16 hereof.
- (2) In any case in which paragraph 17(1) hereof applies the Chairman shall write to such person or persons (as the case may be) to the effect that unless written representations received by him within 14 days after the date of such letter or within such extended period as he may allow justify an exceptional departure from the

following course he will and unless persuaded by such representations not to do so the Chairman whether or not any fees remain unpaid shall:

- (a) issue a direction that no barrister may without the written consent of the Chairman (which consent may be sought urgently in exceptional cases) knowingly accept instructions from any person or firm named in such direction or from any person who or firm which is or has at any time since the direction was issued been a connected person unless his fees are to be paid directly by the Legal Services Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work; and
 - (b) cause the names of the persons or firms named in such direction to be included in a list of persons and firms named in such directions to be circulated by pre-paid first-class post to all such persons and firms to all the Clerks and Heads of Chambers in England and Wales to the Master of the Rolls and to the President of the Law Society notifying them of such direction.
18. Notwithstanding anything to the contrary herein if in any case the Chairman is satisfied that it is appropriate to issue a direction such as is referred to in paragraph 17(2)(a) hereof in respect of any person or firm named in such direction and to circulate a list such as is referred to in paragraph 17(2)(b) hereof including the names of the persons or firms named in such direction he may after giving such persons and firms due notice of why he considers it appropriate to take such course and after considering any written representations and after consultation with the Law Society issue a direction in respect of and cause the list to include the names of such persons and firms as may be appropriate.
- 18.A Upon issuing a direction pursuant to either paragraph 17(2)(a) or paragraph 18 hereof, the Chairman shall report the facts to the OSS and shall request the OSS to commence proceedings before the Solicitors' Disciplinary Tribunal against the persons, the firms, or the partners in the firms named in such direction.
19. The list referred to in paragraphs 17 and 18 hereof shall be circulated monthly unless there have been in the meantime no additions to or deletions from the list.
20. Any Notified Solicitor and any barrister may at any time after the expiration of six months after the name of any person or firm was first included in such a list seek the revocation of any relevant direction and the amendment of the list and the Chairman after considering any written representations and after consultation with the Law Society shall be empowered (but shall not be obliged) to accede to such application upon such terms as he considers appropriate.

Definitions and consequential provisions

21. For the purpose hereof:
- (1) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
 - (2) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;
 - (3) "solicitor" shall where the context admits include any solicitor liable for the fees;

- (4) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 2(2) hereof for the payment of the fees;
 - (5) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
 - (6) "connected person" shall mean any person who from time to time is either
 - (a) a partner employee consultant or associate of any firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;
 - (b) the employer of any person liable for the fees or of any Notified Solicitor;
 - (c) an employee of any person liable for the fees or of any Notified Solicitor;
 - (d) a firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;
 - (7) "Notified Solicitor" shall mean any person or firm whose name is for the time being included in the list referred to in paragraphs 17 and 18 hereof and any person who or firm which is or has at any time since the direction was issued been a connected person;
 - (8) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
 - (9) "the Chairman" shall mean the Chairman of the Bar Council and shall include any person including in particular the Vice-Chairman of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;
 - (10) "the OSS" shall mean the Office for the Supervision of Solicitors;
 - (11) "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.
 - (12) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 13(2) hereof.
 - (13) The "stipulated rate" shall mean 2% above the Bank of England base rate from time to time
 - (14) Any letter written by the Chairman to any person pursuant to or which would otherwise have been effective for the purposes of either the Withdrawal of Credit Scheme which came into effect on 2 March 1987 or the Withdrawal of Credit Scheme 1988 as originally enacted or in force from time to time shall in relation to such person be deemed to be such a letter as is referred to in paragraph 16 hereof.
22. (1) Subject to sub-paragraph (2) below, any fee note and any such letter as is referred to in paragraphs 15(1) 15(2) 16 17(2) or 18 hereof may be sent and shall be treated as having been properly and sufficiently sent to each and every person liable for the

fees and to each and every connected person (as the case may be) if posted by pre-paid first-class post or sent through any Document Exchange or by facsimile transmission addressed to:

- (a) any person liable for the fees; or
- (b) if any person liable for the fees is either a partner of or consultant to or associate of or employed by another or others to the person liable for the fees or to his employer or to his senior partner (as the case may be); or
- (c) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, to the firm under whose name he practises;

and addressed to any place at which such person or his employer or any partner of his carries on practice.

- (2) Where a firm or a sole proprietor is liable for the fees, if any letter under paragraphs 15(2), 16, 17(2) or 18 hereof is addressed to some person other than the senior partner of the firm or the sole proprietor, a copy must also be sent to the senior partner or sole proprietor at the same time.

23. Any such letter as is referred to in paragraphs 17(2) or 18 hereof shall:

- (1) identify any relevant earlier matters of complaint;
- (2) state the Chairman's proposed course of action; and
- (3) enclose a copy of this document provided that any accidental omission or failure to enclose such a copy may be remedied by the sending of a separate copy as soon as the Chairman is made aware of such omission or failure.

24. Any such direction as is referred to in paragraphs 17 or 18 hereof may contain or be amended so as to add or include any or all of the names and addresses:

- (1) of any person liable for the fees;
- (2) of any connected person; and
- (3) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, of the firm under whose name he practises.

Status of these Terms

25. Neither the General Council of the Bar in authorising these Terms nor a barrister in offering his services to a solicitor on these Terms has any intention to create legal relations or to enter into any contract or other obligation binding in law.

26. Neither the sending by a solicitor of a brief or instructions to a barrister nor the acceptance by a barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever or be legally enforceable by or

against or be the subject of litigation with either the barrister or the General Council of the Bar.

Exclusion or variation

27. A solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms.

Transitional

28. Unless otherwise agreed in writing:
- (1) Any amendment to these Terms has effect only with regard to briefs and instructions accepted on or after the date the amendment is expressed to take effect; and
 - (2) As regards briefs and instructions accepted before that date, these Terms continue to have effect in the form in which they stood before the amendment.

LETTER "A"

(To be sent 1 month after fee note)

Privately funded cases

Dear Sir,

Re:_____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a privately funded case in which your relationship with [Name of Barrister] is governed by the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended; "the Terms"). Under paragraph 13(1) of the Terms, the fees were due and payable within 1 month of the fee note.

I would be grateful if you could make arrangements for these fees to be paid or let me know when payment may be expected.

[Please note that under paragraph 13(2) of the Terms, any such fees remaining outstanding one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from one month after the date of this letter until payment.]*

Yours faithfully,

Clerk to [name of barrister]

*Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.

Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re:_____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a publicly funded case and I would be grateful if you could let me know when payment may be expected.

Yours faithfully,

Clerk to [name of barrister]

LETTER "B"

(To be sent 3 months after fee note)

Privately funded cases

Dear Sir,

Re:_____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re:_____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been received.

My records indicate that this is a publicly funded case. I must therefore ask you to notify me of:

- (a) the date of issue and number of the relevant public funding certificate(s);
- (b) the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) the steps you have taken under the relevant Regulations for the purpose of obtaining payment of [name of barrister]'s fees.

Would you also supply me with copies of the relevant Public Funding Certificate(s).

As you know Counsel is required as a matter of professional conduct to report the matter to the Chairman of the General Council of the Bar unless he receives in response to this letter the information requested above and a satisfactory explanation for the fact that he has not yet been paid. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

LETTER "C"

First Chairman's Letter: Private

Private and Confidential - Recorded Delivery

The Senior Partner

Dear Sir,

I refer to Counsel's fees particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached. Letters have been written regarding payment of these fees. Payment has not been received. As a result the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

I would remind you of your professional obligation to pay Counsel's fees in non publicly funded matters irrespective of whether you have been placed in funds by your client.

Unless you challenged Counsel's fees in writing within 3 months after the first fee note was sent to you, or you are able to provide a satisfactory explanation for non-payment, I would ask you to pay Counsel within 14 days of the date of this letter. In addition, please provide an explanation for the delay in payment, again within 14 days of the date of this letter.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that, unless there is a satisfactory explanation for non-payment or you challenged the fees in time, and the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove necessary to implement the Scheme in your case and that Counsel's fees will be paid promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay Counsel's fees on time.

Yours faithfully,

[Name]

CHAIRMAN OF THE BAR

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of

[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

LETTER "C"

First Chairman's Letter: Publicly funded

Private and Confidential
Recorded Delivery

The Senior Partner

Dear Sir,

I refer to Counsel's fees, particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached. Letters have been written regarding payment of these fees. Payment has not been received. As a result, the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

Since this complaint relates to a publicly funded matter, I would be grateful if you would supply the following information within 14 days of the date of this letter:-

- (a) notify me of the date of issue and number and supply me with copies of any relevant publicly funded certificates;
- (b) notify me of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) inform me of what steps you have taken under the relevant Regulations for the purpose of obtaining payment of Counsel's fees.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that if (1) no satisfactory explanation for non-payment of the fees referred to in the Schedule to this letter has been provided and (2) the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove to be necessary to implement the Scheme in your case, and that Counsel's fees will be paid promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay Counsel's fees on time."

Yours faithfully,

[Name]

CHAIRMAN of THE BAR

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of

[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

LETTER "C"

First Chairman's Letter: Private and Publicly funded

Private and Confidential
Recorded Delivery

The Senior Partner

Dear Sir,

I refer to Counsel's fees, particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached. Letters have been written regarding payment of these fees. Payment has not been received. As a result, the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

I would remind you of your professional obligation to pay Counsel's fees in privately funded matters irrespective of whether you have been placed in funds by your client.

Unless you challenged Counsel's fees in writing within 3 months after the first fee note was sent to you, or you are able to provide a satisfactory explanation for non-payment, I would ask you to pay Counsel within 14 days of the date of this letter. In addition, please provide an explanation for the delay in payment, again within 14 days of the date of this letter.

Insofar as this complaint relates to a publicly funded matter, I would be grateful if you would supply the following information within 14 days of the date of this letter:-

- (a) notify me of the date of issue and number and supply me with copies of any relevant publicly funding certificates;
- (b) notify me of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) inform me of what steps you have taken under the relevant Regulations for the purpose of obtaining payment of Counsel's fees.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that, unless there is a satisfactory explanation for non-payment or you challenged the fees in time, and the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove to be necessary to implement the Scheme in your case, and that Counsel's fees will be paid promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay Counsel's fees on time.

Yours faithfully,

[Name]

CHAIRMAN of THE BAR

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of

[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

Annexe G2 - Services to solicitors, contractual terms

This annexe will be deleted from 31 January 2013 and will be replaced by annexe T.

(As Authorised By The General Council Of The Bar On 24 March 2001 and amended by authority of The General Council of the Bar on 17 November 2001)

WHEREAS:

1. These terms have been authorised by the General Council of the Bar;
2. These terms are intended to apply in any case where a barrister is instructed by a solicitor, and both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding;
3. Any such agreement shall operate in accordance with paragraph 27 of the Terms of Work to exclude paragraphs 1-15 and 25-26 thereof as regards the instructions to which it relates;

AND WHEREAS:

4. By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
5. Except in cases funded by the Legal Services Commission, Community Legal Service or Criminal Defence Service a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
6. Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
7. The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

Application of these Terms

1. These terms apply in any case where a barrister is instructed by a solicitor and where both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding subject to the following:-
 - (1) these terms apply to any particular contract only insofar as they have not been expressly varied or excluded by written agreement between the barrister and the solicitor;
 - (2) these terms will apply to briefs and instructions only where they have been accepted by the barrister;
 - (3) these terms do not apply to publicly funded work; and
 - (4) these terms do not apply to any work undertaken by a barrister on a conditional fee basis.

General

2. The solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct the barrister.
3. In any case where the barrister accepts a brief or instructions from the solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:
 - (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;
 - (2) the obligations of the solicitor under these terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

Instructions

4. The barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these terms will apply only where the barrister has accepted the brief or instructions.
5. Notwithstanding that a brief or instructions have been delivered to the barrister he shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:
 - (1) to peruse them;
 - (2) in the case of a brief, to agree a fee with the solicitor.
6. The barrister accepts a brief or instructions upon the understanding:
 - (1) that he must and will comply with the Bar Code of Conduct;
 - (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work;
 - (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.
7. Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent."

Copies of Briefs and Instructions and Records of Advice

8. The barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle the barrister to exercise any lien over any brief instructions or papers.

Fees and Interest

9. Subject to the Bar Code of Conduct, the following provisions shall apply:

- (1) Fees and/or charging rates shall be (a) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (b) a reasonable professional rate for the barrister instructed.
 - (2) Subject to paragraphs 11 and 12 below, the solicitor shall pay the barrister's fees in respect of work to which these terms apply within one month after receipt by the solicitor of the barrister's fee note in respect of such fees.
 - (3) In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (2) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment.
- 10.
- (1) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.
 - (2) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
 - (3) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number.
 - (4) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.
11. In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:
- (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;
 - (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
 - (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.
 - (4) Subject to paragraph 11(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
 - (5) In the event of any breach by the solicitor of his obligations under paragraph 11(1) and/or (2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment if that letter includes a statement to that effect.
- 12.
- (1) Any challenge by the solicitor to the barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to

him or within one month after such letter relating to that fee as is referred to in paragraph 13(1) hereof has been sent to him whichever is the later.

- (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
 - (a) the challenge was made in accordance with paragraph 12(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in writing
 - (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal
 - (ii) to abide by and forthwith give effect to the decision of the Tribunal.
 - (3) If a dispute is referred to a Tribunal in accordance with paragraph 12(2) above:
 - (a) the Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (b) no payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.
 - (c) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 9(3) above shall apply to that sum as if it had become payable when it would have been payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
 - (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 12(1) and (2);
 - (a) the fees will be payable in full, without any deductions or set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 9(2) above
 - (b) for the avoidance of doubt, it shall not be open to the solicitor to withhold or delay such payment or any part thereof on the grounds that a claim or complaint has been made or maybe made against the barrister arising out of the brief or instruction to which the fees relate or any other ground
13. Save as aforesaid and if and to the extent that his fees have not been previously paid, and without prejudice to any other remedy open to him in order to recover them, the barrister:
- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof; and
 - (2) unless an explanation for non-payment satisfactory to the barrister has been received, shall at the expiration of three months after the first fee note relating

thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and

- (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

Withdrawal of Credit

14. (1) In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) or 13(3) hereof, paragraphs 16 to 24 (inclusive) of the Terms of Work shall, so far as applicable, apply to the relationship created between the barrister and the solicitor under these terms.
- (2) Paragraph 22 of the Terms of Work shall also apply to any fee note or letter referred to in paragraphs 9, 10 and 13 above as it does to those referred to in paragraphs 15-18 of the Terms of Work

Definitions and Consequential Provisions

15. For the purpose hereof:
 - (i) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
 - (ii) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;
 - (iii) "solicitor" shall where the context admits include any solicitor liable for the fees;
 - (iv) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 3(2) hereof for the payment of the fees;
 - (v) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
 - (vi) "Terms of Work" shall mean the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended and in force from time to time)
 - (vii) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
 - (viii) "the Chairman" shall mean the Chairman of the General Council of the Bar (also referred to as the "Bar Council") and shall include any person including in particular the Vice Chairman of the General Council of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;
 - (ix) "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.

- (x) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 9(3) hereof.
- (xi) The "stipulated rate" shall mean 2% above the Bank of England base rate from time to time.

The General Council of the Bar

16. Neither the sending by the solicitor of a brief or instructions to the barrister nor the acceptance by the barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever (except between the solicitor and barrister) or be legally enforceable by or against or be the subject of litigation with the General Council of the Bar.

LETTER "A"

(To be sent 1 month after fee note)

Dear Sir

Re: _____

I refer to the Fee Note of [Name of Barrister] in respect of the above case which was sent to you on the [Date].

My records indicate that this is a privately funded case in which your relationship with [Name of Barrister] is governed by the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 (the "Contractual Terms"). Under paragraph 9(2) of those terms, the fees were due and payable within 30 days of the Fee Note.

[Please note that under paragraph 9(3) of the The Contractual Terms, any such fees remaining outstanding within one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from 1 month after the date of this letter until payment.]*

I would be grateful if you could now make arrangements for these fees to be paid.

Yours faithfully

Clerk to [Name of Barrister]

*Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.

LETTER "B"

(To be sent 3 months after fee note)

Dear Sir

Re: _____

I have referred to [Name of Barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully

Clerk to [Name of Barrister]

Annexe H - The Foreign Lawyers (Chambers) Rules

1. Before permitting a foreign lawyer to practise from chambers the head of chambers or if there is no head of chambers every member of chambers must:
 - (a) obtain the written undertaking of the foreign lawyer to comply with the Code as if he were a self-employed barrister except in so far as any requirement of the Code conflicts with the rules of his own profession;
 - (b) ensure that the foreign lawyer is covered by insurance against claims for professional negligence in such amount and upon such terms as are currently required by the Bar Council;
 - (c) provide the Bar Council in writing with the name and details of the foreign lawyer and with a copy of the undertaking referred to in (a) above and a copy of the current insurance policy or certificate of insurance covering the foreign lawyer; and
 - (d) obtain the consent in writing of the Bar Council to the foreign lawyer so practising.
2. Thereafter for so long as the foreign lawyer is permitted to practise from chambers the head of chambers or if there is no head of chambers every member of chambers must:
 - (a) satisfy himself that the foreign lawyer complies with and continues to comply with the undertaking referred to in paragraph 1(a) above;
 - (b) ensure that the foreign lawyer remains covered by insurance in accordance with paragraph 1(b) above and that the Bar Council has a copy of the current insurance policy or certificate of insurance covering the foreign lawyer; and
 - (c) inform the Bar Council of any failure by the foreign lawyer to comply with the undertaking referred to in paragraph 1(a) above which may be known to him.
3. No barrister shall permit a foreign lawyer to practise or continue to practise from chambers of which the barrister is a member if the consent of the Bar Council to the foreign lawyer so practising has not been given or is at any time withdrawn.
4. A European lawyer registered with the Law Society of England and Wales may not practise from or be a member of chambers.

Annexe I - Employed Bar Conduct of Litigation Rules

1. An employed barrister may exercise any right that he has to conduct litigation provided that:
 - (a) he is entitled to practise as a barrister in accordance with paragraph 202 of the Code;
 - (b) he has spent a period of at least twelve weeks working under the supervision of a qualified person or has been exempted from this requirement by the Bar Council on the grounds of his relevant experience;
 - (c) if he is of less than one year's standing (or three years' standing in the case of a barrister who is supplying litigation services to any person other than a person referred to in paragraph 501 of the Code) his principal place of practice is an office which is also the principal place of practice of a qualified person who is able to provide guidance to the barrister; and
 - (d) if he is of less than three years' standing, he completes at least six hours of continuing professional development on an approved litigation course during any year in which he is required to undertake continuing professional development by the Continuing Professional Development Regulations (reproduced in Annex C).
2. For the purpose of paragraph 1(c) above an employed barrister shall be treated as being of a particular number of years' standing if he:
 - (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations¹) or has been authorised to practise by another approved regulator
 - (b) has made such practice his primary occupation; and
 - (c) has been entitled to exercise a right to conduct litigationin relation to every Court and all proceedings for a period (which need not be continuous and need not have been through authorisation by the same approved regulator) of at least that number of years.
3. A person shall be a qualified person for the purpose of paragraph 1(c) above if he:
 - (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations²) or has been authorised to practise by another approved regulator (which need not have been the same regulator) for a period of at least six years in the previous eight years;
 - (b) for the previous two years
 - (i) has made such practice his primary occupation, and
 - (ii) has been entitled to exercise a right to conduct litigation in relation to every Court and all proceedings;
 - (c) is not acting as a qualified person in relation to more than two other people; and
 - (d) has not been designated by the Bar Council as unsuitable to be a qualified person.

4. If an employed barrister in the conduct of litigation gives an undertaking, any breach of that undertaking shall constitute professional misconduct.

¹Bar Training Regulations effective from 1st September 2009

Annexe J - The Complaints Rules 2011

Introduction

1. These Rules prescribe the manner in which
 - (a) all complaints about the conduct of barristers; and
 - (b) all complaints about the conduct of persons who, at the time of such conduct, are serving a sentence of disbarment which is subsequently overturned on appeal shall be processed. In these Rules, the expression "barristers" shall be interpreted as including persons falling within sub-paragraph 1(b) above.
2. In these Rules unless the context otherwise requires
 - (a) Any term defined in the Code of Conduct shall carry the same meaning as it does in Part X of the Code of Conduct.
 - (b) Reference to the "Professional Conduct Department" shall refer to the Professional Conduct Department of the Bar Standards Board ("the BSB").
 - (c) Reference to "the regulatory objectives" shall refer to the regulatory objectives as defined in section 1 of the Legal Services Act 2007.
 - (d) Any reference to a person includes any natural person, legal person and/or firm.
 - (e) Any reference to the masculine gender includes the feminine and the neuter, and any reference to the singular includes the plural, and in each case vice versa.
3. If a barrister is a member of more than one Inn, references in these Rules to his Inn shall mean the Inn by which he was called, unless he is a Bencher in which case his Inn shall mean the Inn of which he is a Bencher.
4. The Complaints Committee ("the Committee") and the Chairman of the Committee shall each have the power to authorise any person, group or body to fulfil any function or exercise any power given to them by these Rules. Any authorisations under this paragraph must be in writing and may be both retrospective and prospective, and both general and for a particular purpose.
5. Save in respect of the matters dealt with at paragraphs 24 and 25 below (time limits for making a complaint), the Committee, the Chairman of the Committee, or any person authorised under paragraph 4 above, shall have the power to extend any time limits prescribed by these Rules, in his or their absolute discretion, whenever it appears to be appropriate to do so.

