

## **C THE DISCIPLINARY TRIBUNALS REGULATIONS**

### **C1. ARRANGEMENT OF REGULATIONS**

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## C2. THE REGULATIONS

### **Definitions**

1. In these Regulations:
  - 1.1 *defendant* shall mean the *relevant person* who is the subject of the disciplinary charge or charges brought before a Disciplinary Tribunal and/or of a disqualification application made to the Disciplinary Tribunal under the *Complaints Rules*; and
  - 1.2 *the standard directions* mean the standard directions set out at Annex 7 to these Disciplinary Tribunals Regulations (as such Annex may be amended or updated by the *Bar Standards Board* from time to time); and
  - 1.3 other expressions shall have the meanings assigned to them by Part VI of the *Handbook*.
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).

### **Service of Charges and/or Applications**

3. Once the *PCC* has taken the decision to refer a matter to a Disciplinary Tribunal in accordance with the *Complaints Rules*, the *Bar Standards Board* shall appoint a person or persons to represent the *Bar Standards Board* in respect of the charge(s) and or application(s). That person or persons shall be referred to throughout these Regulations as the "*BSB Representative*".
4. The *BSB Representative*, once appointed, shall cause a copy of the charge(s) and/or application(s) to be served on the relevant *defendant(s)*, together with a copy of these Regulations not later than 10 weeks (or 5 weeks if the *PCC* has directed that the prosecution of the charges be expedited) after the date on which the decision was taken by the *PCC* to refer the matter to a Disciplinary Tribunal.

5. The *BSB Representative* shall at the same time cause copies of the charge(s) and/or application(s) to be supplied to the *President*.

***Documents to be served on the defendant***

6. As soon as practicable after the issue of the charges and/or applications to the *defendant(s)*, the *BSB Representative* shall supply the *defendant(s)* with:
  - 6.1 a copy of the evidence of any witness intended to be called in support of any charge(s) or application(s) (which, for the avoidance of doubt, does not need to be in the form of a formal witness statement but which can, for example, simply be in the form of a letter or attendance note); and
  - 6.2 a list of the documents intended to be relied on by the *BSB Representative*; and
  - 6.3 the *standard directions* in Annex 7 which, subject to Regulation 9, shall automatically apply to the particular matter. Such *standard directions* shall include a timetable determined by the *BSB Representative* as being reasonable as to the facts of each case; and
  - 6.4 details of any special directions which the *BSB Representative* proposes, in default of agreement, to apply for (which may include any of the matters at Regulation 9.2 below and, in addition, may include an application for leave to amend and/or add charges and/or applications).
7. If the documents referred to in Regulation 6.1 and/or 6.2 are not supplied to the *defendant(s)* within 28 days of the *defendant(s)* being served with charges in accordance with Regulation 4 above, then the *BSB Representative* shall provide to the *defendant(s)* within that period:
  - 7.1 details of the evidence that is still being sought; and
  - 7.2 details of when it is believed that it will be practicable to supply that evidence to the *defendant(s)*.
8. Nothing in Regulations 6 or 7 above shall preclude the reception by a Disciplinary Tribunal of the evidence of a witness that has not been served on the *defendant(s)* (within the time specified aforesaid, or at all), or of a document not included in the list of documents,

provided the Tribunal is of the opinion that the *defendant(s)* are not materially prejudiced thereby, or the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

***Directions etc***

9. Following receipt of the *standard directions*, the *defendant(s)* shall have twenty one days to:
- 9.1 provide to the *BSB Representative* written submissions explaining why the *standard directions* and, where relevant, any special directions of which the *BSB Representative* gave notice under Regulation 6.4 above, should be amended, revoked or added to; and
- 9.2 confirm whether they are intending, in default of agreement, to make any of the following applications for special directions, namely:
- (a) an application for separate hearings or an application that proceedings pending against separate *defendants* be dealt with at the same hearing;
  - (b) an application to sever charges and/or applications;
  - (c) an application to strike out charges and/or applications relating to the *defendant* making the application;;
  - (d) an application to stay proceedings;
  - (e) an application regarding the admissibility of documents;
  - (f) an application for disclosure of documents in accordance with Regulation 17.2(c);
  - (g) an application to extend or abridge any time limit governing the proceedings;
  - (h) an application for adjournment of the substantive hearing;
  - (i) an application for the hearing to be held in private.

10. If a *defendant* does not provide the information referred to in Regulation 9.1 within the relevant twenty one day period, the *defendant* shall be deemed to have accepted the *standard directions* and any special directions of which the *BSB Representative* gave notice under Regulation 6.4 above and they shall be deemed to apply to the particular matter, save so far as they may have been modified on the application of any other *defendant* to the same proceedings that was made within the relevant twenty one day period.
11. If a *defendant* does not provide the information referred to in Regulation 9.2 within the relevant twenty one day period, that *defendant* shall be deemed to have confirmed that there are no matters concerning that *defendant* that may need to be dealt with at a preliminary hearing.
12. If the *BSB Representative* receives any written submissions from a *defendant* in accordance with Regulation 9.1 above, the *BSB Representative* shall consider such written submissions within fourteen days of receipt and shall during such fourteen day period:
  - 12.1 inform the *defendant(s)* of those changes to the *standard directions* or the special directions (as appropriate) which it is able to agree; and
  - 12.2 seek to agree with the *defendant(s)* such other changes to the *standard directions* or the special directions (as appropriate) that are acceptable to all parties.
13. If, at the expiry of the fourteen day period referred to in Regulation 12:
  - 13.1 the parties have failed to reach agreement in respect of any of the *standard directions* or special directions (as appropriate); and/or
  - 13.2 the *defendant(s)* have indicated that they may be intending to make one of the applications referred to at Regulation 9.2 above,the *BSB Representative* shall issue to the *President* the following documentation (where applicable):
  - (a) a copy of the standard directions and/or special directions that have been agreed;
  - (b) any written submissions received from the *defendant(s)* in accordance with Regulation 9.1;

