

# BAR STANDARDS BOARD

REGULATING BARRISTERS

## Guidance on High Court appeals against decisions of Disciplinary Tribunals and the Independent Decision-Making Body

### 1. Introduction

- 1.1. This document is issued by the Bar Standards Board (the BSB) to provide guidance for anyone intending to lodge an appeal in the High Court against a decision of a Disciplinary Tribunal, or against a decision under the Qualification Rules (Section B2 of Part 4 of the BSB Handbook) of the Independent Decision-Making Body (IDB), sitting as an Independent Decision-Making Panel (IDP).

**Reasonable adjustments:** those who wish to submit an appeal and require reasonable adjustments to assist them with making, or progressing, an appeal due to a disability should contact the Administrative Court as soon as possible to discuss their needs. Contact details can be found at the end of this guidance.

- 1.2 This guidance does not cover appeals to the First Tier Tribunal under rS127, relating to the authorisation or licence of entities under Part 3, Section E of the Handbook.
- 1.3 This guidance is not exhaustive and is subject to change. Appellants should ensure they refer to the detailed Civil Procedure Rules at each stage of the process and obtain legal advice where required.

### 2. Rights of appeal to the High Court

- 2.1. All respondents subject to proceedings in front of a Disciplinary Tribunal (which includes BSB entities) have the right to appeal to the High Court against the findings and/or the sanction of the Disciplinary Tribunal of the Council of the Inns of Court (COIC). This right does not extend to decisions taken before the final hearing, for example applications or decisions in relation to directions.

- 2.2. The BSB also has a right to appeal Disciplinary Tribunal findings (where any charge or application to disqualify has been dismissed) and/or sanctions. If the BSB decides to submit an appeal, the BSB will inform the person(s) subject to the proceedings. The appeal process will be exactly the same as described in this guidance, except that the BSB will be the appellant.
- 2.3. An individual who is adversely affected by a decision under Section B2 of Part 4 of the BSB Handbook (the Bar Qualification Rules), which has been reviewed by the BSB, has a subsequent right of appeal to the High Court from a review decision of the IDB.

### **3. Jurisdiction of the High Court**

- 3.1 Appeals are made to the High Court (Administrative Court) and are conducted in accordance with the [Civil Procedure Rules](#) (CPRs) Part 52 (Appeals) and Practice Directions 52A and 52D. Paragraph 27.1A of Practice Direction 52D provides for the appeal route to be to the Administrative Court.
- 3.2 The day-to-day administrative aspects of appeals are handled by [the Administrative Court](#). Relevant contact details can be found at the end of this guidance.
- 3.3 All parties are entitled to be represented at the appeal hearing, and in nearly all cases the BSB will appoint a barrister to represent the BSB at the hearing and assist with the pre-hearing preparation.

### **4. The effect of filing an appeal on a disciplinary sanction**

- 4.1 CPR 52.16 provides that unless the Court or the Disciplinary Tribunal orders otherwise, an appeal does not stay the decision of the Disciplinary Tribunal. However, the Disciplinary Tribunals Regulations in Part 5B of the BSB Handbook provide that a sanction of a Disciplinary Tribunal is only pronounced by the barrister's Inn of Court, in the case of disbarments, or put into effect by the BSB where the rules require, after any appeal to the High Court has been disposed of (rE240 and rE241). In practice, this means that any appeal from a Disciplinary Tribunal that has imposed a sanction of disbarment, suspension, conditions on practising or a fine will normally operate as a stay, because the sanction will not come into effect until after the appeal process has concluded.

4.2 The primary exception to this is where the Disciplinary Tribunal has ordered an immediate suspension or the immediate imposition of conditions pending appeal (rE242), which must be implemented regardless of any notice of appeal being given. Further, a sanction of reprimand or advice as to future conduct are imposed by the Tribunal at the time of their decision and are not subject to a stay.

## **5. Bringing an appeal**

5.1 The first stage in the appeal process is for the appellant<sup>1</sup> to file the appellant's notice in the Administrative Court and to pay the appropriate fee (current court fees can be found at <http://www.justice.gov.uk/courts/fees>). This must be done within 21 days of the Disciplinary Tribunal or IDB decision (CPR 52.12(2)). It is important to note that the appellant's notice must be lodged at the Administrative Court Office, and the appellant should first ascertain from the Administrative Court website whether this must be filed electronically and, if so, the requirements and procedure for doing so.

5.2 A copy of the issued (stamped) appellant's notice must then be served on the BSB by the appellant as soon as practicable, and in any event, not later than seven days after it is filed (CPR 52.12(3)). The notice must also be served on the Council of the Inns of Court (in practice, this should be the Bar Tribunal and Adjudications Service (BTAS), which administers the Disciplinary Tribunals - contact details can be found at the end of this guidance) in the case of appeals from Disciplinary Tribunals (Practice Direction 52D paragraph 27.1A(3)(b)). The appellant must file a certificate of service of the appellant's notice with the court as soon as practicable after service (Practice Direction 52B paragraph 6.1).

5.3 The BSB as respondent may file with the Court a respondent's notice within 14 days of service of the appellant's notice. If choosing to do so, the BSB must serve this notice on the appellant as soon as practicable and in any event not later than seven days after it is filed (CPR 52.13). The dates for filing notices may only be varied by the Court and not by agreement between the parties.

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<sup>1</sup> Which may be the BSB, as noted at paragraph 2.2 above, in which case the process set out in this section 5 applies, but with service on the applicable person as the respondent.

