

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Review of the Disciplinary Tribunal Regulations

Consultation Paper

July 2015

Contents

About this consultation paper	3
Background.....	4
Aims of the review.....	5
Our approach to the Review.....	5
Overview of amendments	6
Section A - Changes to terminology and clarification of roles	7
Section B - Straightforward changes to the Disciplinary Tribunal process	9
Section C - Fundamental or more complex changes to the processes or Tribunal powers ..	14
Section D - Issues of principle not included in the revised Regulations	21
Consequential amendments to other parts of the Handbook	24
Transitional arrangements	25
Equality Impact Assessment	25
Summary of questions	25

Review of the BSB's Disciplinary Tribunal Regulations - Consultation Paper

About this consultation paper

Who is it for?

This consultation will be of interest to consumers of legal services, members of the Bar, and bodies and individuals involved in regulatory disciplinary systems.

What is its purpose?

We want to invite comments on our proposed changes to the Disciplinary Tribunal Regulations (Part 5, Section B of the Bar Standards Board Handbook – “the Handbook”), which have been modernised and streamlined to address various issues with the application of the current regulations that were identified as part of a comprehensive review.

How long will the consultation run for?

The consultation will run from 6 July to 12 October 2015.

How to respond to this consultation

Responses should be sent to Siân Mayhew, Policy and Projects Officer:

- by email to: NZara@BarStandardsBoard.org.uk; or,
- by post to: **Natalie Zara**
Professional Conduct Department
Bar Standards Board
289 – 293 High Holborn
London WC1V 7HZ

Response can also be provided by telephone, with prior arrangement on **0207 611 1444**.

You are welcome to address all or some of the issues set out in this paper and provide observations on issues not specifically covered by the questions.

We will summarise the responses received and will publish the summary document on our website. If you do not want your response or a summary of it published, please make this clear to us when you reply.

Background

1. Under the Legal Services Act 2007 (LSA), the Bar Standards Board (BSB), the regulatory arm of the Bar Council, is responsible for regulating barristers called to the Bar and other authorised individuals and bodies (entities) in the public interest. We will consider taking disciplinary action where there is evidence that a person or entity that we regulate has breached the Handbook.
2. Disciplinary matters are, on the whole¹, dealt with under the Disciplinary Tribunal Regulations (“the Regulations”) at Part 5B of the Handbook. The Regulations set out the powers and functions of Disciplinary Tribunals (“the Tribunal”) and processes to be followed when dealing with allegations of professional misconduct. Referrals to disciplinary action for professional misconduct are made by the BSB’s Professional Conduct Committee (PCC) to independent Tribunal panels which are organised by the Bar Tribunals and Adjudication Service (BTAS). Tribunal panels are formed of three or five people and their sentencing powers include:
 - disbarring a barrister from being a member of the profession;
 - ordering suspension from practice; and
 - disqualifying people from future employment by a BSB authorised individual or body (entity).

70-80	The number of cases we refer to a Disciplinary Tribunal each year
88%	The average percentage of cases where professional misconduct is found proved by the Tribunal²

3. The Regulations in their current form have been in place since 2009 and have not been subject to a complete review since then. However, they have been amended in part on several occasions: in February 2012 to bring them in line with the provisions of the LSA; in January 2014 to incorporate minor changes arising from the introduction of the Handbook (which replaced the Code of Conduct 8th Edition); and more recently, in January 2015, to reflect our extended jurisdiction to regulate entities.
4. The Regulations and their application have not been subject to any general criticism either from the public, the profession or the courts and in practice work well. However, in a couple of relatively recent court cases, comment has been made about specific aspects of the Regulations (see paragraphs 25 and 66). Further, we recognise the current Regulations contain some areas of unnecessary complexity and references to out-dated and potentially inefficient procedures. The review also revealed some issues of principle that need to be explored (see paragraphs 72 - 88 below). With this as a

¹ The Professional Conduct Committee of the BSB also has power the under the Complaints Regulations, (Part 5, Section A of the Handbook) to determine disciplinary matters via the Determination by Consent procedure.

² The ‘uphold rate’ at Tribunals in 2012 was 82%, 92% in 2013/14 and 89% in 2014/15.

background, a wide review of the Regulations has been carried out, the results of which form the basis for the revisions proposed in this paper.

Aims of the review

5. The Regulations are designed to support the BSB in meeting its statutory obligations under the LSA and to promote the Regulatory Objectives³ by:
 - protecting the public and consumers from regulated individuals who have committed professional misconduct; and
 - promoting adherence to the professional principles, through maintaining proper standards of work and integrity within the profession.
6. The Regulations also promote the principles of better regulation⁴ by ensuring consistency, clarity, fairness and transparency in our application of disciplinary procedures for all those involved in and affected by the disciplinary system, including members of the public and decision makers.
7. The aim of this review was therefore to ensure that we continue to meet our obligations under the LSA by:

‘reviewing the current Disciplinary Tribunal Regulations and producing a robust set of revised Regulations which address all identified concerns, are not superfluously prescriptive and reflect modern and best regulatory practice’.

Our approach to the Review

8. The review was carried out with the support of a Working Group comprised of BTAS and BSB staff, PCC members, a member of the BSB’s prosecution panel, members of BTAS’s pool of Tribunal panel members and the Chair of the Disciplinary Tribunal. Further, two barristers who regularly represent barristers at Tribunals were also invited, and agreed, to participate but, unfortunately, due to other commitments were unable to do so.
9. A detailed analysis of the Regulations was carried out through consultation with those involved in the disciplinary system, including all members of the BSB’s prosecution panel, the BTAS panel member pool, members of the PCC and relevant BSB staff. Separately, a number of issues with the Regulations were identified by a short-life Council of the Inns of Court (‘COIC’) working group, set up to consider the implications

³ See section 1 of the LSA

⁴ See section 28 of the LSA

for the Regulations arising from the ‘Browne Review’⁵. A benchmarking exercise was also conducted with other professional regulators to determine whether there were any significant differences with our approach, or anything that could be learnt from their processes.

10. Through this process, we identified in excess of 60 issues: some minor or straightforward, others more complex or fundamental. The Working Group over a period of five months considered and debated each of the identified issues in turn and, with the assistance of external legal advice and drafting, produced the revised draft Regulations for consultation set out at Appendix 1⁶.

