

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

# The Bar Standards Board Handbook

Third edition April 2017

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Includes 9th Edition of  
the Code of Conduct

Version 3.0

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# FOREWORD

Justice and the rule of law are fundamental to our society. So is public confidence in the administration of justice.

Barristers play a central part in our legal system. The effective and efficient running of our legal system relies on barristers using their independent judgment when advising their client, presenting their clients' cases effectively, and carrying out their duty to the court and their other professional duties. The trust and confidence which the public places in barristers, and the reputation of the Bar as a whole, depend on the behaviour of all barristers continuing to merit the trust reposed in them. Barristers therefore must act with integrity, honesty and independence. In their practice they must provide a competent and professional service, keep their knowledge fully up to date, give sound advice and deal frankly and courteously with clients, colleagues and others.

When acting as an advocate or conducting litigation, the role of a barrister is to present their client's case as effectively as possible. Justice requires that people appearing before a court should have a fair hearing. This in turn means that they should be able to have their case presented by skilled advocates who will do so fearlessly, independently and in the best interests of their client. The sound administration of justice also requires that those who are acting as an advocate, or conducting litigation, always observe their duty to the court, even where this conflicts with the interests of their client.

Barristers are now free, if they choose to do so, to offer their services through a range of different business structures, including for the first time BSB authorised entity structures which may be jointly managed and owned by other types of lawyers, such as solicitors, and non-lawyers. The consumer can now choose different means of access to the services of the Bar. However, the public needs to be sure that the standards that apply will be no less rigorous and that access to justice will be safeguarded. So, this Handbook applies not only to barristers but also to alternative business structures, and other entities which are authorised by the Bar Standards Board, to their managers and owners, and to those whom they employ to provide legal services to their clients. It is important that the same high standards are maintained by all those whom the Bar Standards Board regulates.



**Sir Andrew Burns**  
*Chair of the BSB*

Part 1

# Introduction

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# A. GENERAL

## A1. The Bar Standards Board

- 11** The *Bar Standards Board* is a specialist regulator focussing primarily on the regulation of advocacy, litigation and legal advisory services. These legal services have a close relationship to access to justice and the rule of law. Our society is based on a rule of law. Everyone needs to be able to seek expert advice on their legal rights and obligations and to have access to skilled representation in the event of a dispute or litigation. Our system of justice depends on those who provide such services acting fearlessly, independently and competently, so as to further their clients' best interests, subject always to their duty to the Court.
- 12** The regulatory objectives of the *Bar Standards Board* derive from the Legal Services Act 2007 and can be summarised as follows:
- .1 protecting and promoting the public interest;
  - .2 supporting the constitutional principles of the rule of law;
  - .3 improving access to justice;
  - .4 protecting and promoting the interests of consumers;
  - .5 promoting competition in the provision of the services;
  - .6 encouraging an independent, strong, diverse and effective legal profession;
  - .7 increasing public understanding of the citizen's legal rights and duties; and
  - .8 promoting and maintaining adherence to the following professional principles:
    - .a that *authorised persons* act with independence and integrity;
    - .b that *authorised persons* maintain proper standards of work;
    - .c that *authorised persons* act in the best interests of their clients;
    - .d that *authorised persons* comply with their duty to the court to act with independence in the interests of justice; and
    - .e that the affairs of clients are kept confidential.
- 13** The BSB Handbook ("*this Handbook*" or "*the Handbook*") sets out the standards that the *Bar Standards Board* requires the *persons* it regulates to comply with in order for it to be able to meet its *regulatory objectives*.
- 14** Although the *Handbook* is drafted with specific reference to those regulated by the BSB and for use by them, the *Handbook* should also act as a useful reference tool for all consumers of legal services regulated by the *Bar Standards Board*. In particular, the Core Duties and the outcomes set out in Part 2 of this Handbook should give consumers a useful indication of what they should expect from the *Bar Standard Board's* regulatory framework and those subject to it.

## A2. Structure of the Handbook

- 15 The *Handbook* consists of the following parts:
- .1 Part 1 – **Introduction**;
  - .2 Part 2 – **The Code of Conduct** – this part includes the ten Core Duties which underpin the *Bar Standards Board's* entire regulatory framework, as well as the rules which supplement those Core Duties. Compliance with both the Core Duties and the rules is mandatory. The Code of Conduct also contains details of the outcomes which compliance with the Core Duties and the rules is designed to achieve. The *Bar Standards Board's* approach to regulation is risk-focused and so these outcomes have been defined by considering the risks which the profession needs to manage if the *regulatory objectives* are to be achieved;
  - .3 Part 3 – **Scope of Practice and Authorisation and Licensing Rules** – this part includes the requirements that must be met to become entitled to practise as a *barrister* or a *registered European lawyer* and the process that must be followed in order to obtain authorisation to practise as a *BSB entity*. It also provides a summary of the scope of activities that each type of *BSB authorised person* is permitted to undertake;
  - .4 Part 4 – **Qualification Rules** – this part sets out the training which a person must complete, and other requirements which a person must satisfy, in order to be called to the Bar by an *Inn* and become qualified to practise as a *barrister*. It also includes details of the training requirements that *BSB authorised persons* are required to meet;
  - .5 Part 5 – **Enforcement Regulations** – this part sets out the enforcement procedures that apply if *applicable persons* fail to act in accordance with the requirements of this *Handbook*;
  - .6 Part 6 – **Definitions** – this part defines all the italicised terms used in this *Handbook*.
- 16 The *Handbook* includes Core Duties, Outcomes, Guidance, Rules and Regulations. “CD” refers to Core Duties, “o” to Outcomes, “g” to Guidance, “r” to Rules and Regulations. The Regulations form the basis upon which enforcement action may be taken and are set out in Part E of this Handbook. The effect of something being classified as a Core Duty, Outcome, Guidance, Rule or Regulations is as follows:
- .1 **Core Duties** – these underpin the entire regulatory framework and set the mandatory standards that all *BSB regulated persons* or *unregistered barristers* are required to meet. They also define the core elements of professional conduct. Disciplinary proceedings may be taken against a *BSB regulated person* or *unregistered barrister* if the *Bar Standards Board* believes there has been a breach by that person of the Core Duties set out in this *Handbook* and that such action would be in accordance with the *Enforcement Policy*.
  - .2 **The Outcomes** – these explain the reasons for the regulatory scheme and what it is designed to achieve. They are derived from the *regulatory objectives* as defined in the LSA and the risks which must be managed if those objectives are to be achieved. They are not themselves mandatory rules, but they are factors which *BSB regulated persons* or *unregistered barristers* should have in mind when considering how the Core Duties, Conduct Rules or Qualification Rules (as appropriate) should be applied in particular circumstances. The *Bar Standards Board* will take into account whether or not an Outcome has, or might have been, adversely affected when considering how to respond to alleged breaches of the Core Duties, Conduct Rules or Qualification Rules.

- .3 **The Rules** – The Rules serve three purposes:
- .a the Conduct Rules supplement the Core Duties and are mandatory. Disciplinary proceedings may be taken against a *BSB regulated person* or *unregistered barrister* if the *Bar Standards Board* believes there has been a breach by that person of the Conduct Rules set out as applying to them in Part 2 of this *Handbook* and that it would be in accordance with the *Enforcement policy* to take such action. However, the Conduct Rules are not intended to be exhaustive. In any situation where no specific Rule applies, reference should be made to the Core Duties. In situations where specific Rules do apply, it is still necessary to consider the Core Duties, since compliance with the Rules alone will not necessarily be sufficient to comply with the Core Duties;
  - .b the Rules contained within “Scope of Practice Rules” set out the requirements for authorisation and the scope of practice for different kinds of *BSB authorised person* and include some rules relevant to *unregistered barristers*. These rules are mandatory;
  - .c the rest of Part 3 and Part 4 set out the requirements which must be met by a *person* before they may undertake a specific role within those regulated by the *Bar Standards Board*. If a person fails to meet those requirements, they will not be permitted to undertake that role by the *Bar Standards Board*. Where requirements are continuing and a *BSB regulated person* fails to meet such requirements which are relevant to that *BSB regulated person*, the *Bar Standards Board* may take steps in accordance with Part 3 or Part 5 to have that *BSB regulated person* prevented from continuing within that role.
- .4 **Guidance** –
- .a Guidance serves a number of purposes:
    - .i to assist in the interpretation and application of the Core Duties or Rules to which such Guidance relates.
    - .ii to provide examples of the types of conduct or behaviour that the Rules are intended to encourage or which would likely indicate compliance with the relevant Rule or, conversely, which may constitute non-compliance with the Rule to which such Guidance relates.
    - .iii to explain how the Rule applies to a particular type of *person* or *unregistered barrister* and how that particular *person* could comply with that Rule.
    - .iv to act as a signpost to other rules or to guidance on the *Bar Standards Board* website or elsewhere which may be relevant when considering the scope of the Rule.
    - .v in Part 3, to give further information about the process of applying for authorisation and about how the *Bar Standards Board* intends to exercise its discretionary powers in relation to the authorisation of entities.
  - .b The Guidance set out in this Handbook is not the only guidance which is relevant to *BSB regulated persons* and *unregistered barristers*. In addition to the Guidance, the *Bar Standards Board* has published and will publish from time to time various guidance on its website which supplements this *Handbook*, including (but not limited to):
    - .i the *Pupillage Handbook*; and
    - .ii the BSB’s Supporting Information on the BSB Handbook Equality Rules.

- .c In carrying out their obligations or meeting the requirements of this *Handbook*, *BSB regulated persons and unregistered barristers* must have regard to any relevant guidance issued by the *Bar Standards Board* which will be taken into account by the *Bar Standards Board* if there is an alleged breach of or otherwise non-compliance with of the obligations imposed on a *BSB regulated person or unregistered barrister* under this *Handbook*. Failure to comply with the guidance will not of itself be proof of such breach or non-compliance but the *BSB regulated person or unregistered barrister* will need to be able to show how the obligation has been met notwithstanding the departure from the relevant guidance.
- .5 **Regulations** – Part 5 of this *Handbook* sets out the regulations which bind the *Bar Standards Board* when it considers alleged breaches of the *Handbook* and subsequent enforcement action. These Regulations also bind the various Tribunals and panels referred to in that Part and all persons who are subject to the enforcement process. When considering enforcement action under Part 5, the *Bar Standards Board's* response to any alleged breach of or non-compliance with the Core Duties or the Rules will be informed by the impact of the alleged breach or non-compliance on the achievement of the relevant Outcomes, as well by as its own *Supervision and Enforcement Policies* and any other policies published from time to time which the *Bar Standards Board* regards as relevant (taking into account the nature of the alleged breach or non-compliance).

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### A3. Amendments to the Handbook

- r11** Subject to Rules r1 and r2, the *Bar Standards Board* may make amendments and/or additions to this *Handbook* by resolution and any such amendments and/or additions will take effect on such date as the *Bar Standards Board* appoints or, if no such date is appointed, on the date when notice of the amendment is first published on the *Bar Standard Board's* website following approval under Schedule 4 of the Legal Services Act 2007.
- r12** The *Bar Standards Board* has no power without the unanimous consent of the *Inns* to amend or waive Rule Q4.1 or this Rule so as to permit a person who has not been called to the Bar by an Inn to practise as a barrister.
- r13** Any amendments to Section 5.C must be made in accordance with the requirements of that Section.
- r14** Amendments and additions will be published on the *Bar Standards Board's* website.

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## A4. Waivers

- r15** Subject to r12, the *Bar Standards Board* shall have the power to waive or modify:
- .1 the duty imposed on a *BSB regulated person or unregistered barrister* to comply with the provisions of this *Handbook*; or
  - .2 any other requirement of this *Handbook*
  - .3 in such circumstances and to such extent as the *Bar Standards Board* may think fit and either conditionally or unconditionally.
- r16** Any application to the *Bar Standards Board* for a waiver of any of the mandatory requirements or to extend the time within which to complete any of the mandatory requirements must be made in writing, setting out all relevant circumstances relied on and supported by all relevant documentary evidence.

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## B. APPLICATION

- r17 Subject to paragraphs r18 to r11 below, this *Handbook* applies to the following categories of person:
- .1 all *barristers*, that is to say:
    - .a barristers who hold a practising certificate in accordance with Section 3.C ("*practising barristers*");
    - .b barristers who are undertaking either the first non-practising six months of *pupillage* or the second practising six months of *pupillage*, or a part thereof and who are registered with the *Bar Standards Board* as a *pupil* ("*pupils*"); and
    - .c all other barristers who do not hold a practising certificate but who have been called to the Bar by one of the *Inns* and have not ceased to be a member of the Bar ("*unregistered barristers*"),
  - .2 European lawyers registered as such by the *Bar Council* and by an *Inn* in accordance with Section 3.D but only in connection with professional work undertaken by them in England and Wales ("*registered European lawyers*");
  - .3 bodies which have been authorised or licensed by the *Bar Standards Board* in accordance with Section 3.E of this *Handbook* ("*BSB entities*");
  - .4 individuals who are authorised to provide *reserved legal activities* by another *Approved Regulator* where such individuals are employed by a *BSB authorised person* ("*authorised (non-BSB) individuals*");
  - .5 all managers of *BSB entities*;
  - .6 to the extent that this *Handbook* is expressed to apply to them in their capacity as such, owners of a *BSB entity*;
  - .7 solely as regards provisions in this *Handbook* relating to disqualification from performing a *relevant activity* or *relevant activities* and not otherwise, any *non-authorised individuals* who are employed by a *BSB authorised person*; and
  - .8 solely as regards Section 4.B of the *Handbook*, students and *approved training organisations*.
  - .9 and persons within paragraphs r17.1 to 7 (with the exception of pupils undertaking the first six months of *pupillage*, *unregistered barristers* and owners) are referred to as "*BSB regulated persons*" throughout this *Handbook*. For the purposes of Part 5 of the *Handbook* these persons (and those who are no longer *BSB regulated persons* or *unregistered barristers* but who were at the time when any conduct was complained of) are referred to as "*applicable persons*". For the avoidance of doubt, the *Handbook* continues to apply to those who are subject to suspension.