- (c) any notice from the *defendant(s)* that they may be intending to make an application referred to at Regulation 9.2; and
  - (d) the *BSB Representative's* response to any such request(s) and/or submissions.
14. After receipt by the *President* of the documentation referred to in Regulation 13 above, the *President* shall designate a Judge or Queen's Counsel ("the *Directions Judge*") to exercise the powers and functions conferred on the *Directions Judge* in the following Regulations. For the avoidance of doubt, the *Directions Judge* does not have to be the same individual that will Chair the Disciplinary Tribunal, once convened.
15. The *President* shall cause copies of the charge(s) or application(s), together with the documentation referred to at Regulation 13 above, to be supplied to the *Directions Judge* once designated.
16. The *Directions Judge* shall consider the submission as to directions on receipt of the relevant documentation. In appropriate cases, the *Directions Judge* may conclude that an oral directions hearing is required to resolve the relevant matters.
17. If the *Directions Judge* consider that no oral hearing is necessary, then:
- 17.1 he shall make a directions order setting out those directions that are to apply to the particular matter taking into account all of the relevant circumstances, including any written submissions put forward by the parties as well as their own findings; and
  - 17.2 he may determine such other issues as they may be required to deal with at the relevant time including but not limited to:
    - (a) how any of the applications referred to at Regulation 9.2 are to be dealt with;
    - (b) the admission of documents;
    - (c) the disclosure of documents limited to those that are in the *Bar Standards Board's* possession or control, that may support a defence or undermine the *Bar Standards Board's* case;
    - (d) the admission of facts;

- (e) such other matters as they deem expedient for the efficient conduct of the hearing.

18. If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* shall give written notice to the *BSB Representative* and the *defendant(s)* that an oral directions hearing is to be held for the purpose of giving directions and taking such other steps as they consider suitable for the clarification of the issues before the tribunal and generally for the just and expeditious handling of the proceedings. The *Directions Judge* shall also provide the *BSB Representative* and the *defendant(s)* with details of how long the oral directions hearing is anticipated to last.
19. Within 7 days of receipt of the notice referred to in Regulation 18, the *BSB Representative* and the *defendant(s)* shall notify the *President* and the other party of their and, where relevant, their Counsel's available dates and times during the six week period immediately following the date of such notice.
20. The *President* shall endeavour to find a date within that six week period which is convenient for all parties. However, in the event that no mutually convenient time and date is available, the *Directions Judge* shall decide on the date within the relevant six week period that the oral directions hearing is to take place and shall notify the *BSB Representative* and the *defendant(s)* of that date and time.
21. The oral directions hearing shall be convened and may deal with, amongst other things, all of those issues referred to at Regulation 17 above.
22. A Clerk shall take a note of the proceedings at any oral directions hearing and shall cause a record to be drawn up setting out the directions given and/or admissions made at the oral directions hearing.
23. Following the conclusion of the oral directions hearing (or, in circumstances where an oral directions hearing was not required, following the completion of the review by the *Direction Judge* of the papers) the *President* shall cause copies of the directions order to be served on the *BSB Representative* and the *defendant(s)* and such directions shall be deemed to take effect on the fifth working day after the date of posting.
24. The directions orders issued by the *President* under Regulation 23 will be final, and no appeal will lie against such decision.

**Setting the date, appointing a tribunal and issuing a Convening Order**

25. On:

25.1 the deemed acceptance or subsequent agreement of the standard directions by the parties; or

25.2 receipt of the directions order from the *President*,

each party shall submit details of its availability to attend the substantive hearing to the Council of the Inns of Court in accordance with those directions. Following receipt of each party's availability to attend the substantive hearing or, where no such details are provided, following expiry of the relevant time limit by when details of such availability were required to have been provided, the *President* shall:

25.3 set the date of the substantive hearing having regard to the availability of the parties (if provided) and the need for the prompt and expeditious determination of charges and/or application(s) brought against defendant(s) in accordance with the provisions of these Regulations (and provided always that the date of such substantive hearing has not already been set by the *Directions Judge* (for whatever reason));

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

25.5 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*, *Directions Judge* or the Chairman of any Tribunal may direct. No person who has been engaged in the investigation of a *complaint* or application against a *defendant* in accordance with the relevant procedure or otherwise shall act as Clerk in relation to proceedings under these Regulations arising out of that *complaint*. The *President* may publish qualifications or other requirements required in those appointed to be Clerks;

25.6 inform all parties of the date fixed for the hearing as soon as reasonably practicable after the date has been fixed; and

25.7 not less than fourteen days before the date of the substantive hearing, serve an Order on the *defendant(s)* ("the *Convening Order*") specifying:



- (a) the name of the *defendant(s)* to the proceedings and such other information as may be relevant to the *defendant(s)*, for example:
- (i) where any *defendant* is a *barrister*, details of the *barrister's* Inn, their date of call and (if appropriate) their date of being appointed Queen's Counsel, as well as details of whether or not the *barrister* was acting as a *self-employed barrister* or an *employed barrister* (and, in the latter case, details of their *employer*, including whether or not it is a *BSB authorised body*) and if the *barrister* was acting as a *HOLP* or *manager* of an *authorised body*, identifying this fact and identifying the *authorised body* and whether or not it is a *BSB authorised body*;
  - (ii) where any *defendant* is a *BSB authorised body*, details of the date that such body was so authorised or licensed by the *Bar Standards Board*, together with a summary of the number of *barristers* and other individuals working within that *BSB authorised body*; and
  - (iii) where any *defendant* is another type of *BSB regulated person*, details of whether or not the *BSB regulated person* is an *authorised (non-BSB) person* or is otherwise subject to regulation by any other regulator and, if so, the identity of that regulator, and the role undertaken by that individual, including whether acting as a *HOLP*, *manager* or *employee* of an *authorised body* and identifying the *authorised body* and whether or not it is a *BSB authorised body*;
  - (iv) where any *defendant* is a *non-authorised individual* employed by a *BSB authorised person*, details of the role undertaken by that individual and identifying the *BSB authorised person* who directly or indirectly employs the *defendant*.
- (b) the date and time of the sitting of the Disciplinary Tribunal at which it is proposed the charge(s) and/or application(s) should be heard; and
- (c) the names and status (that is, as Chairman, as *lay member*, as *barrister* or other) of those persons who it is proposed should constitute the Disciplinary Tribunal to hear the case; and

- (d) the name of the Clerk,

and sending copies of such *Convening Order* to the nominated members of the Disciplinary Tribunal and the Clerk. In the Order the attention of the *defendant(s)* will be drawn to:

- (e) their right to represent themselves or be represented by counsel, with or without instructing a *solicitor*, as they shall think fit; and
- (f) their right to inspect and be given copies of documents referred to in the list served pursuant to Regulation 6 above; and
- (g) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

26. The *defendant(s)* 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.
27. Upon receipt of such objection, the *President* shall, if satisfied that it is justified (but subject to Regulation 28) exercise the power conferred on him by Regulation 39 to nominate a substitute member or members of the Tribunal, and notify the *defendant(s)* accordingly. Upon receipt of such notification, the *defendant(s)* shall have in relation to such substitute member or members the like right of objection as is conferred by Regulation 26.
28. 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 application to disqualify or charge of professional misconduct or breach of proper professional standards or a charge consisting of a *legal aid complaint* against the *defendant(s)* or any finding on any such application or charge, or of any sentence imposed on the *defendant(s)* in connection therewith.
29. The Convening Order shall contain words drawing the attention of the *defendant(s)* to the rights conferred by Regulation 26.

***The Disciplinary Tribunal****Hearing in private*

30. 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.

*Composition of Disciplinary Tribunals*

31. A Disciplinary Tribunal shall consist of either three persons or five persons.
32. A five-person panel shall include the following persons nominated by the *President*:
- 32.1 as Chairman, a Judge; and
- 32.2 at least one *lay member*, and
- 32.3 at least one practising *barrister* of not less than seven years' standing.
33. A three-person panel shall include the following persons nominated by the *President*:
- 33.1 as Chairman, one Queen's Counsel or a Judge; and
- 33.2 at least one *lay member*.
34. In determining the other persons to sit on the panel the *President* shall have regard to the nature of the charge(s) and/or application(s) being determined and the identity of the *defendant(s)* against whom the charges have been made. When constituting the panel, as well as taking into account the requirements of Regulation 33 above and Regulation 35 below, the *President* shall also have regard to (but shall not be bound by) any recommendations by the *PCC*, which may include a recommendation that a Judge rather than a QC be appointed to act as Chairman of a three-person panel.
35. No person shall be nominated to serve on a Disciplinary Tribunal if they
- 35.1 are a member of the Bar Council or of any of its committees; or
- 35.2 are a member of the *Bar Standards Board* or of any of its committees; or

- 35.3 were a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*.
36. The President may publish qualifications or other requirements required in those appointed to serve on a Disciplinary Tribunal.
37. For the purposes of Regulations 32 and 33, a Judge includes:
- 37.1 a puisne judge of the High Court;
- 37.2 a judge of the Court of Appeal;
- 37.3 a Circuit judge;
- 37.4 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;
- 37.5 a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and
- 37.6 a person who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that he:
- (a) 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
- (b) 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<sup>1</sup>.
38. 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.
39. 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 these Regulations,

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<sup>1</sup> It is being confirmed with COIC that this list is still correct and does not need expanding.

and make such alternative nominations as in the exercise of his discretion he deems to be necessary or expedient.

40. The proceedings of a five-person panel shall be valid notwithstanding that after the *Convening Order* has been issued (in accordance with Regulation 25 above) one or more of the members becomes unable to act or is disqualified from acting, so long as:
- 40.1 the Chairman and at least one *lay member* remain able to act and are present throughout the substantive hearing; and
- 40.2 the number of members present throughout the substantive hearing of the charge is not reduced below three.
41. A member of a Disciplinary Tribunal who has been absent for any time during a sitting shall take no further part in the proceedings.

***Provision of documents to the Disciplinary Tribunal***

42. There shall be provided to each member of the Disciplinary Tribunal prior to the commencement of the substantive hearing copies of the following documents:
- 42.1 the Convening Order;
- 42.2 the charge(s) and/or application(s) and any particulars thereof;
- 42.3 any documents proposed to be relied on by the *BSB Representative* or by the *defendant(s)*, unless a direction has been made that copies of such documents be withheld;
- 42.4 any written answer to the charge(s) and/or application(s) submitted by or on behalf of the *defendant(s)*;
- 42.5 such other documents as have been agreed or directed to be laid before the Tribunal prior to the start of the hearing; and
- 42.6 the *standard directions* (as amended by the parties) together with any agreed special directions or failing such agreement, the directions order issued by the *President* pursuant to Regulation 23.