Overview of amendments

11. With the introduction of the Handbook in 2014, we attempted to move away from overly prescriptive rules to a more outcomes based approach. We continue to take this approach when reviewing and amending different parts of the Handbook.
12. However, we think that it is necessary for these Regulations to remain fairly prescriptive in order to protect the public and provide certainty and clarity for those involved in the disciplinary process. In fact, additional procedural details have been inserted for this reason (see rE187 – rE197). Further, since the Regulations cover a legal process that could result in a regulated person’s livelihood being removed temporarily or permanently, a prescriptive set of rules encourages fairness and consistency in decision making by Tribunals. This prescriptive approach is mirrored in the regulations of other professional regulators.
13. The proposed changes to the Regulations differ in their effect and complexity and so require varying degrees of explanation. The order of the Regulations has also been revised, although much of the content and the fundamental Tribunal process remains unaltered.
14. A detailed description of the most significant changes is provided in this consultation paper to ensure that the public, the profession and other interested parties have a full understanding of the revisions before any changes are implemented. The changes have been grouped under the following four headings according to their nature
 - **Section A - changes to terminology and clarification of roles:** these amendments are proposed with the intention of modernising the Regulations, ensuring they are internally consistent and/or to bring them properly in line with existing processes and the format of the Handbook;
 - **Section B - straightforward changes to the disciplinary process:** this section covers amendments designed to update and streamline the process, fill gaps and

⁵ More information on the original Browne Review can be found here: <http://www.graysinn.info/index.php/disciplinary-tribunals-review-coic>

⁶ A copy of the revised draft regulations with amendments from the original tracked can be provided on request.

provide greater clarity for professionals as well as lay users of the system such as complainants, witnesses and non-legally qualified employees in entities who now come within our regulatory remit;

- **Section C - more fundamental and/or complex changes to the disciplinary process and the powers of the Tribunal:** this section includes issues and revisions that are more substantive and require detailed explanation. Nevertheless they are still designed to update and streamline the process and fill gaps as well as ensure the powers of Tribunal are sufficient to meet the needs of a modern disciplinary system; and
- **Section D - issues of principle not covered in the revised Regulations but on which we wish to seek views:** the issues outlined in this section are wider and are not addressed in the current round of revisions to the Regulations. We wish to take this opportunity to canvass views on these issues and further amendments to inform our thinking on the potential direction of travel in the medium term.

15. Please note, every effort has been made within each section or sub-section, where appropriate, to refer to the issues and amendments in the numerical order they appear in the revised or current Regulations. Further, any references to specific regulations are to the numbering used in the revised version of the Regulations set out at **Appendix 1**, unless otherwise specified. Some references are also made to the current Regulations, a copy of which can be found at **Appendix 2**. A Glossary of terms and their definitions can be found at **Appendix 3**.

Section A - Changes to terminology and clarification of roles

Terminology

16. Consideration has been given to the suitability and accuracy of the language/terminology used within the Regulations. The Bar's disciplinary process has historically reflected the language of the criminal prosecution process and given the nature of the Tribunal process, it is difficult to move away from this entirely. However, some attempt has been made to do so⁷. Other changes in terminology are also proposed to reflect current practice. The amendments in this area are as follows:
- i. the term 'defendant' is used in the current Regulations to refer to the person who is subject to disciplinary proceedings. This has been changed to "respondent" throughout in line with the terminology used by most other Tribunals as well as other professional regulators;
 - ii. where the current Regulations refer to 'serving' or "service" of documentation on the "Tribunal", this has been changed to "file" or "filing" of the documentation with

⁷ Although not referenced in the Regulations, internally, we refer to the barristers who represent us at Tribunal as 'Prosecutors'. In light of the aim to move away from criminal terminology within the disciplinary system, consideration is being given to finding an alternative description for our representatives such as 'Case Presenters'.

- “BTAS” as the Tribunal’s administrative body, which is more accurate given that neither BTAS nor the Tribunal are parties to proceedings;
- iii. the use of male pronouns in the current Regulations has been changed to reflect modern practice and gender neutral references are now included throughout the revised Regulations;
 - iv. the list of the types of Judges that can perform relevant functions under the Regulations (see E137 of the current Regulations – Annex 2) has been removed from the Regulations and instead will be included, unchanged, as a definition in Part 6 of the Handbook; and
 - v. in relation to service of documents, “Registered post” has been replaced with “guaranteed delivery post or other guaranteed or acknowledged delivery” to reflect current terminology (see rE248.1).

Clarification of roles

17. For clarity, corrections have been made throughout the Regulations to references to people/bodies, which are out of date or inaccurate. Similarly, amendments have also been made where a particular action is more appropriately performed by some other person/body. The following amendments have been made:
- i. The current Regulations refer in various places to the ‘BSB Representative’ as the person appointed after a referral to a Tribunal to present the BSB’s case. However, most of the functions allocated to the ‘BSB Representative’ in the current Regulations are not appropriate for our representative to perform and should instead be designated generally to the BSB (to reflect what happens in practice). Therefore all references to the ‘BSB Representative’ have been replaced with references to the ‘BSB’;
 - ii. In the same vein, the ‘President’ of COIC is given under the current Regulations responsibility for all functions performed by the independent Tribunal body when many are purely administrative in nature and should more rightly be designated to BTAS generally. Therefore, where appropriate, the revised Regulations remove the references to the ‘President’ and replace them with ‘BTAS’ (see in particular rE102.2, rE112, rE121, rE124 and rE130);
 - iii. Similarly, a number of administrative functions currently designated to the Treasurers of the Inns of Court are, in reality, entirely performed by either the Registrar of BTAS or the Chair of the Tribunal. Again, the Regulations have been amended to designate these functions at the correct level (see rE251);
 - iv. Some of the functions currently ascribed in the Regulations to the Clerk to the Tribunal, such as organising the recordings of proceedings (rE122) or appointing a qualified person to determine the level of costs (rE245), are now more appropriately assigned to BTAS and accordingly amendments have been made;
 - v. Under the current Regulations, we are responsible for sending copies of both the BSB and respondent’s bundle of papers for hearings to the Tribunal panel members. It has been agreed that it is inappropriate for there to be direct contact between the “prosecuting body” (the BSB) and the independent Tribunal. Therefore the Regulations have been amended to stipulate that this function is performed by BTAS

(rE153). BTAS will have to bear the additional costs and responsibilities, but this approach is in keeping with the approach taken by other Tribunals and the courts.

Q1: Do you agree with the changes to terminology and the clarification of roles outlined above? Are there other changes in these areas that you consider would be beneficial?