- r18** If you are a *BSB authorised individual* who is employed by or a *manager* of an *authorised (non-BSB) body* and is subject to the regulatory arrangements of the *Approved Regulator* of that body, and the requirements of that other *Approved Regulator* conflict with a provision within this *Handbook* then the conflicting provision within this *Handbook* shall not apply to you. You will instead be expected to comply with the requirements of that other *Approved Regulator* and, if you do so, you will not be considered to be in breach of the relevant provision of this *Handbook*.
- r19** If you are a *pupil* and are:
- .1 the *pupil* of an *employed barrister (non-authorised body)*; or
  - .2 the *pupil* of a manager or *employee of a BSB entity*; or
  - .3 the *pupil* of a manager or *employee of an authorised (non-BSB) body*; or
  - .4 spending a period of external training with a *BSB entity* or an *authorised (non-BSB) body*
  - .5 this *Handbook* will apply to you as though you were an employee of the *barrister's* employer or the body concerned.
- r110** If you are a *registered European lawyer*, then, except where otherwise provided, the provisions of this *Handbook* which apply to *barristers* shall apply to you, in connection with all professional work undertaken by you in England and Wales, as if you were a *self-employed barrister* or an *employed barrister (non-authorised body or a manager or employee of an authorised (non BSB) body* or a manager or employee of a *BSB entity* (as the case may be) depending on the way in which you practise.
- r111** In addition to the above, each Part to this Handbook has its own application section which sets out the more detailed application of that particular Part. In the event of any inconsistency, the application section specific to the particular Part shall prevail over these general provisions.



# C. COMMENCEMENT AND TRANSITIONAL PROVISIONS

**r112** This third edition of the *Handbook* came into force on 03 April 2017 and replaced the second edition of the *Handbook* (which came into effect from 30 April 2015).

**r113** Subject to r114 below, in respect of anything done or omitted to be done or otherwise arising before 6 January 2014:

- .1 Parts 2 and 3 of this Handbook shall not apply;
- .2 the edition of the Code of Conduct or relevant Annexe in force at the relevant time shall apply; and
- .3 any reference to Part 2, Part 3 or Part 5 of this *Handbook* shall include reference to the corresponding Part of the edition of the Code of Conduct or relevant Annexe which was in force at the relevant time.

**r114** Where:

- .1 a matter is being dealt with under Annexe J (The Complaints Rules 2011), Annexe K (The Disciplinary Tribunals Regulations (2009) (Reissued 1 February 2012)), Annexe M (Hearings before the Visitors Rules), Annexe N (Interim Suspension Rules) or Annexe O (Fitness to Practise Rules) as at 6 January 2014; or
- .2 anything done or omitted to be done or otherwise arising before 6 January 2014 required referral for consideration in accordance with any of the above Annexes,

then Part 5 of this *Handbook* shall apply to all such cases and any step taken pursuant to the Annexes then applying (if any) shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of Part 5 of this *Handbook*, save that no fine in excess of £15,000 may be imposed by a *Disciplinary Tribunal* in respect of conduct before 6 January 2014 and no financial *administrative sanction* in excess of £300 may be imposed by the PCC in respect of conduct before 6 January 2014.

## D. INTERPRETATION

**r115** In this *Handbook*:

- .1 words and phrases in italics shall have the meaning given to them in Part 6;
- .2 any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural; and, in each case vice versa;
- .3 any reference to another provision in this *Handbook* shall be a reference to that provision as amended from time to time; and
- .4 where references are made to an enactment, it is a reference to that enactment as amended, and includes a reference to that provision as extended or applied by or under any other enactment.

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## Part 2

# The Code of Conduct

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# A. APPLICATION

## R

### Rules

#### rC1 Who?

- .1 Section 2.B (Core Duties): applies to all *BSB regulated persons* and *unregistered barristers* except where stated otherwise, and references to “you” and “your” in Section 2.B shall be construed accordingly.
- .2 Section 2.C (Conduct Rules):
  - a Applies to all *BSB regulated persons*.
  - b Rules rC3.5, rC4, rC8, rC16, rC19 and rC64 to rC70 (and associated guidance to those rules) and the guidance on Core Duties also apply to *unregistered barristers*. If an *unregistered barrister* practises as a *barrister* as set out in rS9 then those rules which apply to *practising barristers* shall also apply.

References to “you” and “your” in Section 2.C shall be construed accordingly

- .3 Section 2.D (Specific Rules): applies to specific groups as defined in each sub-section and references to “you” and “your” shall be construed accordingly.

#### rC2 When?

- .1 Section 2.B applies when practising or otherwise providing *legal services*. In addition, CD5 and CD9 apply at all times.
- .2 Section 2.C applies when practising or otherwise providing *legal services*. In addition, rules rC8, rC16 and rC64 to rC70 and the associated guidance apply at all times.
- .3 Section 2.D applies when practising or otherwise providing *legal services*.
- .4 Sections 2.B, 2.C and 2.D only apply to *registered European lawyers* in connection with professional work undertaken by them in that capacity in England and Wales.

## B. THE CORE DUTIES

- CD1** You must observe your duty to the court in the administration of justice [CD1].
- CD2** You must act in the best interests of each client [CD2].
- CD3** You must act with honesty and integrity [CD3].
- CD4** You must maintain your independence [CD4].
- CD5** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession [CD5].
- CD6** You must keep the affairs of each client confidential [CD6].
- CD7** You must provide a competent standard of work and service to each client [CD7].
- CD8** You must not discriminate unlawfully against any person [CD8].
- CD9** You must be open and co-operative with your regulators [CD9].
- CD10** You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations [CD10].

### G

#### Guidance

##### Guidance to the core duties

- gC1** The Core Duties are not presented in order of precedence, subject to the following:
- .1 CD1 overrides any other core duty, if and to the extent the two are inconsistent. Rules rC3.5 and rC4 deal specifically with the relationship between CD1, CD2 and CD6 and you should refer to those rules and to the related Guidance;
  - .2 in certain other circumstances set out in this Code of Conduct one Core Duty overrides another. Specifically, Rule rC16 provides that CD2 (as well as being subject to CD1) is subject to your obligations under CD3, CD4 and CD8.
- gC2** Your obligation to take reasonable steps to manage your *practice*, or carry out your role within your *practice*, competently and in such a way as to achieve compliance with your legal and regulatory obligations (CD10) includes an obligation to take all reasonable steps to mitigate the effects of any breach of those legal and regulatory obligations once you become aware of the same.

# C. THE CONDUCT RULES

## C1. You and the *court*

### O

#### Outcomes

- oC1** The *court* is able to rely on information provided to it by those conducting litigation and by advocates who appear before it.
- oC2** The proper administration of justice is served.
- oC3** The interests of *clients* are protected to the extent compatible with outcomes oC1 and oC2 and the Core Duties.
- oC4** Both those who appear before the *court* and *clients* understand clearly the extent of the duties owed to the *court* by advocates and those conducting litigation and the circumstances in which duties owed to *clients* will be overridden by the duty owed to the *court*.
- oC5** *The public* has confidence in the administration of justice and in those who serve it.

### R

#### Rules

- rC3** You owe a duty to the *court* to act with independence in the interests of justice. This duty overrides any inconsistent obligations which you may have (other than obligations under the criminal law). It includes the following specific obligations which apply whether you are acting as an advocate or are otherwise involved in the conduct of litigation in whatever role (with the exception of Rule C3.1 below, which applies when acting as an advocate):
  - .1 you must not knowingly or recklessly mislead or attempt to mislead the *court*;
  - .2 you must not abuse your role as an advocate;
  - .3 you must take reasonable steps to avoid wasting the *court's* time;
  - .4 you must take reasonable steps to ensure that the *court* has before it all relevant decisions and legislative provisions;
  - .5 you must ensure that your ability to act independently is not compromised.
- rC4** Your duty to act in the best interests of each *client* is subject to your duty to the *court*.
- rC5** Your duty to the *court* does not require you to act in breach of your duty to keep the affairs of each *client* confidential.

## Not misleading the court

**rC6** Your duty not to mislead the *court* will include the following obligations:

- .1 you must not:
  - .a make submissions, representations or any other statement; or
  - .b ask questions which suggest facts to witnesses  
which you know, or are instructed, are untrue or misleading.
- .2 you must not call witnesses to give evidence or put affidavits or witness statements to the *court* which you know, or are *instructed*, are untrue or misleading, unless you make clear to the *court* the true position as known by or instructed to you.

## G

### Guidance

#### Guidance on Rules rC3 – rC6 and relationship to CD1 and CD2

**gC3** Rules rC3 – rC6 set out some specific aspects of your duty to the *court* (CD1). See CD1 and associated Guidance at gC1.

**gC4** As to your duty not to mislead the court:

- .1 knowingly misleading the *court* includes being complicit in another person misleading the court;
- .2 knowingly misleading the *court* also includes inadvertently misleading the court if you later realise that you have misled the *court*, and you fail to correct the position;
- .3 recklessly means being indifferent to the truth, or not caring whether something is true or false; and
- .4 the duty continues to apply for the duration of the case.

**gC5** Your duty under Rule rC3.4 includes drawing to the attention of the *court* any decision or provision which may be adverse to the interests of your *client*. It is particularly important where you are appearing against a litigant who is not legally represented.

**gC6** You are obliged by CD2 to promote and to protect your *client's* interests so far as that is consistent with the law and with your overriding duty to the *court* under CD1. Your duty to the *court* does not prevent you from putting forward your *client's* case simply because you do not believe that the facts are as your *client* states them to be (or as you, on your *client's* behalf, state them to be), as long as any positive case you put forward accords with your *instructions* and you do not mislead the *court*. Your role when acting as an advocate or conducting litigation is to present your *client's* case, and it is not for you to decide whether your *client's* case is to be believed.

**gC7** For example, you are entitled and it may often be appropriate to draw to the witness's attention other evidence which appears to conflict with what the witness is saying and you are entitled to indicate that a *court* may find a particular piece of evidence difficult to accept. But if the witness maintains that the evidence is true, it should be recorded in the witness statement and you will not be misleading the *court* if you call the witness to confirm their witness statement. Equally, there may be circumstances where you call a hostile witness whose evidence you are instructed is untrue. You will not be in breach of Rule rC6 if you make the position clear to the *court*. See, further, the guidance at gC14.



- gC8** As set out in Rule rC5, your duty to the *court* does not permit or require you to disclose confidential information which you have obtained in the course of your *instructions* and which your client has not authorised you to disclose to the *court*. However, Rule rC6 requires you not knowingly to mislead the *court*. There may be situations where you have obligations under both these rules.
- gC9** Rule rC4 makes it clear that your duty to act in the best interests of your *client* is subject to your duty to the *court*. For example, if your *client* were to tell you that they have committed the crime with which they were charged, in order to be able to ensure compliance with Rule rC4 on the one hand and Rule rC3 and Rule rC6 on the other:
- .1 you would not be entitled to disclose that information to the *court* without your *client's* consent; and
  - .2 you would not be misleading the *court* if, after your *client* had entered a plea of 'not guilty', you were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of your *client's* guilt.
- gC10** However, you would be misleading the *court* and would therefore be in breach of Rules rC5 and rC6 if you were to set up a positive case inconsistent with the confession, as for example by:
- .1 suggesting to prosecution witnesses, calling your *client* or your witnesses to show; or submitting to the *jury*, that your *client* did not commit the crime; or
  - .2 suggesting that someone else had done so; or
  - .3 putting forward an alibi.
- gC11** If there is a risk that the *court* will be misled unless you disclose confidential information which you have learned in the course of your *instructions*, you should ask the *client* for permission to disclose it to the *court*. If your *client* refuses to allow you to make the disclosure you must cease to act, and return your *instructions*: see Rules rC25 to rC27 below. In these circumstances you must not reveal the information to the *court*.
- gC12** For example, if your *client* tells you that they have previous *convictions* of which the prosecution is not aware, you may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous *convictions* will result in the *court* failing to pass the sentence that is required by law. In that situation, you must advise your *client* that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your *client* does not agree to disclose the previous *convictions*, you can continue to represent your *client* but in doing so must not say anything that misleads the *court*. This will constrain what you can say in mitigation. For example, you could not advance a positive case of previous good character knowing that there are undisclosed prior *convictions*. Moreover, if the *court* asks you a direct question you must not give an untruthful answer and therefore you would have to withdraw if, on your being asked such a question, your *client* still refuses to allow you to answer the question truthfully. You should explain this to your *client*.
- gC13** Similarly, if you become aware that your *client* has a document which should be disclosed but has not been disclosed, you cannot continue to act unless your *client* agrees to the disclosure of the document. In these circumstances you must not reveal the existence or contents of the document to the *court*.