***Procedure at the hearing***

43. The Tribunal shall apply the criminal standard of proof when adjudicating upon charges of professional misconduct and in deciding whether the disqualification condition has been established.
44. The proceedings of a Disciplinary Tribunal shall be governed by the rules of natural justice, subject to which the Tribunal may:
- 44.1 (subject to Regulation 45 below) admit any evidence, whether oral or written, whether being given in person or over the telephone or by video link or by such other means as the Tribunal may deem appropriate, whether direct or hearsay, and whether or not the same would be admissible in a *court* of law;
- 44.2 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 a *defendant* has a proper opportunity of answering the charge(s) and/or application(s) made against him or otherwise as shall be just;
- 44.3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.
45. 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 and at the point of sentencing, the facts having been found.

***Decision of a court or tribunal***

46. 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*:

- 46.1 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 and the findings of fact upon which that *Conviction* was based shall be admissible as conclusive proof of those facts;
- 46.2 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 and the findings of fact upon which that finding or sentence was based shall be prima facie proof of the facts set out therein; and
- 46.3 the judgment of any civil *court* may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be prima facie proof of the facts set out therein.

### ***Absence of Defendant***

47. 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 110 of these Regulations) with the documents required by Regulations 6 or 7 (as appropriate) but that *defendant* has not attended at the time and place appointed for the hearing, the Tribunal may nevertheless proceed to hear and determine the charge(s) or application(s) relating to that *defendant* if it considers it just to do so, subject to compliance with Regulation 78 in respect of that *defendant* in the event of any charge or application being found proved.
48. 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(s) or application(s) in the absence of that *defendant* if it considers it just to do so, subject to compliance with Regulation 78 in respect of that *defendant* in the event of any charge or application being found proved.

### ***Recording of proceedings***

49. 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.

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

50. A Disciplinary Tribunal may at any time before or during the hearing direct that the charge(s) and/or application(s) against any *defendant* shall be amended or that new charge(s) and/or application(s) may be added, provided that:
- 50.1 that the Tribunal is satisfied that no *defendant* will by reason of such an amendment suffer any substantial prejudice in the conduct of his defence; and
- 50.2 that the Tribunal may, if so requested by a *defendant*, adjourn for such time as is reasonably necessary to enable that *defendant* to meet the charge(s) or application(s) as so amended in respect of him.

***Adjournment***

51. Subject to the provisions of Regulation 52, the Disciplinary Tribunal shall sit from day to day until it has arrived at a finding and, if any charge or application has been found proved, until sentence is pronounced.
52. Notwithstanding the provisions of Regulation 51, 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.

***The finding***

53. At the conclusion of the hearing, the finding of the Disciplinary Tribunal on each charge or application, 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 or application, the finding to be recorded on that charge or application shall be that of the majority. If the members of the Tribunal are equally divided as to the finding on any charge or application, then, the burden of proof being on the *Bar Standards Board*, the finding to be recorded on that charge or application 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(s) or application(s), and state whether each such finding was unanimous or by a majority.
54. In any case where the Tribunal dismisses the charge(s) and/or application(s), it may give advice to the *defendant* as to his future conduct



**The sentence**

55. If the Disciplinary Tribunal finds any of the charges or applications proved against a *defendant*, evidence may be given of any previous disqualification order or finding of professional misconduct or of breach of proper professional standards by the *Bar Standards Board* or any other regulator or any finding on a charge consisting of a *legal aid complaint* against that *defendant* or of the outcome of any earlier Determination by consent procedure in respect of the matter before the Tribunal. After hearing any representations by or on behalf of the *defendant(s)* 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 to be imposed on a *defendant*, 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 to be imposed on a *defendant*, 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.
56. Subject to Regulation 58 below:
- 56.1 a *defendant* against whom a charge of professional misconduct has been found proved may be sentenced by the Disciplinary Tribunal as follows:
- (a) in the case of *barristers*, in accordance with Annex 1 to these Regulations;
  - (b) in the case of a *barrister only entity* or a *legal disciplinary practice*, in accordance with Annex 2 to these Regulations;
  - (c) in the case of a *licensed body*, in accordance with Annex 3 to these Regulations;
  - (d) in the case of *registered European lawyers*, in accordance with Annex 4 to these Regulations;
  - (e) in the case of all other *BSB regulated persons*, in accordance with Annex 5 to these Regulations;
- 56.2 in the case of a *defendant* who is a *relevant person* in respect of whom the Tribunal finds the *disqualification condition* to be established, the Tribunal may make a Disqualification Order in accordance with Annex 6 (there being no other available

sentence in respect of a *relevant person* who is a *non-authorised individual* directly or *indirectly employed* by a *BSB authorised person*).

57. 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*.
58. A three-person panel shall not:
- 58.1 disbar a *barrister* or suspend a *barrister's* practising certificate for a period in excess of three months; or
  - 58.2 revoke the authorisation or licence (as appropriate) of a *BSB authorised body* or suspend the same for a period in excess of three months; or
  - 58.3 remove a *registered European lawyer* from the register of *European lawyers*; or
  - 58.4 impose a sentence of suspension on any *BSB regulated person* for a prescribed period in excess of three months' duration; or
  - 58.5 impose a Disqualification Order of more than three months' duration.