Section B - Straightforward changes to the Disciplinary Tribunal process

Amendments to the provisions on ‘Directions’

18. The ‘Directions’ section in the Regulations refers to the process for establishing the timetable for submission of evidence and addressing other case management matters in preparation for the hearing. Those regularly applying these processes generally agree that this section can be difficult to follow and that it should be streamlined and simplified. However, while extensive revisions have been made to the drafting of the relevant regulations (see rE106 – rE126), the fundamental approach has not changed.
19. “Standard’ directions” can still be agreed by the parties and come into effect without the endorsement of a Directions Judge. This is still seen as an effective and efficient means of addressing case management issues.
20. The standard directions themselves are still set out at Annex 6 to the Regulations. They have been reordered, clarified and amended to include further directions which are applied regularly, but under the current system have to be treated as special directions. The additional and revised standard directions at Annex 6 cover:
 - The date when the standard directions come into force (Direction 2);
 - Specific timeframes for providing dates of availability, pleas, the respondent’s evidence and witness requirements (Directions 3, 4 and 5);
 - The provision of dates of availability between set dates as opposed to generally (Direction 3);
 - An additional direction that the parties provide a witness schedule and a time estimate for the evidence of each (Direction 5(b));
 - The number of copies of the evidence bundles the parties must file with BTAS. The respondent’s bundle should now be provided to BTAS as opposed to the BSB as is currently the case (Direction 6.a and also rE151);
 - Provision, prior to the hearing, of financial documentation or any other documentation the respondent might wish to rely on in mitigation where an indication has been given by the respondent that he or she intends to admit the charges (Direction 6.b); and
 - Notification of requirements for reasonable adjustments and/or special measures in relation to witnesses (Direction 7).

21. As well as standard directions, the current Regulations provide for “special directions”, which are directions that depart from the list of standard directions set out at Annex 6. This term has caused confusion as it denotes something out of the ordinary. These types of directions have therefore been renamed “non-standard” directions to reflect the fact that such directions can cover any directions that depart in some way, however small, from the standard directions. As with the current special directions, non-standard directions can be agreed between the parties and come into effect without the endorsement of a Directions Judge (unless there is no reply from the respondent, in which case the non-standard directions will require the endorsement of the Directions Judge (rE109)). However, provisions have been added that prevent the parties agreeing:
- any non-standard direction which will impact on BTAS and/or prevent it from carrying out its operational function (rE111); and
 - any direction (standard or non-standard) which has previously been agreed but either party wishes subsequently to vary (rE126).
22. As is the case under the current Regulations, where no agreement on the Directions is achieved between the parties within the proposed timeframe, a Directions Judge will be appointed to agree the directions, either on paper or by means of an oral hearing.
23. **Hearing in private:** all Directions hearings currently and historically have been held in private given that they occur at an early stage in the process and could result in charges being dismissed on an application to strike out. We are not proposing to alter this but no reference is made in the current Regulations to this issue and therefore the revised Regulations expressly stipulate that oral directions hearings will be in private (rE123).
24. **Non/late-compliance with Directions:** BSB Case Officers report that non- or late-compliance with directions is a persistent problem which effects the progress of cases. The current Regulations contain no provisions to enforce compliance and no penalties for failures to comply. Introducing potential consequences for non/late-compliance could reduce the likelihood of this occurring. Our research shows such provisions are commonly seen in other regulators’ disciplinary schemes. The Regulations have therefore been amended at rE168 to give the Tribunal an express power, to exclude the evidence or draw an adverse inference against that party if the Directions have not been complied with as a way to encourage compliance.

Q2: Do you agree with the changes that have been made to the ‘Directions’ section (at rE106 – rE126) and the Standard Directions at Annex 6 of the revised Regulations?

Nomination of Tribunal panel members

25. In 2012, serious anomalies were identified with the appointments process operated by COIC (the body responsible for appointing Tribunal panel members at the time) which called into question the validity of all Tribunal decisions going back some 10 years and generated numerous challenges to previous findings. We acknowledge that some findings were flawed due to perceived bias and agreed, voluntarily on application, to

allow the findings to be overturned. However, we resisted other applications to overturn findings where the flaws were procedural and could not affect the outcome. Our stance was supported by the Administrative Court.

26. However, the Administrative Court was of view that the Regulations were “opaque” and failed to reflect the underlying and accepted system for nomination to panels (ie, that the President of COIC nominates the members of a Tribunal panel from a pool of qualified people appointed by the Tribunal Appointments Body of COIC). Therefore, the revised Regulations, at rE142, now include an express reference to the nomination system and to the Tribunal Appointments Body of COIC. This provision does not apply to judicial chairs as they do form part of the “pool” and are appointed by the President.

Removal of prohibition on Directions Judges sitting as Tribunal Chairs

27. Under the current Regulations, Directions Judges are prohibited from sitting as Tribunal Chairs in a case where they have given directions. The review revealed no clear rationale for maintaining this position and in fact there are benefits in having the same person perform both roles, for example, their familiarity with the case prior to the commencement of the Tribunal. Our research revealed that this is also common practice in other regulators. The Regulations have therefore been amended (rE145) to remove this prohibition except in circumstances where a Directions Judge has made a substantive decision in a case, for example, if he or she has already refused a strike out application or is conflicted for any other reason.

Recommendations by the PCC that a judge should Chair a three person panel

28. The current Regulations (see rE134 of Appendix 2) specify that the President of COIC, when constituting a three person Tribunal panel, *must have regard to* (but not be bound by) any PCC recommendation that a Judge rather than a Queen’s Counsel be appointed as Chair. The view is that it is inappropriate for such an obligation to be placed on the President when the respondent is not accorded the same opportunity to have their views considered. However, to extend the obligation on the President to take into account the respondent’s views could potentially lead to time consuming arguments regarding the identity of the Chair. The Regulation has therefore been amended to remove this obligation placed on the President, although this will not prevent the PCC from making its views on the composition of the panel known to the President.

Applications to adjourn proceedings

29. The current Regulations are silent on the process of making applications to adjourn (postpone) a hearing prior to its commencement. Therefore the revised Regulations now include, at rE155, a provision which explains that such applications should be made to the Chair of the Tribunal in writing accompanied by supporting evidence. Further, rE155,

sets out the procedure the Chair must follow when considering applications. These provisions should lead to greater clarity and consistency in addressing such applications.

Joinder provisions

30. In contrast to the practice of other regulators, the current Regulations do not include any formal power for a Tribunal to join and hear cases or matters together ('joinder' provisions). While in practice this happens regularly without the benefit of underpinning regulations, we consider that, for the sake of clarity and transparency, it should be made clear that a Tribunal has the power to hear matters together, either against the same respondent or against different respondents. Therefore explicit joinder provisions have been included in the revised Regulations to cover this (rE158 – rE160). It should be noted that Directions Judges, in accordance with their general powers to make any directions for the expeditious management of cases (rE129), can continue to direct that cases be joined.