## R

## Rules

**Not abusing your role as an advocate**

**rC7** Where you are acting as an advocate, your duty not to abuse your role includes the following obligations:

- .1 you must not make statements or ask questions merely to insult, humiliate or annoy a witness or any other person;
- .2 you must not make a serious allegation against a witness whom you have had an opportunity to cross-examine unless you have given that witness a chance to answer the allegation in cross-examination;
- .3 you must not make a serious allegation against any person, or suggest that a person is guilty of a crime with which your *client* is charged unless:
  - a you have reasonable grounds for the allegation; and
  - b the allegation is relevant to your *client's* case or the credibility of a witness; and
  - c where the allegation relates to a third party, you avoid naming them in open *court* unless this is reasonably necessary.
- .4 you must not put forward to the *court* a personal opinion of the facts or the law unless you are invited or required to do so by the *court* or by law.

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## C2. Behaving ethically

### O

#### Outcomes

- oC6** Those and entities regulated by the *Bar Standards Board* maintain standards of honesty, integrity and independence, and are seen as so doing.
- oC7** The proper administration of justice, access to justice and the best interests of *clients* are served.
- oC8** Those and entities regulated by the *Bar Standards Board* do not discriminate unlawfully and take appropriate steps to prevent *discrimination* occurring in their practices.
- oC9** Those and entities regulated by the *Bar Standards Board* and *clients* understand the obligations of honesty, integrity and independence.

### R

#### Rules

#### Honesty, integrity and independence

- rC8** You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).
- rC9** Your duty to act with honesty and integrity under CD3 includes the following requirements:
  - .1 you must not knowingly or recklessly mislead or attempt to mislead anyone;
  - .2 you must not draft any statement of case, witness statement, affidavit or other document containing:
    - a any statement of fact or contention which is not supported by your *client* or by your *instructions*;
    - b any contention which you do not consider to be properly arguable;
    - c any allegation of fraud, unless you have clear instructions to allege fraud and you have reasonably credible material which establishes an arguable case of fraud;
    - d (in the case of a witness statement or affidavit) any statement of fact other than the evidence which you reasonably believe the witness would give if the witness were giving evidence orally;
  - .3 you must not encourage a witness to give evidence which is misleading or untruthful;
  - .4 you must not rehearse, practise with or coach a witness in respect of their evidence;
  - .5 unless you have the permission of the representative for the opposing side or of the *court*, you must not communicate with any witness (including your *client*) about the case while the witness is giving evidence;
  - .6 you must not make, or offer to make, payments to any witness which are contingent on their evidence or on the outcome of the case;
  - .7 you must only propose, or accept, fee arrangements which are legal.

## G

## Guidance

## Guidance on Rules rC8 and rC9 and their relationship to CD1, CD2, CD3, CD4 and CD5

- gC14** Your honesty, integrity and independence are fundamental. The interests of justice (CD1) and the *client's* best interests (CD2) can only be properly served, and any conflicts between the two properly resolved, if you conduct yourself honestly and maintain your independence from external pressures, as required by CD3 and CD4. You should also refer to Rule rC16 which subjects your duty to act in the best interests of your *client* (CD2) to your observance of CD3 and CD4, as well as to your duty to the *court* (CD1).
- gC15** Other rules deal with specific aspects of your obligation to act in your *client's* best interests (CD2) while maintaining honesty, integrity (CD3) and independence (CD4), such as rule rC21.10 (not acting where your independence is compromised), rule rC10 (not paying or accepting *referral fees*) and rC21 (not acting in circumstances of a conflict of interest or where you risk breaching one *client's* confidentiality in favour of another's).
- gC16** Rule rC3 addresses how your conduct is perceived by the public. Conduct on your part which the public may reasonably perceive as undermining your honesty, integrity or independence is likely to diminish the trust and confidence which the public places in you or in the profession, in breach of CD5. Rule rC8 is not exhaustive of the ways in which CD5 may be breached.
- gC17** In addition to your obligation to only propose, or accept, fee arrangements which are legal in Rule C9.7, you must also have regard to your obligations in relation to referral fees in Rule rC10 and the associated guidance.

## Examples of how you may be seen as compromising your independence

- gC18** The following may reasonably be seen as compromising your independence in breach of Rule 8 (whether or not the circumstances are such that Rule rC10 is also breached):
- .1 offering, promising or giving:
    - a any commission or referral fee (of whatever size) – note that these are in any case prohibited by Rule rC10 and associated guidance; or
    - b a gift (apart from items of modest value),
 to any *client*, *professional client* or other *intermediary*; or
  - .2 lending money to any such *client*, *professional client* or other *intermediary*; or
  - .3 accepting any money (whether as a loan or otherwise) from any *client*, *professional client* or other *intermediary*, unless it is a payment for your professional services or reimbursement of expenses or of disbursements made on behalf of the *client*;
- gC19** If you are offered a gift by a current, prospective or former *client*, *professional client* or other *intermediary*, you should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that your independence had been compromised. If this would be the case, you should refuse to accept the gift.
- gC20** The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would lead others reasonably to think that your independence had been compromised.

**gC21** Guidance gC18 to gC20 above is likely to be more relevant where you are a *self-employed barrister*, a *BSB entity*, an *authorised (non-BSB) individual*, an *employed barrister (BSB entity)* or a *manager of a BSB entity*. If you are a *BSB authorised individual* who is an *employee* or *manager of an authorised (non-BSB) body* or you are an *employed barrister (non-authorised body)* and your *approved regulator* or *employer* (as appropriate) permits payments to which Rule rC10 applies, you may make or receive such payments only in your capacity as such and as permitted by the rules of your *approved regulator* or *employer* (as appropriate). For further information on referral fees, see the guidance at gC32).

**gC22** The former prohibition on *practising barristers* expressing a personal opinion in the media in relation to any future or current proceedings in which they are briefed has been removed. *Practising barristers* must, nevertheless, ensure that any comment they may make does not undermine, and is not reasonably seen as undermining, their independence. Furthermore, any such comment must not bring the profession, nor any other *barrister* into disrepute. Further guidance is available on the *Bar Standards Board's* website (<https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>) or by clicking on the relevant link.

#### Examples of what your duty to act with honesty and integrity may require

**gC23** Rule rC9 sets out some specific aspects of your duty under CD3 to act with honesty and integrity.

**gC24** In addition to the above, where the other side is legally represented and you are conducting correspondence in respect of the particular matter, you are expected to correspond at all times with that other party's legal representative – otherwise you may be regarded as breaching CD3 or Rule C9.

#### Other possible breaches of CD3 and/or CD5

**gC25** A breach of Rule rC9 may also constitute a breach of CD3 and/or CD5. Other conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

- .1 subject to Guidance gC26 below, breaches of Rule rC8;
- .2 breaches of Rule rC10;
- .3 criminal conduct, other than *minor criminal offences* (see Guidance C27);
- .4 seriously offensive or discreditable conduct towards third parties;
- .5 dishonesty;
- .6 unlawful *victimisation* or *harassment*; or
- .7 abuse of your professional position.

**gC26** For the purposes of Guidance gC25.7 above, referring to your status as a *barrister*, for example on professional notepaper, in a context where it is irrelevant, such as in a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD3 and/or CD5.

**gC27** Conduct which is not likely to be treated as a breach of Rules rC8 or rC9, or CD3 or CD5, includes (but is not limited to):

- .1 *minor criminal offences*;
- .2 your conduct in your private or personal life, unless this involves:
  - .a abuse of your professional position; or
  - .b committing a *criminal offence*, other than a *minor criminal offence*.

**gC28** For the purpose of Guidance rC27 above, *minor criminal offences* include:

- .1 an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; or
- .2 an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; or
- .3 an offence whose main ingredient is the unlawful parking of a motor vehicle.

**R****Rules****Referral fees**

**rC10** You must not pay or receive *referral fees*.

**G****Guidance****Guidance on Rule rC10 and their relationship to CD2, CD3, CD4 and CD5**

**gC29** Making or receiving payments in order to procure or reward the referral to you by an intermediary of professional *instructions* is inconsistent with your obligations under CD2 and/or CD3 and/or CD4 and may also breach CD5.

**gC30** Moreover:

- .1 where *public* funding is in place, the *Legal Aid Agency's* Unified Contract Standard Terms explicitly prohibit contract-holders from making or receiving any payment (or any other benefit) for the referral or introduction of a *client*, whether or not the lay *client* knows of, and consents to, the payment;
- .2 whether in a private or publicly funded case, a *referral fee* to which the *client* has not consented may constitute a bribe and therefore a *criminal offence* under the Bribery Act 2010;

**gC31** *referral fees* and inducements (as defined in the Criminal Justice and Courts Act 2015) are prohibited where they relate to a claim or potential claim for damages for personal injury or death or arise out of circumstances involving personal injury or death personal injury claims: section 56 Legal Aid, Sentencing and Punishment of Offenders Act 2012 and section 58 Criminal Justice and Courts Act 2015. Rule rC10 does not prohibit proper expenses that are not a reward for referring work, such as genuine and reasonable payments for:

- .1 clerking and administrative services (including where these are outsourced);
- .2 membership subscriptions to ADR bodies that appoint or recommend a person to provide mediation, arbitration or adjudication services; or
- .3 advertising and publicity, which are payable whether or not any work is referred. However, the fact that a fee varies with the amount of work received does not necessarily mean that that it is a *referral fee*, if it is genuinely for a marketing service from someone who is not directing work to one provider rather than another, depending on who pays more.

**gC32** Further guidance is available at <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>

**R** Rules**Undertakings**

**rC11** You must within an agreed timescale or within a reasonable period of time comply with any undertaking you give in the course of conducting litigation.

**G** Guidance**Guidance on Rule rC11**

**gC33** You should ensure your insurance covers you in respect of any liability incurred in giving an undertaking.

**R** Rules**Discrimination**

**rC12** You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

**G** Guidance**Guidance on Rule rC12**

**gC34** Rules rC110 and associated guidance are also relevant to equality and diversity. The BSB's Supporting Information on the BSB Handbook Equality Rules are available on the BSB website: [https://www.barstandardsboard.org.uk/media/1562168/bsb\\_equality\\_rules\\_handbook\\_corrected.pdf](https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf).

**R** Rules**Foreign work**

**rC13** In connection with any *foreign work* you must comply with any applicable rule of conduct prescribed by the law or by any national or local Bar of:

- .1 the place where the work is or is to be performed; and
- .2 the place where any proceedings or matters to which the work relates are taking place or contemplated;

unless such rule is inconsistent with any requirement of the Core Duties.

**rC14** If you solicit work in any jurisdiction outside England and Wales, you must not do so in a manner which would be prohibited if you were a member of the local Bar.

## G

## Guidance

**Guidance on Rules rC13 and rC14**

**gC35** When you are engaged in *cross border activities* within a *CCBE State* other than the UK, you must comply with the rules at 2.D5 which implement the part of the *Code of Conduct for European Lawyers* not otherwise covered by this Handbook as well as with any other applicable rules of conduct relevant to that particular *CCBE State*. It is your responsibility to inform yourself as to any applicable rules of conduct.

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## C3. You and your client

### O Outcomes

- oC10** *Clients* receive a competent standard of work and service.
- oC11** *Clients'* best interests are protected and promoted by those acting for them.
- oC12** *BSB authorised persons* do not accept instructions from *clients* where there is a conflict between their own interests and the *clients'* or where there is a conflict between one or more *clients* except when permitted in this *Handbook*.
- oC13** *Clients* know what to expect and understand the advice they are given.
- oC14** Care is given to ensure that the interests of vulnerable *clients* are taken into account and their needs are met.
- oC15** *Clients* have confidence in those who are instructed to act on their behalf.
- oC16** *Instructions* are not accepted, refused, or returned in circumstances which adversely affect the administration of justice, access to justice or (so far as compatible with these) the best interests of the *client*.
- oC17** *Clients* and *BSB authorised persons* and *authorised (non-BSB)* individuals and *managers of BSB entities* are clear about the circumstances in which *instructions* may not be accepted or may or must be returned.
- oC18** *Clients* are adequately informed as to the terms on which work is to be done.
- oC19** *Clients* understand how to bring a *complaint* and *complaints* are dealt with promptly, fairly, openly and effectively.
- oC20** *Clients* understand who is responsible for work done for them

### R Rules

#### Best interests of each client, provision of a competent standard of work and confidentiality

- rC15** Your duty to act in the best interests of each *client* (CD2), to provide a competent standard of work and service to each *client* (CD7) and to keep the affairs of each *client* confidential (CD6) includes the following obligations:
- .1 you must promote fearlessly and by all proper and lawful means the *client's* best interests;
  - .2 you must do so without regard to your own interests or to any consequences to you (which may include, for the avoidance of doubt, you being required to take reasonable steps to mitigate the effects of any breach of this *Handbook*);
  - .3 you must do so without regard to the consequences to any other person (whether to your *professional client*, *employer* or any other person);
  - .4 you must not permit your *professional client*, *employer* or any other person to limit your discretion as to how the interests of the *client* can best be served; and

.5 you must protect the confidentiality of each *client's* affairs, except for such disclosures as are required or permitted by law or to which you *client* gives informed consent.