Powers and functions of the Committee

6. The membership of the Committee shall be as prescribed by the Standing Orders of the BSB as amended from time to time.
7. The powers of the Committee shall be as set out in these Rules, and shall include the power:

- (a) to consider complaints made by persons other than the BSB;
 - (b) to raise complaints on behalf of the BSB, and to withdraw such complaints;
 - (c) to determine whether any complaint discloses a potential case of professional misconduct or a potential breach of the Code, and if so to deal with it in accordance with these Rules;
 - (d) to direct the investigation of complaints;
 - (e) to seek, in appropriate cases, to resolve complaints using the Determination by Consent procedure;
 - (f) to bring charges of professional misconduct before Disciplinary Tribunals (as provided by the Disciplinary Tribunals Regulations at Annex K to the Code of Conduct) on behalf of the BSB, to refer to such tribunals any legal aid complaint relating to the conduct of a barrister and to be responsible for prosecuting any such charges or legal aid complaints before such Tribunals;
 - (g) to take such other actions in relation to complaints or infringements of the Code of Conduct as are permitted by these Rules, and in particular paragraph 31 below;
 - (h) to impose, or direct the imposition, of a fixed financial penalty or a written warning under paragraph 901.1 of the Code of Conduct, whether in connection with a complaint or otherwise;
 - (i) to make recommendations on matters of professional conduct to the BSB or to any of its committees, as the Committee may think appropriate;
 - (j) to make rulings on matters of professional conduct when the Committee considers it appropriate to do so; and
 - (k) to exercise the power of the BSB under paragraph 108 of the Code of Conduct to grant waivers of the provisions of that Code either generally or in particular cases.
8. In the period up to 31 March 2011, the Complaints Committee shall have the additional powers and functions in relation to complaints of inadequate professional service as are set out in Schedule 2 to these Rules.

Procedure for dealing with complaints - general

9. The Committee may at any time postpone consideration of a complaint, whether to permit further investigation of the complaint to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.
10. The Committee may at any time seek information or assistance, orally or in writing, as it thinks fit, from any person, group or body.
11. If at any time the Committee decides in accordance with these Rules:
- (a) to refer a complaint to another person or body for consideration; or
 - (b) to dismiss or take no further action on a complaint; or
 - (c) to postpone consideration of a complaint or part of it; it shall give written reasons for such decision, and provide such reasons to the barrister against whom the complaint was made and (where the complaint was made by a person other than the BSB) the complainant.
12. Any complaint raised by the BSB itself shall be considered by the Committee in accordance with paragraph 28 and following below.

13. Any complaint other than a complaint raised by the BSB itself shall be considered by the Committee in accordance with paragraphs 14 to 27 below.

Procedure for dealing with complaints by persons other than the BSB

Reference of complaints to other persons

Reference to Legal Ombudsman

14. If a complaint is made by or on behalf of a barrister's client against that barrister, the Committee shall refer such complaint without further consideration to the Legal Ombudsman, and shall notify the complainant of the referral.
 - (a) For the avoidance of doubt, such referral shall not prevent the immediate operation of the Interim Suspension Rules or the Fitness to Practise Rules, where appropriate.
 - (b) On a complaint being referred, or referred back, to the BSB by the Legal Ombudsman, paragraphs 15 and following below shall apply.
15. If it appears to the Committee that a complaint against a self-employed barrister (not being a complaint made by or on behalf of a barrister's client against that barrister) may appropriately be resolved by that barrister's Chambers, the Committee may refer the complaint to the barrister's Chambers for investigation and resolution.
16. When deciding whether to refer a complaint in accordance with paragraph 15 above, the Committee shall take into account all the circumstances, including:
 - (a) the seriousness of the complaint;
 - (b) the complexity of the complaint;
 - (c) the relationship (if any) between the complainant and the barrister or the barrister's Chambers;
 - (d) any other factor relevant to the issue of whether it is appropriate and potentially effective to refer the complaint to Chambers.
17. Where a complaint relates to conduct which occurred more than twelve months prior to the complaint being made, the Committee shall consider whether the complaint should be dismissed in accordance with paragraph 25 below prior to deciding whether to refer the complaint to Chambers in accordance with paragraph 15 above.
18. Where a complaint is referred to Chambers, the Committee will send any information held by it relating to the complaint to the Head of Chambers, or the individual(s) responsible for administration of Chambers, who will be responsible for ensuring that the complaint is investigated in accordance with Annex S of the Code.
19. Following a referral to Chambers, the Committee shall inform the complainant of the complainant's rights under paragraph 21(b) below.
20. The Committee's decision under paragraph 15 is final and no party shall have the right to appeal against it.
21. If:

- (a) the Committee considers that progress made by Chambers in investigating and resolving the complaint, or the outcome of such investigation, is unsatisfactory; or
 - (b) a complainant informs the Committee that he is dissatisfied with the progress or outcome of the Chambers' investigation, giving reasons for such dissatisfaction,
- then the Committee shall consider the complaint in accordance with paragraph 24 and following below.

Reference to any other person

22. If it appears to the Committee that a complaint relates to a matter which might more appropriately be dealt with by the barrister's Inn, Circuit, employer or some other regulatory body, it may refer the complaint without further consideration to that other body.

Reference where barrister acting in judicial or quasi-judicial capacity

23. (a) If it appears to the Committee that the complaint arises out of a barrister's actions in a part-time or temporary judicial or quasi-judicial capacity, it shall act as follows:
- (i) If it appears to the Committee that the complaint would otherwise fall to be dismissed under these Rules, the Committee shall dismiss it.
 - (ii) If it appears to the Committee that the complaint would otherwise not fall to be dismissed, the Committee shall refer the complaint without further consideration to the person or body responsible for the appointment of the barrister to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other person or body as appropriate) ("the appointing body"), requesting the appointing body to notify the Committee when the complaint has been dealt with and of any action taken. Where the appointing body is a person other than the Lord Chancellor or a Minister of the Crown and where the Committee considers it inappropriate to refer the complaint to the appointing body, or where the appointing body refuses to deal with a complaint, the Committee shall consider the complaint and, subject to (iv) below, direct it to be proceeded with in accordance with paragraph 28 and following below.
 - (iii) If the appointing body, having dealt with a complaint, believes that it may be appropriate for further consideration by the Bar Standards Board, the appointing body may, subject to (iv) below, refer the matter to the Committee which may reconsider the complaint and may, if it sees fit, direct it to be proceeded with in accordance with paragraph 28 and following below.
 - (iv) No such reference to the Committee as is mentioned in (iii) above by the appointing body shall be acted upon by the Committee, nor shall the Committee exercise the powers under the last sentence of paragraph (ii) above in respect of any part of the complaint relating to anything said or done by the barrister in the exercise of his judicial functions or affecting the independence of the barrister in his judicial or quasi-judicial capacity.

- (b) If it appears to the Committee that the complaint relates to the conduct of a barrister who, since the events giving rise to the complaint took place, has been appointed to and continues to hold full-time judicial office and has ceased practice, the Committee shall not consider the complaint further and shall inform the complainant that his complaint should be directed to the Lord Chancellor or to such other person or body as may hereafter assume the responsibilities of the Lord Chancellor in this regard.
Committee's powers before investigation of complaints

24. In determining whether a complaint raised by a person other than the BSB discloses a potential case of professional misconduct or a potential breach of the Code, and whether, if it does, it is apt for further consideration, the Committee shall first consider whether the complaint has been made:

- (a) within twelve months of the conduct of which complaint is made, or
- (b) (where a complainant has indicated to the Committee his dissatisfaction with the outcome of a Chambers' investigation in accordance with paragraph above) within three months of the conclusion of the investigation by Chambers,

whichever is the later. Where the conduct of which complaint is made is (or was) ongoing or consists of a series of related acts or omissions, then the conduct shall for the purposes of this paragraph be treated as having taken place at the time when the ongoing conduct ceased or at the time of the last of such acts or omissions.

25. Where the Committee considers that the complaint has not been made within the period identified in paragraph 24 above, then it shall dismiss the complaint unless it considers that further consideration of the complaint is justified, despite the lapse of time, by reason of the regulatory objectives. The Committee shall give written reasons for any decision made under this paragraph.

26. The Committee shall next consider whether further consideration of the complaint is justified. If the Committee considers that:

- (a) the complaint for any reason obviously lacks substance;
- (b) the complaint cannot be properly or fairly investigated, or the barrister is for any reason unable fairly to respond to it;
- (c) the complaint or its consequences are insufficiently serious to justify further action;
or
- (d) for any other reason whatsoever the complaint is not apt for further consideration;

then the Committee shall dismiss the complaint.

27. If a complaint is not dismissed by the Committee following its initial consideration, it shall be investigated and dealt with in the manner set out in paragraph 28 and following below.

Investigation of complaints

28. The investigation of complaints shall be conducted by the Professional Conduct Department under the direction of the Committee.

29. Following the completion of any investigation into a complaint, the Committee shall exercise the powers given to it by paragraph 30 and following below.
- Committee consideration of complaints
30. The Committee shall consider complaints, together with the results of investigations thereof, in such manner as it shall see fit, provided that (save in the case of complaints falling within paragraph 31(b) below), the Committee shall not conclude that there is a realistic prospect of a finding of professional misconduct being made against a barrister on the basis of any allegation by a complainant to which the barrister has not had a reasonable opportunity to respond.
31. If in the course of its consideration of a complaint ("the original complaint") the Committee considers that there is any matter other than that complained of which might give rise to a potential case of professional misconduct, the Committee may raise a complaint about that matter on behalf of the BSB ("the new complaint").
- (a) In such event, unless the new matter falls within sub-paragraph (b) below:
- (i) The new complaint shall be investigated in the manner set out in paragraph 28 and following above.
- (ii) The Committee shall not proceed to consider whether there is a realistic prospect of a finding of professional misconduct being made in respect of the new complaint unless and until the barrister concerned has been given the opportunity to comment in writing on the matter complained of in the new complaint. The Committee shall take any comments made by the barrister into consideration when it determines whether there is a realistic prospect of a finding of professional misconduct being made in respect of the new complaint.
- (iii) The Committee may defer further consideration of the original complaint pending the results of any investigation of the new complaint.
- (b) No further investigation will be required where:
- (i) the subject matter of the new complaint has already been investigated in the course of investigations into the original complaint, or
- (ii) the new complaint is a complaint made by the BSB of a breach of paragraphs 901.2, 901.4, 901.5, 901.6 or 905(b)(c) or (f) of the Code of Conduct.
32. Upon considering any complaint, and subject to the provisions of paragraph 38 below, the Committee may take any of the following steps:
- (a) Dismiss the complaint, provided that (where the decision is taken at a meeting of the Committee, and not by some other person, group or body authorised in accordance with paragraph 4 of these Rules) the majority of the lay members present at the meeting consent to such dismissal.
- (b) Determine that no further action shall be taken on the complaint.
- (c) Direct that the complaint should be subject to the Determination by Consent procedure (under paragraphs 43 and 44 of these Rules) or form the subject matter of a charge before a Disciplinary Tribunal.
33. A direction shall be made by the Committee under paragraph 32(c) above only where:

- (a) the Committee considers that there is a realistic prospect of a finding of professional misconduct being made; and
 - (b) the Committee decides that the regulatory objectives would be best served by pursuing disciplinary proceedings.
34. For the purpose of these Rules a "realistic prospect of a finding of professional misconduct being made" means that the Committee considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of a complaint, that it is more likely than not that such a finding will be made.
35. Where the Committee decides to take no further action on a complaint, or dismisses a complaint, but the barrister's conduct is nevertheless such as to give cause for concern, the Committee may in those circumstances, and either before or after any disposal of the complaint, do any or all of the following:
- (a) draw to the barrister's attention in writing the Committee's concerns;
 - (b) direct the barrister to apologise in writing to the complainant;
 - (c) advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the Committee or on some other person nominated by the Committee, to receive such advice;
 - (d) in a case where there has been an infringement of the provisions of paragraph 901.1 of the Code, direct the Professional Conduct Department to administer a formal written warning and/or a financial penalty for the infringement.

If the complaint of professional misconduct was not dismissed before any such direction or advice was made or given, the Committee may thereafter dismiss that complaint.

36. If, when dismissing or deciding to take no further action on a complaint, the Committee nonetheless considers that the circumstances of the complaint are relevant to the barrister's position as a pupil supervisor, it may notify the barrister's Inn of its concern in such manner as it sees fit.
37. Where a barrister is directed to apologise to the complainant pursuant to paragraph 35(b) above, the Committee may direct that such apology is to be approved by the Chairman of the Committee, or a person nominated by the Chairman of the Committee, prior to being sent to the complainant.
38. If the subject matter of the complaint involves a conviction for an offence of dishonesty or deception the Committee shall direct that the complaint should form the subject matter of a charge before a Disciplinary Tribunal.
39. In all other cases where the Committee considers that there is a realistic prospect of a finding of professional misconduct being made, in determining what is the appropriate means of disposal under paragraph 32 above, the Committee shall be entitled to take into consideration any matters which it considers relevant, including but not limited to:
- (a) the barrister's previous conduct (including any disciplinary findings made against him as a student by his Inn, or any disciplinary findings made against him by any other professional or regulatory body);

- (b) the means by which any previous complaints against him have been disposed of; and
 - (c) the means by which complaints of a similar nature against other barristers have been disposed of.
40. If the Committee considers that there is a realistic prospect of a finding of professional misconduct being made against a registered European lawyer in respect of the complaint, the Professional Conduct Department shall:
- (a) inform the professional body of which the registered European lawyer is a Member in his home Member State;
 - (b) offer that professional body the opportunity to make representations to the Disciplinary Tribunal to which the complaint has been referred or (where the Determination by Consent procedure is used) to the Committee; and
 - (c) inform that professional body of findings made by any panel under these Rules or under Annexes K, M or N of this code.
41. The Committee may reopen or reconsider a complaint which has been disposed of, unless it has been disposed of by a Disciplinary Tribunal,
- (a) where new evidence becomes available to the Committee which leads it to conclude that it should do so, or
 - (b) for some other good reason.
42. Following such reopening or reconsideration, the Committee may take any further or different action it thinks fit, as if the former decision had not been made, provided that if the complaint has already been referred to a Disciplinary Tribunal and charges have been served on the Defendant then the Committee's actions shall be confined to instructing counsel for the BSB to:
- (a) offer no evidence on a charge, or
 - (b) apply to the Directions Judge for the making of additions to or amendments of a charge.

Determination by consent

43. A complaint may, with the consent of the barrister against whom the complaint is made, be finally determined by the Committee. This is referred to as the "Determination by Consent procedure".
44. The circumstances in which the Determination by Consent procedure is to be used, and how it is to be used, are set out in Schedule 1 to these Complaints Rules. Disciplinary charges.
45. If the Committee directs under paragraphs 33 or 38 above that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the following paragraphs shall have effect.

46. At the same time as the Committee directs that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the Committee shall also direct whether a three-person panel or a five-person panel is to be constituted.
- (a) Where paragraph 38 above applies (complaint involving conviction for dishonesty or deception), the Committee shall direct that a five-person panel is to be constituted.
 - (b) In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the Committee shall only consider the sentence which it considers is likely to be imposed if the barrister is found guilty of the charges alleged, having regard to
 - (i) any applicable Sentencing Guidance issued by the Council of the Inns of Court; and
 - (ii) the previous disciplinary record of the barrister; and
 - (iii) any deferred sentence which would be activated if the barrister were to be found guilty of the charges alleged.
 - (c) If the Committee considers that the barrister is likely, if convicted, to be disbarred or suspended from practice for more than three months then the Committee shall direct that a five-person panel is to be constituted; otherwise, the Committee shall direct that a three-person panel is to be constituted.
 - (d) The Committee shall inform the barrister and the complainant (if any) of the decision taken under this paragraph. The decision taken by the Committee under this paragraph shall not be subject to any appeal.
47. Where the Committee directs that a three-person panel is to be constituted, the Committee may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chairman of the Panel, giving reasons for any such recommendation.
48. In the event that another charge of professional misconduct is pending or to be brought against the barrister concerned, the Committee shall have the power to direct that the additional charge be brought before the same Tribunal or panel as is disposing of the original charge, even if the additional charge, by itself, may be regarded as insufficiently serious to merit disposal by a Tribunal of that level.
49. The Committee may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions are satisfied:
- (a) the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction),
 - (b) witnesses are unlikely to be called for the hearing,
 - (c) the case needs to be resolved urgently, or
 - (d) there is some other good reason for expedition.
50. When the Committee has directed that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the Committee shall be responsible for bringing the charge on behalf of the BSB. In this regard:
- (a) The Committee may arrange for the appointment of counsel to settle the charge and to present the case before the Tribunal, and may arrange for the appointment of a

solicitor or such other person as may be necessary to assist counsel and prepare the case.

- (b) Any charges shall be brought in the name and on behalf of the BSB.

Confidentiality

51. (a) The BSB shall respect the confidentiality of complaints. The BSB shall not disclose the fact that a complaint has been made or details of the complaint or its disposal save as specified in this paragraph or otherwise required by law.
- (b) Disclosure may be made:
- (i) for the purpose of investigating the complaint;
 - (ii) for the purpose of keeping the complainant and the barrister informed of the progress of the complaint;
 - (iii) (for the purpose of publicising any forthcoming public hearing of charges arising from the complaint;
 - (iv) where the complainant and the barrister consent;
 - (v) for the purposes of paragraph 40 of these Rules;
 - (vi) where the publication of a finding is required by the provisions of the Disciplinary Tribunals Regulations 2009;
 - (vii) subject to paragraph (c) below, in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk; or from anybody responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body for a Certificate of Good Standing in respect of a barrister; or from one of the Inns of Court in respect of an application from a barrister to become a pupil supervisor; or
 - (viii) with the approval of the Committee, for any other good reason.
- (c) Where a disclosure is made pursuant to paragraph (b)(vii) above:
- (i) If any complaint has been made against the barrister concerned which has not been disposed of by the Committee under paragraph 32(a), (d) or (e) of these Rules, or dismissed by any Disciplinary Tribunal or by any other body to which it may have referred by the Committee, the BSB shall simply indicate that a complaint has been received which has not been dismissed; and
 - (ii) if a finding of professional misconduct has been recorded against the barrister concerned, the BSB shall disclose the finding and the penalty;
 - (iii) if the request is from the selection panel or a member of its secretariat in respect of an application by a barrister for silk or if the request is from one of the Inns of Court in respect of an application by a barrister to become a pupil

supervisor if a finding of inadequate professional service has been recorded against the barrister concerned, the BSB shall disclose the finding and penalty.

(d) Where any finding of professional misconduct has been made (whether by a Disciplinary Tribunal, the Visitors, or the Committee in the course of a Determination by Consent), the BSB shall publish on the BSB's website the name of the barrister against whom that finding was made, the nature of that finding, and the sentence imposed, unless the body making the finding directs otherwise.

Appeals from written warnings and financial penalties

52. A barrister's appeal in accordance with paragraph 901.3 of the Code from a written warning or financial penalty imposed by the BSB for any failure to comply with the provisions identified in paragraph 901.1 of the Code shall lie to an Appeal Panel constituted under the auspices of the Council of the Inns of Court in the same manner as a three-person panel constituted under Regulation 2(3) of the Disciplinary Tribunal Regulations.
53. An appeal shall be made by the barrister sending to the Chairman of the Committee, within the time provided by paragraph 901.3 of the Code, a notice identifying the warning or financial penalty appealed against, the decision the barrister contends for, the grounds of such appeal and a statement of whether or not the barrister requires his appeal to be disposed of at an oral hearing. The appeal shall be by way of a re-hearing.
54. The notice shall be accompanied by the sum of £100 (or such other sum as may be prescribed by the BSB from time to time) payable to the BSB to defray expenses.
55. At least 5 working days before the time set for the appeal, the Professional Conduct Department will provide each member of the Panel and the barrister with a paginated bundle of the correspondence and other documents on its files relating to the imposition of the written warning and financial penalty.
56. On such an appeal:
 - (a) the barrister may be represented;
 - (b) the Appeal Panel shall decide whether to set aside the written warning or financial penalty or both, or to replace a written warning with a financial penalty or vice versa, as appropriate;
 - (c) if the Appeal Panel shall allow the appeal in whole or in part, the Panel may direct that the sum paid under paragraph 54 above shall be refunded: but the Appeal Panel shall have no power to award costs.

Commencement and Transitional Provisions

57.
 - (a) These Rules will come into effect on 1st January 2011. They shall apply to all complaints whenever raised.
 - (b) Any step taken in relation to any complaint prior to 1st January 2011 pursuant to the provisions of the Rules then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Rules.