Witnesses and vulnerable witnesses

31. A further gap in the current Regulations is the lack of any specific provisions concerning the process for taking witness evidence at hearings and the treatment of vulnerable witnesses. Therefore, the revised Regulations include two additional sections covering these issues (rE171 – rE175 and rE176 – rE181). The provisions codify the practices already applied when dealing with witnesses but we consider it important and in the public interest for these practices to be set out in the Regulations.
32. The Regulations provide at rE176 a definition of 'vulnerable witnesses'. The list, in the main, reflects the definition included at Section 16 of the Youth Justice and Criminal Evidence Act 1999. It also follows the equivalent provisions of other regulators, particularly the healthcare regulators, although the list has been slightly adapted to include (for the purposes of these Regulations only) witnesses who are the alleged victims of violence by a respondent. The Regulations include a specific power for a Directions Judge or the Tribunal to make a direction preventing a respondent from cross-examining a vulnerable witness (rE179). Special measures can also be put in place, on application, for the treatment of *any* witnesses, even those not considered 'vulnerable', where there is good reason (rE181).

Q3: Do you agree with the list of those people who may be treated by the Tribunal as 'vulnerable witnesses' (rE176) and should the list be extended to include reference to victims of other types of allegation, and not just allegations of a violent or sexual nature?

Procedure at the Hearing

33. The current Regulations are silent on the procedure to be followed at Tribunal hearings. As well as it being common place for other regulators to include such information in their regulations, we consider it to be in the public interest to enshrine these basic procedural details in the Regulations. Therefore the Regulations now include an outline of the

procedure to be followed depending on whether or not the charges are admitted (rE187 - rE197). This will ensure that all participants whether parties, witnesses or observers, are clear as to the hearing process. The need for such clarity is now even more important in light of the extension of our jurisdiction to lay persons working in chambers and entities who may be less familiar with court or tribunal proceedings.

Action taken by the BSB/Bar Council

34. The current Regulations contain detailed provisions prescribing the action we must take following the “pronouncement” of sentences (see rE196 – rE197 of the current Regulations at Appendix 2 and also paragraph 59 below). We no longer think it is necessary to include such administrative detail in the Regulations. Therefore, rE239 – rE240 has been simplified and now simply states that we must ensure that the sentence of the Tribunal is “put into effect”. The underlying administrative processes will, instead, be included in separate policy and guidance documentation.

Keeping complainants informed

35. There is only one reference to complainants in the current Regulations which comes under the “Miscellaneous” section (see rE215 of the current Regulations at Appendix 2). It refers to keeping the complainant, if any, updated on progress. The view is that it is unnecessary, and inconsistent with the rest of the Regulations, to include this provision in a set of Regulations intended to cover the formal Tribunal processes. Keeping complainants updated on progress is extremely important but it is only applicable to the BSB and is more appropriately addressed in our internal processes and in public guidance. The regulation has therefore been removed.

Other straightforward amendments

36. The following amendments have also been made to the Regulations:
- The revised Regulations include a new provision, requiring the BSB to file its bundle of evidence with BTAS at the same time as it serves the bundle on the respondent (rE103) to allow BTAS to have an early and full picture of the allegations for case management purposes;
 - The wording of the Regulations at rE140 has been amended to specify that the formal composition of a five person Tribunal panel includes two lay and two barrister members since this is the only formation in which a five person Panel will be convened (the current Regulations state that there must be “*at least one*” lay/barrister member);
 - References to the provision of a shorthand writer have been replaced with the need to provide a verbatim record (rE157), since most hearings are now digitally recorded;
 - The revised Regulations, at rE202, now include the requirement to put before a Tribunal previous findings against an entity as well as anyone directly implicated by the charges against an entity, as any such findings will be equally relevant to the sentencing process;

- The revised Regulations now include a new provision allowing the Tribunal to order, on application, that a finding is *not* published (rE241.1.a) where, in exceptional circumstances, the Tribunal consider this to be appropriate (but see also paragraph 63 below);
- The revised Regulations now include additional details regarding the submission/serving of cost schedules 24 hours before the hearing (rE243) so the Tribunal is aware in advance of the costs either party intends to seek;
- The current Tribunal sentencing power to order that a respondent be reprimanded by the Treasurer of his or her Inn (paragraph 9 of Annex 1) has been removed, as it is sufficiently covered by the Tribunal's general power to order a respondent to attend on a "nominated person" to be reprimanded.

Q4: Do you have any comments on the changes to the Regulations outlined above in Section B which are not subject to specific questions?

Section C - Fundamental or more complex changes to the processes or Tribunal powers

Potential gap in the Tribunal's powers of disposal

37. When the Handbook was introduced in January 2014, it included a revised definition of professional misconduct which "*means a breach of this Handbook by a BSB regulated person which is not appropriate for disposal by way of no further action⁸ or the imposition of administrative sanctions*".
38. The power to impose administrative sanctions currently lies solely with the PCC and extends to all breaches of the Handbook proved on the balance of probabilities. These sanctions are not currently made public although they are taken into account when determining what action to take in relation to any further breaches by the same individual or entity.
39. As Tribunals are tasked with considering allegations of professional misconduct, any referrals by the BSB to a Tribunal will, by definition, be matters that are not considered suitable for the imposition of administrative sanctions. Under the current Regulations, Tribunals do not have the power to impose administrative sanctions. Therefore, if a Tribunal considers that the alleged behaviour of a respondent does not amount to professional misconduct but is satisfied, on the balance of probabilities, that there has been a breach of the Handbook, it has no option but to dismiss the charges. This is the case, even if it is satisfied that a breach of the Handbook has occurred which might warrant the imposition of an administrative sanction. This creates a potential gap in the powers of the Tribunal which could result in no action at all being taken against a respondent who has clearly breached the Handbook.

⁸ Following a recent public consultation, the BSB will be making an application to the LSB to remove from the Handbook the PCC's power to take "no further action" – see Consultation on '[Complaints Regulations: Amendment to the Professional Conduct Committee's power to take "no further action"](#)' (Feb 2015)

40. The issues are therefore whether, and how, this gap should be filled. The options are to:

- a) extend the powers of the Tribunal to allow it to impose administrative sanctions; or
- b) include a provision allowing the Tribunal to refer a matter back to us for consideration of the imposition of an administrative sanction; or
- c) include a provision allowing the Tribunal to make a formal finding that a breach has occurred and order that the BSB impose an appropriate administrative sanction; or
- d) maintain the status quo.