**rC16** Your duty to act in the best interests of each *client* (CD2) is subject to your duty to the *court* (CD1) and to your obligations to act with honesty, and integrity (CD3) and to maintain your independence (CD4).

## G

## Guidance

### Guidance on Rules rC15 and rC16 and their relationship to CD2, CD6 and CD7

**gC36** Your duty is to your *client*, not to your *professional client* or other *intermediary* (if any).

**gC37** Rules rC15 and rC16 are expressed in terms of the interests of each *client*. This is because you may only accept *instructions* to act for more than one *client* if you are able to act in the best interests of each *client* as if that *client* were your only *client*, as CD2 requires of you. See further Rule rC17 on the circumstances when you are obliged to advise your *client* to seek other legal representation and Rules rC21.2 and rC21.3 on conflicts of interest and the guidance to those rules at gC69.

**gC38** CD7 requires not only that you provide a competent standard of work but also a competent standard of service to your *client*. Rule rC15 is not exhaustive of what you must do to ensure your compliance with CD2 and CD7. By way of example, a competent standard of work and of service also includes:

- .1 treating each *client* with courtesy and consideration; and
- .2 seeking to advise your *client*, in terms they can understand; and
- .3 taking all reasonable steps to avoid incurring unnecessary expense; and
- .4 reading your instructions promptly. This may be important if there is a time limit or limitation period. If you fail to read your instructions promptly, it is possible that you will not be aware of the time limit until it is too late.

**gC39** In order to be able to provide a competent standard of work, you should keep your professional knowledge and skills up to date, regularly take part in professional development and educational activities that maintain and further develop your competence and performance and, where you are a *BSB entity* or a *manager* of such body, you should take reasonable steps to ensure that *managers* and *employees* within your *organisation* undertake such *training*. Merely complying with the minimum Continuing Professional Development requirements may not be sufficient to comply with Rule rC15. You should also ensure that you comply with any specific training requirements of the *Bar Standards Board* before undertaking certain activities – for example, you should not attend a police station to advise a suspect or interviewee as to the handling and conduct of police interviews unless you have complied with such training requirements as may be imposed by the *Bar Standards Board* in respect of such work. Similarly, you should not undertake public access work without successfully completing the required training specified by the *Bar Standards Board*.

**gC40** In addition to Guidance gC38 above, a *BSB entity* or a *manager* of such body should ensure that work is allocated appropriately, to *managers* and/or *employees* with the appropriate knowledge and expertise to undertake such work.

**gC41** You should remember that your *client* may not be familiar with legal proceedings and may find them difficult and stressful. You should do what you reasonably can to ensure that the *client* understands the process and what to expect from it and from you. You should also try to avoid any unnecessary distress for your *client*. This is particularly important where you are dealing with a vulnerable *client*.

- gC42** The duty of confidentiality (CD6) is central to the administration of justice. *Clients* who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a *court*. CD6, rC4 and Guidance gC8 and gC11 to gC13 provide further information.
- gC43** Rule rC15.5 acknowledges that your duty of confidentiality is subject to an exception if disclosure is required or permitted by law. For example, you may be obliged to disclose certain matters by the Proceeds of Crime Act 2002. Disclosure in those circumstances would not amount to a breach of CD6 or Rule rC15.5 In other circumstances, you may only make disclosure of confidential information where your *client* gives informed consent to the disclosure. See the Guidance to Rule rC21 at gC68 for an example of circumstances where it may be appropriate for you to seek such consent.
- gC44** There may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to the *court*. Rule rC4 and Guidance gC8 and gC11 to gC13 provide further information.
- gC45** Similarly, there may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to your regulator. Rule rC64 and Guidance gC92 to gC93 in respect of that rule provide further information. In addition, Rule rC66 may also apply.
- gC46** If you are a *pupil of*, or are *devilling work for*, a *self-employed barrister*, Rule rC15.5 applies to you as if the *client* of the *self-employed barrister* was your own *client*.
- gC47** The section You and Your Practice, at 2.C5, provides for duties regarding the systems and procedures you must put in place and enforce in order to ensure compliance with Rule rC15.5.
- gC48** If you are an *authorised individual* or a *manager* working in a *BSB entity* your personal duty to act in the best interests of your *client* requires you to assist in the redistribution of *client* files and otherwise assisting to ensure each *client's* interests are protected in the event that the *BSB entity* itself is unable to do so for whatever reason (for example, insolvency).

**R****Rules**

- rC17** Your duty to act in the best interests of each *client* (CD2) includes a duty to consider whether the *client's* best interests are served by different legal representation, and if so, to advise the *client* to that effect.

**G****Guidance****Guidance on Rule rC17**

- gC49** Your duty to comply with Rule rC17 may require you to advise your *client* that in their best interests they should be represented by:
- .1 a different advocate or legal representative, whether more senior or more junior than you, or with different experience from yours;
  - .2 more than one advocate or legal representative;
  - .3 fewer advocates or legal representatives than have been instructed; or
  - .4 in the case where you are acting through a *professional client*, different *solicitors*.

**gC50** Specific rules apply where you are acting on a public access basis, which oblige you to consider whether *solicitors* should also be instructed. As to these see the public access rules at Section 2.D2 and further in respect of *BSB regulated bodies* Rule S28 and the associated guidance.

**gC51** CD2 and Rules rC15.5 and rC17 require you, subject to Rule rC16, to put your *client's* interests ahead of your own and those of any other person. If you consider that your *professional client*, another *solicitor* or *intermediary*, another *barrister*, or any other person acting on behalf of your *client* has been negligent, you should ensure that your *client* is advised of this.

## R Rules

**rC18** Your duty to provide a competent standard of work and service to each *client* (CD7) includes a duty to inform your *professional client*, or *your client* if instructed by a *client*, as far as reasonably possible in sufficient time to enable appropriate steps to be taken to protect the *client's* interests, if:

- .1 it becomes apparent to you that you will not be able to carry out the *instructions* within the time requested, or within a reasonable time after receipt of *instructions*; or
- .2 there is an appreciable risk that you may not be able to undertake the *instructions*.

## G Guidance

### Guidance on Rule rC18

**gC52** For further information about what you should do in the event that you have a clash of listings, please refer to our guidance which can be accessed on the *Bar Standards Board's* website at <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.

## R Rules

### Not misleading clients and potential clients

**rC19** If you supply, or offer to supply, *legal services*, you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, *legal services* about:

- .1 the nature and scope of the *legal services* which you are offering or agreeing to supply;
- .2 the terms on which the *legal services* will be supplied, who will carry out the work and the basis of charging;
- .3 who is legally responsible for the provision of the services;
- .4 whether you are entitled to supply those services and the extent to which you are regulated when providing those services and by whom; or
- .5 the extent to which you are covered by insurance against claims for professional negligence.

## G

## Guidance

## Guidance on Rule rC19

- gC53** The best interests of *clients* (CD2) and public confidence in the profession (CD5) are undermined if there is a lack of clarity as to whether services are regulated, who is supplying them, on what terms, and what redress *clients* have and against whom if things go wrong. Rule rC19 may potentially be infringed in a broad variety of situations. You must consider how matters will appear to the *client*.
- gC54** *Clients* may, by way of example, be misled if *self-employed barristers* were to share premises with *solicitors* or other professionals without making sufficiently clear to *clients* that they remain separate and independent from one another and are not responsible for one another's work.
- gC55** Likewise, it is likely to be necessary to make clear to *clients* that any entity established as a "ProcureCo" is not itself able to supply *reserved legal activities* and is not subject to regulation by the *Bar Standards Board*.
- gC56** A set of *chambers* dealing directly with unsophisticated lay *clients* might breach Rule rC19 if its branding created the appearance of an entity or *partnership* and it failed to explain that the members of *chambers* are, in fact, self-employed individuals who are not responsible for one another's work.
- gC57** Knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead could also result in you being in breach of Rule rC19. You should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.
- gC58** If you carry out public access work but are not authorised to *conduct litigation*, you would breach Rule rC19 if you caused or permitted your *client* to be misled into believing that you are entitled to, or will, provide services that include the *conduct of litigation* on behalf of your *client*.
- gC59** If you are a *self-employed barrister*, you would, for example, likely be regarded as having breached Rule rC19 if you charged at your own hourly rate for work done by a *devil* or *pupil*. Moreover, such conduct may well breach your duty to act with honesty and integrity (CD3).
- gC60** If you are an *unregistered barrister*, you would breach Rule rC19 if you misled your *client* into thinking that you were providing *legal services* to them as a *barrister* or that you were subject to the same regulation as a *practising barrister*. You would also breach the rule if you implied that you were covered by insurance if you were not, or if you suggested that your *clients* could seek a remedy from the *Bar Standards Board* or the *Legal Ombudsman* if they were dissatisfied with the services you provided. You should also be aware of the rules set out in Section D5 of this Code of Conduct and the additional guidance for *unregistered barristers* available on the *Bar Standards Board* website which can be accessed here <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.
- gC61** Rule C19.3 is particularly relevant where you act in more than one capacity, for example as a *BSB authorised individual* as well as a manager or employee of an *authorised (non BSB) body*. This is because you should make it clear to each *client* in what capacity you are acting and, therefore, who has legal responsibility for the provision of the services.
- gC62** If you are a *pupil*, you should not hold yourself out as a member of *chambers* or permit your name to appear as such. You should ensure the *client* understands your status.
- gC63** A number of other rules impose positive obligations on you, in particular circumstances, to make clear your regulatory status and the basis and terms on which you are acting. See, for example, Rule rC23 and guidance gC74.

**R** Rules**Personal responsibility**

**rC20** Where you are a *BSB authorised individual*, you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your *client*, *professional client*, *employer* or any other person.

**G** Guidance**Guidance on Rule rC20**

**gC64** It is fundamental that *BSB authorised individuals* and *authorised (non-BSB) individuals* are personally responsible for their own conduct and for their own professional work, whether they are acting in a self-employed or employed capacity (in the case of *BSB authorised individuals*) or as an *employee* or *manager* of a *BSB entity* (in the case of *authorised (non-BSB) individuals*).

**gC65** Nothing in Rule rC20 is intended to prevent you from delegating or outsourcing to any other person discrete tasks (for example, research) which such other person is well-equipped to provide. However, where such tasks are delegated or outsourced, you remain personally responsible for such work. Further, in circumstances where such tasks are being outsourced, Rule rC87 which deals with outsourcing, must be complied with.

**gC66** You are responsible for the service provided by all those who represent you in your dealings with your *client*, including your clerks or any other *employees* or agents.

**gC67** Nothing in this rule or guidance prevents a *BSB entity* from contracting on the basis that any civil liability for the services provided by a *BSB regulated individual* lies with the *BSB entity* and the *BSB regulated individual* is not to be liable. However, any such stipulation as to civil liability does not affect the regulatory obligations of the *BSB regulated individual* including (but not limited to) that of being personally responsible under Rule rC20 for the professional judgments made.

**gC68** See, further, guidance to Rule rC19, as regards work by *pupils* and *devils* Rule rC15, gC124 and Rule rC85 (on outsourcing).

**R** Rules**Accepting instructions**

**rC21** You must not accept *instructions* to act in a particular matter if:

- .1 due to any existing or previous *instructions* you are not able to fulfil your obligation to act in the best interests of the prospective *client*; or
- .2 there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the prospective *client* in respect of the particular matter; or
- .3 there is a conflict of interest, or real risk of conflict of interest, between the prospective *client* and one or more of your former or existing *clients* in respect of the particular matter unless all of the *clients* who have an interest in the particular matter give their informed consent to your acting in such circumstances; or

- .4 there is a real risk that information confidential to another former or existing *client*, or any other person to whom you owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, you could not act in the best interests of the prospective *client*, and the former or existing *client* or person to whom you owe that duty does not give informed consent to disclosure of that confidential information; or
- .5 your instructions seek to limit your ordinary authority or discretion in the conduct of proceedings in *court*; or
- .6 your instructions require you to act other than in accordance with law or with the provisions of this *Handbook*; or
- .7 you are not authorised and/or otherwise accredited to perform the work required by the relevant *instruction*; or
- .8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter; or
- .9 you do not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the *client's* best interests for you to accept; or
- .10 there is a real prospect that you are not going to be able to maintain your independence.

## G

## Guidance

## Guidance on Rule rC21

**gC69** Rules rC21.2, rC21.3 and rC21.4 are intended to reflect the law on conflict of interests and confidentiality and what is required of you by your duty to act in the *client's* best interests (CD2), independently (CD4), and maintaining *client* confidentiality (CD6). You are prohibited from acting where there is a conflict of interest between your own personal interests and the interests of a prospective *client*. However, where there is a conflict of interest between an existing *client* or *clients* and a prospective *client* or *clients* or two or more prospective *clients*, you may be entitled to accept instructions or to continue to act on a particular matter where you have fully disclosed to the relevant *clients* and prospective *clients* (as appropriate) the extent and nature of the conflict; they have each provided their informed consent to you acting; and you are able to act in the best interests of each *client* and independently as required by CD2 and CD4.