SCHEDULE 1: Determination by Consent

1. The Committee shall, in deciding whether to make a complaint subject to the Determination by Consent procedure under paragraph 43 of the Complaints Rules, consider all the circumstances. The Committee may make the complaint subject to the Determination by Consent procedure only if it considers that:
 - (a) there is a realistic prospect of a finding of professional misconduct being made in respect of the complaint; and
 - (b) there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
 - (c) the breach or breaches of the Code, if proved, combined with
 - (i) the barrister's previous disciplinary history, and
 - (ii) any deferred sentences which would be activated if the breach or breaches were proved,do not appear to be such as to warrant a period of suspension from practice or disbarment; and
 - (d) there are no exceptional circumstances which would warrant no further action being taken on the complaint or the complaint being dismissed; and
 - (e) there are no other public interest considerations which warrant a full hearing.
2. A decision taken under paragraph 43 of the Complaints Rules shall be final and neither the barrister nor the complainant (if applicable) may appeal against such a decision.
3. The Determination by Consent procedure shall be conducted in accordance with such procedures as the Committee may prescribe from time to time.
4. The Committee may terminate the Determination by Consent procedure at any time if it no longer considers that the requirements of paragraph 1 of this Schedule are satisfied, or for any other good reason.
5. If the Determination by Consent procedure terminates other than by a finding and sentence to which the barrister consents, then the complaint shall be disposed of by the Committee in accordance with paragraph 30 and following of the Complaints Rules.
6. The Committee shall publish any finding and sentence resulting from the Determination by Consent procedure to the same extent as such publication would have taken place following a finding and sentence resulting from a Disciplinary Tribunal, as provided for in paragraph 29 of Annex K to the Code of Conduct.
7. Once accepted by the barrister, no appeal may be made against a determination by consent, whether by the barrister or by the complainant (if applicable).
8. In determining any sanction to be imposed under the Determination by Consent procedure, the Committee shall have regard to any applicable Sentencing Guidance published by the Council of the Inns of Court.
9. A barrister against whom a charge of professional misconduct has been found proved under the Determination by Consent procedure may be subject to the following sanctions:

- (a) ordered to pay a fine of up to £15,000 to the Bar Standards Board (save that no fine may be ordered in excess of £5,000 unless the relevant conduct occurred after 31st March 2009);
 - (b) ordered to complete continuing professional development of such nature and duration as the Committee shall direct and to provide satisfactory proof of compliance with this order to the Committee;
 - (c) reprimanded by the Treasurer of his Inn;
 - (d) reprimanded by the Committee;
 - (e) given advice by the Committee as to his future conduct;
 - (f) ordered to attend on a nominated person to be reprimanded;
 - (g) ordered to attend on a nominated person to be given advice as to his future conduct;
 - (h) ordered to provide the complainant with an apology (save that such order may be made only in respect of conduct which took place after 1st July 2008);
 - (i) ordered to take and pass a test in professional conduct and ethics by a stated date, failing which the barrister shall be suspended from practice until such test has been passed, provided that no such sentence shall be imposed unless and until the Bar Standards Board has prescribed procedures by which such tests are to be conducted.
10. Where a barrister is directed to apologise to the complainant pursuant to paragraph 9(h) above, the Committee may direct that such apology is to be approved by the Chairman of the Committee, or a person nominated by the Chairman of the Committee, prior to being sent to the complainant.
11. Where the Committee has imposed a fine, the confirmation letter to the barrister shall indicate that the barrister must pay the fine within 28 days, subject to any representations made regarding the need for extra time to pay. Any application to pay a fine in instalments shall be left to the discretion of the Chairman of the Committee.
12. Where a sanction imposed by the Committee includes a fine, that element of the sentence may be directed by the Committee to have deferred effect. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the "period of deferral").
- (a) A deferred sentence shall be activated where the barrister is subsequently found (whether during the period of deferral or afterwards) to have committed a Relevant Breach during the period of deferral. For the purpose of this Regulation, a Relevant Breach would be a breach of the Code of Conduct amounting to professional misconduct.
 - (b) Where the Committee finds that there has been a Relevant Breach during the period of deferral, it shall (at the same time as imposing sentence for the Relevant Breach) activate the sentence which had been deferred, save in exceptional circumstances.
 - (c) For the avoidance of doubt, the Committee may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a Disciplinary Tribunal, so long as the total sanction imposed does not exceed the powers of the Committee set out in paragraph 9 above.

13. For the avoidance of doubt, any sanction imposed by the Committee under the Determination by Consent procedure shall be treated as a sentence imposed by a tribunal for the purpose of paragraph 905(f) of the Code of Conduct.

Annexe K - The Disciplinary Tribunals Regulations 2009

As amended January 2012

Arrangement of Regulations

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1. Definitions

- (1) In these regulations:
 - (a) The "BSB Representative" shall be the person or persons appointed by the Director of the Bar Standards Board to represent the Bar Standards Board ("the BSB") in respect of charges brought before a Disciplinary Tribunal.
 - (b) Other expressions shall have the meanings assigned to them by Part X of the Code of Conduct of the Bar of England and Wales.
- (2) Anything required by these Rules 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).

2. Composition of Disciplinary Tribunals

- (1) A Disciplinary Tribunal shall consist of either three persons or five persons.
- (2) A five-person panel shall (subject to paragraph (4) below) consist of the following five persons nominated by the President:
 - (a) as Chairman, a Judge; and
 - (b) two lay members; and
 - (c) two practising barristers of not less than seven years' standing.
- (3) A three-person panel shall consist of the following three persons nominated by the President:
 - (a) as Chairman, one Queen's Counsel or a Judge; and
 - (b) one practising barrister of not less than seven years' standing; and
 - (c) one lay member.
- (4) In constituting a panel, the following rules shall be respected:

- (a) The President shall have regard to (but shall not be bound by) any recommendation by the Professional Conduct Committee that a Judge rather than a QC be appointed to act as Chairman of a three-person panel.
 - (b) If the barrister charged ("the defendant") is an employed barrister, at least one of the barristers nominated to a five-person panel should normally be an employed barrister.
 - (c) In the case of a registered European lawyer, one of the members of a five-person panel shall be a registered European lawyer rather than a barrister.
 - (d) No person shall be nominated to serve on a Disciplinary Tribunal if they:
 - (i) are a member of the Bar Council or of any of its committees; or
 - (ii) are a member of the BSB or of any of its committees; or
 - (iii) were a member of the Professional Conduct Committee of the BSB ("the Professional Conduct Committee ") at any time when the matter was being considered by the Professional Conduct Committee.
 - (e) The President may publish qualifications or other requirements required in those appointed to be barrister or lay members of a Disciplinary Tribunal.
- (5) For the purposes of this Regulation and of Regulation 9, a Judge includes:
- (a) a puisne judge of the High Court;
 - (b) a judge of the Court of Appeal;
 - (c) a Circuit judge;
 - (d) a Recorder who has been requested to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;
 - (e) a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and
 - (f) 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:
 - (i) 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; and
 - (ii) has acted as a judge of the Court of Appeal or of the High Court or as a deputy Circuit judge in the last 12 months.
- (6) If a vacancy in the Disciplinary Tribunal shall arise prior to the substantive hearing of the charge, the President shall select another member of the relevant class to fill such vacancy.
- (7) At any time before the commencement of the substantive hearing of the charge, the President may cancel any or all of the nominations made pursuant to this regulation, and make such alternative nominations as in the exercise of his discretion he deems to be necessary or expedient.

- (8) The proceedings of a five-person panel shall be valid notwithstanding that after the Convening Order has been issued (in accordance with Regulation 8 below) one or more of the members becomes unable to continue to act or disqualified from continuing to act, so long as:
 - (a) the Chairman and at least one lay member remain able to act and are present throughout the substantive hearing; and
 - (b) the number of members present throughout the substantive hearing of the charge is not reduced below three.
- (9) A member of a Disciplinary Tribunal who has been absent for any time during a sitting shall take no further part in the proceedings.

3. Sittings of Disciplinary Tribunals

The President shall appoint Disciplinary Tribunals to sit at such times as are necessary for the prompt and expeditious determination of charges brought against defendants in accordance with the provisions of these Regulations.

4. Clerks

The President shall appoint a person or persons to act as Clerk or Clerks to the Disciplinary Tribunals to perform the functions specified in these Regulations and such other functions as the President or the Chairman of any Tribunal may direct. No person who has been engaged in the investigation of a complaint against a defendant in accordance with the relevant procedure or otherwise shall act as Clerk in relation to disciplinary proceedings arising out of that complaint. The President may publish qualifications or other requirements required in those appointed to be Clerks.

5. Service of Charges

- (1) Following the formulation of the charge or charges by counsel appointed by the BSB Representative, the BSB Representative shall cause a copy thereof to be served on the defendant, together with a copy of these Regulations and details of any Directions sought not later than 10 weeks (or 5 weeks if the Professional Conduct Committee has directed that the prosecution of the charges be expedited) after the date on which the complaint was referred to a Disciplinary Tribunal by the Professional Conduct Committee.
- (2) The BSB Representative shall at the same time cause copies of the charge or charges to be supplied to the President.

6. Representation of complainant's interests

- (1) The BSB Representative shall keep the complainant (if any) informed of the progress of the complaint.

7. Documents to be served

- (1) The defendant shall, as soon as practicable, be supplied with:

- (a) a copy of the evidence of each witness intended to be called in support of the charge or charges; and
 - (b) a list of the documents intended to be relied on by the BSB Representative.
- (2) If the documents referred to in paragraph (1) of this Regulation are not supplied to the defendant within 28 days of the defendant being served with charges in accordance with Regulation 5(1) above, then the BSB Representative shall provide to the defendant within that period:
- (a) details of the evidence that is still being sought; and
 - (b) a statement of when it is believed that it will be practicable to supply that evidence to the defendant.
- (3) Nothing in this Regulation shall preclude the reception by a Disciplinary Tribunal of the evidence of a witness that has not been served on the defendant (within the time specified aforesaid, or at all), or of a document not included in the list of documents, provided the Tribunal is of opinion that the defendant is not materially prejudiced thereby, or on such terms as are necessary to ensure that no such prejudice occurs.

8. Convening Orders

- (1) After receipt of the copy charge or charges supplied pursuant to Regulation 5, the President shall issue an Order ("the Convening Order") specifying:
- (a) the name, Inn, date of call and (if appropriate) status as a pupil supervisor or date of taking silk of the defendant;
 - (b) the date of the sitting of the Disciplinary Tribunal at which it is proposed the charge or charges should be heard; and
 - (c) the names and status (that is, as Chairman, as lay member, or as barrister) of those persons who it is proposed should constitute the Disciplinary Tribunal to hear his case; and
 - (d) the name of the Clerk.
- (2) The President shall arrange for the service of the Convening Order on the defendant, such service to take place not less than 14 days before the substantive hearing, and for copies thereof to be supplied to the nominated members of the Disciplinary Tribunal and the Clerk. In the Order the defendant's attention will be drawn to:
- (a) his right to represent himself or be represented by counsel, with or without instructing a solicitor, as he shall think fit; and
 - (b) his right to inspect and be given copies of documents referred to in the list served pursuant to Regulation 7 above; and

- (c) his right (without prejudice to his right to appear and take part in the proceedings) to deliver a written answer to the charge or charges if he thinks fit.
- (3) The defendant shall have the right upon receipt of the Convening Order to give notice to the President objecting to any one or more of the proposed members of the Disciplinary Tribunal. Such notice shall be given as soon as reasonably practicable and shall specify the ground of objection.
- (4) Upon receipt of such objection, the President shall, if satisfied that it is justified (but subject to Paragraph (5) of this Regulation) exercise the power conferred on him by Regulation 2(7) to nominate a substitute member or members of the Tribunal, and notify the defendant accordingly. Upon receipt of such notification, the defendant shall have in relation to such substitute member or members the like right of objection as is conferred by Paragraph (3) of this Regulation.
- (5) No objection to any member of the Tribunal shall be valid on the ground that he has or may have had knowledge of a previous charge of professional misconduct or breach of proper professional standards or a charge consisting of a legal aid complaint against the defendant or any finding on any such charge, or of any sentence imposed on the defendant in connection therewith.
- (6) The Convening Order shall contain words drawing the attention of the defendant to the rights conferred by Paragraphs (2) to (5) of this Regulation.

9. Directions etc

- (1) The President shall designate a Judge or Judges ("the Directions Judge(s)") to exercise the powers and functions specified in this Regulation.
- (2) The defendant shall, within 28 days of service of the Directions sought by the BSB Representative (as required by Regulation 5(1) above) agree such Directions in writing, or propose amendments to such Directions.
- (3) If the BSB Representative and the defendant are thereafter able to reach agreement on such Directions, the BSB Representative shall submit the agreed Directions to the Directions Judge for approval.
- (4) If the BSB Representative and the defendant are within 28 days of the defendant proposing amendments to the Directions (as required by paragraph (2) above) unable to reach agreement as to the Directions to be made, then the BSB Representative shall indicate in writing to the defendant that no agreement can be reached. Thereafter:
 - (a) The defendant shall, within 14 days of such indication being served, provide to the BSB Representative written submissions:
 - (i) explaining why the defendant's proposed directions are to be preferred to the directions proposed by the BSB Representative; and

- (ii) if the defendant wishes to submit that an oral directions hearing is appropriate, explaining why the defendant considers that an oral hearing is appropriate and providing a time estimate for such hearing.
 - (b) The BSB Representative shall, within 14 days of receipt of the defendant's submissions (or, if no such submissions are received, within 14 days of the last date on which such submissions should have been provided) forward the defendant's written submissions, together with its own submissions in respect of the matters identified at sub-paragraph (a) above, to the Directions Judge.
- (5) If one or both parties have requested an oral hearing, or of his own motion, the Directions Judge shall consider whether it is necessary to hold an oral hearing. His decision in this regard will be final, and no appeal will lie against such decision.
- (6) If the Directions Judge considers that no oral hearing is necessary, then he shall make a directions order in accordance with this Regulation without an oral hearing, having regard to the Directions proposed by the parties and any written submissions.
- (7) For the avoidance of doubt, in the event that the defendant fails to agree directions and fails to provide written submissions in support of alternative directions, the BSB Representative may forward its proposed directions to the Directions Judge who may approve such directions without an oral hearing, if the Directions Judge considers that no oral hearing is necessary.
- (8) If the Directions Judge considers that an oral hearing is necessary, the Directions Judge shall (subject to Paragraph (15) of this Regulation) direct that an oral Directions Hearing is to be held for the purpose of giving directions and of taking such other steps as he considers suitable for the clarification of the issues before the tribunal and generally for the just and expeditious handling of the proceedings.
- (9) If the Directions Judge directs that an oral Directions Hearing is to be held, the Directions Judge shall at the same time direct:
- (a) within what period of time the oral Directions Hearing is to be held; and
 - (b) the estimated length of the oral Directions Hearing.
- (10) The BSB Representative shall thereafter seek to agree with the defendant a date and time for the oral Directions Hearing in accordance with the Directions Judge's order. Where no agreement can be reached, either party may refer the matter to the President for a date to be fixed in accordance with paragraph 33(1) below.
- (11) The directions to be given and steps taken by the Directions Judge may concern, but shall not be limited to, the following matters:
- (a) whether the substantive hearing (or any part of it) should not be held in public - in which case reasons shall be given for such direction being made;
 - (b) applications for separate hearings;
 - (c) applications to sever charges;
 - (d) applications to strike out charges;
 - (e) attendance of witnesses;

- (f) a requirement that the parties provide each other with the names of all witnesses to be called at the hearing within a specified time limit;
 - (g) admission of documents;
 - (h) admission of facts, in accordance with the procedure set out at Paragraph (12) of this Regulation;
 - (i) a statement that the defendant has been duly served (in accordance with Regulation 32 of these Regulations) with the documents required by Regulations 5, 7 and 8;
 - (j) the estimated duration of the substantive hearing;
 - (k) a requirement that the parties provide to the President dates to avoid for the substantive hearing;
 - (l) such other matters as he deems expedient for the efficient conduct of the hearing;
 - (m) consideration of any application under Regulation 14(3) or under Regulation 19(5)(h);
 - (n) a requirement that such action as appears to him to be necessary for a fair hearing of the matter be undertaken within such period as he may decide;
 - (o) where he is satisfied that the matter is ready for hearing by a Tribunal recommend that the President set a date for the substantive hearing in accordance with paragraph 33(1) below;
 - (p) applications for costs.
- (12) (a) The Directions Judge may, if he thinks fit, request the defendant or his representative to state (either forthwith or in writing within such time as may be specified) whether any and if so which of such of the facts relied on in support of the charges as may be specified is disputed, and/or the grounds on which such fact is disputed.
- (a) The Clerk shall cause a record to be made of the making of such a request as aforesaid, and of the defendant's response thereto, and the same shall be drawn to the attention of the Disciplinary Tribunal at the conclusion of the substantive hearing, if relevant, on the question of costs.
- (13) The powers and functions specified in this Regulation may be exercised by a Judge nominated by the President other than the Directions Judge, including the Judge designated in the Convening Order as Chairman of the Tribunal appointed to hear and determine the charge or charges against the defendant.
- (14) The Clerk shall take a note of the proceedings at any oral Directions Hearing and shall cause a record to be drawn up and served on the parties setting out the directions given or admissions made at the oral Directions Hearing, including, without prejudice to the generality of the directions given, a record of any directions

which relate to any of the matters specifically set out under Paragraph (11) of this Regulation.

- (15) Save in respect of an order made pursuant to paragraph (5) of this Regulation, a defendant aggrieved by a direction given or other step taken pursuant to this Regulation may give notice to the Clerk of his intention to apply for a review of such direction or step.
- (a) Such notice must be given within 14 days after the service on him of the record of any directions;
 - (b) Such review will be conducted by a panel appointed by the President consisting of:
 - (i) a person qualified to sit as Chairman of a five-person panel in accordance with Regulation 2(2)(a) above; and
 - (ii) a lay member.
 - (b) The review panel shall, on such application being made, give such directions or take such other steps as it sees fit.
 - (c) The decision of the review panel shall not be subject to any review nor to any appeal.
- (16) For the avoidance of doubt the Directions Judge, or the Chairman of the Disciplinary Tribunal designated in the Convening Order (or failing the Directions Judge or the Chairman, any other Judge nominated by the President) may:
- (a) upon the application of either party at any time extend or abridge any time limit governing the disciplinary procedures on such terms as he thinks just;
 - (b) upon the application of either party, or of his own motion, hold preliminary hearings for the purpose of giving any further directions or taking any other steps which he considers necessary for the proper conduct of the proceedings;
 - (c) adjourn any preliminary hearing from time to time and for such periods of time as he considers appropriate and set such time limits as he may decide for action to be taken during such adjournments; or
 - (d) consider applications for adjournment of the substantive hearing prior to that Hearing and grant such adjournments as he considers appropriate.

10. Provision of documents

- (1) There shall be provided to each member of the Disciplinary Tribunal prior to the commencement of the substantive hearing copies of the following documents:
- (a) the Order of the President constituting the Tribunal;
 - (b) the Charges and any particulars thereof;
 - (c) any documents proposed to be relied on by the BSB

- Representative or by the defendant, unless a direction has been made that copies of such documents be withheld;
- (d) any written answer to the charges submitted by or on behalf of the defendant;
 - (e) such other documents as have been agreed or directed to be laid before the Tribunal prior to the start of the hearing; and
 - (f) the record of directions given which has been drawn up and served on the parties pursuant to Regulation 9(14).

11. Procedure at the hearing

- (1) The Tribunal shall apply the criminal standard of proof when adjudicating upon charges of professional misconduct.
- (2) The proceedings of a Disciplinary Tribunal shall be governed by the rules of natural justice, subject to which the tribunal may:
 - (a) (subject to paragraph (3) below) admit any evidence, whether oral or written, whether direct or hearsay, and whether or not the same would be admissible in a court of law;
 - (b) give such directions with regard to the conduct of and procedure at the hearing, and with regard to the admission of evidence thereat, as it considers appropriate for securing that the defendant has a proper opportunity of answering the charge or otherwise as shall be just;
 - (c) 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.
- (3) Reference may be made (if applicable) by any party to the fact that the Determination by Consent procedure was used prior to the complaint being 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 terminated), unless and until the defendant makes reference to the substance of the procedure in the course of presenting his case.

12. Hearing in private

The hearing before a Disciplinary Tribunal shall be in public unless it has been directed that it shall not be held in public, and such direction has not been over-ruled by the Tribunal.

13. Decision of a court or tribunal

- (1) In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal, the following rules of evidence shall apply provided that it is proved in each case that the decision relates to the defendant:
 - (a) The fact that the defendant has been convicted of a criminal offence may be proved by producing a copy of the certificate of conviction relating to the

offence; proof of a conviction in this matter shall constitute prima facie evidence that the defendant was guilty of the offence the subject thereof.

- (b) The finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sentence.
 - (c) The judgment of any civil court may be proved by producing an official copy of the judgment.
- (2) In any case set out in paragraph (1) of this Regulation, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based shall be admissible as prima facie proof of those facts.

14. Absence of Defendant

- (1) If a Disciplinary Tribunal is satisfied that the relevant procedure has been complied with and the defendant has been duly served (in accordance with Regulation 32 of these Regulations) with the documents required by Regulations 5, 7 and 8 and the defendant has not attended at the time and place appointed for the hearing, the tribunal may nevertheless proceed to hear and determine the charge or charges if it considers it just to do so, subject to compliance with Regulation 23(1) in the event of any charge being found proved.
- (2) If 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 or charges in the absence of the defendant if it considers it just to do so, subject to compliance with Regulation 23(2) in the event of any charge being found proved.
- (3) If the procedure under paragraph (2) of this Regulation has been followed, the defendant has the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.

15. Recording of proceedings

The Clerk shall arrange for a record of the proceedings before a Disciplinary Tribunal to be made by the employment of a shorthand writer or the use of a recording machine.

16. Amendment of charges

A Disciplinary Tribunal may at any time before or during the hearing direct that the charge(s) shall be amended provided always:

- (1) that the Tribunal is satisfied that the defendant will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence; and
- (2) that the Tribunal may, if so requested by the defendant, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges as so amended; and

- (3) that the Tribunal may make such order as to the costs of or occasioned by the amendment, or of any consequential adjournment of the proceedings, as it considers appropriate.

17. Adjournment

- (1) Subject to the provisions of the following paragraph, the Disciplinary Tribunal shall sit from day to day until it has arrived at a finding and if any charge has been found proved until sentence is pronounced.
- (2) Notwithstanding the provisions of paragraph (1) of this Regulation, a Disciplinary Tribunal may, if the Tribunal decides an adjournment is necessary for any reason, adjourn the hearing for such period as it may decide.

18. The finding

At the conclusion of the hearing, the finding of the Disciplinary Tribunal on each charge, together with its reasons, shall be set down in writing and signed by the Chairman and all members of the Tribunal. If the members of the Tribunal are not unanimous as to the finding on any charge, the finding to be recorded on that charge shall be that of the majority. If the members of the Tribunal are equally divided as to the finding on any charge, then, the burden of proof being on the BSB, the finding to be recorded on that charge shall be that which is the most favourable to the defendant. The Chairman of the Tribunal shall then announce the Tribunal's finding on the charge or charges, and state whether each such finding was unanimous or by a majority.