41. There are arguments for and against each of the proposed options above, which the Working Group considered in significant detail. A summary of the issues related to each is provided below.

42. **a) Extend the Tribunal powers:** on the face of it, this appears to be the simplest solution. It allows matters to be dealt with promptly by a panel that has heard and considered all the evidence and can make an informed decision taking into account all the circumstances. Tribunals would need to be provided with clear guidance on the decision making process, the application of the different standards of proof⁹ and, to ensure consistency, guidance on the approach the BSB take when imposing these sanctions. However, there is a risk that these decision-making processes for Tribunals could become quite complex and vulnerable to challenge, as well as difficult for members of the public to understand.

43. This approach raises two further concerns. The first is the appropriate appeal route for such decisions. Currently, all appeals from Tribunal decisions go the High Court but appeals against administrative sanctions imposed by us go to a three person panel appointed by BTAS. It would be inappropriate and inconsistent to create two appeal routes for the imposition of administrative sanctions. Therefore, if this option was to be adopted, a new avenue of appeal from Tribunal decisions would need to be included in the Regulations to mirror the appeal route for BSB decisions. This is not necessarily an insurmountable issue but could result in decisions taken a by five person Tribunal being appealed to a three person panel, albeit that a Judge could be appointed to Chair the three person panel.

44. The second and more difficult issue with this option is that administrative sanctions imposed by a Tribunal would be in the public domain (because all hearings are held in public) when administrative sanctions imposed by us are not. Therefore the effect and consequences for the respondent of an administrative sanction imposed by a Tribunal would be quite different to an administrative sanction imposed by the BSB.

45. **b) Referring cases back to the BSB for consideration of the imposition of an administrative sanction:** this option has the disadvantages of prolonging the process for respondents and any complainants as well the decision on the final outcome of Tribunal proceedings being taken in private. We would also essentially be required to

⁹ Tribunals apply a higher standard of proof ("certain so as to be sure") when taking decisions about allegations of professional misconduct.

reconsider our earlier decision (ie, that the allegations were not suitable for the imposition of administrative sanctions) and it could be perceived as the BSB having “two bites at the cherry”.

46. However, weighed against these disadvantages are certain advantages, including greater consistency in the decision making processes applied and the impact on the respondent, as well as clearer appeal routes. Further, when reconsidering the imposition of an administrative sanction in a particular case, we would be reviewing a different set of circumstances since the evidence of professional misconduct would have been tested by the Tribunal and found to be inadequate (contrary to our original assessment). Administrative sanctions would be imposed at the BSB’s discretion, but we would have the benefit of the Tribunal’s reasoning and assessment of the evidence when taking any decision.
47. **c) Directing that the BSB impose an administrative sanction:** this option has the same advantages and disadvantages as the previous option except that it also has the further disadvantage that the Tribunal would be making a public finding. However, it should be noted that prior to the introduction of the Handbook, when the imposition of administrative sanctions was limited to only a few breaches of the Code, Tribunals had the power to direct that the BSB impose a written warning or financial penalty.¹⁰
48. **d) Maintaining the status quo:** the advantage of maintaining the status quo is that it requires the PCC to continue to focus on effective risk assessment and on referring to Tribunals only those cases that are serious enough to warrant professional misconduct proceedings. The disadvantage of this option is that it is not in the public interest for a Tribunal to dismiss a case entirely in circumstances where a breach of the Handbook can be proved and it would be appropriate for some action to be taken. However, although we expect these situations to occur rarely, it is not possible, at this stage, to assess the risk associated with maintaining the current position. Having carried out a review of Tribunal decisions taken since the introduction of the Handbook in January 2014, in which one of more of the charges were dismissed, there have been no relevant cases where the power to impose an administrative sanction clearly could have been exercised were it to have existed¹¹.
49. The Working Group debated long and hard the options above and concluded that option b) above – *‘refer cases back to the BSB for consideration of the imposition of an administrative sanction’* – is the most appropriate, when taking into account all the issues.
50. This approach offers the greatest level of flexibility and public protection by ensuring that action can be taken where a breach of the Handbook has occurred. However, it also prevents inconsistency between sanctions imposed by a Tribunal and those imposed by us. The Regulations have therefore been amended at rE208 to this effect. If, following the consultation, this proposal is accepted, the power will need to be supported by clear

¹⁰ See Code of Conduct 8th Edition, Annex K, Disciplinary Tribunal Regulations, regulation 19(10)

¹¹ Since January 2014, there have been 25 cases referred to Tribunal under the old Code of Conduct in which one or more of the charges were dismissed, none of which would allow for the imposition of an administrative sanction under 901.1 of the Code of Conduct. Of the 33 cases referred to Tribunal under the new Handbook, none have been dismissed.

guidance as to when it would be appropriate to use it. For example, a referral back to the BSB would need to be based on the public interest and the risk posed by the conduct, not simply because a finding could be made on the lower standard of proof.

51. We recognise that the issues are complex and none of the options is ideal. We therefore particularly welcome views on this issue to allow us to determine the best way forward.

Q5: Do you agree that Tribunals should be given the power to refer matters back to the BSB for consideration of the imposition of administrative sanctions? If not, which of the other options above do you consider would be more appropriate?

Deferred sentences

52. The Regulations currently give Tribunals the power to order that a sentence be deferred, ie it will only be activated if the respondent commits professional misconduct during the period of deferral, which can be from six months to a maximum of two years. The power only applies where a Tribunal considers a fine, condition/and or suspension from practice, to be an appropriate sanction to address the proven misconduct (see rE176 – rE179 of the current the Regulations at Appendix 2).

53. The power to impose deferred sentences was introduced in 2009 with the aim of deterring further incidents of professional misconduct. However, it has only been used five times in the last six years (twice in relation to the same barrister) and not at all since 2012. The review has raised questions as to whether it is appropriate to retain this power. In principle, it is debateable whether it is right that a regulated person, who is found to have a committed professional misconduct warranting a comparatively serious sanction, be protected from the impact of such sanction solely as a means to encourage future good behaviour. Further, the process for applying and monitoring a deferred sentence can be complex, resource intensive and expensive to impose. In all the circumstances, we consider that the power should be removed from the Regulations particularly as it has not been exercised for nearly three years and therefore is apparently of little practical use.

Q6: Do you agree the power to impose deferred sentences should be removed from the Regulations?