**gC70** Examples of where you may be required to refuse to accept *instructions* in accordance with Rule rC21.7 include:

- .1 where the *instructions* relate to the provision of litigation services and you have not been authorised to *conduct litigation* in accordance with the requirements of this *Handbook*; and
- .2 where the matter involves *criminal advocacy* and you are not (or, where you are a *BSB entity*, none of your *managers* or *employees* are) accredited at the correct *QASA level* to undertake such work in accordance with the Quality Assurance Scheme for Advocates Rules set out at 2.C3; and
- .3 where the matter would require you to conduct correspondence with parties other than your *client* (in the form of letters, faxes, emails or the like), you do not have adequate systems, experience or resources for managing appropriately such correspondence and/or you do not have adequate insurance in place in accordance with Rule rC75 which covers, amongst other things, any loss suffered by the *client* as a result of the conduct of such correspondence.

- gC71** Competency and experience under Rule rC21.8 includes your ability to work with vulnerable *clients*.
- gC72** Rule rC21.9 recognises that there may be exceptional circumstances when *instructions* are delivered so late that no suitable, competent advocate would have adequate time to prepare. In those cases you are not required to refuse *instructions* as it will be in the *client's* best interests that you accept. Indeed, if you are obliged under the cab rank rule to accept the *instructions*, you must do so.
- gC73** Rule rC21.10 is an aspect of your broader obligation to maintain your independence (CD4). Your ability to perform your duty to the *court* (CD1) and act in the best interests of your *client* (CD2) may be put at risk if you act in circumstances where your independence is compromised. Examples of when you may not be able to maintain your independence include appearing as an advocate in a matter in which you are likely to be called as a witness (unless the matter on which you are likely to be called as a witness is peripheral or minor in the context of the litigation as a whole and is unlikely to lead to your involvement in the matter being challenged at a later date). However, if you are planning to withdraw from a case because it appears that you are likely to be a witness on a material question of fact, you should only withdraw if you can do so without jeopardising the *client's* interests.
- gC74** Where the *instructions* relate to public access or licensed access work and you are a self-employed barrister you will also need to have regard to the relevant rules at 2.D2. If you are a *BSB entity*, you should have regard to the guidance to Rule S28.

**R****Rules****Defining terms or basis on which instructions are accepted**

- rC22** Where you first accept *instructions* to act in a matter:
- .1 you must, subject to Rule rC23, confirm in writing acceptance of the *instructions* and the terms and/or basis on which you will be acting, including the basis of charging;
  - .2 where your instructions are from a *professional client*, the confirmation required by rC22.1 must be sent to the *professional client*;
  - .3 where your instructions are from a *client*, the confirmation required by rC22.1 must be sent to the *client*.
  - .4 if you are a *BSB entity*, you must ensure that the terms under which you accept instructions from *clients* include consent from clients to disclose and give control of files to the *Bar Standards Board* or its agent in circumstances where the conditions in rS113.5 are met.
- rC23** In the event that, following your acceptance of the *instructions* in accordance with Rule rC22, the scope of the *instructions* is varied by the relevant *client* (including where the *client* instructs you on additional aspects relating to the same matter), you are not required to confirm again in writing acceptance of the instructions or the terms and/or basis upon which you will be acting. In these circumstances, you will be deemed to have accepted the instructions when you begin the work, on the same terms or basis as before, unless otherwise specified.
- rC24** You must comply with the requirements set out in Rules rC22 and rC23 before doing the work unless that is not reasonably practicable, in which case you should do so as soon as reasonably practicable.



## G

## Guidance

## Guidance to Rules rC22 to rC24

- gC75** Compliance with the requirement in Rule rC22 to set out the terms and/or basis upon which you will be acting may be achieved by including a reference or link to the relevant terms in your written communication of acceptance. You may, for example, refer the *client* or *professional client* (as the case may be) to the terms of service set out on your website or to standard terms of service set out on the *Bar Council's* website (in which regard, please also refer to the guidance on the use of the standard terms of service which can be found here [http://www.barcouncil.org.uk/media/182287/guide\\_to\\_contractual\\_terms.pdf](http://www.barcouncil.org.uk/media/182287/guide_to_contractual_terms.pdf)). Where you agree to do your work on terms and conditions that have been proposed to you by the *client* or by the *professional client*, you should confirm in writing that that is the basis on which your work is done. Where there are competing sets of terms and conditions, which terms have been agreed and are the basis of your retainer will be a matter to be determined in accordance with the law of contract.
- gC76** Your obligation under Rule rC23 is to ensure that the basis on which you act has been defined, which does not necessarily mean governed by your own contractual terms. In circumstances where Rule rC23 applies, you should take particular care to ensure that the *client* is clear about the basis for charging for any variation to the work where it may be unclear. You must also ensure that you comply with the requirements of the Provision of Services Regulations 2009 <http://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents>. See further Rule rC19 (not misleading *clients* or prospective *clients*) and the guidance to that rule at gC52 to gC62.
- gC77** If you are a *self-employed barrister* a clerk may confirm on your behalf your acceptance of *instructions* in accordance with Rules rC22 and rC23 above.
- gC78** When accepting *instructions*, you must also ensure that you comply with the *complaints* handling rules set out in Section 2.D.
- gC79** When accepting instructions in accordance with Rule rC22, confirmation by email will satisfy any requirement for written acceptance.
- gC80** You may have been instructed in relation to a discrete and finite task, such as to provide an opinion on a particular issue, or to provide ongoing services, for example, to conduct particular litigation. Your confirmation of acceptance of instructions under Rule rC22 should make clear the scope of the *instructions* you are accepting, whether by cross-referring to the *instructions*, where these are in writing or by summarising your understanding of the scope of work you are instructed to undertake.
- gC81** Disputes about costs are one of the most frequent complaints. The provision of clear information before work starts is the best way of avoiding such complaints. *The Legal Ombudsman* has produced a useful guide "An Ombudsman's view of good costs service" which can be found here <http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf>.
- gC82** Where the *instructions* relate to public access or licensed access work and you are a self-employed barrister, you will also need to have regard to the relevant rules at 2.D2. If you are a *BSB entity*, you should have regard to the guidance to Rule S28.

**R** Rules**Returning instructions**

**rC25** Where you have accepted *instructions* to act but one or more of the circumstances set out in Rules rC21.1 to rC21.10 above then arises, you must cease to act and return your *instructions* promptly. In addition, you must cease to act and return your *instructions* if:

- .1 in a case funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid it has become apparent to you that this funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by your *client*; or
- .2 the *client* refuses to authorise you to make some disclosure to the *court* which your duty to the *court* requires you to make; or
- .3 you become aware during the course of a case of the existence of a document which should have been but has not been disclosed, and the *client* fails to disclose it or fails to permit you to disclose it, contrary to your advice.

**rC26** You may cease to act on a matter on which you are instructed and return your *instructions* if:

- .1 your professional conduct is being called into question; or
- .2 the *client* consents; or
- .3 you are a *self-employed barrister* and:
  - a despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available; or
  - b illness, injury, pregnancy, childbirth, a bereavement or a similar matter makes you unable reasonably to perform the services required in the *instructions*; or
  - c you are unavoidably required to attend on jury service;
- .4 you are a *BSB entity* and the only appropriate *authorised individual(s)* are unable to continue acting on the particular matter due to one or more of the grounds referred to at Rules rC26.3.a to rC26.3.c above occurring;
- .5 you do not receive payment when due in accordance with terms agreed, subject to Rule rC26.7 (if you are conducting litigation) and in any other case subject to your giving reasonable notice requiring the non-payment to be remedied and making it clear to the *client* in that notice that failure to remedy the non-payment may result in you ceasing to act and returning your *instructions* in respect of the particular matter; or
- .6 you become aware of confidential or privileged information or documents of another person which relate to the matter on which you are instructed; or
- .7 if you are conducting litigation, and your *client* does not consent to your ceasing to act, your application to come off the record has been granted; or
- .8 there is some other substantial reason for doing so (subject to Rules rC27 to rC29 below).

## G

## Guidance

## Guidance on Rule rC26

- gC83** In deciding whether to cease to act and to return existing instructions in accordance with Rule rC26, you should, where possible and subject to your overriding duty to the *court*, ensure that the *client* is not adversely affected because there is not enough time to engage other adequate legal assistance.
- gC84** If you are working on a referral basis and your *professional client* withdraws, you are no longer instructed and cannot continue to act unless appointed by the *court*, or you otherwise receive new instructions. You will not be bound by the cab rank rule if appointed by the court. For these purposes working on a “referral basis” means where a *professional client* instructs a *BSB authorised individual* to provide *legal services* on behalf of one of that *professional client*’s own clients
- gC85** You should not rely on Rule rC26.3 to break an engagement to supply legal services so that you can attend or fulfil a non-professional engagement of any kind other than those indicated in Rule rC26.3.
- gC86** When considering whether or not you are required to return instructions in accordance with Rule rC26.6 you should have regard to relevant case law including: *English & American Insurance Co Ltd & Others -v- Herbert Smith*; ChD 1987; (1987) NLJ 148 and *Ablitt -v- Mills & Reeve (A Firm) and Another*; ChD (Times, 24-Oct-1995).
- gC87** If a fundamental change is made to the basis of your remuneration, you should treat such a change as though your original instructions have been withdrawn by the *client* and replaced by an offer of new *instructions* on different terms. Accordingly:
- .1 you must decide whether you are obliged by Rule rC29 to accept the new *instructions*;
  - .2 if you are obliged under Rule rC29 to accept the new *instructions*, you must do so;
  - .3 if you are not obliged to accept the new *instructions*, you may decline them;
  - .4 if you decline to accept the new *instructions* in such circumstances, you are not to be regarded as returning your *instructions*, nor as withdrawing from the matter, nor as ceasing to act, for the purposes of Rules rC25 to rC26, because the previous *instructions* have been withdrawn by the *client*.

## R

## Rules

- rC27** Notwithstanding the provisions of Rules rC25 and rC26, you must not:
- .1 cease to act or return *instructions* without either:
    - .a obtaining your *client*’s consent; or
    - .b clearly explaining to your *client* or your *professional client* the reasons for doing so; or
  - .2 return instructions to another person without the consent of your *client* or your *professional client*.

## Requirement not to discriminate

**rC28** You must not withhold your services or permit your services to be withheld:

- .1 on the ground that the nature of the case is objectionable to you or to any section of *the public*;
- .2 on the ground that the conduct, opinions or beliefs of the prospective *client* are unacceptable to you or to any section of *the public*;
- .3 on any ground relating to the source of any financial support which may properly be given to the prospective *client* for the proceedings in question.

## G

### Guidance

#### Guidance on Rule rC28

**gC88** As a matter of general law you have an obligation not to discriminate unlawfully as to those to whom you make your services available on any of the statutorily prohibited grounds such as gender or race. See <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/> and [https://www.barstandardsboard.org.uk/media/1562168/bsb\\_equality\\_rules\\_handbook\\_corrected.pdf](https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf) for guidance as to your obligations in respect of equality and diversity. This rule of conduct is concerned with a broader obligation not to withhold your services on grounds that are inherently inconsistent with your role in upholding access to justice and the rule of law and therefore in this rule “discriminate” is used in this broader sense. This obligation applies whether or not the *client* is a member of any protected group for the purposes of the Equality Act 2010. For example, you must not withhold services on the ground that any financial support which may properly be given to the prospective *client* for the proceedings in question will be available as part of Criminal Legal Aid and Civil Legal Aid.

## R

### Rules

#### The ‘cab-rank’ rule

**rC29** If you receive *instructions* from a *professional client*, and you are:

- .1 a *self-employed barrister* instructed by a *professional client*; or
- .2 an *authorised individual* working within a *BSB entity*; or
- .3 a *BSB entity* and the *instructions* seek the services of a named *authorised individual* working for you,

and the *instructions* are appropriate taking into account the experience, seniority and/or field of practice of yourself or (as appropriate) of the named *authorised individual* you must, subject to Rule rC30 below, accept the *instructions* addressed specifically to you, irrespective of:

- a the identity of the *client*;
- b the nature of the case to which the *instructions* relate;
- c whether the *client* is paying privately or is publicly funded; and
- d any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the *client*.

**rC30** The cab rank Rule rC29 does not apply if:

- .1 you are required to refuse to accept the *instructions* pursuant to Rule rC21; or
- .2 accepting the *instructions* would require you or the named *authorised individual* to do something other than in the course of their ordinary working time or to cancel a commitment already in their diary; or
- .3 the potential liability for professional negligence in respect of the particular matter could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for you to accept; or
- .4 you are a Queen's Counsel, and the acceptance of the *instructions* would require you to act without a junior in circumstances where you reasonably consider that the interests of the *client* require that a junior should also be instructed; or
- .5 accepting the *instructions* would require you to do any *foreign work*; or
- .6 accepting the *instructions* would require you to act for a *foreign lawyer* (other than a *European lawyer*, a lawyer from a country that is a member of EFTA, a *solicitor* or *barrister* of Northern Ireland or a *solicitor* or advocate under the law of Scotland); or
- .7 the *professional client*:
  - .a is not accepting liability for your fees; or
  - .b represents, in your reasonable opinion, an unacceptable credit risk; or
  - .c is instructing you as a lay *client* and not in their capacity as a professional *client*; or
- .8 you have not been offered a proper fee for your services (except that you shall not be entitled to refuse to accept *instructions* on this ground if you have not made or responded to any fee proposal within a reasonable time after receiving the *instructions*); or
- .9 except where you are to be paid directly by (i) the *Legal Aid Agency* as part of the Community Legal Service or the Criminal Defence Service or (ii) the Crown Prosecution Service:
  - .a your fees have not been agreed (except that you shall not be entitled to refuse to accept *instructions* on this ground if you have not taken reasonable steps to agree fees within a reasonable time after receiving the *instructions*);
  - .b having required your fees to be paid before you accept the *instructions*, those fees have not been paid;
  - .c accepting the *instructions* would require you to act other than on (A) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 as published on the *Bar Council's* website; or (B) if you publish standard terms of work, on those standard terms of work.