19. The sentence

- (1) If the Disciplinary Tribunal finds the charge or any of the charges proved, evidence may be given of any previous finding of professional misconduct or of breach of proper professional standards or any finding on a charge consisting of a legal aid complaint against the defendant. After hearing any representations by or on behalf of the defendant the Tribunal shall set down in writing its decision as to the sentence. If the members of the tribunal are not unanimous as to the sentence, the sentence to be recorded shall be that decided by the majority. If the members of the Tribunal are equally divided as to the sentence, the sentence to be recorded shall be that which is the most favourable to the defendant. The chairman of the Tribunal shall then announce the Tribunal's decision as to sentence and state whether the decision was unanimous or by a majority.
- (2) Subject to paragraph (3) below, and subject to Regulation 35 below, a defendant against whom a charge of professional misconduct has been found proved may be sentenced by the Disciplinary Tribunal to be:
- (a) disbarred (or in the case of a registered European lawyer, removed from the register of European lawyers);
 - (b) suspended (or in the case of a registered European lawyer suspended from the register of European lawyers) for a prescribed period (either unconditionally or subject to conditions);
 - (c) prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any public access instructions;

- (d) ordered to pay a fine of up to £15,000 to the BSB;
 - (e) ordered to 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 Professional Conduct Committee;
 - (f) ordered to take and pass a professional conduct and ethics test by a stated date, failing which the defendant shall be suspended from practice until such test has been passed, provided that no such sentence shall be imposed unless and until the BSB has prescribed procedures by which such tests are to be conducted;
 - (g) reprimanded by the Treasurer of his Inn;
 - (h) reprimanded by the Tribunal;
 - (i) given advice by the Tribunal as to his future conduct;
 - (j) ordered by the Tribunal to attend on a nominated person to be reprimanded;
 - (k) ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.
- (3) In any case where a charge of professional misconduct has been found proved, the Tribunal may decide that no further action should be taken against the defendant.
- (4) A three-person panel shall not impose a sentence of disbarment, nor shall it impose a sentence of suspension for a prescribed period in excess of three months' duration. (For the avoidance of doubt, this paragraph does not prevent a three-person panel making an order in accordance with paragraph (2)(f) above, nor in accordance with Regulations 20(3)(b) or 20(3)(c) below.)
- (5) In the event that a three-person panel considers that a case before it merits (in conjunction with any deferred sentence activated in accordance with Regulation 22 below) a sentence of disbarment or of suspension for a prescribed period in excess of three months' duration:
- (a) The three-person panel shall refer the case to a five-person panel for sentencing.
 - (b) The three-person panel shall, for the assistance of the five-person panel, prepare a statement of facts as found, which will not be open to challenge before the five-person panel.
 - (c) The three-person panel shall direct within what period of time the sentencing hearing before the five-person panel is to be held.
 - (d) The five-person panel shall be composed in accordance with Regulation 2(2). The defendant shall be informed as soon as practicable of the names and status (that is, as Chairman, as lay member, or as barrister) of those persons who it is proposed should constitute the five person panel. The defendant shall have the right upon receipt of such information to give notice to the President objecting to any one or more of the proposed members of the panel. Such notice shall be given as soon as reasonably practicable and shall specify the ground of objection.

- (e) The President shall fix the date for the sentencing hearing in accordance with paragraph 33(1) below.
 - (f) If the five-person panel is satisfied that the requirements of sub-paragraph (e) above have been complied with and the defendant has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless proceed to sentence the defendant, subject to compliance with Regulation 23(3).
 - (g) If the five-person panel is satisfied that it has not been practicable to comply with the requirements of sub-paragraphs (e) above and the defendant has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless proceed to sentence the defendant, subject to compliance with Regulation 23(4).
 - (h) If the procedure under sub-paragraph (g) has been followed, the defendant has the right to apply to the Directions Judge for an order that there should be a new sentencing hearing before a fresh five-person panel.
- (6) Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and 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 Services Commission in connection with services provided as part of the Community Legal Service or Criminal Defence Service and to exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service) on a Disciplinary Tribunal in the cases to which those Sections apply. Accordingly:
- (a) Any Disciplinary Tribunal which hears a charge consisting of a legal aid complaint relating to the conduct of a defendant may if it thinks fit (and whether or not it sentences the defendant in accordance with paragraphs (2) to (5) of this Regulation 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.
 - (b) Where a Disciplinary Tribunal hears a charge of professional misconduct against a defendant it may (in addition to or instead of sentencing that defendant in accordance with paragraphs (2) to (5) of this Regulation) order that he shall be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service either temporarily or for a specified period if it determines that there is good reason for the exclusion arising out of (i) his conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or (ii) his professional conduct generally.
- (7) In a case where a defendant is charged with professional misconduct comprising an infringement of any of the provisions referred to in paragraph 901.1 of the Code, and the panel finds that there was an infringement of that provision but that the charge of professional misconduct is not proved, then the panel may direct that the BSB send a written warning to the defendant or that a financial penalty be imposed on him for the infringement of the Code or both.

- (8) Whether or not a Disciplinary Tribunal shall have found any charge proved, if the Disciplinary Tribunal considers that the circumstances of the complaint are relevant to the defendant in his capacity as a pupil supervisor, it may notify the defendant's Inn of its concerns in such manner as it sees fit.
- (9) If a barrister is a member of more than one Inn, each Inn of which he is a member shall be mentioned in the sentence.
- (10) For the purpose of this Regulation:
 - (a) A sentence of suspension for a barrister shall mean that the defendant is suspended from practice as a barrister and from enjoyment of all rights and privileges as a member of the Inn(s) of which he is a member and is, for so long as he remains suspended, prohibited from holding himself out as being a barrister without disclosing the suspension.
 - (b) A sentence of suspension for a registered European lawyer shall mean that the defendant is suspended from the register of European lawyers maintained by the BSB and is, for so long as he remains suspended, prohibited from holding himself out as registered with the BSB without disclosing the suspension.
 - (c) A sentence requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the Continuing Professional Development Regulations at Annex C to the Code of Conduct.

20. Sentence of suspension from practice as a Barrister

- (1) Any sentence of suspension from practice may apply to the whole of a defendant's practice or to such part only as the Disciplinary Tribunal may determine.
- (2) The conditions to which a sentence of suspension from practice may be made subject include a requirement that the defendant shall undergo such further pupillage or training or attain such standard of competence as the Tribunal may determine.
- (3) The prescribed period for which a sentence of suspension from practice is expressed to run may be:
 - (a) for a fixed period; or
 - (b) for a period until the defendant has complied with any practising requirements under paragraph 202(a) to (d) of this Code or paragraph 5(1) or (2) of the Registered European Lawyers Rules, as the case may be, of which the defendant has been found by that Disciplinary Tribunal to be in breach; or
 - (c) until the defendant has complied with the order of the tribunal.

21. Power to order that a sentence has deferred effect

- (1) Where a sentence imposed by a Disciplinary Tribunal includes a fine and/or a suspension from practice, those elements of the sentence may be directed by the Disciplinary Tribunal to have deferred effect.

- (2) A sentence may have deferred effect for a minimum of six months or a maximum of two years (the "period of deferral").

22. Power to activate a deferred sentence

- (1) A deferred sentence shall be activated where the defendant is subsequently found (whether during the period of suspension or afterwards) to have committed a Relevant Breach during the period of deferral. For the purpose of this Regulation, a Relevant Breach is a breach of the Code of Conduct amounting to professional misconduct.
- (2) Where a Disciplinary Tribunal finds that there has been a Relevant Breach during the period of deferral, it shall (at the same time as imposing sentence for the Relevant Breach) activate the sentence which had been deferred, save in exceptional circumstances.
- (3) For the avoidance of doubt, a Disciplinary Tribunal may (where the conditions for activation of a deferred sentence are satisfied) activate a sentence which has been deferred when imposed by the Professional Conduct Committee pursuant to the Determination by Consent procedure.
- (4) Where a deferred sentence is activated pursuant to this Regulation, the sentence shall then be pronounced, and any action as may be required to carry the sentence into effect shall be taken, in accordance with Regulation 27 below.

23. Wording of the sentence when defendant not present

If the defendant has not been present throughout the proceedings, the sentence shall include one or more of the following statements:

- (1) If the relevant procedure under Regulation 14(1) has been complied with, that the finding and sentence were made in the absence of the defendant in accordance with Regulation 14(1).
- (2) If the procedure under Regulation 14(2) has been complied with, that the finding and the sentence were made in the absence of the defendant and that he has the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.
- (3) If the relevant procedure under Regulation 19(5)(f) has been complied with, that the sentence was made in the absence of the defendant in accordance with Regulation 14(1).
- (4) If the procedure under Regulation 19(5)(g) has been complied with, that the sentence was made in the absence of the defendant and that he has the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.

24. Report of Finding and Sentence

As soon as practicable after the conclusion of the proceedings of a Disciplinary Tribunal, the chairman of the Tribunal shall prepare a report in writing of the finding on the charges of professional misconduct and the reasons for that finding and, where applicable, the sentence. At the discretion of the chairman of the Tribunal, the report may also refer to matters which, in the light of the evidence given to the Tribunal, appear to require investigation or comment. He shall send copies of the report to the following:

- (1) in all cases:
 - (a) The Lord Chancellor
 - (b) The Lord Chief Justice
 - (c) The Attorney General
 - (d) The President
 - (e) The Chairman of the Bar Council
 - (f) The Director of the BSB
 - (g) The defendant
 - (h) The complainant (if any)
 - (i) The Treasurer of the defendant's Inn of Call
 - (j) The Treasurer of any other Inn of which the defendant is a member

- (2) In cases where one or more charges of professional misconduct have been found proved and any such charge constitutes or arises out of a legal aid complaint, and/or the sentence includes an order under Regulation 19(6), the Legal Services Commission.

25. Appeal to the Visitors

- (1) In cases where one or more charges of professional misconduct have been proved, an appeal may be lodged with the Visitors in accordance with the Hearings Before the Visitors Rules 2005:
 - (a) against conviction by the defendant; and/or
 - (b) against sentence, by the defendant or (with the consent of the Chairman of the BSB or the Chairman of the Professional Conduct Committee) by the BSB; and/or
 - (c) in any case where any charge of professional misconduct has been dismissed (with the consent of the Chairman of the BSB or the Chairman of the Professional Conduct Committee) by the BSB.

- (2) In cases where no professional misconduct has been proved, but the defendant has been found to have infringed one or more provisions of the Code referred to in paragraph 901.1 of the code, an appeal lies against that finding at the instance of the defendant in the manner prescribed in Annex J to the Code of Conduct (the Complaints Rules).

- (3) In any case where the BSB intends to appeal under sub-paragraph (1)(c) above, the consent of the Chairman of the BSB or the Chairman of the Professional Conduct Committee shall be obtained within the period of 28 days beginning with the date on which the order of the Disciplinary Tribunal was made (or, if later, within the period of 28 days beginning with the date on which sentence was imposed pursuant to such

order). In the event that such consent is not obtained within that period no appeal under sub-paragraph (1)(c) shall be permitted without permission of the Visitors.

- (4) Where a defendant lodges an appeal against a sentence of disbarment, he may at the same time lodge with the Visitors an appeal against any requirement imposed pursuant to Regulation 28.
- (5) For the avoidance of doubt, a complainant (other than, where applicable, the BSB) shall have no rights of appeal.

26. Appeal: sum payable

Where an appeal is lodged with the Visitors by the Defendant, the Notice of Appeal must be accompanied by the sum of £250 payable to the BSB to defray expenses, such sum to be refunded in the discretion of the Visitors in the event of an appeal which is successful wholly or in part.

27. Action by the Defendant's Inn

- (1) On receipt of the report prepared in accordance with Regulation 24, the Treasurer of the defendant's Inn of Call shall not less than 21 days after the conclusion of the Tribunal's proceedings (or, where the defendant has given notice appeal to the Visitors against the finding and/or sentence, once the time for appeal has expired and any appeal arising has been disposed of) pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry the sentence into effect. The Treasurer shall inform the persons specified in Regulation 24(1) of the date on which the sentence is to take effect.
- (2) Similar action shall be taken by the Treasurer of any other Inn of which the defendant is a member in conjunction with the Treasurer of the defendant's Inn of Call.
- (3) In any case in which the defendant has given notice of appeal to the Visitors against the finding and/or sentence of the Tribunal on the charges of professional misconduct, the action set out in paragraphs (1) and (2) of this Regulation shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.
- (4) Where, pursuant to Regulation 30(3)(a)(i) or Regulation 30(3)(b) below, a Tribunal has required the BSB to suspend the defendant's practising certificate or not to issue a practising certificate to the defendant pending appeal ("the Interim Measure"), the Treasurer shall direct that any period of suspension to which the defendant has been sentenced shall be deemed to have taken effect on the date on which the Interim Measure came into effect, or the date on which the defendant would otherwise have been eligible to be issued with a practising certificate, whichever is the later.

28. Action by the Bar Standards Board

- (1) In the case of a registered European lawyer, on receipt of the report prepared in accordance with Regulation 24, the BSB shall not less than 21 days after the conclusion of the Tribunal's proceedings pronounce the sentence decided on by the Tribunal and take such further action as may be required to carry the sentence into effect. The BSB shall inform the persons specified in Regulation 24(1) of the date on which the sentence is to take effect.
- (2) In any case in which a registered European lawyer has given notice of appeal to the Visitors against the finding and/or sentence of the Tribunal on the charges of professional misconduct, the actions set out in paragraph (1) of this Regulation shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.
- (3) The BSB shall take all such steps as may be necessary or expedient in order to give effect to any requirement made by the Tribunal pursuant to Regulation 30 below.

29. Publication of finding and sentence

- (1) The following procedures are to be observed in regard to publication of the finding and sentence of a Disciplinary Tribunal:
 - (a) When the Tribunal has found one or more charges of professional misconduct have been proved the President shall publish the charges found proved and the sentence as soon as he has been informed by the Treasurer(s) of the defendant's Inn(s) of the date from which the sentence is to take effect.
 - (b) When the Tribunal has found that any charge of professional misconduct has not been proved the President shall not publish that charge and the finding unless the defendant so requests.
- (2) When publishing any finding, sentence or decision in accordance with paragraph (1) of this Regulation, the President shall communicate the same in writing to:
 - (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the Treasurer of each Inn for screening in the Hall, Benchers' Room and Treasurer's Office of the Inn Director of Public Prosecutions;
 - (f) the Chairman of the Bar Council;
 - (g) the Leaders of the six circuits;
 - (h) the defendant;
 - (i) the complainant (if any);
 - (j) such one or more press agencies or other publications as the President may decide
 - (k) in the case of a registered European lawyer, his home professional body

- (3) The BSB shall publish the finding and sentence of the Tribunal in such manner and in such time as it sees fit unless:
 - (a) the hearing was held in private; and
 - (b) the Chairman of the Tribunal directs that publication shall be delayed until the President has published the finding under paragraph (1) of this Regulation.

30. Suspension pending appeal

- (1) This regulation applies in relation to any defendant who has been sentenced to be disbarred or to be suspended or prohibited from accepting or carrying out any public access instructions for a period of more than one year.
- (2) Where this regulation applies the Tribunal shall seek representations from the defendant and the BSB Representative as to whether it would be inappropriate to take action under paragraphs (3) or (4) below;
- (3) Having heard any representations under paragraph (2) above, the Tribunal shall:
 - (a) unless in the particular circumstances of the case it appears to the Tribunal to be inappropriate to do so, either:
 - (i) require the BSB to suspend immediately the practising certificate of the defendant;
 - (ii) determine that its sentence prohibiting the defendant from accepting or carrying out any public access instructions shall take effect immediately; or
 - (b) where the defendant has been sentenced to be disbarred or to be suspended and where that defendant does not currently hold a practising certificate, require the BSB not to issue any practising certificate to him.
- (4) If pursuant to paragraph (3)(a) above the Tribunal concludes that it would be inappropriate to require immediate suspension it may nonetheless require the BSB to suspend the practising certificate of the defendant from such date as the Tribunal may specify.
- (5) Where this regulation applies but the defendant is permitted to continue to practise for any period the Tribunal may require the BSB to impose such terms in respect of the defendant's practice as the Tribunal deems necessary for the protection of the public.
- (6) If a defendant in relation to whom a requirement has been made pursuant to paragraphs (3) to (5) above considers that, due to a change in the circumstances, it would be appropriate for that requirement to be varied, he may apply to the President in writing for a variation to be made.
- (7) On receiving an application made pursuant to paragraph (6) above the President shall refer it to the Chairman and one of the lay members of the Tribunal which originally imposed the requirement.

- (8) Any application made pursuant to paragraph (6) above shall be sent by the applicant, on the day that it is made, to the Professional Conduct Committee and the Professional Conduct Committee may make such representations as they think fit on that application to those to whom the application has been referred by the President.
- (9) The persons to whom an application made pursuant to paragraph (6) above is referred may vary or confirm the requirement in relation to which the application has been made.
- (10) References in this Regulation to the BSB shall be treated as referring to such body as may from time to time have the power to issue or suspend practising certificates or to impose terms in respect of a barrister's practice.

31. Costs

- (1) A Disciplinary Tribunal shall have power to make such Orders for costs, whether against or in favour of a defendant, as it shall think fit.
- (2) Upon making such an Order a Disciplinary Tribunal shall either itself determine the amount of such costs or appoint a suitably qualified person to do so on its behalf.
- (3) Any costs ordered to be paid by or to a defendant shall be paid to or by the BSB.
- (4) Subject as aforesaid, all costs and expenses incurred by a Disciplinary Tribunal or by the Professional Conduct Committee in connection with or preparatory to the hearing before the Tribunal shall be borne by the BSB.

32. Service of documents

- (1) Any documents required to be served on a defendant arising out of or in connection with disciplinary proceedings shall be deemed to have been validly served:
 - (a) If sent by registered post, or recorded delivery post, or receipted hand delivery to:
 - (i) the address notified by such defendant pursuant to Paragraph 202(d) of the Code of Conduct (or any provisions amending or replacing the same); or
 - (ii) an address to which the defendant may request in writing that such documents be sent; or
 - (ii) in the absence of any such request, to his last known address;

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

- (b) If served by e-mail, where:
 - (i) the defendant's e-mail address is known to the BSB; and
 - (ii) the defendant has requested 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 of sending the e-mail;

- (c) If actually served;
 - (d) If served in any way which may be directed by the Directions Judge or the Chairman of the Disciplinary Tribunal.
- (2) For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the defendant or his clerk.

33. Miscellaneous provisions

- (1) Where under these Regulations any hearing is to be fixed by the President:
- (a) The President 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.
 - (b) Both parties shall be informed of the date fixed for the hearing as soon as reasonably practicable after the date has been fixed.
- (2) Any duty or function or step which, pursuant to the provisions of these regulations, is to be discharged or carried out by the President may, if he is unable to act due to absence or any other reason, be discharged or carried out by any other member of the Council of the Inns of Court, the Treasurer of any Inn or by any other person nominated in writing by the President for any specific purpose.
- (3) When the Treasurer of an Inn is a Royal Benchler, references in these Regulations to such Treasurer shall be read as references to his deputy.

34. Exclusion from providing representation funded by the Legal Services Commission - Application for termination

- (1) A defendant who has been excluded from legal aid work under Section 42 of the Act of 1985 may apply for an order terminating his exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service in accordance with this Regulation.
- (2) Any such application shall be in writing and shall be addressed to the President.
- (3) On considering any such application the President may dismiss the application or may determine that the defendant's exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service be terminated forthwith or on a specified future date.
- (4) The President shall give notification of his decision in writing to the same persons as received copies of the report of the Disciplinary Tribunal which ordered that the defendant be excluded from providing such representation legal aid work.

- (5) Upon the receipt of any such report the Treasurer of the applicant's Inn of Call and of any other Inn of which he is a member shall take action equivalent to that which it took in respect of the report of the Disciplinary Tribunal which sentenced the defendant to be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.
- (6) The procedures to be observed in regard to the publication of the decision of the President on any such application as is referred to in this Regulation shall be those which were applicable to the publication of the finding and sentence whereby the applicant was excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.
- (7) The President shall have power to make such order for costs as he thinks fit and Regulation 31 shall apply with all necessary modifications.

35. Citation, commencement, revocations and transitional provisions

- (1) These Regulations may be cited as "The Disciplinary Tribunals Regulations 2009" and shall come into operation on 31st March 2009 save that no fine may be ordered in excess of £5,000 in respect of conduct before 31st March 2009.
- (2) Subject to Paragraph (3) below, the Disciplinary Tribunals Regulations of the Council of the Inns of Court and any other rules or regulations relating to Disciplinary Tribunals made prior to the commencement of these Regulations shall cease to have effect on 30th March 2009;
- (3) These Regulations shall apply to all cases, including any case in which a defendant was served with the charge or charges before 31st March 2009 and any step taken in any such case pursuant to the Regulations then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Regulations.
- (4) These Regulations shall apply to all cases where the Professional Conduct Committee decided before 31st March 2009 that a complaint should form the subject matter of a charge before a Disciplinary Tribunal as if the Professional Conduct Committee had at that time directed that the charge should be heard by a five-person panel.