## **Decisions, transcripts and skeleton arguments**

- 5.5 IDP meetings are not recorded apart from the written decision, which should be included with the notice of appeal in an appeal from an IDB decision.
- 5.6 A notice of appeal from a Disciplinary Tribunal decision must include the Disciplinary Tribunal decision. Disciplinary Tribunal proceedings are audio recorded using digital equipment. The appellant must apply for a copy of the transcript of the original proceedings as soon as possible and, in any event, within 7 days of the filing of the appellant's notice. Transcripts can be obtained from the transcription company used, Marten Walsh Cherer, whose contact details can be found at the end of this guidance. Whilst the CPRs provide for transcripts to be made at the public expense, on application, where an appellant complains of financial hardship the BSB will give consideration to obtaining the transcript.
- 5.4 As soon as practicable, but in any event within 35 days of the filing of the appellant's notice, the appellant must file an appeal bundle which must contain only those documents relevant to the appeal. This includes any transcript of a Disciplinary Tribunal hearing. The appeal bundle must be paginated and indexed. The contents of the bundle should be agreed by the parties where possible.
- 5.7 Section V of [Practice Direction 52A](#) sets out provisions relating to skeleton arguments to be used on appeals which must set out as concisely as practicable the arguments intended to be relied upon. Please refer to this Section V for full details of what should be included in skeleton arguments, and what should not be included.

## **6. Listing the hearing**

- 6.1 The Administrative Court Office procedure for listing cases is determined on a case-by-case basis. Most commonly, the Court will write to all parties requesting a list of mutually agreed dates of availability. The List Officer will subsequently notify the parties of the hearing details. Contact details for the List Office can be found at the end of this guidance.

## **7. The appeal hearing**

- 7.1 The full appeal hearing ordinarily takes place in public at the Royal Courts of Justice, although as noted the Administrative Court now also runs remote hearings, details of which can be found on [the Court's website](#). The case will be listed in the Administrative Court daily cause list section of the Royal Courts of Justice Daily Cause List, which can be found at <https://www.gov.uk/government/publications/royal-courts-of-justice-cause-list>. This provides details of the court room, or remote hearing details, and the time at which the hearing will start.
- 7.2 The appeal hearing will be limited to a review of the Disciplinary Tribunal's or IDB's decision, unless the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing. Unless it orders otherwise, the Court will not receive oral evidence or evidence which was not before the Disciplinary Tribunal or IDB. In addition, at the hearing a party may not rely on a matter not contained in an appellant's or respondent's notice without the permission of the Court.

## **8. Conduct at the appeal hearing**

- 8.1 All the papers in the appeal will be distributed to the Court in advance of the hearing and therefore parties should assume that the Court has read the papers in advance of the hearing.
- 8.2 Advocates will need to be robed during the proceedings and normal court etiquette should be followed. The Judge should be addressed as My Lord or My Lady.
- 8.3 The hearing will usually start with the appellant presenting their case followed by the BSB presenting any arguments or submissions in response, or the other way around if the BSB is the appellant. As stated above, the Court will have been provided with all the relevant papers in advance, so any submissions to support the appeal can be kept short. Submissions made by the appellant should concentrate on the main points of the appeal and on addressing the counter-arguments presented in any respondent's notice.
- 8.4 Generally, the time estimates provided for the listing of appeals are fairly accurate. As with any case, however, an appeal will sometimes overrun. Where this happens,

the Court may reconvene at a later date and the date(s) for the reconvened hearing will either be agreed at the hearing or notified to the parties afterwards.

## **9. Findings**

- 9.1 The Court has the power to strike out the whole or part of an appellant's or respondent's notice where there is a compelling reason to do so.
- 9.2 The Court has all the powers of the Disciplinary Tribunal or IDB (as the case may be) and may affirm, set aside or vary any order of the Disciplinary Tribunal or IDB, or order a new hearing. If the Court strikes out an appellant's notice or dismisses an appeal and it considers that the notice or appeal is totally without merit, it will record that fact.
- 9.3 An appeal will be allowed where the Disciplinary Tribunal's decision (or IDB's decision) was wrong or unjust due to a serious procedural or other irregularity at the Disciplinary Tribunal or IDB stage.
- 9.4 The Court may make an order for the costs of an appeal and may have regard to the means of the parties and all the circumstances of the case.

## **10. Communication of Court's decision**

- 10.1 In most cases, the Court will give its decision orally at the end of the appeal hearing. However, the Court may decide to reserve judgment and issue the final decision in the form of a written judgment after the hearing.
- 10.2 Where an appeal against a Disciplinary Tribunal decision has been unsuccessful in whole or in part, the BSB will also publish the final sanction on its website, as adjusted by the Court if applicable. The barrister will be advised of the date on which the relevant sanction or individual sanctions take effect.
- 10.3 Where the appellant is a barrister and where the final sanction is disbarment, it will be necessary for this to be pronounced by the relevant Inn of Court, in line with the Disciplinary Tribunals Regulations.

## **11. Decision of Court is final**

11.1 The decision of the Court is final and therefore no appeal lies against its decision, except to the Court of Appeal in the case of a decision to disbar a barrister. An appeal to the Court of Appeal does not operate as a stay on the sanction being put into effect.

## **12. Meeting your needs**

12.1 The BSB can provide this guidance in different formats, such as Braille, large print or on digital audio file. If you would like the guidance in a different format or have any questions about the appeals process, please contact the BSB (see contact details below).

**Contact Details:**

**Administrative Court**

Administrative Court Office  
The Royal Courts of Justice

Strand

London

WC2A 2LL

DX 44457 Strand

Tel: 020 7947 6655

Fax: 020 7947 6802

List Enquiries: 020 7947 6655

List Office Fax: 020 7947 6330

Email: [administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk)

Details of other offices of the Administrative Court can be found on the Administrative Court website: <https://www.gov.uk/courts-tribunals/administrative-court>

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**Marten Walsh Cherer (transcripts)**

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WC2A 1HP

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