(For the avoidance of doubt, this Regulation does not prevent a three-person panel making an order in accordance with Regulation 59 below.)

59. In the event that a three-person panel considers that a case before it merits (in conjunction with any deferred sentence) any of the sentences referred to in Regulation 58 above being imposed in relation to a *defendant*:
- 59.1 the three-person panel shall refer the case to a five-person panel for sentencing of that *defendant* (but may proceed to sentence any other *defendants* to the proceedings in respect of whom this Regulation 59 does not apply);
  - 59.2 the three-person panel shall, for the assistance of the five-person panel, prepare a statement of facts as found (and, where applicable, details of the sentences passed on any other *defendants* to the proceedings). The *defendant* shall not be able to challenge the facts found by the three-person panel; and

- 59.3 the three-person panel shall direct within what period of time the sentencing hearing before the five-person panel is to be held.
60. The five-person panel shall be composed in accordance with Regulation 32. The *defendant* shall be informed as soon as practicable of the names and status (that is, as Chairman, as *lay member*, as *barrister* or other) 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, shall specify the ground of objection and shall be dealt with in accordance with Regulations 27 and 28.
61. The *President* shall fix the date for the sentencing hearing in accordance with Regulation 59.3 above and shall inform all the parties of the date fixed for the hearing as soon as reasonably practicable after the date has been fixed.
62. If the five-person panel is satisfied that the requirements of Regulation 61 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 78.
63. If the five-person panel is satisfied that it has not been practicable to comply with the requirements of Regulation 61 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 78.
64. If the procedure under Regulation 63 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.
65. 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:

- 65.1 any Disciplinary Tribunal which hears a charge consisting of a *legal aid complaint* relating to the conduct of a *defendant* who is a *barrister* may if it thinks fit (and whether or not it sentences the *defendant* in accordance with Regulation 56.1 in respect of any conduct arising out of the same *legal aid complaint*) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;
- 65.2 where a Disciplinary Tribunal hears a charge of professional misconduct against a *defendant* who is a *barrister* it may (in addition to or instead of sentencing that *defendant* in accordance with Regulation 56.1) 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.
66. Whether or not a Disciplinary Tribunal shall have found any charge or application proved against a *barrister* that is a *pupil supervisor*, 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.
67. 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 imposed on him.

***Sentence of suspension from practice or from authorisation or licensing or imposition of conditions***

68. For the purposes of Regulations 68 to 71:
- 68.1 a sentence of suspension for a *barrister* shall mean that the *defendant's* practising certificate is suspended for the period of the suspension such that the *defendant* is not an *authorised person*, 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. For so long as he remains suspended, he is prohibited from holding himself out as being a *barrister* in respect of any *legal services* that he may supply without being an *authorised person* and when otherwise permitted to describe

himself as a barrister in providing services (whether or not for reward) he must, if he does so describe himself, disclose the suspension;

68.2 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 *Bar Standards Board* and is, for so long as he remains suspended, prohibited from holding himself out as registered with the *Bar Standards Board*;

68.3 a sentence of suspension for a *BSB authorised body* shall mean that the body's authorisation or licence is suspended for the period of the suspension such that the *defendant* is not an *authorised person* for that period;

68.4 a sentence on a *barrister* or a *registered European lawyer* requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the Continuing Professional Development Regulations at Part IV of this *Handbook*.

69. The prescribed period for which a sentence of suspension from practice is expressed to run may be:

69.1 for a fixed period; or

69.2 until the *defendant* has complied with any conditions specified in the order imposing the sentence of suspension.

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

70.1 without the same being suspended; or

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

71. Conditions may (depending on the circumstances) include limiting the scope of the *defendant's* practice (after the end of any suspension, if applicable) to such part as the Disciplinary Tribunal may determine, either indefinitely or for a defined period; and/or imposing requirements that the *defendant*, or in the case of a *BSB authorised body*, its *managers* or *employees*, shall undergo such further *training* as the Tribunal may determine;

and/or prohibiting the *defendant* from accepting or carrying out any *public access instructions*; and/or such other matters as the Tribunal may consider appropriate for the purpose of protecting *the public* and/or preventing a recurrence.

***Power to order that a sentence has deferred effect***

72. Where a sentence imposed by a Disciplinary Tribunal includes a fine, condition and/or a suspension from practice, those elements of the sentence may be directed by the Disciplinary Tribunal to have deferred effect.
73. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the “*period of deferral*”).

***Power to activate a deferred sentence***

74. 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.
75. 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.
76. 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 *PCC* pursuant to the Determination by Consent procedure.
77. 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 Regulations 85 to 91 below.

***Wording of the sentence when defendant not present***

78. If a *defendant* has not been present throughout the proceedings, the sentence in respect of that *defendant* shall include one or more of the following statements:

- 78.1 if the relevant procedure under Regulation 47 has been complied with, that the finding and sentence were made in the absence of the *defendant* in accordance with Regulation 47;
- 78.2 if the procedure under Regulation 48 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;
- 78.3 if the relevant procedure under Regulation 62 has been complied with, that the sentence was made in the absence of the *defendant* in accordance with Regulation 62;
- 78.4 if the procedure under Regulation 63 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.

### ***Report of Finding and Sentence***

79. 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(s) on the charges of professional misconduct and/or on any applications and the reasons for those findings 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:
- 79.1 those of the following whom he deems appropriate taking into account the particular circumstances:
- (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 Chairman of the *Bar Standards Board*;
- (h) the Chairman of the *PCC*;
- (i) the *defendant*;
- (j) the *defendant's* head of *Chambers*, *HOLP*, or employer (as appropriate);
- (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 *PCC* may direct;
- (m) other *Approved Regulators* and the LSB; and
- (n) in the case of a *registered European lawyer*, his *home professional body*, and

79.2 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 65, the Legal Services Commission.