Annexe L - The Summary Procedure Rules (No longer applicable)

Annexe M - THE HEARINGS BEFORE THE VISITORS RULES 2010

Updated on 1st November 2011

1. Citation and commencement
2. Interpretation
3. Service of documents
4. Notice of Intention to Appeal
5. Directions Judge
6. No appeal from Directions Judge
7. Service of Petition
8. Fees
9. Petition of Appeal
10. Service of other documents
11. Answer
12. Appointment of panel to hear appeal
13. Date of Hearing
14. Procedure at hearing
15. Findings of the Visitors
16. Barristers' Exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.
17. Costs
18. Transition
19. Revocation

We, the Judges of Her Majesty's High Court of Justice, in the exercise of our powers as Visitors to the Inns of Court, hereby make the following rules for the purpose of appeals to the Visitors from Disciplinary Tribunals of the Council of the Inns of Court and certain other appeals to the Visitors:

Citation and Commencement

1. These rules may be cited as the Hearings before the Visitors Rules 2010 and shall come into effect on 1st September 2010.

Interpretation

2. (1) The Interpretation Act 1978 shall apply in relation to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament
- (2) In these Rules, unless the context otherwise requires
 - "answer" means an answer served pursuant to rule 11;
 - "appellant" means an appellant wishing to appeal to the Visitors against a relevant decision;
 - "BSB" means the Bar Standards Board;
 - "defendant" means the barrister against whom an order of a Disciplinary Tribunal was made;
 - a Judge of the Court of Appeal includes a person who has been a Judge of the Court of Appeal provided that he remains permitted by virtue of Section 9 of the Senior Courts Act 1981 to be requested to act as a Judge of the Court of Appeal;[1]
 - a Judge of the High Court includes a person who has been a Judge of the High Court provided that he remains permitted by virtue of Section 9 of the Senior Courts Act 1981 to be requested to act as a Judge of the High Court;[2]
 - "Directions Judge" means a Judge nominated pursuant to rule 5(1);
 - "directions function" means any of the functions and powers conferred on a Directions Judge by rule 5;
 - "petition" means the petition of appeal served pursuant to rule 7;
 - "relevant decision" means
 - a decision of a Disciplinary Tribunal; or
 - a decision, on review, by the BSB under Part X of the Bar Training Regulations (where the Bar Training Regulations provide for an appeal to the Visitors against such a decision), herein a "Qualification Decision";
 - "respondent" means the person with an interest in upholding a relevant decision, being:
 - in the case of an appeal by the BSB against a decision of a Disciplinary Tribunal, the defendant;
 - in all other cases, the BSB;
 - "Disciplinary Tribunal" means a Disciplinary Tribunal of the Council of the Inns of Court; and

"the Visitors" means the panel nominated to hear the appeal pursuant to rule 12 or, in the case of an appeal within rule 12(3)(c) or 12(5), the single judge nominated to hear the appeal.

- (3) Where a Disciplinary Tribunal has made a finding and imposed sentence in two separate decisions, whether in accordance with regulation 19(5) of the Disciplinary Tribunal Regulations or otherwise, the date of the relevant decision shall be deemed to be the date of the later decision.
- (4) Where the relevant decision is a decision, on review, under Part X of the Bar Training Regulations, the date of the relevant decision shall be deemed to be the date upon which notice of the decision was sent by the BSB to the person affected by the decision.
- (5) Any term defined in the Code of Conduct shall carry the same meaning as it does in Part X of the Code of Conduct.
- (6) The powers conferred upon the Lord Chief Justice by these Rules can be exercised on his behalf by a Judge of the Court of Appeal or a Judge of the High Court who is selected by him to act in this capacity. This delegation does not prevent the Lord Chief Justice from exercising these powers. Nor does it prevent the Judge designated to exercise these functions on behalf of the Lord Chief Justice from hearing an appeal.[3]
- (7) In these Rules a period of time expressed as a number of days shall be computed as clear days.

Service of Documents

3. (1) Where pursuant to these Rules any document is to be served on any of the persons specified in the first column of Table 1 in the Schedule to these Rules, that document shall be served on that person by sending it to the person specified and the address specified in the second column of that table against the person to be served.
- (2) Such documents shall be served
 - (a) by recorded delivery post, or
 - (b) by hand delivery, if a written confirmation of receipt is obtained, or
 - (c) (save where any fee is payable on the service of a document) by fax or other electronic means in accordance with paragraph (4) below.
- (3) Where, in accordance with Table 1, the address for service on a respondent is his last known address, service by first class post shall constitute good service.
- (4) Where a document is to be served by fax or other electronic means, the party who is to be served must previously have indicated in writing to the party serving:
 - (a) that the party to be served is willing to accept service by fax or other electronic means; and
 - (b) the fax number, e-mail address or other electronic identification to which it must be sent.

- (5) Documents shall be deemed to be served on the date set out in Table 2 in the Schedule to these Rules.
- (6) For the purpose of this rule, a "written confirmation of receipt" means a receipt signed by or on behalf of the intended recipient.

Notice of Intention to Appeal

4. (1) Written notice of intention to appeal against the relevant decision must be served by the appellant on the Clerk to the Visitors within the period of 21 days beginning with the date of the relevant decision or within such further time as may be allowed by the Directions Judge.
- (2) A copy of the notice of intention to appeal should also be served by the appellant on the respondent and (when the appeal is against a decision of a Disciplinary Tribunal) on the Council of the Inns of Court.
- (3) When serving a notice of intention to appeal, an appellant (other than the BSB) shall give notice of a current address at which service is to be made on the appellant.
- (4) An appellant (other than the BSB) must ensure that the Clerk to the Visitors is informed of any change to the appellant's address.

Directions Judge

5. (1) The Lord Chief Justice shall nominate judges of the High Court or the Court of Appeal to exercise the functions conferred by this Rule.
- (2) No person shall act as a Directions Judge in relation to any appeal if they were a member of any committee of the BSB at any time when the matter was being considered by that committee.
- (3) A Directions Judge shall consider the course of any appeal and may at any time prior to the appointment of a panel to hear the appeal give such directions and take such steps as appear to him to be necessary or desirable for the purpose of securing the just, expeditious and economical disposal of the appeal.
- (4) Any applications to be heard by a Directions Judge must be served on the Clerk to the Visitors.
- (5) Any applications to the Directions Judge will be heard on paper and without an oral hearing, unless there is good reason for an oral hearing.
- (6) The directions that may be given and the steps that may be taken by the Directions Judge may relate to (but shall not be limited to) the following matters-
 - (a) the anticipated duration of the hearing (which shall not, absent good reason, exceed one day);
 - (b) the variation of any timetable specified in these Rules;

- (c) further procedural steps that should be taken before the hearing;
 - (d) the failure by either party to comply with any timetable specified in these Rules or directed by him;
 - (e) the adjournment of the hearing; and
 - (f) where (in the case of an appeal against a decision of a Disciplinary Tribunal) the sentence of the original Disciplinary Tribunal has been pronounced, whether it should be stayed pending the outcome of the appeal.
- (7) The Directions Judge may, on application made by the appellant (which must be served on the BSB at the time of making the application) and after giving the BSB the opportunity to respond to the application, vary or set aside an order made against the appellant under regulation 30(3) or (4) of the Disciplinary Tribunal Regulations on such terms and subject to such conditions (if any) as he considers appropriate.
- (8) If, at any time, the Directions Judge concludes that a party has failed to comply with any obligation imposed by, or timetable specified in, these Rules or directed by him in exercise of his directions functions (as the case may be), he may also-
- (a) make a final order for compliance by the party in default;
 - (b) direct that that party may not serve a petition or answer;
 - (c) dismiss or strike out the petition or answer of that party;
 - (d) order that any further step that appears to him to be necessary or desirable in order to provide for a fair and expeditious hearing of the matter be undertaken within a specified period;
 - (e) direct an expedited hearing where the party in default has been prohibited from serving an answer or the answer has been struck out.

No appeal from Directions Judge

6. There shall be no appeal against an order of the Directions Judge.

Service of Petition

7. (1) A written petition of appeal containing the information required by rule 9 below must be served by the appellant on the persons specified in paragraph (2) below within the period of 42 days beginning with the date of the relevant decision or within such further time as may be allowed by the Lord Chief Justice or the Directions Judge.
- (2) The persons to be served are:
- (a) the Clerk to the Visitors; and
 - (b) the respondent;

- (3) Service of the petition will be valid only if
 - (a) the petition is served on both persons identified in paragraph (2) above, and
 - (b) where the appellant is a defendant,
 - (i) the petition served on the Clerk to the Visitors is accompanied by any fee payable in accordance with rule 8(1) below, or by an application pursuant to rule 8(2), and
 - (ii) a copy of such fee or such application is served on the BSB.
- (4) If an application for an extension of the period of 42 days specified in paragraph (1) above is made, the Directions Judge may, if he sees fit, extend the period within which the petition must be served.

Fees

8. (1) Where an appeal is lodged with the Visitors by the defendant, the petition must (subject to the provisions of this rule) be accompanied by the sum of £250 payable to the BSB to defray expenses, such sum to be refunded in the discretion of the Visitors in the event of an appeal which is successful wholly or in part.
 - (2) Where payment of the sum required by paragraph (1) above would cause undue hardship to the appellant, the appellant may apply to the Directions Judge for an order reducing the amount payable.
 - (3) If the Directions Judge is satisfied that payment of the sum required by paragraph (1) above would cause undue hardship to the appellant, he shall:
 - (a) direct that some lesser (or nil) amount be paid; and
 - (b) (where applicable) direct by when such amount be paid.

Petition of Appeal

9. (1) Where the appeal is against a decision of a Disciplinary Tribunal, the petition shall state whether the appeal is against the findings or sentence of the Disciplinary Tribunal, or both, and shall contain the following particulars-
 - (a) the charges;
 - (b) a summary of the facts on which the charges were based;
 - (c) the findings of the Disciplinary Tribunal;
 - (d) the sentence;
 - (e) any finding against which the appellant appeals (if any);
 - (f) the grounds for appeal, including for each matter appealed against the specific evidence on which the appellant will place reliance;
 - (g) the relief sought; and
 - (h) if the hearing is estimated to last longer than one day, an estimate of the time required for the hearing and the reasons for that estimation.

- (2) In the case of an appeal against sentence the petition may also refer to:
 - (a) any factors which it is contended make the sentence unduly severe (or lenient) in relation to the appellant's (or the defendant's) record; and
 - (b) sentences in other similar cases.
- (3) Where the appeal is against a Qualification Decision, the petition shall contain the following particulars:
 - (a) the decision, on review, of the BSB against which the appeal is being made;
 - (b) a summary of the facts giving rise to that decision;
 - (c) the grounds for appeal; and
 - (d) the relief sought.
- (4) Subject to rule 11(5), the appellant may not, without the permission of the Directions Judge, support the appeal on a ground not relied upon before the body which took the relevant decision.

Service of other documents

10. (1) Subject to paragraph (2) below, the appellant against a decision of a Disciplinary Tribunal shall, at the same time as serving the petition, serve on the Clerk to the Visitors the number of copies specified in paragraph (4) below of the transcript of the proceedings before the Disciplinary Tribunal whose decision is being appealed.
- (2) If any transcript to be served pursuant to paragraph (1) above is not available when the petition is served, the copies of that transcript shall be served on the Clerk to the Visitors as soon as practicable thereafter.
- (3) Not less than 14 days before the date set for the hearing of an appeal
 - (a) a copy of every document intended to be produced at the hearing by any party shall be served by that party on every other party; and
 - (b) the number of copies of any such document specified in paragraph(4) below shall be served on the Clerk to the Visitors.
- (4) The number of copies required to be served on the Clerk to the Visitors is:
 - (a) if the appeal is of a type falling within rule 12(2) below, three copies; and
 - (b) in any other case, two copies.

Answer

11. (1) The respondent may (or, if so directed by the Directions Judge, shall) serve on the Clerk to the Visitors an answer to the petition within the period of 28 days starting with the date on which the petition is served or on which the transcript of the lower hearing is provided pursuant to rule 10(2) (whichever is the later) or such further time as may be allowed by the Directions Judge.

- (2) Where an answer is served pursuant to paragraph (1) the respondent shall also serve forthwith a copy of that answer on the appellant.
- (3) The answer shall follow the form of the petition and shall state which points in the petition are accepted and which are rejected.
- (4) If, in the view of the person serving an answer, the hearing is likely to last longer than one day, the answer shall include an estimation of the time required for the hearing and the reasons for that estimation.
- (5) The BSB may, in any answer it serves in respect of an appeal against a decision of a Disciplinary Tribunal, refer to any factors which it is contended make the sentence unduly lenient in relation to the appellant's record or to sentences in other cases.

Appointment of panel to hear appeal

12. (1) When a petition is served upon the Clerk to the Visitors (whether or not served in time), and after the period for service of any answer in accordance with rule 11(1) above has elapsed, the Lord Chief Justice shall nominate the persons who are to hear the appeal.
- (2) An appeal against a decision of a Disciplinary Tribunal presided over by a Judge of the High Court shall be heard by a panel comprised of-
 - (a) a Judge of the Court of Appeal.
 - (b) a Queen's Counsel; and
 - (c) a lay representative.
- (3) Subject to paragraph (c) below, an appeal that is not of a type mentioned in paragraph (2) and is an appeal against a decision of a Disciplinary Tribunal shall be heard by a panel comprised of-
 - (a) a Judge of the High Court or the Court of Appeal;
 - (b) a barrister (who, where the defendant is a Queen's Counsel, shall himself be a Queen's Counsel); and
 - (c) a lay representative.
- (4) An appeal that is not of a type mentioned in paragraph (2) and that is an appeal against a decision of a Disciplinary Tribunal may be heard by a Judge of the High Court or of the Court of Appeal sitting alone, if the Lord Chief Justice or the Directions Judge directs that the appeal relates solely to a point of law and is appropriate to be heard by a judge sitting alone.
- (5) Any other appeal shall be heard by a Judge of the High Court or the Court of Appeal.
- (6) No person shall be nominated to serve on a panel if they
 - (a) are a member of the Bar Council or of any of its committees; or
 - (b) are a member of the BSB or of any of its committees; or

- (c) were a member of any committee of the BSB at any time when the matter was being considered by that committee.

Date of Hearing

- 13. (1) Unless the Directions Judge orders otherwise, the time allocated for the hearing of an appeal shall be one day.
- (2) The appeal shall be listed by the Clerk to the Visitors for a hearing on the first available date after the expiry of a period of four weeks beginning with the date of service on the Clerk to the Visitors of the answer (or, where no answer is served, beginning with the last date for service of the answer under rule 11(1) above).
- (3) A notice of the hearing of the appeal shall be served on the appellant and on the respondent at least 14 days before the date fixed for hearing of the appeal.

Procedure at hearing

- 14. (1) Subject to the following paragraphs of this Rule, the Visitors may give any directions with regard to the conduct of, and procedure at, a hearing of an appeal they consider appropriate.
- (2) The Visitors may give such directions before or during the hearing.
- (3) The hearing shall be held in public unless either party has made an application that the hearing shall not be in public and the public interest does not require that it shall be held in public.
- (4) A hearing may proceed in the absence of an appellant (or defendant), but not in the absence of a representative of the BSB.
- (5) No witness may be called at the hearing without the consent of the Visitors.
- (6) Evidence that was not before the Disciplinary Tribunal whose decision is being appealed may be given at the hearing only in exceptional circumstances and with the consent of the Visitors.
- (7) Grounds of appeal based on issues that were not relied upon before the body making the relevant decision may be relied upon only with the permission of the Directions Judge in accordance with rule 9(4) above or, in exceptional circumstances, with the consent of the Visitors.
- (8) An appellant or defendant (as the case may be) may only challenge before the Visitors a decision of a court of law on which the relevant decision was based in exceptional circumstances and with the consent of the Visitors.
- (9) The proceedings of the Visitors shall continue to be valid notwithstanding that one or more of the members of the panel becomes unable to continue or becomes disqualified from continuing to act, if the remaining members of the panel include the judicial member of the panel and a lay representative.[5]
- (10) A full record shall be made of the hearing.

- (11) A transcription of the audio recording shall be provided upon request to either party to the hearing but at his own expense.

Findings of the Visitors

15. (1) The findings of the Visitors shall be pronounced in a single decision. The decision shall state whether it has been reached unanimously or by a majority.
- (2) The findings may be pronounced in public or in private but should normally be pronounced in public unless a party to the hearing requests otherwise and the public interest does not require that the findings be pronounced in public.
- (3) In respect of an appeal against a decision of a Disciplinary Tribunal, the Visitors may:
- (a) dismiss the appeal;
 - (b) allow an appeal in whole or in part;
 - (c) confirm or vary an order of the Disciplinary Tribunal whose decision is being appealed;
 - (d) order a re-hearing on such terms as they may deem appropriate in the circumstances;
 - (e) in the case of an appeal brought by the BSB against a decision of a Disciplinary Tribunal, issue a declaration, but only where this will have no consequences whatsoever for the defendant.
- (4) In respect of an appeal against a Qualification Decision, the Visitors may:
- (a) allow an appeal in whole or in part;
 - (b) confirm or vary the decision of the BSB;
 - (c) order the BSB to reconsider its decision on such terms as the panel appointed to hear the panel may determine to be appropriate in the circumstances.
- (5) The Visitors shall give reasons for their decision. These reasons may be given orally or in writing.
- (6) The Visitors may order, in the event of an appeal against a decision of a Disciplinary Tribunal by the defendant which is successful wholly or in part, a refund to the appellant of any sum paid to the BSB in accordance with rule 8 above.
- (7) There is no appeal against a decision of the Visitors.

Barrister's Exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service

16. (1) These Rules shall apply in relation to an appeal against an order of the Disciplinary Tribunal that a barrister's exclusion from providing representation funded by the

Legal Services Commission as part of the Community Legal Service or Criminal Defence Service pursuant to section 42(3) of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and amended by section 24, Schedule 4, paragraphs 32 and 35 of the Access to Justice Act 1999) is not to be terminated, subject to the following modifications set out in the following paragraphs of this rule.

- (2) The petition shall contain the following particulars:
 - (a) the date of the order of the Disciplinary Tribunal that excluded the appellant from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service;
 - (b) the charges in respect of which that order was made;
 - (c) a summary of the facts on which those charges were based;
 - (d) the findings of the Disciplinary Tribunal;
 - (e) the findings against which the appeal is brought; and
 - (f) the grounds for appeal.
- (3) An order of the Disciplinary Tribunal to terminate a barrister's exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service only from a date that is subsequent to that order shall, for the purposes of any appeal, be treated as an order that the barrister's exclusion from such work is not to be terminated.

Costs

17. (1) The Visitors may make such order for costs of the appeal as they consider appropriate.
- (2) Any order for costs made may include an order for payment of the cost of any transcript required for the purposes of the appeal.

Transition

18. Where any appeal has been commenced before 1 September 2010 but has not been completed by that date, these rules shall apply to that appeal from that date but any steps that have been taken in relation to that appeal pursuant to any provision of the Hearings Before the Visitors Rules 2005 shall be regarded as having been taken pursuant to the equivalent provisions of these Rules.

Revocation

19. The Hearings before the Visitors Rules 2005 are hereby revoked.

On behalf of the Judges of Her Majesty's
High Court of Justice
Lord Chief Justice
President of the Queen's Bench Division
President of the Family Division
The Chancellor of the High Court

SCHEDULE Rule 3(1)

Table 1: Addressee and Place for Service of Documents

Person to be served	Addressee and place of service
The Clerk to the Visitors	Addressed to the Clerk to the Visitors at the Royal Courts of Justice, Strand, London WC2A 2LL.
The Council of the Inns of Court	Addressed to the President of the Council of the Inns of Court, c/o The Honourable Society of the Inner Temple, c/o 10 Fleet Street, London EC4Y 1AU.
The BSB	<p>In respect of a decision of a Disciplinary Tribunal: Addressed to the Secretary to the Complaints Committee of the BSB at 289-293 High Holborn, London WC1V 7HZ.</p> <p>In respect of a Qualification Decision: Addressed to the Secretary to the Qualifications Committee of the BSB at 289-293 High Holborn, London WC1V 7HZ.</p>
An appellant other than the BSB	Addressed to him at the address specified by him pursuant to rule 4(3).
A defendant	<p>Addressed to him at -</p> <p>(a) the address notified by him pursuant to Paragraphs 202(d) or 206.1(a)(i) of the Code of Conduct of the Bar of England and Wales (or any provisions amending or replacing those paragraphs);</p> <p>(b) if he has specified in writing an address to which documents may be sent, that address; or</p> <p>(c) where no address has been notified pursuant to the provisions mentioned in paragraph (a) above or specified as mentioned in paragraph (b) above, to his last known address.</p>

Table 2: Deemed Date of Service of Documents

Method of service	Deemed date of service of document
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First-class post	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
Hand delivery	If the document is served personally before 4.30 pm on a business day, on that day; or in any other case, on the next business day after that day.
Recorded delivery	If it is delivered to or left at the permitted address on a business day before 4.30 pm, on that day; or in any other case, on the next business day after that day.
Fax	If the transmission of the fax is completed on a business day before 4.30 pm, on that day; or in any other case, on the next business day after the day on which it was transmitted.
E-mail or other electronic transmission	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent.

[1] Amended 1st November 2011

[2] Amended 1st November 2011

[3] Amended 1st November 2011

[4] Amended 1st November 2011

[5] Amended 1st November 2011

Annexe N - Interim Suspension Rules

INTERIM SUSPENSION RULES

Introduction

1. These Rules are supplemental to:
 - (a) the Complaints Rules; and
 - (b) the Disciplinary Tribunals Regulations;as approved from time to time and annexed to the Code of Conduct of the Bar of England and Wales.
2. Anything required by these Rules to be done or any discretion required to be exercised by, and any notice required to be given to, the President or the Complaints Committee may be done or exercised by, or given to, any person or body authorised by the President or by the Complaints Committee as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

3. In these Rules unless the context otherwise requires
 - (a) Any term defined in the Code of Conduct shall carry the same meaning as it does in Part X of the Code of Conduct.
 - (b) Any reference to a person includes any natural person, legal person and/or firm. Any reference to the masculine gender includes the feminine and the neuter, and any reference to the singular includes the plural, and in each case vice versa.
 - (c) 'Suspension Panel' means a Suspension Panel as provided for in rule 4 of these Rules;
 - (d) 'Appeal Panel' means an Appeal Panel as provided for in rule 5 of these Rules;
 - (e) 'Approved Regulator' and 'authorised body' have the meanings given by the Legal Services Act 2007.
 - (f) 'Complaints Committee' means the Complaints Committee of the Bar Standards Board
 - (g) 'conviction(s)' refers to a criminal conviction for an Indictable Offence or a finding by an approved regulator of professional misconduct, as appropriate.