Appeals to the High Court

54. Under the current Regulations, the respondent and the BSB are entitled to appeal decisions of Tribunals. The respondent's right to appeal is unrestricted whereas the BSB's is restricted to cases where the Tribunal: has taken into account irrelevant considerations; failed to take into account relevant considerations; reached a decision that is wrong in law; and/or reached a decision which no reasonable Tribunal could properly have reached (see rE185 of Appendix 2).
55. These restrictions have been imposed for policy reasons, as opposed to any requirement under the relevant legislation or the Civil Procedure Rules (CPRs). The former, section

24 of the Crimes and Courts Act 2013, merely gives the General Council of the Bar (and thereby the BSB) the power to confer rights of appeal to the High Court in relation to regulated persons. The latter, Practice Direction 52D, paragraph 27.1A of the CPRs, refers only to appeals from decisions of Disciplinary Tribunals.

56. The restrictions were introduced with the new Handbook and on reflection, the view is that it is not in the public interest to retain such prescriptive requirements in relation to appeals. The overriding criterion for the BSB to mount an appeal should be whether it is in the public interest to do so. The retention of the requirement that consent for the BSB to appeal must be obtained from either the Chair of the BSB or the Chair of the PCC is considered to provide sufficient protection for respondents. Therefore, we are now of the view that the criteria applicable to a decision to lodge an appeal are more appropriately captured in a separate, publicly available, policy document. Once drafted, the policy will largely reflect what is currently included in the Regulations but allow for flexibility to mount appeals in any circumstances where it is in the public interest. The Regulations have therefore been amended accordingly (rE23 - rE236).

Q7: Do you agree that the formal restrictions on the BSB mounting appeals against decisions of Tribunals should be removed?

Functions currently allocated to the Inns of Court/COIC

57. Historically the Inns of Court have played a central role in the Bar's disciplinary system and indeed, they were, in the distant past, entirely responsible for it in conjunction with the judiciary. However, the landscape has changed, particularly with the introduction of the LSA. The formal role of the Inns is now limited to "calling" prospective barristers to the Bar, ie conferring on them the formal status of barrister and disbarring them when ordered to do so by a Tribunal. In all other respects the BSB, with LSB approval, has the statutory power to determine the contents of the disciplinary rules for the Bar of England and Wales.
58. We recognise that the current Regulations still contain anachronistic provisions which give functions to the Inns that are no longer appropriate or needed. Therefore a range of amendments address these issues with the intention of ensuring all appropriate functions and powers are exercised primarily by Disciplinary Tribunals and, where necessary, by the BSB. These are set out in the following paragraphs (see also paragraphs 81 – 82 below).
59. **Sentencing functions:** under the current Regulations, the Inns are tasked with "pronouncing" all sentences imposed by Tribunals and they cannot come into effect until pronounced (rE189 to rE195 at Appendix 2). The Inns are also responsible for setting the dates on which sentences are to take effect. However, other than in the case of disbarments, there is no longer any clear rationale for this and we are of the view that it is inappropriate for the Inns to be involved in the sentencing process in this way. Therefore the previous provisions that require the Inns to pronounce sentences (other than disbarment) have been removed, as have any provisions requiring the Inns to take action in relation to outcomes of Tribunal hearings.

60. In addition, under the current regulations, any suspension orders made by the Tribunal are accompanied by an order to remove the barrister's "*rights and privileges as a member of his Inn*" (rE170 of Appendix 2). We do not consider this to be a regulatory matter and whether or not a barrister can continue to exercise rights and privileges in relation to their Inn while suspended is an issue for the individual Inn and not for the regulatory disciplinary system to determine. Therefore the sentencing powers in the Regulations have been amended to remove this aspect of a Tribunal's sentencing powers.

Q8: Do you agree with the removal of the regulations in relation to the involvement of the Inns of Courts in the disciplinary system except in relation to the pronouncement of disbarments?

Format of reports of finding and sentence and their distribution

61. The current Regulations contain extensive provisions in relation to the production and dissemination of reports of the outcome of Tribunals (see rE181-182 and rE200 of Appendix 2). These provide for three different stages at which reports are prepared and issued to different recipients, only one of which is in the public domain. The revised Regulations have attempted to streamline the system for reporting on Tribunal outcomes, by providing for one formal single "decision report", ie, judgement, for each case, regardless of the outcome (see rE233). This report will be produced within a few weeks of the conclusion of the Tribunal and distributed to relevant individuals/bodies, depending on the outcome of the case.
62. The current Regulations also include at various places comparatively detailed lists of individuals/bodies that should be supplied with reports. Our view is that these lists should be distilled to one which will be applicable in relation to the 'decision report' described above. As such rE233 now provides a list of those people/bodies to which the report must always be sent, depending on the outcome of the Tribunal. However, the President maintains the discretion to send the report to any other person or bodies as he or she deems appropriate (rE233.9). This means that, by policy, BTAS can choose to send the final report as standard to any relevant bodies, which could include the Lord Chancellor or various press bodies (where charges are upheld), should these bodies wish to receive them.
63. The findings will continue to only be published online only where the charges have been found proved by the Tribunal (rE241). Where charges are dismissed, the decision of the Disciplinary Tribunal can only be published on our websites in anonymised form (see rE241.c).
64. We are, however, considering as part of this review whether this approach remains appropriate, since some may be of the opinion that it is in public interest and the interests transparency to include additional powers for the Tribunal to publish full non-anonymous details of *all* findings online, regardless of the outcome (ie, even when the charges against a regulated persons are dismissed). We therefore welcome views on

this issue which will help determine whether we should amend our policy on the publication of dismissed findings.

Q9: Do you agree with the proposed amendments to streamline the reporting process?

Q10: Do you agree with the proposal to remove reference to the full list of bodies to which the final report should be sent and allow the distribution of such reports to be determined at the discretion of BTAS/ the President?

Q11: Do you agree with the BSB's current approach to the publication of decisions of Disciplinary Tribunals online, or are you of the view that our approach should be amended to allow for the publication of all Tribunal decisions online, even where a Tribunal dismiss a finding?

Applications for a fresh-hearing

65. Under the current Regulations (see rE150 at Appendix 2), if a respondent does not attend a Tribunal hearing and charges are found proved in his or her absence, a rehearing (as opposed to the respondent appealing the finding) can only be ordered where the procedures for service have not been complied with. We consider these circumstances to be too restrictive and therefore the Regulations have been extended at rE184 to allow for applications for a rehearing to be made in all circumstances where there is a valid reason for the respondent's absence. This revised approach is fairer to the respondent and avoids the need for costly appeals which could well result in a matter being remitted to a fresh Tribunal.