### ***Appeal to the Visitors***

80. In cases where one or more charges of professional misconduct have been proved and/or a disqualification order has been made or where all charge(s) and/or applications(s) have been dismissed, an appeal may be lodged with the Visitors in accordance with the Hearings Before the Visitors Rules 2010:

80.1 against conviction by the *defendant*; and/or



- 80.2 against sentence, by the *defendant* or (with the consent of the Chairman of the *Bar Standards Board* or the Chairman of the *PCC*) by the *Bar Standards Board*; and/or
- 80.3 in any case where any charge of professional misconduct or application to disqualify has been dismissed (with the consent of the Chairman of the *Bar Standards Board* or the Chairman of the *PCC*) by the *Bar Standards Board*.
81. In any case where the *Bar Standards Board* intends to appeal under Regulation 80.2 or 80.3 above, the consent of the Chairman of the *Bar Standards Board* or the Chairman of the *PCC* 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 Regulation 80.2 or 80.3 shall be permitted without permission of the Visitors.
82. Where a *defendant* lodges an appeal against a disbarment, Disqualification Order or the revocation of a licence or authorisation, he may at the same time lodge with the Visitors an appeal against any requirement imposed pursuant to Regulations 85 or 89 as appropriate.
83. For the avoidance of doubt, a complainant (other than, where applicable, the *Bar Standards Board*) shall have no rights of appeal.

***Appeal: sum payable***

84. Where an appeal is lodged with the Visitors by the *defendant*, the Notice of Appeal must be accompanied by the sum of £250 (or such other amount as may be specified by the *Bar Standards Board* from time to time) payable to the *Bar Standards Board* 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.

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

85. On receipt of the report prepared in accordance with Regulation 79, 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 of appeal to the Visitors against the finding and/or sentence, once the time for appeal to the Visitors has expired and any

appeal to the Visitors 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 93 of the date on which the sentence is to take effect which date shall be no later than two clear days after the date of the sentence being pronounced.

86. 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.
87. 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 Regulations 85 and 86 shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.
88. Where, pursuant to Regulation 55.1, a Tribunal has required the *Bar Standards Board* 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.

***Action to be taken by the Council of the Inns of Court (in all other circumstances)***

89. In circumstances where the Disciplinary Tribunal has imposed a sentence (other than disbarring or suspending a *barrister* which is dealt with in accordance with Regulations 85 to 88 above), on receipt of the report prepared in accordance with Regulation 79, the Council of the Inns of Court 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 that sentence into effect. The Council of the Inns of Court shall inform the persons specified in Regulation 93 of the date on which the sentence is to take effect which date shall be no later than two clear days after the date of the sentence being pronounced.
90. In any case in which a *BSB regulated person* has given notice of appeal to the Visitors against the finding and/or sentence of the Tribunal on the charges of professional

misconduct, the actions set out in Regulation 89 shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.

91. The Council of the Inns of Court shall take all such steps as may be necessary or expedient to give effect to any requirement made by the Tribunal pursuant to Regulation 92 below.

***Publication of finding and sentence***

92. The following procedures are to be observed in regard to publication of the finding and sentence of a Disciplinary Tribunal:

92.1 When the Tribunal has found one or more charges of professional misconduct have been proved the President shall publish the charges found proved together with details of the sentence and the date that such sentence is to take effect once it has heard from the Inn or the Council of the Inns of Court (as the case may be) of the date that such sentence is to take effect.

92.2 When the Tribunal has found the disqualification condition to be established and has made a Disqualification Order it shall publish the details of the findings on the basis of which that order was made and the terms of the Disqualification Order and the date that such order is to take effect once it has heard from the Council of the Inns of Court as to that date.

92.3 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.

93. When publishing any finding, sentence or decision in accordance with Regulation 92, the President shall communicate the same in writing to those of the following whom he deems appropriate taking into account the particular circumstances:

93.1 the Lord Chancellor;

93.2 the Lord Chief Justice;

93.3 the Attorney General;

93.4 the Director of Public Prosecutions;

- 93.5 the Chairman of the Bar Council;
  - 93.6 the Leaders of the six circuits;
  - 93.7 The Chairman of the *Bar Standards Board*;
  - 93.8 the Chairman of the *PCC*;
  - 93.9 the *defendant*;
  - 93.10 the *defendant's* head of *Chambers*, *HOLP* or employer (as appropriate)';
  - 93.11 the Treasurers of the *defendant's* Inn of Call and of any other Inns of which he is a member;
  - 93.12 such one or more press agencies or other publications, as the Chairman of the *PCC* may direct;
  - 93.13 other *Approved Regulators* and the *LSB*; and
  - 93.14 in the case of a *registered European lawyer*, his *home professional body*.
94. The *Bar Standards Board* shall publish the finding and sentence of the Tribunal in such manner and in such time as it sees fit unless the Chairman of the Tribunal directs that publication shall be delayed until the President has published the finding under Regulation 92.