## G

## Guidance

## Guidance on Rule rC29 and rC30

**gC89** Rule rC30 means that you would not be required to accept *instructions* to, for example, *conduct litigation* or attend a police station in circumstances where you do not normally undertake such work or, in the case of litigation, are not authorised to undertake such work.

**gC90** In determining whether or not a fee is proper for the purposes of Rule C30.8, regard shall be had to the following:

- .1 the complexity length and difficulty of the case;
- .2 your ability, experience and seniority; and
- .3 the expenses which you will incur.

**gC91** Further, you may refuse to accept instructions on the basis that the fee is not proper if the instructions are on the basis that you will do the work under a *conditional fee agreement* or damages based agreement.

**gC91A** Examples of when you might reasonably conclude (subject to the following paragraph) that a *professional client* represents an unacceptable credit risk for the purposes of Rule C30.7.b include:

- .1 Where they are included on the *Bar Council's* List of Defaulting Solicitors;
- .2 Where to your knowledge a *barrister* has obtained a judgment against a *professional client*, which remains unpaid;
- .3 Where a firm or sole practitioner is subject to insolvency proceedings, an individual voluntary arrangement or partnership voluntary arrangement; or
- .4 Where there is evidence of other unsatisfied judgments that reasonably call into question the *professional client's* ability to pay your fees.

Even where you consider that there is a serious credit risk, you should not conclude that the *professional client* represents an unacceptable credit risk without first considering alternatives. This will include considering whether the credit risk could be mitigated in other ways, for example by seeking payment of the fee in advance or payment into a third party payment service as permitted by rC74, rC75 and associated guidance.

## Quality Assurance Scheme for Advocates Rules

### R

#### Rules

#### Scope of QASA

**rC31** Subject to Rule rC32, you must not undertake *criminal advocacy* unless you have *provisional accreditation* or *full accreditation* in accordance with these *QASA Rules* and with the *QASA Handbook*.

**rC32** *Barristers* who do not have *provisional accreditation* or *full accreditation* under the *QASA* are permitted to undertake *criminal advocacy*:

- .1 in hearings which primarily involve advocacy which is outside of the definition of *criminal advocacy*; or
- .2 if they have been instructed specifically as a result of their specialism in work outside of the definition of *criminal advocacy*.

**rC33** You shall only undertake *criminal advocacy* in hearings which you are satisfied fall within the *QASA level* at which you are accredited, or any *QASA level* below the same, unless you are satisfied that you are competent to accept instructions for a case at a higher *QASA level* strictly in accordance with the criteria prescribed in the *QASA Handbook*.

#### Provisional accreditation

**rC34** If you are granted *provisional accreditation*, you must apply to convert this to *full accreditation* within 12 or 24 months of the date on which your *provisional accreditation* was granted.

#### Full accreditation

**rC35** If you are granted *full accreditation*, it will be valid for 5 years from the date on which it was granted.

#### General provisions relating to applications for registration, progression or re-accreditation

**rC36** You may apply for *registration*, *progression* or *re-accreditation* under these *QASA Rules*. In support of an application you shall submit such information as may be prescribed by the *QASA*. This will include:

- .1 completing the relevant application form supplied by the *Bar Standards Board* and submitting it to the *Bar Standards Board*;
- .2 submitting such information in support of the application as may be prescribed by the *QASA*. This will include all of the *criminal advocacy evaluation forms* that you have obtained; and
- .3 paying the appropriate fee in the amount determined in accordance with the *Bar Standards Board's* published fees policy.

**rC37** An application will only have been made once the *Bar Standards Board* has received the application form completed in full, together with all information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.

**rC38** You are personally responsible for the contents of your application and any information submitted to the *Bar Standards Board* by you or on your behalf, and you must not submit (or cause or permit to be submitted on your behalf) information to the *Bar Standards Board* which you do not believe is full and accurate.

**rC39** On receipt of an application, the *Bar Standards Board* shall decide whether to grant or refuse the application, and shall notify you accordingly, giving reasons for any decision to refuse the application. This decision will take effect when it has been communicated to the *barrister* concerned.

**rC40** Before reaching a decision on the application, the *Bar Standards Board* may appoint an *independent assessor* to conduct an assessment of your competence to conduct *criminal advocacy* at the relevant *QASA level*.

### Registration for QASA

**rC41** In order to be accredited under *QASA barristers* must first apply for *registration*. In support of an application you shall submit such information as may be prescribed by the *QASA*.

#### QASA Level 1

- .1 If you apply for *registration* at *QASA level 1* and your application is successful, you will be awarded *full accreditation* at *QASA level 1*.

#### QASA Levels 2 to 4

- .2 If you apply for *registration* at *QASA levels 2, 3 or 4* and your application is successful, you will be awarded *Provisional accreditation* which will be valid for 24 months.
- .3 You must apply to convert your *provisional accreditation* to *full accreditation* within 24 months.
- .4 You must be assessed in your first effective criminal trials at your *QASA level* and submit the prescribed number of completed *criminal advocacy evaluation forms* confirming that you are competent in accordance with the competence framework detailed in the *QASA Handbook*.
- .5 Your application must include all completed *criminal advocacy* evaluation forms obtained by you in *effective trials*.
- .6 If your application is successful you will be awarded *full accreditation*.
- .7 Subject to Rule rC41.8, if your application for *full accreditation* is unsuccessful, you shall be granted *provisional accreditation* at the *QASA level* below and shall be required to apply to convert this to *full accreditation* at that lower *QASA level* in accordance with Rules rC41.3 to rC41.5.
- .8 If your application for *full accreditation* at *QASA level 2* is unsuccessful, you shall be granted *accreditation* at *QASA level 1*.

#### Barristers not undertaking trials

- .9 If you do not intend to undertake criminal trials you may apply for *registration* at *QASA level 2*. If your application is successful, you will be awarded *provisional accreditation*. You must be assessed via an *approved assessment organisation* within 24 months.
- .10 If your application for *full accreditation* is successful you shall be awarded *full accreditation* and will be permitted to undertake non-trial hearings up to *QASA level 3* and trials at *QASA level 1*.
- .11 Once you have *full accreditation*, if you wish to undertake trials at *QASA level 2* you must inform the BSB of your intention and comply with Rules rC42.2 to Rules rC42.5.

#### Barristers who took silk between 2010 and 2013

- .12 If you took silk between 2010 and 2013 inclusive you can register through the modified entry arrangements set out in paragraph 2.38 of the *QASA Handbook*.



## Progression

**rC42** If you have *full accreditation*, you may apply for *accreditation* at the next higher *QASA level* to your current *QASA level*.

- .1 *Progression to QASA level 2*
- .2 If you wish to progress to *QASA level 2* you must first obtain *provisional accreditation* at *QASA level 2* by notifying the *Bar Standards Board* of your intention to progress.
- .3 Your *provisional accreditation* will be valid for 24 months. In order to convert this to *full accreditation* you must be assessed in your first effective criminal trials at *QASA level 2* and submit the prescribed number of completed *criminal advocacy evaluation forms* confirming that you are competent in *QASA level 2* trials in accordance with the competence framework detailed in the *QASA Handbook*.
- .4 Your application must include all completed *criminal advocacy evaluation forms* obtained by you in *effective trials*.
- .5 Where your application is successful, you shall be granted *full accreditation* at *QASA level 2*, which is valid for 5 years from the date of issue.

### Progression to QASA level 3 and 4

#### Stage 1

- .6 You must first apply for *provisional accreditation* at the next higher *QASA level* to your current *QASA level*. In order to apply for *provisional accreditation*, you must submit the prescribed number of *criminal advocacy evaluation forms* confirming that you are very competent at your current *QASA level* in accordance with the competence framework detailed in the *QASA Handbook*.
- .7 Your application must include all completed *criminal advocacy evaluation forms* obtained by you in *effective trials*. These should be obtained within a 12 month period.
- .8 If your application is successful you will be awarded *provisional accreditation*.

#### Stage 2

- .9 Your *provisional accreditation* will be valid for 12 months. You must apply to convert your *provisional accreditation* to *full accreditation* before your *provisional accreditation* expires.
- .10 You must be assessed in your first effective criminal trials at your new *QASA level* and submit the prescribed number of completed *criminal advocacy evaluation forms* confirming that you are competent in accordance with the competence framework detailed in the *QASA Handbook*.
- .11 Your application must include all completed *criminal advocacy evaluation forms* obtained by you in *effective trials*.
- .12 If your application is successful you will be awarded *full accreditation*.
- .13 If your application for *full accreditation* is unsuccessful, you may continue to conduct *criminal advocacy* at your current *QASA level* until the expiry of your current accreditation.

## Re-accreditation

**rC43** You must apply for *re-accreditation* at the *QASA level* at which you are accredited within five years from the date on which your *full accreditation* was granted.

**rC44** You shall submit, in support of an application for *re-accreditation*, evidence to demonstrate your competence to conduct *criminal advocacy* at the *QASA level* at which you are accredited, comprising:

- .1 if you are accredited at *QASA level 1*, evidence of the assessed continuing professional development undertaken by you in the field of advocacy in the period since you were accredited at *QASA level 1* or, if you have previously been *re-accredited* at that *QASA level*, since your most recent *re-accreditation*;
- .2 if you are *accredited* at *QASA level 2, 3 or 4*, the number of *criminal advocacy evaluation forms prescribed by the QASA*. Your application must include all completed *criminal advocacy evaluation forms* obtained by you in consecutive *effective trials* in the 24 months preceding the application.

**rC45** If your application is successful you will be awarded *full accreditation* for a period of 5 years.

**rC46** Subject to Rules rC47, if your application for *re-accreditation* is unsuccessful, you shall be granted *provisional accreditation* at the *QASA level* below and shall be required to apply to convert this to *full accreditation* at that lower *QASA level* in accordance with Rules rC41.3 to rC41.5.

**rC47** If your application for *re-accreditation* at *QASA level 2* is unsuccessful, you shall be granted accreditation at *QASA level 1*.

### Lapse of accreditation

**rC48** Subject to Rule rC50, your *provisional accreditation* will lapse if you do not apply for *full accreditation* before it expires.

**rC49** Subject to Rule rC50, your *full accreditation* will lapse if you do not apply for *re-accreditation* within 5 years of the date on which you were awarded *full accreditation*.

**rC50** If the BSB has received an application within the period of *accreditation*, the accreditation will not lapse whilst a decision is pending.

**rC51** If your *accreditation* lapses, you may not undertake *criminal advocacy* in accordance with rC31.

### Applications for variation

**rC52** Where your individual circumstances result in you encountering difficulties in obtaining completed *criminal advocacy evaluation forms* within the specified period, then you may apply to the *Bar Standards Board* for an extension of time to comply with the requirements; or

**rC53** Where your individual circumstances result in you encountering difficulties in obtaining completed *criminal advocacy evaluation forms*, then you may apply to the *Bar Standards Board* for your competence to conduct *criminal advocacy* to be assessed by an *independent assessor*, and you may submit the results of the assessment in support of your application for *registration, re-accreditation or progression* in the place of one *criminal advocacy* evaluation form.

### Managing underperformance

**rC54** The *Bar Standards Board* may receive *criminal advocacy evaluation forms* raising concerns regarding your competence to conduct *criminal advocacy* at any time.

**rC55** Where concerns regarding your competence to conduct *criminal advocacy* are brought to the attention of the *Bar Standards Board*, either during the course of its consideration of an application brought by you under these Rules, or as a result of concerns raised under Rule rC54, it may decide to do one or more of the following:

- .1 appoint an *independent assessor* to conduct an assessment of your *criminal advocacy*;

- .2 recommend that you undertake, at your own cost, such training for such period as it may specify;
- .3 revoke your *accreditation* at your current *QASA level*; and/or
- .4 refer you for consideration of your health or conduct under the Fitness to Practise Rules or the Complaints Rules, as it considers appropriate,

and shall notify you accordingly, giving reasons for its decision.

**rC56** Where your *accreditation* has been revoked, you shall be granted *provisional accreditation* at the *QASA level* below and shall be required to apply to convert this to *full accreditation* in accordance with Rules rC41.3 to rC41.5.

**rC57** Where you have applied for *registration* or *re-accreditation* at *QASA level 1*, and your application has been refused, you will not be entitled to accept any instructions to conduct *criminal advocacy*, and the *Bar Standards Board* may recommend that you undertake training in accordance with Rule rC55.2 before you re-apply for *registration* or *re-accreditation* as appropriate.