66. A Directions Judge will now be permitted to grant a fresh hearing if he or she considers it just to do so and is satisfied that the respondent:

- submitted the application for a new hearing promptly; and
- had good reason for not attending the hearing.

67. The criteria for granting a fresh hearing, set out at rE186, mostly mirror comparable provisions in the CPRs (Part 39, Rule 39.3). However, the Regulations do not include the additional criterion contained in the CPRs that there should be "a reasonable prospect of success" at the "trial". The inclusion of this additional factor may make the decision to grant a rehearing unreasonably complex given the very small number of cases to which the Regulation might apply. Further, if a respondent has a good reason for not attending a hearing, even if his or her prospects of successfully defending the charges are low, it is fair to provide an opportunity to have the case heard again.

Q12: Do you agree with the changes introduced, which allow for the granting of a fresh hearing on application in any circumstance where the respondent has a good reason for not attending the original hearing?

Rate for claiming costs for respondents acting in person

68. In 2012, in a case where a respondent was acting in person and the charges were dismissed by a Tribunal, a costs award was made against the BSB. The respondent, who was an unregistered barrister, claimed costs at professional hourly rates. In determining the hourly rate to be applied, the costs assessor treated CPR 48.6, which limits barristers acting in person to claiming the litigants in person rate set out in the CPRs, as persuasive. In the event, the costs assessor did not apply the litigant in person rate and made the award based on the professional hourly rate claimed by the respondent. The BSB sought judicial review of the decision.
69. The Administrative Court commented, in cutting the hourly rate in half but not applying the CPR, that *“if the [BSB] is concerned to avoid having to pay the costs of a barrister’s time when that barrister has successfully defended proceedings, it is open to the [BSB] to provide in its rules that the CPR should apply.”*
70. We accept that in appropriate cases we should be subject to cost orders in line with the Regulations and relevant case law (but see paragraphs 73 - 77). However, we do not consider that barristers, acting in person, should be in a more advantageous position in relation to claiming costs from the BSB than they would be in court proceedings.
71. The Regulations have therefore been amended at rE244 to make it clear that barrister respondents who have represented themselves at a Tribunal should, in the event of a costs claim against the BSB, be limited to claiming the rate applicable to litigants in person as provided for in the CPRs. This limits the BSB’s risk of being exposed to large cost claims that, in turn, may potentially lead to increased insurance premiums and legal costs, which are funded by the profession’s Practising Certificate Fee.

Q13: Do you agree with the amendment to the Regulations limiting the hourly rate that self-representing barristers can claim to the rate applicable to litigants in person under the CPRs?

Q14: Do you have any other comments on any of the proposed amendments to the Regulations set out in Section C above which are not specifically covered by specific questions?

Section D - Issues of principle not included in the revised Regulations

72. This final section highlights a series of issues that are not necessarily intended to be covered in the revised Regulations, but on which we consider it important to canvass wider opinion before deciding whether and how to move forward with them. Each has wider implications although we may decide to incorporate immediate/interim changes to the proposed revised Regulations.

Claiming costs incurred by the BSB

73. The BSB is prohibited under the current Regulations from claiming the costs of preparation for hearings (rE214 at Appendix 2). Given that BSB representatives provide their services pro-bono, our ability to recoup the costs of successful prosecutions is limited and therefore fall on the wider practising Bar via the Practising Certificate Fee. The system therefore currently allows respondents to lengthen, delay and/or complicate proceedings without the risk of financial consequences.
74. In contrast, we run the risk of exposure to costs orders covering respondent's full costs. In many cases, the respondent's costs will be covered by their professional insurance (provided by the Bar Mutual) regardless of the outcome and, while the Bar Mutual takes a responsible approach to funding cases, it is bound by the terms of its insurance policy. The current situation therefore creates an inequality of arms whereby respondents can make numerous, potentially unmeritorious, challenges to proceedings without fear of increasing their costs exposure. In turn the resources used by the BSB in defending such challenges are borne by the whole profession via the Practising Certificate Fee.
75. Against this background, there are clear arguments in favour of removing the current prohibition on the BSB claiming the preparatory costs for hearings. To support this type of change, we would need to introduce a formal billing system which would require additional upfront expenditure. However, in the medium- to long-term it would reduce our financial exposure and thereby the funds required from the practising certificate to support this area of regulation.
76. Additionally, and perhaps as an interim measure, the Regulations could contain a provision allowing for costs to be claimed against the respondent but, in accordance with section 194(3) of the Legal Services Act 2007, prescribing that these costs be paid to a legal charity. The value of these costs would reflect the financial value of the service which is currently provided to us free of charge by our representatives.
77. An alternative approach would be to remove the ability for either party to claim costs and expect the respondent and BSB to bear their own. A number of regulators operate in this way. At this stage, we are only canvassing views and we will need to consider further the wider implications, in particular the views of the Bar Mutual, before considering any changes to the Regulations. We would therefore encourage readers of this paper to provide their views on these issues.

Q15: What are your views on potential changes to the current regime for claiming BSB costs, taking into account the alternative approaches set out at paragraphs 75 - 77?

Size of Tribunal Panels

78. The concept of having three person and five person panels to consider differing levels of professional misconduct has been in place for many years but only developed into formal three and five person Tribunals in 2009. The current regime allows for the most serious

cases, which may warrant a lengthy suspension (over 12 months) or disbarment, to be dealt with by a panel of five people with a Judge acting as Chair. All other Tribunal cases are dealt with by a three person panel chaired by a QC.

79. The question has arisen as to whether there continues to be a need to have five person panels and whether all cases could be referred to three person Tribunal panels regardless of the seriousness of the case. The option to constitute the panel with a Judge Chair in serious cases, using criteria similar to that which currently distinguishes three person Tribunal panels from five person panels, could remain. This approach mirrors the practice of most other regulators and other court systems and could clearly lead to a reduction in operating costs.
80. A substantive evidence-gathering exercise would be required to consider the impact on such a change on the quality of Tribunal decision-making and to ensure the gravity of proceedings are still reflected in the composition of panels. This consultation, however, provides an opportunity to seek the initial views of interested parties on the potential for introducing such a change in the future.

Q16: What are your views on removing the jurisdiction of five-person Tribunal panel and replacing them with three person panels potentially Chaired by a Judge?