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

95. Regulations 96 to 104 below apply in relation to any *defendant* who:
- 95.1 in respect of a *barrister*, has been sentenced to be disbarred;
  - 95.2 in respect of a *BSB authorised individual*, has been sentenced to be disqualified or to be suspended for more than one year;
  - 95.3 in respect of a *BSB authorised body*, has been sentenced to have their authorisation or licence revoked or suspended for more than one year; or

- 95.4 in respect of any *BSB authorised person*, has been sentenced to have conditions placed on their practising certificate, authorisation or licence (as appropriate) prohibiting them from accepting or carrying out the *conduct of litigation* or any *public access instructions* for a period of more than one year.
96. Where Regulation 95 applies the Tribunal shall seek representations from the *defendant* and the *BSB Representative* as to the appropriateness or otherwise of taking action under Regulation 97 below.
97. Having heard any representations under Regulation 96 above, the Tribunal shall, unless in the particular circumstances of the case it appears to the Tribunal to be inappropriate to do so, either:
- 97.1 in relation to Regulations 95.1 to 95.3, require the *defendant* to suspend their practice immediately; or
- 97.2 in relation to Regulation 95.4, determine that its sentence imposing a condition prohibiting the *defendant* from accepting or carrying out any litigation or *public access instructions* shall take effect immediately.
98. If pursuant to Regulation 97 above the Tribunal concludes that it would be inappropriate to require immediate suspension or immediate imposition of conditions (as the case may be) it may nonetheless require the *defendant* to suspend their practice or impose conditions from such date as the Tribunal may specify.
99. Where the *defendant* is permitted to continue to practise for any period before being suspended under Regulation 98, the Tribunal may require the *Bar Standards Board* to impose such terms in respect of the *defendant's* practice as the Tribunal deems necessary for the protection of *the public* pending the suspension coming into effect.
100. Where an order is made in respect of a *defendant* under Regulation 97, 98 or 99 above and that *defendant* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, he may apply to the President in writing for a variation to be made.

101. On receiving an application made pursuant to Regulation 100 above the President shall refer it to the Chairman and one of the *lay members* of the Tribunal which originally made the relevant order.
102. Any application made pursuant to Regulation 100 above shall be sent by the applicant, on the day that it is made, to the *PCC* and the *PCC* may make such representations as they think fit on that application to those to whom the application has been referred by the President.
103. The persons to whom an application made pursuant to Regulation 100 above is referred may vary or confirm the order in relation to which the application has been made.
104. References in Regulation 99 to the *Bar Standards Board* 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 conditions on practising certificates and the authorisations and licences of *BSB authorised bodies*.

### **Costs**

105. 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.
106. 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.
107. Any costs ordered to be paid by or to a *defendant* shall be paid to or by the *Bar Standards Board*.
108. All costs incurred by a Disciplinary Tribunal or by the *PCC* in connection with or preparatory to the hearing before the Tribunal shall be borne by the *Bar Standards Board*.

### **Miscellaneous**

#### Representation of complainant's interests

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

Service of documents

110. Any documents required to be served on a *defendant* arising out of or in connection with proceedings under these Regulations shall be deemed to have been validly served:

110.1 If sent by registered post, or recorded delivery post, or receipted hand delivery to:

- (a) in the case of a *BSB authorised individual*, the address notified by such *defendant* pursuant to the requirements of Part II of this *Handbook* (or any provisions amending or replacing the same) as being his practising address; or
- (b) in the case of a *BSB regulated person* or *non-authorised individual* acting as a *manager* or *employee* of a *BSB authorised body*, the address provided by the *BSB authorised body* as being his home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified pursuant to the requirements of Part II of this *Handbook*; or
- (c) in either case, an address to which the *defendant* may request in writing that such documents be sent; or
- (d) in the absence of any of the above, to his last known address or; in the case of a *BSB regulated person* or *non-authorised individual* acting as a *manager* or *employee* of a *BSB authorised body*, the last known address of the relevant *BSB authorised body*,

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

110.2 If served by e-mail, where:

- (a) the *defendant's* e-mail address is known to the *Bar Standards Board*; and
- (b) 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;

110.3 If actually served;

110.4 If served in any way which may be directed by the Directions Judge or the Chairman of the Disciplinary Tribunal.

111. 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 a relevant representative of such *defendant* (including, for example, his clerk, a *manager* or *employee* of the *BSB authorised body* at which he works).

#### Delegation

112. The powers and functions specified in these Regulations as being conferred on a Directions Judge(s) may be exercised by any other Judge or Queen's Counsel nominated by the President, 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*, in circumstances where the Directions Judge(s) is unable to act due to absence or any other reason.

113. 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.

#### Other

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

#### ***Exclusion from providing representation funded by the Legal Services Commission - Application for termination***

115. 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 115 and Regulation 116 below.



116. Any such application shall be in writing and shall be addressed to the President.
117. 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.
118. 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.
119. 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.
120. 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.
121. The President shall have power to make such order for costs as he thinks fit and Regulations 105 to 108 shall apply with all necessary modifications.

***Citation, commencement and revocations***

122. These Regulations may be cited as "The Disciplinary Tribunal Regulations [ ]".
123. These Regulations shall come into force in accordance with the provisions of Part I of this Handbook.

**ANNEX 1 – SENTENCING POWERS AGAINST BARRISTERS**

In relation to a *barrister*<sup>2</sup> against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such *barrister* should:

1. be disbarred;
2. have his practising certificate suspended and be suspended from rights and privileges as a member of his Inn for a prescribed period (either unconditionally or subject to conditions);
3. have conditions imposed on his practising certificate;
4. have his authorisation to *conduct litigation* removed, suspended or made subject to conditions;
5. be ordered to pay a fine of up to £1,000,000 to the *Bar Standards Board* (or up to £50,000,000 if, the charges relate to their time as an *employee or manager of a licensed body*);
6. be ordered to complete continuing professional development of such nature and duration as the Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *Monitoring Unit*;
7. be reprimanded by the Treasurer of his Inn;
8. be reprimanded by the Tribunal;
9. be given advice by the Tribunal as to his future conduct;
10. be ordered by the Tribunal to attend on a nominated person to be reprimanded; or
11. be ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.