Composition of Panels

4. A Suspension Panel shall consist of five members nominated by the President being:
 - (a) A Chairman and three other barristers of at least seven years Call of whom the Chairman and at least one other shall be Queen's Counsel
 - (b) a lay member.

Provided that:

- (i) the proceedings of a Suspension Panel shall be valid notwithstanding that one or more of the members, other than the Chairman or lay member, becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing is not reduced below three and continues to include the Chairman and the lay member.
- (ii) no person shall be appointed to serve on a panel if they are: a member of the Bar Council or any of its committees, a member of the Bar Standards Board or any of its committees or were a member of the Complaints Committee at any time when the matter was being considered by the Complaints Committee.

5. An Appeal Panel shall consist of three members nominated by the President being:

- (a) Two Queen's Counsel who are entitled to sit as a Recorder or a Deputy High Court Judge or who have been Queen's Counsel for at least seven years. Unless the panel otherwise decides, the senior barrister member will be the Chairman of the panel.
- (b) a lay member

Provided that:

- (i) no person shall be appointed to serve on a panel if they are: a member of the Bar Council or any of its committees, a member of the Bar Standards Board or any of its committees or were a member of the Complaints Committee at any time when the matter was being considered by the Complaints Committee.
- (ii) Provided that no individual shall sit on both the Suspension Panel and the Appeal Panel considering the same matter.

Referral to a Suspension Panel

6. Upon the Bar Standards Board receiving notification that a barrister ("the Defendant") has been:

- (a) convicted of or charged with a Indictable Offence, or
- (b) convicted by an Approved Regulator for misconduct of any sort, for which conviction he has been sentenced to suspension or termination of his right to practise in an Authorised Body, whether on an interim or final basis and whether or not such sentence is subject to conditions,

the Complaints Committee shall, as soon as practicable, consider whether to refer the matter to a Suspension Panel.

7. The Complaints Committee may refer a matter to a Suspension Panel if:

- (a) the matter has been referred to the Complaints Committee under rule 6 above; or
- (b) a complaint has been referred to the Complaints Committee and during the investigation of which it is disclosed that a barrister has been convicted of or

charged with a Indictable Offence, or convicted of misconduct by another Approved Regulator as described at 6(b) above; or

- (c) in any other circumstances it is disclosed to the Complaints Committee that a barrister has been convicted of or charged with a Indictable Offence or convicted of misconduct by another Approved Regulator as described in 6(b) above.

No matter shall be referred to a Suspension Panel unless the Complaints Committee considers that the conviction(s) or criminal charge(s) (if such charge(s) were subsequently to lead to conviction(s)), would warrant a charge of professional misconduct and referral to a Disciplinary Tribunal.

- 8. As soon as practicable after the decision has been made to refer a matter to a Suspension Panel, the Bar Standards Board shall write to the President notifying him of the decision.
- 9. As soon as practicable after receipt of the letter referred to in paragraph 8, the President shall write to the Defendant notifying him of the decision, together with a copy of these Rules, giving brief details of the conviction(s) or criminal charge(s) that have caused the referral to the Panel. The letter of notification:
 - (a) shall lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;
 - (b) shall invite the Defendant to accept one or other of the dates proposed or to provide a written representation to the President, which should be copied to the Chairman of the Complaints Committee, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the President not more than fourteen days from the date of the letter of notification. The President shall consider any such representation together with any representations from the Chairman of the Complaints Committee, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to sub-rule (a) above. The President's decision, which shall be notified in writing to the Defendant by the President, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the President;
 - (c) shall inform the Defendant that he may by letter to the Chairman of the Complaints Committee undertake either:
 - (i) immediately to be suspended from practice; or
 - (ii) not to accept or carry out any public access instructions;pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal based on the conviction(s) or criminal charge(s) that have caused the referral to the Panel;
 - (d) shall inform the Defendant that he is entitled to make representations in writing or orally, by himself or by another member of the Bar or a solicitor on his behalf:
 - (i) where a conviction or convictions have caused the referral to the Panel, as to whether a period of interim suspension or an interim prohibition from

accepting or carrying out any public access instructions should be imposed;
or

- (ii) where a criminal charge or charges have caused the referral to the Panel, as to whether and if so in what terms any notification should be given to professional clients and lay clients and the conditions subject to which the Defendant should be permitted to continue to practise;

pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal;

- (e) shall inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal.

- 10. (a) If, when referring a matter to a Suspension Panel, the Complaints Committee so requests, the President shall appoint a person who is qualified to sit as Chairman of a Suspension Panel to consider whether to impose an immediate interim suspension.
 - (b) This person shall impose an immediate interim suspension only if he is satisfied that the seriousness of the breaches found by the Approved Regulator and the seriousness of the risk to the public and to the administration of justice justify such a course.
 - (c) If an immediate interim suspension is imposed, the suspension shall remain effective until further order of the Suspension Panel which considers the matter.
11. If a Defendant sends a letter in accordance with rule 9(c) above which is satisfactory to the Chairman of the Complaints Committee the Chairman shall accept the undertaking contained in the letter in lieu of imposing a period of interim suspension or an interim prohibition from accepting or carrying out any public access instructions and so inform the Defendant in writing, whereupon the Defendant shall (as the case may be) either:
- (a) immediately be suspended from practice, or
 - (b) immediately be prohibited from accepting or carrying out any public access instructions, until after the disposal by a Disciplinary Tribunal of any charges of professional misconduct based on the conviction(s) or criminal charges(s) that have caused the referral to the Panel.

Powers of Suspension Panels

- 12. If, prior to the date fixed for a hearing under rules 9(a) or 9(b) above, a Defendant shall not have produced a letter in accordance with rule 9(c) above satisfactory to the Chairman of the Complaints Committee, a Suspension Panel nominated in accordance with rule 4 above shall, at the time and place notified to the Defendant in accordance with rules 9(a) or 9(b) above, consider:
 - (a) where a conviction or convictions have caused the referral to the Panel, whether a period of interim suspension or interim prohibition from accepting or carrying out any public access instructions should be imposed on the Defendant;
 - (b) where a criminal charge or charges have caused the referral to the Panel, whether the Defendant should be directed to notify his professional clients and lay clients of

the criminal offence(s) with which he has been charged before undertaking any work or (as the case may be) further work for any such client.

13. At any hearing of a Suspension Panel the proceedings shall be governed by the rules of natural justice, subject to which:
 - (a) the procedure shall be informal, the details being at the discretion of the Chairman of the Panel;
 - (b) the Defendant shall be entitled to make representations in writing or orally, by himself or by another member of the Bar or a solicitor on his behalf, as to:
 - (i) where a conviction or convictions have caused the referral to the Panel, why a period of interim suspension or interim prohibition from accepting or carrying out any public access instructions should not be imposed; or
 - (ii) where a criminal charge or charges have caused the referral to the Panel, why the Panel should not direct that the Defendant should notify his professional clients and lay clients of the criminal offence(s) with which he has been charged before undertaking any work or (as the case may be) further work for any such client; pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal;
 - (c) no witnesses may be called without the prior consent of the Chairman of the Panel and without the submission of a proof of evidence;
 - (d) the attendance of the Defendant shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence, subject to the Panel being satisfied that this course is appropriate, that all relevant procedures requiring the Defendant's attendance have been complied with and that no acceptable explanation for the Defendant's absence has been provided. Should the Panel not be so satisfied, it shall have the power to adjourn the hearing;
 - (e) the hearing shall not be in public unless so requested by the Defendant and a record shall be taken electronically. The tape of the hearing shall be retained under the arrangements of the President for two years or until any charges of professional misconduct against the Defendant based on the convictions or criminal charges which caused the referral to the Panel have been finally disposed of by a Disciplinary Tribunal and any appeal procedure has been exhausted whichever period is the longer;
 - (f) if it decides an adjournment is necessary for any reason, the Panel may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.
14. If the members of a Suspension Panel are not unanimous as to any decision the decision made shall be that of the majority of them. If the members of the Panel are equally divided the decision shall be that which is the most favourable to the Defendant.
15. Where a conviction or convictions have caused the referral to a Suspension Panel, at the conclusion of the hearing the Panel:
 - (a) may decide not to impose any period of interim suspension or interim prohibition from accepting or carrying out any public access instructions;

- (b) may impose a period of interim suspension or interim prohibition from accepting or carrying out any public access instructions (either unconditionally or subject to conditions) of up to six months pending the hearing before a Disciplinary Tribunal, provided that:
 - (i) no period of interim suspension should be imposed unless the Panel considers that it is likely that a Disciplinary Tribunal would impose a sentence of disbarment or suspension for more than twelve months for a charge or charges of professional misconduct based on the conviction or convictions that have caused the referral to the Panel and it considers that it is in the public interest that the Defendant should be suspended pending the hearing before a Disciplinary Tribunal; and
 - (ii) no period of interim prohibition from accepting or carrying out any public access instructions should be imposed unless the Panel considers that it is likely that a Disciplinary Tribunal would impose a sentence of disbarment or suspension for more than twelve months or prohibition from accepting or carrying out any public access instructions for a charge or charges of professional misconduct based on the conviction or convictions that have caused the referral to the Panel and it considers that it is in the public interest that the Defendant should be prohibited from accepting or carrying out any public access instructions pending the hearing before a Disciplinary Tribunal.
- (c) in lieu of imposing a period of suspension or prohibition from accepting or carrying out any public access instructions, may accept from the Defendant an undertaking in writing in terms satisfactory to the Panel (and subject to such conditions and for such period as the Panel may agree) either:
 - (i) immediately to be suspended from practice; or
 - (ii) not to accept or carry out any public access instructions pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal based on the conviction or convictions that have caused the referral to the Panel;
- (d) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any period of interim suspension or prohibition imposed under sub-rule (b) above or undertaking accepted under sub-rule (c) above.
- (e) shall, if a period of interim suspension or interim prohibition is imposed under sub-rule (b) above or a written undertaking is accepted under sub-rule (c) above:
 - (i) fix a time and date within the period of suspension or prohibition imposed, alternatively inform the Defendant that such a time and date will be fixed by the President and notified to the Defendant not less than fourteen days prior to such date, when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the conviction or convictions that have caused the referral to the Panel, a Panel shall be convened for the purpose of reviewing the matter;
 - (ii) inform the Defendant of his right to request a Panel to review the matter prior to the date fixed in (1) above as provided in rule 17 below;
 - (iii) inform the Defendant of his right of appeal as provided in rule 19 below;

- (iv) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;
 - (f) (may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.
16. Where a criminal charge or charges have caused the referral to a Suspension Panel, at the conclusion of the hearing the Panel:
- (a) may decide to make no direction as to the conduct of the Defendant's practice;
 - (b) may decide to direct the Defendant to notify his professional clients and lay clients of the criminal offence(s) with which he has been charged, in which case the Panel shall set out the terms of the written notification to be given (for such period as the Panel may think fit) to such clients and may include such comments as the Defendant may wish to make and the Panel may approve concerning the criminal charge(s). In addition to directing the notification of professional clients and lay clients, the Panel may direct that the conduct of Defendant's practice shall be subject to such conditions as the Panel may think fit;
 - (c) in lieu of making any direction under sub-rule (b) above the Panel may accept one or more undertakings in writing in such terms and upon such conditions as the Panel may think fit as to the form of written notification to be given to any professional client or lay client and as to the conduct of the Defendant's practice;
 - (d) shall set down in writing signed by the Chairman of the Panel the terms of any direction or undertaking accepted under sub-rules (b) or (c) above together with a copy or copies of the letter or letters approved as the form of notification to professional clients and lay clients;
 - (e) shall, if any direction is given or undertaking accepted under sub-rules (b) or (c) above limited to any specified period:
 - (i) fix a time and date within that period, alternatively inform the Defendant that such a time and date will be fixed by the President and notified to the Defendant not less than fourteen days prior to the expiration of such period when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the criminal charge or charges that have caused the referral to the Panel, a Panel shall be convened for the purpose of reviewing the matter;
 - (ii) inform the Defendant of his right to request a Panel to review the matter prior to the date fixed in (1) above as provided in rule 17 below;
 - (iii) inform the Defendant of his right of appeal as provided in rule 19 below;
 - (iv) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;
 - (f) may, if not already referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

17. In the event of a significant change in circumstances or other good reason the Defendant may at any time while suspended or subject to a prohibition pursuant to a decision of a Suspension Panel or an undertaking under rules 15(b) or 15(c) above or subject to a direction or undertaking under rules 16(b) or 16(c) make a request in writing to the President for a Panel to be convened to review the matter. The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the President may seek representations from the Chairman of the Complaints Committee and may in his discretion convene a Panel or refuse the request. In either case the President shall notify the Defendant in writing of the decision. The President shall not be obliged to give reasons and his decision shall be final. If the President decides to convene a Panel the procedure to be followed for fixing the time and date of the hearing shall be as set out in rules 9(a) and 9(b) above.
18. Unless in the meantime the hearing before a Disciplinary Tribunal of any charges based on the conviction(s) or criminal charge(s) which had caused the referral to a Suspension Panel has commenced, a hearing by a Suspension Panel convened pursuant to rules 15(e)(1), 16(e)(1) or 17 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the Panel which may reconsider the matter as if there had been no previous hearing. The provisions of rules 13, 14, 15 and 16 above shall apply at the first and any subsequent reconsideration of the matter save that in imposing any further period of interim suspension or interim prohibition from accepting or carrying out any public access instructions the Panel shall have regard to the length of any period of suspension or prohibition already served by the Defendant. If the hearing before a Disciplinary Tribunal of any charges based on the conviction(s) or criminal charge(s) which had caused the referral to a Suspension Panel has commenced before the date fixed for a rehearing by a Suspension Panel, such date shall be vacated and any interim suspension or prohibition or the terms of any direction made or undertaking accepted by a Suspension Panel shall continue until such charges have been disposed of by the Disciplinary Tribunal.
19. A Defendant may by letter served on the President and on the Chairman of the Complaints Committee not more than fourteen days after the date of the relevant decision of a Suspension Panel give notice of his wish to appeal against the decision.
20. Unless a Disciplinary Tribunal shall otherwise direct, any period of interim suspension or interim prohibition shall cease or the Defendant shall cease to be bound by the terms of any direction made or undertaking accepted by a Suspension Panel or an Appeal Panel immediately upon:
 - (a) all charges of professional misconduct based on the conviction(s) or criminal charge(s) which had caused the referral to a Suspension Panel being disposed of by a Disciplinary Tribunal;
 - (b) any appeal by the Defendant against the conviction or all the conviction(s) which had caused the referral to a Suspension Panel being successful;
 - (c) the acquittal of the Defendant of the criminal charge or all the criminal charges which had caused the referral to a Suspension Panel;
 - (d) the criminal charge or all the criminal charges which had caused the referral to a Suspension Panel being withdrawn.

Appeals

21. As soon as practicable after receipt of a letter in accordance with rule 19 above the President shall convene an Appeal Panel and write to the Defendant notifying him of a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The Defendant may make a written representation, addressed to the Chairman of the proposed Appeal Panel, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chairman of the Appeal Panel not more than fourteen days from the date of the letter of notification. The Chairman shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within ten days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the Defendant. The Chairman's decision, which shall be notified in writing to the Defendant shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the Appeal Panel.
22. The proceedings before an Appeal Panel shall be by way of a rehearing and the provisions of rule 13 above shall apply as if for references therein to the Suspension Panel and the Chairman of the Suspension Panel there were substituted references respectively to the Appeal Panel and the Chairman of the Appeal Panel.
23. Where the appeal concerns a period of interim suspension or interim prohibition from accepting or carrying out any public access instructions, at the conclusion of the hearing the Appeal Panel:
 - (a) may remove the period of interim suspension or interim prohibition and/or any conditions attached thereto;
 - (b) may confirm the period of interim suspension or interim prohibition (subject to any conditions), impose further or alternative conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;
 - (c) in lieu of confirming or imposing a period of interim suspension or interim prohibition, may accept from the Defendant in terms satisfactory to the Chairman of the Panel an undertaking in writing to continue to be suspended from practice or to continue not to accept or carry out any public access instructions (subject in either case to such conditions and for such period as the Panel may agree) pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal based on the conviction or convictions that have caused the referral to the Panel;
 - (d) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any interim suspension or interim prohibition confirmed or imposed under sub-rule (b) above or undertaking accepted under sub-rule (c) above. If the members of the Panel are not unanimous as to the decision the decision made shall be that of the majority of them. Any period of suspension or prohibition, which is confirmed or imposed, shall be recorded as set out in rule 15(d) above;
 - (e) shall, if a period of interim suspension or prohibition is confirmed, imposed or the subject of a written undertaking under sub-rule (c) above:
 - (i) confirm or fix a time and date within the period of the interim suspension or prohibition, alternatively inform the Defendant that such a time and date will be confirmed or fixed by the President and notified to the Defendant not less than fourteen days prior to such date, when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional

misconduct based on the conviction or convictions that caused the referral to the Suspension Panel, a Suspension Panel shall be convened for the purpose of reviewing the matter;

- (ii) inform the Defendant of his right to request a Suspension Panel to review the matter prior to the date confirmed or fixed under (1) above as provided in rule 17 above;
 - (iii) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;
- (f) may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

24. Where the appeal concerns a direction made or undertaking accepted under rules 16(b) or 16(c) above, at the conclusion of the hearing the Appeal Panel:

- (a) may confirm, remove or modify any direction previously given by the Suspension Panel, subject to such conditions as to the Defendant's practice as the Panel may think fit;
- (b) in lieu of any direction under sub-rule (a) above, the Panel may accept one or more written undertakings in such terms and upon such conditions as the Panel may think fit as to the form of written notification to be given to any professional client or lay client and as to the conduct of the Defendant's practice;
- (c) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any direction made or undertaking accepted under sub-rules (a) or (b) above together with a copy or copies of the letter or letters approved as the form of notification to professional clients and lay clients;
- (d) shall, if any direction is confirmed or modified or undertaking accepted under sub-rule (b) above limited to any specified period:
 - (i) confirm or fix a time and date within that period, alternatively inform the Defendant that such a time and date will be fixed by the President and notified to the Defendant not less than fourteen days prior to the expiration of such period when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the criminal charge or charges that caused the referral to the Suspension Panel, a Suspension Panel shall be convened for the purpose of reviewing the matter;
 - (ii) inform the Defendant of his right to request a Suspension Panel to review the matter prior to the date fixed in (1) above as provided in rule 16 above;
 - (iii) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;
- (e) may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

25. A pending appeal to an Appeal Panel shall not operate as a stay of any period of interim suspension or interim prohibition or the terms of any direction or undertaking which is the subject of the appeal.
26. There shall be no right of appeal from the decision of an Appeal Panel.

Costs

27. A Suspension Panel and an Appeal Panel shall have no power to award costs.

Report and Publication of Decisions

28. As soon as practicable after the conclusion of a Suspension Panel hearing or an Appeal Panel hearing, the President shall confirm the decision to the Defendant in writing.
29. In any case where a period of interim suspension or prohibition is imposed or an undertaking from a Defendant is accepted as a consequence of which he is suspended from practice or prohibited from accepting or carrying out public access instructions (either unconditionally or subject to conditions) the President shall communicate brief details thereof in writing to the following:
 - (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the Chairman of the Bar Council;
 - (f) the Leaders of the six circuits;
 - (g) the Director of the Bar Standards Board;
 - (h) the Chairman of the Complaints Committee;
 - (i) the Defendant;
 - (j) the Defendant's head of chambers;
 - (k) the Treasurers of the Defendant's Inn of Call and of any other Inns of which he is a member;
 - (l) such one or more press agencies or other publications, as the Chairman of the Complaints Committee may direct.

Save in cases where interim suspension or interim prohibition is followed by a sentence of disbarment or suspension from practice or prohibition from accepting or carrying out any public access instructions imposed by a Disciplinary Tribunal, if a Defendant ceases for whatever reason to be suspended from practice or prohibited from accepting or carrying out any public access instructions the Bar Standards Board shall communicate brief details of the circumstances in which the Defendant has ceased to be suspended from practice or prohibited from accepting or carrying out any public access instructions to all the persons and agencies to which brief details of the interim suspension had previously been communicated pursuant to this rule.

30. In any case where a direction is made requiring notification of a criminal charge or charges to professional clients and lay clients or any undertaking is accepted under rules 16(c) or

24(b) above the Bar Standards Board shall communicate brief details thereof in writing to the following:

- (a) the Lord Chancellor;
- (b) the Lord Chief Justice;
- (c) the Attorney General;
- (d) the Director of Public Prosecutions;
- (e) the President of the Council of the Inns of Court;
- (f) the Chairman of the Bar Council;
- (g) the Leaders of the six circuits;
- (h) the Director of the Bar Standards Board;
- (i) the Chairman of the Complaints Committee;
- (j) the Defendant;
- (k) the Defendant's head of chambers.

Service of documents

31. Regulation 32 of the Disciplinary Tribunals Regulations shall apply for the purposes of the service of any documents in connection with the procedures which are the subject of these Rules save that for the reference in Regulation 32(1)(d) to the "Directions Judge or the Chairman of the Disciplinary Tribunal" there shall be substituted the " President of the Council of the Inns of Court".