Re-admittance

81. As outlined above (see paragraphs 57– 60), the Inns of Court are responsible for calling persons to the Bar and for disbarring barristers where a Tribunal makes this order. They are also currently responsible, via the Inns Conduct Committee, for deciding whether those who have been disbarred can be recalled to the Bar. However, this process does not form part of the BSB's direct regulatory arrangements and is not under the governance of independent panels. The reality is re-admittance is a regulatory matter and there are strong public interest arguments in favour of the process being transferred to Tribunals who are completely independent and separate to the profession and also have the original power to order disbarment.
82. This would be a fundamental change to the regulatory arrangements which will require more detailed consideration. However, this consultation provides a suitable opportunity to canvass initial views about making such a change.

Q17: Do you agree that the decision to re-admit a barrister to the Bar following disbarment should be a matter for the BSB as the regulator and taken by Tribunals not the Inns of Court?

Settlement agreements

83. In recent times, a practice has emerged among some other regulators where respondents have the option of agreeing with the regulator, prior to a hearing, the outcome of the disciplinary proceedings and the sanction to be applied. These

arrangements are known by various titles but generically are known as “regulatory settlement agreements”. Where such an agreement is reached between the parties, it will be put to the Tribunal panel for approval. The issue is whether we should adopt this mechanism within the Regulations as an alternative way of dealing with professional misconduct allegations.

84. We have formed no settled view on whether such agreements would be an appropriate addition to the regulatory disciplinary regime. However, to an extent the basic concept already exists in the form of the Determination by Consent procedure (a procedure which allows regulated persons to consent to the PCC determining the outcome of charges of professional misconduct, without the involvement of a Tribunal Panel)¹².
85. The advantage of “settlement agreements” are that they can shorten what might be lengthy proceedings and encourage respondents, in appropriate cases, to accept that misconduct has occurred. This could create efficiency gains and financial savings.
86. Having said that, such agreements could also have the reverse effect of lengthening or increasing the complexity of proceedings if a Tribunal disagrees with the terms of a proposed settlement agreement. Considerable resources could also be expended on reaching a settlement and indeed could be wasted if no settlement is achieved.
87. More importantly, the public may see such settlements as lacking transparency, unjust and weighted in the respondent’s favour. However, some may view any process which encourages the early acceptance of a wrong-doing as advantageous and in the public interest, particularly where it avoids unnecessary challenges later down the line.
88. At this stage, we merely intend to obtain views on whether we should explore further the concept of introducing such settlements.

Q18: Do you support the introduction of “settlement agreements” as an alternative means of determining the outcome of disciplinary cases?

Consequential amendments to other parts of the Handbook

89. Consequential changes to other parts of the Handbook, principally the Complaints Regulations at Part 5A and the Definitions at Part 6, may be required. The extent and nature of these changes will be determined by the outcome of this consultation and once the final content of the Regulations has been approved. However, they may involve amending terminology, updating the definitions section to include new or amended definitions and creating new provisions or deleting others to reflect any relevant changes to the powers of the Tribunal.

¹² Further information on the Determination by Consent procedure can be found here: https://www.barstandardsboard.org.uk/media/1408127/140321_-_ge02_-_dbc_explanatory_note_for_barristers_and_flowchart_-_live_updated_nov_14_va444025_.pdf

Transitional arrangements

90. It is intended that the revised Regulations replace the current Regulations from an agreed date. The transitional arrangements set out at rE261 provide that the revised Regulations, once finally approved, will apply not only to cases commenced after they come into effect but also to those that are already being dealt with at the time the Regulations come into force.

Equality Impact Assessment

91. We have undertaken an initial equality screening of the impact of the proposed changes to the Regulations. The screening did not identify any adverse impacts in relation to any of the protected characteristics under the Equality Act 2010. However, the issue of equality impacts will be revisited in light of any relevant issues arising from this consultation and once the changes have been approved.

Q19: Do you consider that any of proposed changes to the Regulations could create adverse impacts for any of the equality groups?

Summary of questions

- Q1** Do you agree with the changes to terminology and the clarification of roles outlined above? Are there other changes in these areas that you consider would be beneficial?
- Q2** Do you agree with the changes that have been made to the 'Directions' section (at rE106 – rE126) and the Standard Directions at Annex 6 of the revised Regulations?
- Q3** Do you agree with the list of those people who may be treated by the Tribunal as 'vulnerable witnesses' (rE176) and should the list be extended to include reference to victims of other types of allegation, and not just allegations of a violent or sexual nature?
- Q4** Do you have any comments on the changes to the Regulations outlined above in Section B which are not subject to specific questions?
- Q5** Do you agree that Tribunals should be given the power to refer matters back to the BSB for consideration of the imposition of administrative sanctions? If not, which of the other options above do you consider would be more appropriate?
- Q6** Do you agree the power to impose deferred sentences should be removed from the Regulations?
- Q7** Do you agree that the formal restrictions on the BSB mounting appeals against decisions of Tribunals should be removed?

- Q8** Do you agree with the removal of the regulations in relation to the involvement of the Inns of Courts in the disciplinary system except in relation to the pronouncement of disbarments?
- Q9** Do you agree with the proposed amendments to streamline the reporting process?
- Q10** Do you agree with the proposal to remove reference to the full list of bodies to which the final report should be sent and allow the distribution of such reports to be determined at the discretion of BTAS/ the President?
- Q11** Do you agree with the BSB's current approach to the publication of decisions of Disciplinary Tribunals online, or are you of the view that our approach should be amended to allow for the publication of all Tribunal decisions online, regardless of the outcome?
- Q12** Do you agree with the changes introduced, which allow for the granting of a fresh hearing on application in any circumstance where the respondent has a good reason for not attending the original hearings?
- Q13** Do you agree with the amendment to the Regulations limiting the hourly rate that self-representing barristers can claim to the rate applicable to litigants in person under the CPRs?
- Q14** Do you have any other comments on any of the proposed amendments to the Regulations set out in Section C above which are not specifically covered by specific questions?
- Q15** What are your views on potential changes to the current regime for claiming BSB costs, taking into account the alternative approaches set out at paragraphs 75 - 77?
- Q16** What are your views on removing the jurisdiction of five-person Tribunal panel and replacing them with three person panels potentially Chaired by a Judge?
- Q17** Do you agree that the decision to re-admit a barrister to the Bar following disbarment should be a matter for the BSB as the regulator and taken by Tribunals not the Inns of Court?
- Q18** Do you support the introduction of "settlement agreements" as an alternative means of determining the outcome of disciplinary cases?
- Q19** Do you consider that any of proposed changes to the Regulations could create adverse impacts for any of the equality groups?