**rC58** Where you have undertaken training under Rule rC55.2, the *Bar Standards Board* shall, at the end of the specified period, assess whether you have satisfactorily completed the training before reaching a decision in relation to any further steps that it may consider appropriate to take in accordance with Rule rC55.2.

## Appeals

**rC59** You may appeal to the *Bar Standards Board* against any decision reached by it under these rules. Appeals must be made in accordance with the published *Bar Standards Board QASA Appeals Policy*.

## Commencement and transitional arrangements

**rC60** Subject to Rule rC63, the *QASA Rules* commence on 30 September 2013.

### Registration of barristers currently undertaking criminal advocacy

**rC61** *Barristers* currently undertaking *criminal advocacy* are required to apply for *registration* under the *QASA Scheme* in accordance with the phased implementation programme as set out at paragraphs 2.11 to 2.13 of the *QASA Handbook*.

**rC62** The dates for *registration* will depend upon the primary circuit in which you practise. This will be the circuit in which you undertake *criminal advocacy* more frequently than in any other circuit.

- .1 If you primarily practise in the Midland or Western Circuit, you must register for *QASA* from 30 September 2013 and before the first occasion on which you undertake *criminal advocacy* after 7 March 2014.
- .2 If you primarily practise in the South Eastern Circuit, you must register for *QASA* from 10 March 2014 and before the first occasion on which you undertake *criminal advocacy* after 13 June 2014.
- .3 If you primarily practise in the Northern, North Eastern or Wales and Chester Circuit, you must register for *QASA* from 30 June 2014 and before the first occasion on which you undertake *criminal advocacy* after 3 October 2014.

**rC63** Subject to Rules rC63.1, rC63.2 and Rule rC31 commences for all advocates from 4 October 2014.

- .1 Rule rC31 will commence for those advocates who primarily practise in the Midland or Western Circuit from 10 March 2014. Any advocate who undertakes *criminal advocacy* in these circuits without *accreditation* must be able to prove to the *Bar Standards Board* that they practise primarily in another circuit.
- .2 Rule rC31 will commence for those advocates who primarily practise in the South Eastern Circuit from 14 June 2014. Any advocate who undertakes *criminal advocacy* in this circuit without *accreditation* must be able to prove to the *Bar Standards Board* that they practise primarily in the Northern, North Eastern or Wales and Chester Circuit.

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## C4. You and your regulator

### O

#### Outcomes

- oC21** *BSB regulated persons* are effectively regulated.
- oC22** The public have confidence in the proper regulation of *persons* regulated by the *Bar Standards Board*.
- oC23** The *Bar Standards Board* has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the *regulatory objectives*.

### R

#### Rules

##### Provision of information to the Bar Standards Board

- rC64** You must:
- .1** promptly provide all such information to the *Bar Standards Board* as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and
  - .2** comply in due time with any decision or sentence imposed by the *Bar Standards Board*, a *Disciplinary Tribunal*, the *Visitors*, the High Court, an *interim panel*, a *review panel*, an *appeal panel* or a *Fitness to Practise Panel*.
  - .3** if you are a *BSB entity* or an *owner* or *manager* of a *BSB entity* and the conditions outlined in rS113.5 apply, give the *Bar Standards Board* whatever co-operation is necessary, including:
    - a** complying with a notice sent by the *Bar Standards Board* or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a *BSB entity* (such notice may require such documents to be produced at a time and place fixed by the *Bar Standards Board* or its agent; and
    - b** complying with a notice from the *Bar Standards Board* or its agent to redirect communications, including post, email, fax and telephones.

### G

#### Guidance

##### Guidance to Rule rC64:

- gC92** Your obligations under Rule rC64 include, for example, responding promptly to any request from the *Bar Standards Board* for comments or information relating to any matter whether or not the matter relates to you, or to another *BSB regulated person*.
- gC93** Information which you are requested to disclose under Rule rC64 may include *client* information that is subject to legal privilege. You are not entitled to disclose such information without the consent of the *client*. You may enquire whether your *client* is willing to waive privilege but should be alert to the possibility that you may have a conflict of interest in giving them any advice as to whether they should. The BSB will look at the question of privilege on a case by case basis. It will bear in mind in the exercise of its regulatory functions that a *client* might have been prepared to waive privilege if asked. Observations in *R (Morgan Grenfell & Co Ltd) v Special Commissioner* [2003] 1 A.C. 563 at [32], referred to in *R (Lumsdon) v Legal Services Board* [2013] EWHC 28 (Admin) at [73] were made in the context of a different statutory disclosure regime and should not be used as necessarily applicable to disclosure under Rule C64. However, in the meantime, following this guidance should avoid practical

difficulties in most cases. For the avoidance of doubt, none of this casts any doubt on a *barrister's* entitlement to withhold from the BSB any material that is subject to the *barrister's* own legal privilege (such as legal advice given to the *barrister* about their own position).

## R

## Rules

**Duty to report certain matters to the Bar Standards Board**

**rC65** You must report promptly to the *Bar Standards Board* if:

- .1 you are charged with an *indictable offence*; in the jurisdiction of England and Wales or with a *criminal offence* of comparable seriousness in any other jurisdiction;
- .2 subject to the Rehabilitation of Offenders Act 1974 (as amended) you are convicted of, or accept a caution, for any *criminal offence*, in any jurisdiction, other than a *minor criminal offence*;
- .3 you (or an entity of which you are a *manager*) to your knowledge are the subject of any disciplinary or other regulatory or enforcement action by another *Approved Regulator* or other regulator, including being the subject of disciplinary proceedings;
- .4 you are a *manager* of a *regulated entity (other than a BSB entity)* which is the subject of an intervention by the *approved regulator* of that body;
- .5 you are a *registered European lawyer* and:
  - .a to your knowledge any investigation into your conduct is commenced by your *home regulator*; or
  - .b any finding of professional misconduct is made by your *home regulator*; or
  - .c your authorisation in your *home state* to pursue professional activities under your *home professional title* is withdrawn or *suspended*; or
  - .d you are charged with a disciplinary offence.
- .6 any of the following occur:
  - .a bankruptcy proceedings are initiated in respect of or against you;
  - .b *director's disqualification* proceedings are initiated against you;
  - .c a *bankruptcy order* or *director's disqualification order* is made against you;
  - .d you have made a composition or arrangement with, or granted a trust deed for, your creditors;
  - .e winding up proceedings are initiated in respect of or against you;
  - .f you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you;
  - .g administration proceedings are initiated in respect of or against you;
- .7 you have committed serious misconduct;
- .8 you become authorised to *practise* by another *approved regulator*.

**G** Guidance**Guidance to Rule rC65**

**gC94** In circumstances where you have committed serious misconduct you should take all reasonable steps to mitigate the effects of such serious misconduct.

**gC94.1** For the avoidance of doubt rC65.2 does not oblige you to disclose cautions or criminal convictions that are “spent” under the Rehabilitation of Offenders Act 1974 unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies. However, unless the caution or conviction is immediately spent, you must notify the BSB before it becomes spent.

**R** Rules**Reporting serious misconduct by others**

**rC66** Subject to your duty to keep the affairs of each *client* confidential and subject also to Rules rC67 and rC68, you must report to the *Bar Standards Board* if you have reasonable grounds to believe that there has been serious misconduct by a *barrister* or a *registered European lawyer*, a *BSB entity*, *manager of a BSB entity* or an *authorised (non-BSB) individual* who is working as a *manager* or an *employee* of a *BSB entity*.

**rC67** You must never make, or threaten to make, a report under Rule rC66 without a genuine and reasonably held belief that Rule rC66 applies.

**rC68** You are not under a duty to report serious misconduct by others if:

- .1 you become aware of the facts giving rise to the belief that there has serious misconduct from matters that are in the public domain and the circumstances are such that you reasonably consider it likely that the facts will have come to the attention of the *Bar Standards Board*; or
- .2 you are aware that the person that committed the serious misconduct has already reported the serious misconduct to the *Bar Standards Board*; or
- .3 the events which led to you becoming aware of that other person’s serious misconduct are subject to their legal professional privilege; or
- .4 you become aware of such serious misconduct as a result of your work on a Bar Council advice line.

**rC69** You must not victimise anyone for making in good faith a report under Rule rC66.

**G** Guidance**Guidance on Rules rC65.7 to rC68**

**gC95** It is in the public interest that the *Bar Standards Board*, as an *Approved Regulator*, is made aware of, and is able to investigate, potential instances of serious misconduct. The purpose of Rules rC65.7 to rC69, therefore, is to assist the *Bar Standards Board* in undertaking this regulatory function.

**gC96** Serious misconduct includes, without being limited to:

- .1 dishonesty (CD3);
- .2 assault or harassment (CD3 and/or CD5 and/or CD8);

- .3 seeking to gain access without consent to *instructions* or other confidential information relating to the opposing party's case (CD3 and/or CD5); or
- .4 seeking to gain access without consent to confidential information relating to another member of *chambers*, member of staff or *pupil* (CD3 and/or CD5);
- .5 encouraging a witness to give evidence which is untruthful or misleading (CD1 and/or CD3);
- .6 knowingly or recklessly misleading, or attempting to mislead, the *court* or an opponent (CD1 and/or CD3); or
- .7 being drunk or under the influence of drugs in *court* (CD2 and/or CD7); or
- .8 failure by a *barrister* to report promptly to the *Bar Standards Board* pursuant to rC65.1-rC65.5 above or if;
  - *director's disqualification* proceedings are initiated against you;
  - a *director's disqualification* order is made against you;
  - winding up proceedings are initiated in respect of or against you;
  - you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you;
  - administration proceedings are initiated in respect of or against you;
- .9 a breach by a *barrister* of rC67 above; for example, reporting, or threatening to report, another *person* as a litigation tactic or otherwise abusively; or merely to please a *client* or any other *person* or otherwise for an improper motive;;
- .10 conduct that poses a serious risk to the public.

**gC97** If you believe (or suspect) that there has been serious misconduct, then the first step is to carefully consider all of the circumstances. The circumstances include:

- .1 whether that person's *instructions* or other confidential matters might have a bearing on the assessment of their conduct;
- .2 whether that person has been offered an opportunity to explain their conduct, and if not, why not;
- .3 any explanation which has been or could be offered for that person's conduct;
- .4 whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not.

**gC98** Having considered all of the circumstances, the duty to report arises if you have reasonable grounds to believe there has been serious misconduct. This will be so where, having given due consideration to the circumstances, including the matters identified at Guidance gC97, you have material before you which as it stands establishes a reasonably credible case of serious misconduct. Your duty under Rule rC66 is then to report the potential instance of serious misconduct so that the *Bar Standards Board* can investigate whether or not there has in fact been misconduct.

**gC99** Circumstances which may give rise to the exception from the general requirement to report serious misconduct set out in Rule rC68.1 include for example where misconduct has been widely reported in the national media. In these circumstances it would not be in the public interest for every *BSB regulated person* to have an obligation to report such serious misconduct.



**gC100** In Rule rC68.4 “work on the *Bar Council* advice line” means:

- .1 dealing with queries from *BSB regulated persons* who contact an advice line operated by the *Bar Council* for the purposes of providing advice to those persons; and
- .2 either providing advice to *BSB regulated persons* in the course of working for an advice line or to any individual working for an advice line where (i) you are identified on the list of *BSB regulated persons* maintained by the *Bar Council* as being permitted to provide such advice (the “approved list”); and (ii) the advice which you are being asked to provide to the individual working for an advice line arises from a query which originated from their work for that service; and
- .3 providing advice to *BSB regulated persons* where any individual working for an advice line arranges for you to give such advice and you are on the approved list.
- .4 for the purposes of Rule C68, the relevant advice lines are:
  - the Ethical Queries Helpline;
  - the Equality and Diversity Helpline;
  - the Remuneration Helpline; and
  - the Pupillage Helpline.

**gC101** Rule rC68.4 has been carved out of the general requirement to report serious misconduct of others because it is not in the public interest that the duty to report misconduct should constrain *BSB authorised persons* appointed by or on behalf of the *Bar Council* to offer ethical advice to others from doing so or inhibit *BSB regulated persons* needing advice from seeking it. Consequently, *BSB authorised persons* appointed by or on behalf of the *Bar Council* to offer ethical advice to *BSB regulated persons* through a specified advice service will not be under a duty to report information received by them in confidence from persons seeking such advice, subject only to the requirements of the general law. However, in circumstances where Rule C68.4 applies, the relevant *BSB authorised person* will still be expected to encourage the relevant *BSB regulated person* who has committed serious misconduct to disclose such serious misconduct to the *Bar Standards Board* in accordance with Rule rC65.7.

**gC102** Misconduct which falls short of serious misconduct should, where applicable, be reported to your HOLP so that they can keep a record of non-compliance in accordance with Rule rC96.4.

## R

### Rules

#### Access to premises

**rC70** You must permit the *Bar Council*, or the *Bar Standards Board*, or any person appointed by them, reasonable access, on request, to inspect:

- .1 any premises from which you provide, or are believed to provide, *legal services*; and
- .2 any documents or records relating to those premises and your *practice*, or *BSB entity*,

and the *Bar Council*, *Bar Standards Board*, or any person appointed by them, shall be entitled to take copies of such documents or records as may be required by them for the purposes of their functions and, if you are a *BSB entity* may enter your premises and operate from those premises for the purpose of taking such action as is necessary to protect the interests of clients.