Commencement and Transitional Provisions

32. (a) These Rules will come into effect on 1st October 2005. They shall apply to all matters, including matters referred to a Suspension Panel prior to 1st October 2005, and to all Suspension Panels, Appeals and Appeal Panels, including all Panels and Appeals pending as at 1st October 2005;
- (b) Any step taken in relation to any Suspension Panel, Appeal or Appeal Panel prior to 1st October 2005 pursuant to the provisions of the Rules then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Rules.
- (c) These Rules shall not be applied in respect of any conviction or charge prior to 1st February 2000.
- (d) These Rules shall not be applied in respect of any conviction by an Approved Regulator prior to 30th April 2010.

Annexe O - Fitness to Practise Rules

Introduction

1. These Rules are supplemental to:
 - (a) the Complaints Rules;
 - (b) the Disciplinary Tribunals Regulations; and
 - (c) the Interim Suspension Rules;

as approved from time to time and annexed to the Code of Conduct of the Bar of England and Wales.
2. These Rules prescribe the manner in which any question concerning whether a barrister is unfit to practise, as defined in these Rules, shall be processed.
3. Anything required by these Rules to be done or any discretion required to be exercised by, and any notice required to be given to, the President or the Complaints Committee, may be done or exercised by, or given to, any person or body authorised by the President or by the Complaints Committee as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

4. In these Rules:
 - (a) "the Complaints Committee" means the Complaints Committee of the Bar Standards Board
 - (b) "Medical Panel" means a Medical Panel as provided for in rule 4 of these Rules;
 - (c) "Review Panel" means a Review Panel as provided for in rule 5 of these Rules;
 - (d) "the Barrister" means the barrister whose case is referred to a Medical Panel pursuant to the procedure prescribed by these Rules;
 - (e) "Medical Expert" means a medical expert appointed by the President for the purpose of serving on Medical and Review Panels.
 - (f) "Appointed Medical Advisor" means a medical expert appointed by the President for the purpose of performing medical (including psychiatric) examinations on barristers and advising Medical and Review panels;
 - (g) "Unfit to practise" when used to describe a barrister means that he is incapacitated by reason of ill health and:
 - (1) the barristers is suffering from serious incapacity due to his physical or mental condition (including any addiction); and

- (2) as a result the barrister's fitness to practise is seriously impaired; and
 - (3) his suspension or the imposition of conditions is necessary for the protection of the public.
- (h) Any term defined in the Code of Conduct shall carry the same meaning as it does in Part X of the Code of Conduct.
- (i) Any reference to a person includes any natural person, legal person and/or firm. Any reference to the masculine gender includes the feminine and the neuter, and any reference to the singular includes the plural, and in each case vice versa.

Composition of Panels

5. A Medical Panel shall consist of five members nominated by the President being:
- (a) a Chairman and two other barristers of at least seven years Call of whom the Chairman and at least one other shall be Queen's Counsel;
 - (b) Medical Expert;
 - (c) Lay Representative.

Provided that:

- (1) No person shall be nominated to serve on a Medical Panel which is to consider any case which may have been considered at any meeting of the Complaints Committee which he attended; and
- (2) the proceedings of a Medical Panel shall be valid notwithstanding that one or more of the members other than the Chairman or Medical Expert or Lay Representative becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing is not reduced below three and continues to include the Chairman and the Medical Expert and Lay Representative.
- (3) no person shall be appointed to serve on a panel if they are a member of the Bar Council or of any of its committees; or are a member of the BSB or of any of its committees; or were a member of the Complaints Committee at any time when the matter being dealt with by the panel was being considered by the Complaints Committee;.

6. A Review Panel shall consist of four members nominated by the President being:
- (a) Two Queen's Counsel who are entitled to sit as a Recorder or Deputy High Court Judge or who have been Queen's Counsel for at least seven years. Unless the panel otherwise decides, the senior barrister member will be the Chairman of the panel.
 - (b) a Medical Expert;

- (c) a Lay Representative

Provided that:

- (1) no person shall be appointed to serve on a Review Panel if they are a member of the Bar Council or of any of its committees; or are a member of the BSB or of any of its committees; or were a member of the Complaints Committee at any time when the matter being dealt with by the panel was being considered by the Complaints Committee;
- (2) no individual shall sit on both the Medical Panel and the Review Panel considering the same case.

Referral to a Medical Panel

- 7. Where information in writing or a complaint in writing is received by the Bar Council about any barrister who holds a practising certificate which raises a question whether the barrister is unfit to practise, the Complaints Committee shall consider whether to refer the case to a Medical Panel.
- 8. The Complaints Committee shall refer a case to a Medical Panel if:
 - (a) having been referred to it under rule 7 above the Complaints Committee considers a barrister may be unfit to practise; or
 - (b) a complaint of professional misconduct has been referred to the Complaints Committee during the investigation of which it appears that a barrister may be unfit to practise; or
 - (c) in any other circumstances it appears to the Complaints Committee or any other Disciplinary Panel or Tribunal that a barrister may be unfit to practise; or
 - (d) a barrister requests the Complaints Committee in writing to refer his case to a Medical Panel.
- 9. As soon as practicable after the decision has been made to refer a case to a Medical Panel, the Secretary of the Complaints Committee shall write to the President requesting him to establish a Medical Panel.
- 10. As soon as practicable after receipt of the letter from the Secretary of the Complaints Committee, the President shall write to the Barrister notifying him of the decision, together with a copy of these Rules. The letter of notification shall:
 - (a) contain a summary of the reasons why the case has been referred to a Medical Panel;
 - (b) lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for a preliminary hearing of the Panel to take place. One alternative shall be given;

- (c) invite the Barrister to accept one or other of the dates proposed or to provide a written representation to the President, copying to the Chairman of the Complaints Committee, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the President not more than fourteen days from the date of the letter of notification. The President shall consider any such representation together with any representation from the Chairman of the Complaints Committee and either confirm one of the original dates or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rule 8(b) above. The President's decision, which shall be notified in writing to the Barrister, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the President;
- (d) inform the Barrister that he is entitled to make representations in writing or orally, by himself or by another member of the Bar on his behalf, and that he may produce medical evidence, provided (but subject to the discretion of the Chairman of the Panel to consider any form of evidence placed before it) that a proof of such evidence shall have been submitted prior to the hearing;
- (e) inform the Barrister that he may be invited to attend within a period of time upon an Appointed Medical Advisor nominated by the Panel to carry out an examination of the Barrister, and requested to authorise disclosure of his medical records;
- (f) inform the Barrister of his right to appeal as provided in rule 20 below.

Procedure and Powers of Medical Panels

11. At any hearing of a Medical Panel the proceedings shall be governed by the rules of natural justice, subject to which:
- (a) the procedure shall be informal, the details being at the discretion of the Chairman of the Panel;
 - (b) the Barrister shall be entitled to make representations in writing or orally, by himself or by another member of the Bar or a solicitor on his behalf, and may produce medical evidence, provided (but subject to the discretion of the Chairman of the Panel to consider any form of evidence placed before it) that a proof of such evidence shall have been submitted prior to the hearing;
 - (c) the attendance of the Barrister shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence, subject to the Panel being satisfied that this course is appropriate, that all relevant procedures requiring the Barrister's attendance have been complied with and that no acceptable explanation for the Barrister's absence has been provided. Should the Panel not be so satisfied, it shall have the power to adjourn the hearing;
 - (d) the hearing shall not be in public unless so requested by the Barrister and a record shall be taken electronically. The tape of the hearing shall be retained under the arrangements of the President for two years or until any charges of professional misconduct against the Barrister arising out of the case have been finally disposed of

through the Bar Council's procedure for complaints and any appeal procedure has been exhausted whichever period is the longer;

- (e) if it decides an adjournment is necessary for any reason, the Panel may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.
12. If the members of a Medical Panel are not unanimous as to any decision the decision made shall be that of the majority of them. If the members of the Panel are equally divided the decision shall be that which is the most favourable to the Barrister.
13. At the conclusion of a preliminary hearing of a Medical Panel, the Panel:
- (a) may give directions for a full hearing of the Panel, including:
 - (1) a direction within a specified period of time an Appointed Medical Advisor nominated by the Panel shall carry out an examination of the Barrister; and
 - (2) a request to the Barrister to authorise disclosure of his medical records to such Appointed Medical Advisor;
 - (b) shall warn the Barrister that if he refuses any request made under rule 11(a) above any Panel hearing his case shall be entitled to draw such adverse inferences as it may think fit from such refusal;
 - (c) may direct that the barrister be suspended from practice or prohibited from accepting or carrying out any public access instructions (either unconditionally or subject to conditions) for a specified period which should not save in exceptional circumstances exceed 3 months pending the full hearing of the Panel, provided that no such period of interim suspension or prohibition should be imposed unless the Panel is satisfied that it is necessary to protect the public.
 - (d) in lieu of imposing a period of suspension or prohibition under (c) above may accept from the Barrister an undertaking in writing in terms satisfactory to the Panel (and subject to such conditions and for such a period as the Panel may agree) either:
 - (1) immediately to be suspended from practice, or
 - (2) not to accept or carry out any public access instructions, pending the conclusion of the full hearing;
 - (e) may accept from the Barrister an undertaking or undertakings in writing in terms satisfactory to the Panel (and subject to such conditions and for such a period as the Panel may agree) as to the conduct of the Barrister's practice pending the conclusion of the full hearing;
 - (f) shall set down in writing signed by the Chairman of the Panel the decision of the Panel including the terms of any directions given under rule 11(a) above and the period and terms of any interim suspension or prohibition imposed under rule 12(c) above or undertaking accepted under rule 12(d) or (e) above.
 - (g) shall, if a period of interim suspension or prohibition is imposed under rule 12(c) above or a written undertaking is accepted under rule 12 (d) above:

- (1) fix a time and date within the period of suspension or prohibition imposed or to which the undertaking relates, alternatively inform the Barrister that such a time and date will be fixed by the President and notified to the Barrister not less than fourteen days prior to such date, when, unless a Medical Panel has concluded proceedings, a Panel shall be convened for the purpose of reviewing the matter;
 - (2) inform the Barrister of his right to request a Panel to review the matter prior to the date fixed in (1) above as provided in rule 16 below;
 - (3) inform the Barrister of his right of appeal as provided in rule 18 below;
 - (4) inform the Barrister that he is entitled to request an expedited full hearing of the Medical Panel and, if so requested, the Chairman of the Panel may so direct.
14. If a Medical Panel shall decide to give directions under rule 12(a) above, as soon as practicable after the report of any examination requested has been carried out (or refused) and a summary of the case against the Barrister has been prepared on behalf of the Panel, the Secretary of the Complaints Committee shall notify the Barrister. The letter of notification shall:
 - (a) contain:
 - (1) the summary of the case against the Barrister;
 - (2) a copy of any report produced by the Appointed Medical Advisor nominated to carry out an examination of the Barrister;
 - (b) lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for a full hearing of the Panel to take place. One alternative shall be given;
 - (c) invite the Barrister to accept one or other of the dates proposed or to provide a written representation to the President with a copy to the Chairman of the Complaints Committee, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the President not more than fourteen days from the date of the letter of notification. The President shall consider this representation together with any representation from the Chairman of the Complaints Committee, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rule 12(b) above. The Chairman's decision, which shall be notified in writing to the Barrister, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the President;
 - (d) inform the Barrister of his right to appeal as provided in rule 19 below.

15. At any full hearing of a Medical Panel the provisions of rule 9 above shall apply but in addition the Barrister himself or by another member of the Bar shall be entitled to cross-examine any Appointed Medical Advisor whose report is in evidence before the Panel.
16. At the conclusion of a full hearing of a Medical Panel, the Panel:
 - (a) may decide to take no action;
 - (b) if satisfied that the Barrister is or may become unfit to practise shall have power to impose one or more of the penalties or conditions set out in rules 15(c), (d) and (e) below;
 - (c) may impose a period of interim suspension or interim prohibition from accepting or carrying out any public access instructions (either unconditionally or subject to conditions) of up to six months, but shall inform the Barrister that such period of interim suspension or interim prohibition shall be continued without any further decision of a Panel unless determined at a review of his case as provided in rule 16 below;
 - (d) may impose an indefinite period of suspension or prohibition from accepting or carrying out any public access instructions;
 - (e) may make the Barrister's right to continue to practise, or to resume practice after any period of suspension or prohibition from accepting or carrying out any public access instructions, subject to such conditions as the Panel may think fit, including, without prejudice to the generality of the foregoing:
 - (1) a requirement that the Barrister should attend one or more Appointed Medical Advisors for regular examination whose report(s) should be made available to the Chairman of the Complaints Committee and any Medical Panel or Review Panel when considering the case;
 - (2) a requirement that the Barrister should attend one or more clinics or hospitals as the Panel may decide for the purposes of treatment in respect of any physical or mental condition which the Panel may think is or may become a cause of the Barrister's Unfitness to practise;
 - (f) in lieu of imposing any penalty or condition under rule 15(b) above the Panel may accept from the Barrister one or more undertakings in writing satisfactory to the Panel referring to such period of suspension or prohibition and any conditions which the Panel would have imposed or made under rules 15 (c), (d) and (e) above;
 - (g) shall inform the Barrister of his right to request a Panel to review his case as provided in rule 16 below;
 - (h) shall inform the Barrister of his right of appeal as provided in rule 19 below;
 - (i) shall inform the Barrister that to attempt to practise during a period of suspension or to attempt to accept or carry out any public access instructions during a period of prohibition or, if the Barrister's right to continue to practise is subject to one or more conditions, not to comply with any such condition, would be serious professional misconduct likely to result in a charge of professional misconduct and a hearing before a Disciplinary Tribunal;

- (j) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any suspension or prohibition imposed, conditions made, or undertakings accepted.
17. At any time, after a period of suspension or prohibition imposed or undertaken under rules 15(d) or (f) above has expired, or in the event of a significant change in circumstances or other good reason, the Barrister may make a request in writing to the Chairman of the Complaints Committee for a Panel to be convened to review his case. Where a significant change in circumstances or good reason is relied upon the letter must set out the details of any such alleged change in circumstances or good reason. On receipt of such a letter the Chairman may in his discretion convene a Panel or refuse the request. In either case the Chairman shall inform the Barrister in writing of his decision but shall not be obliged to give reasons. The Chairman's decision shall be final.
18. At any time during which a Barrister is subject to a period of suspension or prohibition or is practising subject to conditions made pursuant to these Rules the Chairman of the Complaints Committee may in his discretion convene a Panel to review that Barrister's case.
19. When a case is referred for review to a Medical Panel under rules 17 or 18 above:
- (a) there shall be a rehearing of the case by the Panel and the provisions of rules 10, 12 and 15 above shall apply save that copies of the report of any expert or any proof of evidence referred to at any previous hearing of a Medical Panel in respect of the same case may be referred to;
- (b) unless agreed in writing between the Chairman of the Panel and the Barrister that any of the provisions contained in rules 10, 11 and 12 shall not apply, there shall be a preliminary as well as a full hearing of the Panel and the provisions contained in rules 10, 13, and 16 above shall apply thereto.
20. A Barrister may by letter served on the President not more than fourteen days after the date of the relevant decision of a Medical Panel give notice of his wish to appeal against the decision.

Appeals

21. As soon as practicable after receipt of a letter in accordance with rule 20 above the President shall convene a Review Panel and write to the Barrister notifying him of a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The Barrister may make a written representation, addressed to the Chairman of the proposed Review Panel, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chairman of the Review Panel not more than fourteen days from the date of the letter of notification. The Chairman shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and place originally notified to the Barrister. The President's decision, which shall be notified in writing to the Barrister by the President, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the Review Panel.

22. The proceedings before a Review Panel shall be by way of a rehearing and the provisions of rules 10 and 14 above shall apply as if for references therein to the Medical Panel and the Chairman of the Medical Panel for the purposes of a full hearing of a Medical Panel there were substituted references respectively to the Review Panel and the Chairman of the Review Panel, save that copies of the report of any expert or any proof of evidence referred to at any hearing of a Medical Panel in respect of the same case may be referred to.
23. At the conclusion of the hearing, the Review Panel:
- (a) may allow the appeal and decide to take no action;
 - (b) confirm the decision that is the subject of the appeal;
 - (c) may exercise any of the powers of a Medical Panel as set out in rules 15(c), (d), (e), and (f) above;
 - (d) shall inform the Barrister of his right to request a Medical Panel to review his case as provided in rule 16 above;
 - (e) shall inform the Barrister that to attempt to practise during a period of suspension or to attempt to accept or carry out any public access instructions during a period of prohibition or, if the Barrister's right to continue to practise is subject to one or more conditions, not to comply with any such condition, would be serious professional misconduct likely to result in a charge of professional misconduct and a hearing before a Disciplinary Tribunal;
 - (f) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any suspension or prohibition imposed, conditions made, or undertakings accepted. If the members of the Panel are not unanimous as to the decision the decision shall be that of the majority of them.
24. A pending appeal to a Review Panel shall not operate as a stay of any period of suspension or prohibition from accepting or carrying out any public access instructions or any conditions or the terms of any undertaking which is the subject of the appeal.
25. There shall be no right of appeal from the decision of a Review Panel.

Costs

26. A Medical Panel and a Review Panel shall have no power to award costs.

Confidentiality of medical reports

27. A Barrister's medical records and any report prepared for or submitted to a Medical Panel or a Review Panel shall not be used for any other purpose than is provided for in these Rules and shall not be disclosed to any other person or body without the consent in writing of the Barrister.

Report and Publication of Decisions

28. As soon as practicable after the conclusion of a Medical Panel hearing or a Review Panel hearing, the Secretary of the Complaints Committee shall confirm the decision to the Barrister in writing.

29. Unless the decision of a Medical Panel full hearing or a Review Panel hearing is to take no action and the Barrister is permitted to continue to practise without being subject to any conditions, the President shall communicate brief details thereof in writing to the following:
- (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the Chairman of the Bar Council;
 - (f) the Director of the Bar Standards Board;
 - (g) the Leaders of the six circuits;
 - (h) the Chairman of the Complaints Committee;
 - (i) the Barrister;
 - (j) the Barrister's head of chambers;
 - (k) the Treasurers of the Barrister's Inn of Call and of any other Inns of which he is a member.

Service of documents

30. Regulation 32 of the Disciplinary Tribunals Regulations shall apply for the purposes of the service of any documents in connection with the procedures which are the subject of these Rules save that for the reference in Regulation 32(1)(d) to the "Directions Judge or the Chairman of the Disciplinary Tribunal" there shall be substituted the " President".

Commencement and Transitional Provisions

31. (a) These rules will come into effect on 1 January 2011. They shall apply to all cases, including cases referred to a Medical Panel prior to that date, and to all Medical Panels, Appeals and Review Panels including all Panels and Appeals pending as at that date;
- (b) Any step taken in relation to any Medical Panel, Appeal or Review Panel prior to 1 January 2011 pursuant to the provisions of the Rules then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Rules.

Annexe P - Adjudication Panel and Appeals Rules (No longer applicable)

Annexe Q - European Lawyers Code of Conduct

1 Preamble

1.1 The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in Society.

A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:-

- the client;
- the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular; and
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2 The Nature of Rules of Professional Conduct

1.2.1 Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in a disciplinary sanctions.

1.2.2 The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3 The Purpose of the Code

1.3.1 The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the Community whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

1.3.2 The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:-

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

1.4 Field of Application - Ratione Personae

This code shall apply to lawyers of the European Union and European Economic Area as they are defined by the Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Observer members of the CCBE.

1.5 Field of Application Ratione Materiae

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and European Economic Area. Cross-border activities shall mean:-

- (a) all professional contacts with lawyers of Member States other than the lawyer's own; and
- (b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

1.6 Definitions

In this Code:

"Member State" means a Member State of the EU or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired his or her professional title.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

2 General Principles

2.1 Independence

2.1.1 The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties.

2.1.2 This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him or herself, to serve his or her personal interests or in response to outside pressure.

2.2 Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3 Confidentiality

2.3.1 It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2 A lawyer shall respect the confidentiality of all information that becomes known to the lawyer in the course of his or her professional activity.

2.3.3 The obligation of confidentiality is not limited in time.

2.3.4 A lawyer shall require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

2.4 Respect for the Rules of Other Bars and Law Societies

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Bar or Law Society of the host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Members of organisations of CCBE are obliged to deposit their Code of Conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the current Code from the Secretariat.

2.5 Incompatible Occupations

- 2.5.1 In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.
- 2.5.2 A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the host Member State.
- 2.5.3 A lawyer established in a host Member State in which he wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6 Personal Publicity

- 2.6.1 A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.
- 2.6.2 Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

2.7 The Client's Interests

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

- 2.8 Limitation of Lawyer's Liability towards the client

To the extent permitted by the law of the Home member State and the Host member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer is subject.

3 Relations with Clients

3.1 Acceptance and Termination of Instructions

- 3.1.1 A lawyer shall not handle a case for a party except on that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain.

- 3.1.2 A lawyer shall advise and represent the client promptly conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.
- 3.1.3 A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without co-operating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.

- 3.1.4 A lawyer shall not be entitled to exercise his or her right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2 Conflict of Interest

- 3.2.1 A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.
- 3.2.2 A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.
- 3.2.3 A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidences entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.
- 3.2.4 Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3 Pactum de Quota Litis

- 3.3.1 A lawyer shall not be entitled to make a pactum de quota litis.
- 3.3.2 By "pactum de quota litis" is meant an agreement between a lawyer and the client entered into prior to the final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.
- 3.3.3 The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the competent authority having jurisdiction over the lawyer.

3.4 Regulation of Fees

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

3.5 Payment on Account

If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6 Fee Sharing with Non-Lawyers

- 3.6.1 A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the rules to which the lawyer is subject.
- 3.6.2 The provisions of 6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

3.7 Legal Aid

- 3.7.1 The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.
- 3.7.2 A lawyer shall inform the client of the availability of legal aid where applicable.