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<sup>2</sup> If an application to disqualify the barrister from acting as *HOLP*, manager or employee of an authorised person is made in the same proceedings, the Disciplinary Tribunal may also disqualify the barrister in accordance with the provisions of Annex 6.

**ANNEX 2 – SENTENCING POWERS AGAINST BARRISTER ONLY ENTITIES AND LEGAL DISCIPLINARY PRACTICES**

In relation to a *barrister only entity* or a *legal disciplinary practice* against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such entity should:

1. have its authorisation to practise as a *barrister only entity* or a *legal disciplinary practice* (as appropriate) removed;
2. have conditions imposed upon its authorisation to practise as a *barrister only entity* or a *legal disciplinary practice* (as appropriate);
3. have its authorisation to practice suspended for a prescribed period (either unconditionally or subject to conditions);
4. be re-classified as a licensed body (either unconditionally or with conditions being imposed on its licence to practise as a *licensed body*);
5. have its authorisation to *conduct litigation* withdrawn, suspended or made subject to conditions;
6. be ordered to pay a fine of up to £1,000,000 to the *Bar Standards Board*;
7. be ordered to ensure that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the *Monitoring Unit*;
8. be reprimanded by the Tribunal;
9. be given advice by the Tribunal as to its future conduct; or
10. be ordered by the Tribunal to attend (by its *HOLP* or other person identified in the order) on a nominated person to be given advice as to its future conduct.

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

In relation to a *licensed body* against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such *licensed body* should:

1. have its licence to practise revoked;
2. have its licence to practice suspended for a prescribed period (either unconditionally or subject to conditions);
3. have conditions imposed on its licence to practice;
4. have its *right to conduct litigation* withdrawn, suspended or made subject to conditions;
5. be ordered to pay a fine of up to £250,000,000 to the *Bar Standards Board*;
6. be ordered to ensure that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the *Monitoring Unit*;
7. be reprimanded by the Tribunal;
8. be given advice by the Tribunal as to its future conduct; or
9. be ordered by the Tribunal to attend (by its *HOLP* or other person identified in the order) on a nominated person to be given advice as to its future conduct.

**ANNEX 4 – SENTENCING POWERS AGAINST REGISTERED EUROPEAN LAWYERS**

In relation to a *registered European lawyer* against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such *registered European lawyer* should:

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

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

In relation to all other *BSB regulated persons* against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such *BSB regulated person*<sup>3</sup> should:

1. be ordered to pay a fine of up to £1,000,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to their time as an *employee* or *manager* of a *licensed body*);
2. be reprimanded by the Tribunal;
3. be given advice by the Tribunal as to his future conduct;
4. be ordered by the Tribunal to attend on a nominated person to be reprimanded;
5. be ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.

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

**ANNEX 6 - DISQUALIFICATION**

In relation to a *relevant person* in respect of whom a Disciplinary Tribunal finds the *disqualification condition* to be established<sup>4</sup>, the Disciplinary Tribunal may make a *Disqualification Order*,

1. In deciding whether to exercise the power to make a Disqualification Order, the Disciplinary Tribunal will have regard to whether doing so would be a sufficient and proportionate outcome in the public interest;
2. Any Disqualification Order should identify the relevant person to whom it applies, the basis on which the *disqualification condition* was found to be satisfied (for example, by cross reference to the relevant findings of the Tribunal), the *relevant activities* to which it applies, the period for which it is to take effect (whether indefinite or a defined term) and the date on which it is to come into effect.

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<sup>4</sup> The definition of disqualification condition in these rules is such that where that definition is satisfied the conditions for an order under section 99 of the LSA 2007 will be satisfied in the case of a relevant person who is a manager or employee of a licensed body, to whom that section applies. However, the power to make a Disqualification Order under these rules also extends to other *relevant persons*, where the disqualification condition is satisfied in respect of them, including non-authorised individuals directly and indirectly employed by a BSB authorised person.

**ANNEX 7 - STANDARD DIRECTIONS**

Pursuant to the Disciplinary Tribunal Regulations:

- (1) The hearing of the matter shall be in public;
- (2) That within [ ] days the *defendant* shall be required to specify:
  - (1) Whether in relation to each of the charges they are admitted;
  - (2) Whether any of the facts relied on by the *Bar Standards Board* and set out in the documents provided pursuant to Regulation 6 are admitted;
- (3) That the *defendant* provide by [ ] documents and a list of those witnesses he intends to rely upon together with a copy of their evidence;
- (4) That on or before [ ] both the *BSB Representative* and the *defendant* serve written notice as to which witnesses (if any) they require the other party to tender for cross-examination;
- (5) That the *defendant* shall provide to the *Bar Standards Board* at least fourteen days prior to the date fixed for the substantive hearing [ ] copies of any defence bundle previously provided pursuant to direction (3) above for circulation to the Tribunal members;
- (6) That the estimated duration of the hearing shall be [ ] days/hours;
- (7) That the substantive hearing shall take place on [ ];

OR

- (7) Within [ ] days all parties shall provide the President with their availability dates for the substantive hearing failing which the President may fix the hearing without reference to the availability of any party;
- (8) That there be liberty for the parties to agree in writing to vary the timetable for these directions;
- (9) That there be liberty to apply.