3.8 Client Funds

- 3.8.1 Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.
- 3.8.1.1 That clients' funds shall always be held in an account in a bank or similar institution subject to supervision of Public Authority and that all clients' funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.
- 3.8.1.2 That any account in which the clients' funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the lawyer.
- 3.8.1.3 That any account or accounts in which clients' funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the clients' funds held by the lawyer.
- 3.8.1.4 That all funds shall be paid to clients immediately or upon such conditions as the client may authorise.
- 3.8.1.5 That payments made from clients' funds on behalf of a client to any other person including
- (a) payments made to or for one client from funds held for another client and
 - (b) payment of the lawyer's fees,
- be prohibited except to the extent that they are permitted by law or have the express or implied authority of the client for whom the payment is being made.
- 3.8.1.6 That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his clients' funds and distinguishing clients' funds from other funds held by him.
- 3.8.1.7 That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyers'

clients' funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.

- 3.8.2 The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.
- 3.8.3 A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account nor shall the client funds in a client account be available to defray money owed by the lawyer to the bank.
- 3.8.4 Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.
- 3.8.5 The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.
- 3.8.6 The competent authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.

3.9 Professional Indemnity Insurance

- 3.9.1 Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.
- 3.9.2 Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

4 Relations with the Courts

4.1 Rules of Conduct in Court

A lawyer who appears, or takes part in a case, before a court or tribunal in a Member State must comply with the rules of conduct applied before that court or tribunal.

4.2 Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings.

4.3 Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interest of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person.

4.4 False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5 Extension to Arbitrators Etc

The rules governing a lawyer's relations with the courts apply also to the lawyer's relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5 Relations Between Lawyers

5.1 Corporate Spirit of the Profession

5.1.1 The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2 A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2 Co-operation among Lawyers of Different Member States

5.2. 1 It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.

5.2.2 Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations competences and obligations of lawyers in the Member States concerned.

5.3 Correspondence Between Lawyers

5.3.1 If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the documents.

5.3.2 If the prospective recipient of the communication is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay.

5.4 Referral Fees

5.4.1 A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2 A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

5.5 Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6 (Deleted by decision of the CCBE Plenary Session in Dublin on 6th December 2002)

5.7 Responsibility for Fee

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his or her personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

5.8 Continuing professional development

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

5.9 Disputes Amongst Lawyers in Different Member States

- 5.9.1 If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.
- 5.9.2 If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.
- 5.9.3 A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

Annexe R - Pupillage Funding and Advertising Requirements

1. The members of a set of chambers must pay to each non-practising chambers pupil by the end of each month of the non-practising six months of his pupillage no less than:
 - (a) £1,000; plus
 - (b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:
 - (i) travel for the purposes of his pupillage during that month; and
 - (ii) attendance during that month at courses which he is required to attend as part of his pupillage.
2. The members of a set of chambers must pay to each practising chambers pupil by the end of each month of the practising six months of his pupillage no less than:
 - (a) £1,000; plus
 - (b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:
 - (i) travel for the purposes of his pupillage during that month; and
 - (ii) attendance during that month at courses which he is required to attend as part of his pupillage; less
 - (c) such amount, if any, as the pupil may receive during that month from his practice as a barrister; and less
 - (d) such amounts, if any, as the pupil may have received during the preceding months of his practising pupillage from his practice as a barrister, save to the extent that the amount paid to the pupil in respect of any such month was less than the total of the sums provided for in sub-paragraphs (a) and (b) above.
3. The members of a set of chambers may not seek or accept repayment from a chambers pupil of any of the sums required to be paid under paragraphs 1 and 2 above, whether before or after he ceases to be a chambers pupil, save in the case of misconduct on his part.

Advertising

4. All vacancies for pupillages must be advertised on a website designated by the Bar Council and the following information must be provided:
 - (a) The name and address of chambers.
 - (b) The number of tenants.
 - (c) A brief statement of the work undertaken by chambers eg "predominately criminal".
 - (d) The number of pupillage vacancies.
 - (e) The level of award.

- (f) The procedure for application.
- (g) The minimum educational or other qualification required;
- (h) The date of closure for the receipt of applications.
- (i) The date by which the decisions on the filling of vacancies will be made.

Application

5. The requirements set out in paragraphs 1 to 4 above:
 - (a) apply in the case of pupillages commencing on or after 1st September 2011;
 - (b) do not apply in the case of pupils who were granted exemption from the Vocational Stage of training under Regulation 59 of the Bar Training Regulations;¹
 - (c) do not apply in the case of pupils who are undertaking a period of pupillage in a set of chambers as part of a pupillage training programme offered by another organisation that is authorised by the Bar Council to take pupils.
 - (d) do not apply in the case of pupils who have completed both the non-practising and the practising six months of pupillage;
 - (e) save as provided in paragraph 3 above, do not apply in respect of any period after a pupil ceases, for whatever reason, to be a chambers pupil; and
 - (f) may be waived in part or in whole by the Pupillage Funding and Advertising Panel

6. For the purposes of these requirements:
 - (a) "chambers pupil" means, in respect of any set of chambers, a pupil undertaking the non-practising or practising six months of pupillage with a pupil-master or pupil-masters who is or are a member or members of that set of chambers;
 - (b) "non-practising chambers pupil" means a chambers pupil undertaking the non-practising six months of pupillage;
 - (c) "practising chambers pupil" means a chambers pupil undertaking the practising six months of pupillage;
 - (d) "month" means calendar month commencing on the same day of the month as that on which the pupil commenced the non-practising or practising six months pupillage, as the case may be;
 - (e) any payment made to a pupil by a barrister pursuant to paragraph 805 of the Code of Conduct shall constitute an amount received by the pupil from his practice as a barrister; and
 - (f) the following travel by a pupil shall not constitute travel for the purposes of his pupillage:
 - (i) travel between his home and chambers; and
 - (ii) travel for the purposes of his practice as a barrister.

¹Bar Training Regulations effective from 1st September 2009

Annexe S - Chambers Complaints

Introduction

The numbered paragraphs below contain requirements which must be met by all barristers in order to comply with paragraph 403.5 (d) of the Code of Conduct.

REQUIREMENTS

Provision of information to clients

1. ¹ From 6th October 2010, Barristers must notify clients in writing at the time of engagement or if not practicable at the next appropriate opportunity:
 - (a) Of their right to make a complaint, how and to whom this can be done, including their right to complain to the Legal Ombudsman at the conclusion of the complaints process, the timeframe for doing so and the full details of how to contact the Legal Ombudsman;
 - (b) That the lay client may complain directly to Chambers without going through solicitors.

In cases of public or licensed access using an intermediary, the intermediary must similarly be informed.

In the case of the professional client, the notification of the information at 1(a) and 1(b) does not require a separate specific letter. It is sufficient for it to be contained in the ordinary terms of reference letter (or equivalent letter) that is sent by Chambers upon acceptance of instructions. In the case of the lay client, where there is, unless it is public access case, no letter of engagement, a specific letter must be sent to them notifying of the information at 1(a) and 1(b).

2. Chambers' websites and literature must carry information about the Chambers' Complaints Procedure

RESPONSE TO COMPLAINTS

3. All complaints must be acknowledged promptly. Together with the acknowledgment, the complainant must be provided with:-
 - (a) the name of the person who will deal with the complaint together with a description of that person's role in Chambers
 - (b) a copy of the Chambers' Complaint Procedure
 - (c) the date by which the complainant will next hear from Chambers.

¹At the conclusion of the complaints process, complainants must be informed in writing of their right to complain to the Legal Ombudsman, the timeframe for doing so and the full details of how to contact them.

Documents and Record Keeping

4. All communications and documents relating to complaints must be kept confidential and disclosed only so far as is necessary for
 - (a) the investigation and resolution of the complaint
 - (b) internal Chambers review for the purposes of improving practice
 - (c) complying with requests from the Bar Standards Board in the exercise of its monitoring and or auditing functions.

The disclosure of internal Chambers' documents relating to the handling of the complaint, such as the minutes of a Chambers' meeting held to discuss a particular complaint, to the Bar Standards Board for the further resolution or investigation of the complaint is not required.

5. A record must be kept of each complaint, all steps taken in response to it and the outcome of the complaint, together with a copy of all correspondence, including electronic mail, and all other documents generated in response to the complaint. The records and copies should be kept for 6 years.
6. The person responsible for the administration of the procedure must report at least annually to the appropriate member/committee of Chambers on the number of complaints received, the subject areas of the complaints and the outcomes. The complaints should be reviewed for trends and possible training issues.

¹Amended 6th October 2010

Annexe T - The (new) standard contractual terms for the supply of legal services by barristers to authorised persons 2012

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**STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS
TO AUTHORISED PERSONS 2012**

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions of Contract for the Supply of Services by Barristers to Authorised Persons (as defined below) (“the Conditions”):

1.1.1 reference to a clause is to the relevant clause of these Conditions;

1.1.2 headings are included for convenience only and do not affect the interpretation of these Conditions;

1.1.3 references to “parties” or a “party” are references to the parties or a party to the Agreement;

1.1.4 references to the masculine include the feminine and references to the singular include the plural and vice versa in each case;

1.1.5 references to a person include bodies corporate (including limited liability partnerships) and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;

1.1.6 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.1.7 references to any provision of the Code include references to that provision as amended replaced or renumbered from time to time; and

1.1.8 references to a person or body include references to its successor.

1.2 In these Conditions, the following words have the following meanings, except where the context requires otherwise:-

“the Agreement”

the agreement between the Barrister and the Authorised Person for the Barrister to provide the Services on the terms set out in these Conditions;

“the Authorised Person”

the person who is an authorised person for the purposes of s. 18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees;

“the Barrister”

the barrister, practising as a member of the Bar of England & Wales, who is willing and able in that capacity to provide the Services in connection with the Case and in accordance with the Instructions from the Authorised Person on behalf of the Lay Client;

“the Case”

the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is Instructed to provide the Services;

“the Code”

the Code of Conduct of the Bar of England and Wales, as amended from time to time;

“Conditional Fee Agreement”

the meaning ascribed to those words by section 58 of the Courts and Legal Services Act 1990;

“the Instructions”

the briefs, instructions and requests for work to be done (and all accompanying materials) given by the Authorised Person to the Barrister in whatever manner to enable him to supply the Services, and “Instruct” and “Instructing” shall have corresponding meanings;

“Invoice”

includes a fee note not amounting to a VAT invoice

“The Law Society”

The Law Society of England and Wales

“the Lay Client”

the person for whose benefit or on behalf of whom the Barrister is Instructed by the Authorised Person to provide the Services (who may be the Authorised Person where the Case concerns the affairs of the Authorised Person)

“the Services”

the legal services provided by the Barrister in connection with the Case pursuant to the Instructions provided by the Authorised Person;

“the SRA”

the Solicitors Regulation Authority; and

“the SRA Code”

the part of the SRA Handbook published by the SRA on 16 September 2011 referred to as the “SRA Code of Conduct 2011” as amended from time to time.

2. APPLICATION OF THESE CONDITIONS

- 2.1 The Barrister provides the Services requested by the Authorised Person on the terms set out in these Conditions and subject to his professional obligations under the Code.
- 2.2 These Conditions (other than this clause 2.2) may be varied if, but only if, expressly agreed by the Parties in writing (including by exchange of emails).
- 2.3 By instructing the Barrister to provide further Services in relation to the Case, the Authorised Person accepts these Conditions in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.4 These Conditions do not apply in the following circumstances:
 - 2.4.1 the Barrister is paid directly (a) by the Legal Services Commission, through the Community Legal Service or the Criminal Defence Service or (b) by the Crown Prosecution Service; or
 - 2.4.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions.

- 2.5 Nothing in these Conditions nor any variation referred to in clause 2.2 shall operate so as to conflict with the Barrister's duty under the Code or with the Authorised Person's duty under the SRA Code.

3. THE INSTRUCTIONS TO THE BARRISTER

- 3.1 The Authorised Person must ensure the Instructions delivered to the Barrister are adequate to supply him with the information and documents reasonably required and in reasonably sufficient time for him to provide the Services requested.
- 3.2 The Authorised Person must respond promptly to any requests for further information or instructions made by the Barrister.
- 3.3 The Authorised Person must inform the Barrister immediately if there is reason to believe that any information or document provided to the Barrister is not true and accurate.
- 3.4 Where the Authorised Person requires the Barrister to perform all or any part of the Services urgently the Authorised Person must ensure that:
- 3.4.1 all relevant Instructions are clearly marked "Urgent"; and
- 3.4.2 at the time the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 3.5 The Authorised Person must inform the Barrister within a reasonable time if the Case is settled or otherwise concluded.

4. RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS

- 4.1 Upon receipt of the Instructions, the Barrister will within a reasonable time review the Instructions and inform the Authorised Person whether or not he accepts the Instructions.
- 4.2 The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the Code and the Barrister incurs no liability if he refuses any Instructions in accordance with the Code.
- 4.3 Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Authorised Person will provide the Barrister with all reasonable assistance to carry out any necessary customer due diligence including (if required to do so) consenting to the Barrister relying upon the Authorised Person under Regulation 17 of the Money Laundering Regulations 2007.
- 4.4 In the event that the Barrister reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied he may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability
- 4.5 Subject to the preceding provisions of this Clause 4, the Agreement comes into effect upon the Barrister accepting the Instructions.

5. CONFIDENTIAL INFORMATION AND PUBLICITY

- 5.1 The Barrister will keep confidential all information provided to him in connection with the Case unless:

- 5.1.1 he is authorised by the Authorised Person or the Lay Client to disclose it;
- 5.1.2 the information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister; or
- 5.1.3 he is required or permitted to disclose it by law, or by any regulatory or fiscal authorities, in which case, to the extent that he is permitted to do so, he will endeavour to give the Authorised Person and/or the Lay Client as much advance notice as possible and permitted of any such required disclosure.
- 5.2 The Barrister owes the same duty of confidentiality to other lay clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.
- 5.3 Unless the Authorised Person expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed by another barrister or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that that other barrister or pupil complies with clause 5.1.
- 5.4 Subject to his obligation under clause 5.1, the Barrister may make and retain copies of the Instructions and any written material produced by him.
- 5.5 To the extent such information is already in the public domain, the Barrister may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories that he is or has been instructed by the Authorised Person and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, the Barrister may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality and (where the law so requires) with the Lay Client's consent.

6. ELECTRONIC COMMUNICATION

- 6.1 Unless otherwise directed by the Authorised Person, the Barrister may correspond by means of electronic mail, the parties agreeing hereby:
 - 6.1.1 to accept the risks of using electronic mail, including but not limited to the risks of viruses, interception and unauthorised access; and
 - 6.1.2 to use commercially reasonable procedures to maintain security of electronic mail and to check for commonly known viruses in information sent and received electronically.

7. DATA PROTECTION

- 7.1 The Barrister is a data controller for the purposes of the Data Protection Act and is bound by the Act amongst other things, to take appropriate technical and organisational measures against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data. He is entitled to process (which includes obtaining, consulting, holding, using and disclosing) personal data of the Lay Client, the Authorised Person and others to enable him to provide the Services, to liaise with the Authorised Person in respect of the Lay Client's case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to publicise his activities as set out in clause 5.5 above, to comply with regulatory requirements and as permitted or required by law. The Lay Client and the Authorised Person each have a right of access and a right of correction in respect of their personal data which the Barrister holds about them, in accordance with data protection legislation.

8. PROVIDING THE SERVICES

- 8.1 The Barrister will exercise reasonable skill and care in providing the Services. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the Code.
- 8.2 The Barrister will provide the Services by such date as may be agreed between the parties, and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations as referred to in paragraph 701 of the Code.
- 8.3 The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.
- 8.4 The Barrister will, in addition, provide all information reasonably required to enable the Lay Client and/or Authorised Person to assess what costs have been incurred and to obtain and enforce any order or agreement to pay costs against any third party.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including all documents, reports, written advice or other materials provided by the Barrister to the Authorised Person or the Lay Client belong to and remain with the Barrister. The Authorised Person and the Lay Client have the right and licence to use the Barrister's work product for the particular Case and the particular purpose for which it is prepared. If the Authorised Person or the Lay Client wishes to use copies of the Barrister's work product for purposes other than those for which it is prepared, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of his work product are asserted.

10. LIABILITY

- 10.1 Subject to Clause 10.2 below, the Barrister is not liable:
 - 10.1.1 For any loss or damage, however suffered, by any person other than the Lay Client;
 - 10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions;
 - 10.1.3 for any indirect or consequential loss however suffered.
- 10.2 Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law.

11. FEES

- 11.1 The fee for the Services shall in all cases comply with paragraph 405 of the Code and will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Authorised Person, whether prospectively or retrospectively.
- 11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:

- 11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister, and in addition may be reviewed by the Barrister to reflect any reasonably significant changes in his status or seniority;
- 11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be agreed with the Authorised Person, and in default of agreement the Barrister shall be entitled to treat the Agreement as having been terminated by the Authorised Person, subject to the Barrister's obligations under paragraph 610 of the Code.
- 11.3 If no fee or hourly rate is agreed, then the Barrister is entitled to charge a reasonable fee for the Services having regard to all relevant circumstances.
- 11.4 The fee for the Barrister's Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the fee at the appropriate rate.

12. BILLING, PAYMENT AND INTEREST

- 12.1 The Barrister shall be entitled to deliver an Invoice to the Authorised Person in respect of the Services or any completed part thereof and any disbursements at any time after supplying the Services or the relevant part thereof.
- 12.2 The Barrister shall deliver an Invoice to the Authorised Person in respect of the Services or any part thereof and any disbursements as soon as reasonably practicable after and not more than 3 months from the earliest of: (a) a request by the Authorised Person; (b) notification by the Authorised Person that the Case has settled or otherwise concluded; or (c) termination of the Agreement.
- 12.3 The Invoice must set out an itemised description of:
 - 12.3.1 the Services provided by the Barrister and the fees charged;
 - 12.3.2 any disbursements incurred and the cost thereof; and
 - 12.3.3 VAT (or any tax of a similar nature), if any.
- 12.4 The Authorised Person must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Authorised Person has been put in funds by the Lay Client. The Invoice must be paid without any set-off (whether by reason of a complaint made or dispute with the Barrister or otherwise), and without any deduction or withholding on account of any taxes or other charges.
- 12.5 Where the Barrister has delivered a fee note, on request by the Authorised Person the Barrister will deliver a VAT invoice following receipt of payment.
- 12.6 If the Invoice remains outstanding more than 30 days from the date of delivery, the Barrister is entitled:
 - 12.6.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
 - 12.6.2 to sue the Authorised Person for payment; and
 - 12.6.3 subject to the Barrister's obligations to the Court and under paragraph 610 of the Code, to refrain from doing any further work on the Case unless payment for that further work is made in advance.

13. TERMINATION

- 13.1 The Authorised Person may terminate the Agreement by giving notice to the Barrister in writing at any time.

- 13.2 The Agreement will terminate automatically as soon as the Barrister is under an obligation pursuant to Part VI of the Code or otherwise to withdraw from the Case or to cease to act and has complied with any requirements of the Code in so doing.
- 13.3 The Barrister may terminate the Agreement by written notice when he is entitled pursuant to Paragraphs 608 to 610 of the Code or otherwise to withdraw from the Case or cease to act and has complied with any requirements of the Code in so doing.
- 13.4 For the avoidance of doubt, termination of the Agreement, whether under this clause 13 or otherwise, does not affect or prejudice any accrued liabilities, rights or remedies of the parties under the Agreement.

14. WAIVER

- 14.1 Except where expressly stated, nothing done or not done by the Barrister or the Authorised Person constitutes a waiver of that party's rights under the Agreement.

15. SEVERABILITY

- 15.1 If any provision of these Conditions is found by a competent court or administrative body of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions of these Conditions which will remain in full force and effect.
- 15.2 If any provision of these Conditions is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such deletions as may be necessary to make it valid and enforceable.

16. EXCLUSION OF RIGHTS OF THIRD PARTIES

- 16.1 This Agreement governs the rights and obligations of the Barrister and the Authorised Person towards each other and confers no benefit upon any third party (including the Lay Client). The ability of third parties to enforce any rights under the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

17. ENTIRE AGREEMENT

- 17.1 Subject to clauses 2.2 and 11.1, the Agreement, incorporating these Conditions, comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Agreement on the basis of any representation.

18. NOTICES AND DELIVERY

- 18.1 Any notice or other written communication to be given or delivered under this Agreement may be despatched in hard copy or in electronic form (including fax and email) and shall in the case of a notice to be given to the Barrister be given to him at his last known Chambers' address, fax number or email address and shall in the case of a notice to be given to the Authorised Person be given to him at his last known place of business, fax number or email address.
- 18.2 Notices and other written communications under this Agreement shall be deemed to have been received:-

- 18.2.1 In the case of hard copy documents despatched by first class post, on the second working day next following the day of posting;
- 18.2.2 In the case of documents despatched by second class post, on the fourth working day next following the day of posting;
- 18.2.3 In the case of documents in electronic form, on the working day next following the date of despatch.

19. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 19.1 The Agreement and these Conditions shall be governed by and construed in accordance with the law of England and Wales.
- 19.2 Unless any alternative dispute resolution procedure is agreed between the parties, the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute which arises out of or under this Agreement.[†]
- 19.3 Without prejudice to Clause 19.2, the parties may agree to alternative methods of dispute resolution, including submission of any dispute regarding fees to the Voluntary Joint Tribunal on Barristers' Fees where the Authorised Person is a solicitor.[†]

Inserted 31 January 2013

[†] The parties are reminded that if a judgment or a Voluntary Joint Tribunal's award is not fully paid within 30 days, the Barrister may request the Chairman of the General Council of the Bar to include the solicitor on the List of Defaulting Solicitors.