### Co-operation with the Legal Ombudsman

**rC71** You must give the *Legal Ombudsman* all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of *complaints* made under the Ombudsman scheme.

### Ceasing to practise

**rC72** Once you are aware that you (if you are a *self-employed barrister* or a *BSB entity*) or the *BSB entity* within which you work (if you are an authorised individual or *manager* of such *BSB entity*) will cease to practise, you shall effect the orderly wind-down of activities, including:

- .1 informing the *Bar Standards Board* and providing them with a contact address;
- .2 notifying those *clients* for whom you have current matters and liaising with them in respect of the arrangements that they would like to be put in place in respect of those matters;
- .3 providing such information to the *Bar Standards Board* in respect of your practice and your proposed arrangements in respect of the winding down of your activities as the *Bar Standards Board* may require.

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## C5. You and your practice

### O Outcomes

- oC24** Your *practice* is run competently in a way that achieves compliance with the Core Duties and your other obligations under this *Handbook*. Your *employees, pupils* and trainees understand, and do, what is required of them in order that you meet your obligations under this *Handbook*.
- oC25** *Clients* are clear about the extent to which your services are regulated and by whom, and who is responsible for providing those services.

### C5.1 General

### R Rules

#### Client money

- rC73** Except where you are acting in your capacity as a *manager* of an *authorised (non-BSB) body*, you must not receive, control or handle *client money* apart from what the client pays you for your services.
- rC74** If you make use of a third party payment service for making payments to or from or on behalf of your *client* you must:
- .1** Ensure that the service you use will not result in your receiving, controlling or handling *client money*; and
  - .2** Only use the service for payments to or from or on behalf of your *client* that are made in respect of legal services, such as fees, disbursements or settlement monies; and
  - .3** Take reasonable steps to check that making use of the service is consistent with your duty to act competently and in your *client's* best interests.
- rC75** The *Bar Standards Board* may give notice under this rule that (effective from the date of that notice) you may only use third party payment services approved by the *Bar Standards Board* or which satisfy criteria set by the *Bar Standards Board*

### G Guidance

#### Guidance on Rules rC73 and rC74

- gC103** The prohibition in Rule rC73 applies to you and to anyone acting on your behalf, including any "ProcureCo" being a company established as a vehicle to enable the provision of *legal services* but does not in itself supply or provide those *legal services*. Rule rC73 prohibits you from holding *client money* or other *client* assets yourself, or through any agent, third party or nominee.
- gC104** Receiving, controlling or handling *client money* includes entering into any arrangement which gives you de facto control over the use and/or destination of funds provided by or for the benefit of your *client* or intended by another party to be transmitted to your *client*, whether or not those funds are beneficially owned by your client and whether or not held in an account of yours.

- gC105** The circumstances in which you will have de facto control within the meaning of Rule rC73 include when you can cause money to be transferred from a balance standing to the credit of your *client* without that *client's* consent to such a withdrawal. For large withdrawals, explicit consent should usually be required. However, the *client's* consent may be deemed to be given if:
- .1 the *client* has given informed consent to an arrangement which enables withdrawals to be made after the *client* has received an invoice; and
  - .2 the *client* has not objected to the withdrawal within a pre-agreed reasonable period (which should not normally be less than one week from receipt of the invoice).
- gC106** A fixed fee paid in advance is not *client money* for the purposes of Rule rC73.
- gC107** If you have decided in principle to take a particular case you may request an 'upfront' fixed fee from your prospective *client* before finally agreeing to work on their behalf. This should only be done having regard to the following principles:
- You should take care to estimate accurately the likely time commitment and only take payment when you are satisfied that:
    - it is a reasonable payment for the work being done; and
    - in the case of public access work, that it is suitable for you to undertake.
  - If the amount of work required is unclear, you should consider staged payments rather than a fixed fee in advance.
  - You should never accept an upfront fee in advance of considering whether it is appropriate for you to take the case and considering whether you will be able to undertake the work within a reasonable timescale.
  - If the *client* can reasonably be expected to understand such an arrangement, you may agree that when the work has been done, you will pay the *client* any difference between that fixed fee and (if lower) the fee which has actually been earned based on the time spent, provided that it is clear that you will not hold the difference between the fixed fee and the fee which has been earned on trust for the *client*. That difference will not be *client money* if you can demonstrate that this was expressly agreed in writing, on clear terms understood by the *client*, and before payment of the fixed fee. You should also consider carefully whether such an arrangement is in the *client's* interest, taking into account the nature of the instructions, the *client* and whether the *client* fully understands the implications. Any abuse of an agreement to pay a fixed fee subject to reimbursement, the effect of which is that you receive more money than is reasonable for the case at the outset, will be considered to be holding *client money* and a breach of rC73. For this reason, you should take extreme care if contracting with a *client* in this way.
  - In any case, rC22 requires you to confirm in writing the acceptance of any instructions and the terms or basis on which you are acting, including the basis of charging.
- gC108** Acting in the following ways may demonstrate compliance with Rules rC73, rC74 and rC75:
- gC109** Checking that any third party payment service you may use is not structured in such a way that the service provider is holding, as your agent, money to which the *client* is beneficially entitled. If this is so you will be in breach of Rule rC73.

- gC110** Considering whether your *client* will be safe in using the third party payment service as a means of transmitting or receiving funds. The steps you should take in order to satisfy yourself will depend on what would be expected in all the circumstances of a reasonably competent legal adviser acting in their *client's* best interests. However, you are unlikely to demonstrate that you have acted competently and in your *client's* best interests if you have not:
- .1 ensured that the payment service is authorised or regulated as a payment service by the *Financial Conduct Authority (FCA)* and taken reasonable steps to satisfy yourself that it is in good standing with the FCA;
  - .2 if the payment service is classified as a small payment institution, ensured that it has arrangements to safeguard *clients'* funds or adequate insurance arrangements;
  - .3 ensured that the payment service segregates *client* money from its own funds;
  - .4 satisfied yourself that the terms of the service are such as to ensure that any money paid in by or on behalf of the *client* can only be paid out with the *client's* consent;
  - .5 informed your *client* that moneys held by the payment service provider are not covered by the *Financial Services Compensation Scheme*.
- gC111** Unless you are reasonably satisfied that it is safe for your client to use the third party payment service (see rC74.3, gC109 and gC110 above), advising your *client* against using the third party payment service and not making use of it yourself.
- gC112** The Bar Standards Board has not yet given notice under rule rC75.

## R

## Rules

## Insurance

- rC76** You must:
- .1 ensure that you have adequate insurance (taking into account the nature of your practice) which covers all the *legal services* you supply to *the public*; and
  - .2 if you are a *BSB authorised person* or a *manager* of a *BSB entity* then in the event that the *Bar Standards Board*, by any notice it may from time to time issue under this Rule C76, stipulates a minimum level of insurance and/or minimum terms for the insurance which must be taken out by *BSB authorised persons*, you must ensure that you have or put in place within the time specified in such notice, insurance meeting such requirements as apply to you.
- rC77** Where you are acting as a *self-employed barrister*, you must be a member of *BMIF*, unless:
- .1 you are a *pupil* who is covered by your *pupil supervisor's* insurance; or
  - .2 you were called to the *Bar* under Rule Q98, in which case you must either be insured with *BMIF* or be covered by insurance against claims for professional negligence arising out of the supply of your services in England and Wales in such amount and on such terms as are currently required by the *Bar Standards Board*, and have delivered to the *Bar Standards Board* a copy of the current insurance policy, or the current certificate of insurance, issued by the insurer.

**rC78** If you are a member of *BMIF*, you must:

- .1 pay promptly the insurance premium required by *BMIF*; and
- .2 supply promptly such information as *BMIF* may from time to time require pursuant to its rules.

## G

## Guidance

## Guidance on Rules rC76 to rC78

**gC113** Where you are working in a *BSB entity*, you will satisfy the requirements of Rule rC76.1 so long as the *BSB entity* has taken out insurance, which covers your activities. A *BSB entity* will have to confirm each year that it has reviewed the adequacy of its insurance cover on the basis of a risk analysis and that they have complied with this rule.

**gC114** Any notice issued under Rule rC76 will be posted on the *Bar Standards Board's* website and may also be publicised by such other means as the Bar Standards Board may judge appropriate.

The *Bar Standards Board's* requirements in respect of professional indemnity insurance, including the minimum terms, are concerned with ensuring consumer protection, specifically that there is adequate cover for liabilities which *BSB regulated persons* may incur to their *clients* or other parties to whom they may owe duties when performing their *legal services*. This includes claims for contribution which third parties, such as instructing *solicitors*, may make on the basis that the *BSB regulated person* has such a liability to a mutual *client*. However, Rule C76.1 of the *Handbook* does not require *BSB regulated persons* to carry insurance for other types of liability, which do not relate to their liabilities towards consumers, such as a contractual liability to instructing *solicitors* in respect of losses incurred by the *solicitor* that are not based on any liability the *solicitor* has in turn incurred to the *client*. Nor are the minimum terms concerned with the latter type of liability and whether and on what terms to seek to insure against such exposure is a commercial judgment for *BSB regulated persons* to make. You should however ensure that you are aware of and comply with any general legal requirements for you to carry other types of insurance than professional indemnity cover.

**gC115** Where you are working in an *authorised (non-BSB) body*, the rules of the *approved regulator* of that body will determine what insurance the *authorised (non-BSB) body* must have.

**gC116** Where you are working as an *employed barrister (non-authorised body)*, the rule does not require you to have your own insurance if you provide *legal services* only to your *employer*. If you supply *legal services* to other people (to the extent permitted by the *Scope of Practice and Authorisation, and Licensing Rules* set out at Section S.B you should consider whether you need insurance yourself having regard to the arrangements made by your *employer* for insuring against claims made in respect of your services. If your *employer* already has adequate insurance for this purpose, you need not take out any insurance of your own. You should ensure that your *employer's* policy covers you, for example, for any pro-bono work you may do.

**gC117** Where you are a *registered European lawyer*, the rule does not require you to have your own insurance if:

- .1 you provide to the *Bar Standards Board* evidence to show that you are covered by insurance taken out or a guarantee provided in accordance with the rules of your *home State*; and
- .2 the *Bar Standards Board* is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover required pursuant to Rule rC76. However, where the *Bar Standards Board* is satisfied that the equivalence is only partial, the *Bar Standards Board* may require you to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by you in accordance with the rules of your *home state*

**R** Rules**Associations with others**

- rC79** You may not do anything, practising in *an association*, which you are otherwise prohibited from doing.
- rC80** Where you are in *an association* on more than a one-off basis, you must notify the *Bar Standards Board* that you are in *an association*, and provide such details of that association as are required by the *Bar Standards Board*.
- rC81** If you have a material commercial interest in an organisation to which you plan to refer a *client*, you must:
- .1 tell the *client* in writing about your interest in that organisation before you refer the *client*; and
  - .2 keep a record of your referrals to any such organisation for review by the *Bar Standards Board* on request.
- rC82** If you have a material commercial interest in an organisation which is proposing to refer a matter to you, you must:
- .1 tell the *client* in writing about your interest in that organisation before you accept such *instructions*;
  - .2 make a clear agreement with that organisation or other public statement about how relevant issues, such as conflicts of interest, will be dealt with; and
  - .3 keep a record of referrals received from any such organisation for review by the *Bar Standards Board* on reasonable request.
- rC83** If you refer a *client* to a third party which is not a *BSB authorised person* or an *authorised (non-BSB) person*, you must take reasonable steps to ensure that the *client* is not wrongly led to believe that the third party is subject to regulation by the *Bar Standards Board* or by another *approved regulator*.
- rC84** You must not have a material commercial interest in any organisation which gives the impression of being, or may be reasonably perceived as being, subject to the regulation of the *Bar Standards Board* or of another *approved regulator*, in circumstances where it is not so regulated.
- rC85** A material commercial interest for the purposes of Rules rC78 to rC84 is an interest which an objective observer with knowledge of the salient facts would reasonably consider might potentially influence your judgment.

**G** Guidance**Guidance on Rules rC78 to rC84 and CD5**

- gC118** You may not use an association with the purpose of, or in order to evade rules which would otherwise apply to you. You may not do anything, practising in *an association*, which you are individually prohibited from doing.
- gC119** You will bring yourself and your profession into disrepute (CD5) if you are personally involved in arrangements which breach the restrictions imposed by the Legal Services Act 2007 on those who can provide reserved legal activities. For example, you must not remain a member of any "ProcureCo" arrangement where you know or are reckless as to whether the ProcureCo is itself carrying on reserved legal activities without a licence or where you have failed to take reasonable steps to ensure this is not so before joining or continuing your involvement with the Procureco.

- gC120** The purpose of Rules rC78 to rC84 is to ensure that *clients* and members of *the public* are not confused by any such association. In particular, the public should be clear who is responsible for doing work, and about the extent to which that person is regulated in doing it: see Rules rC77 and rC80.
- gC121** This *Handbook* applies in full whether or not you are practising in an association. You are particularly reminded of the need to ensure that, notwithstanding any such association, you continue to comply with Rules rC8, rC9, rC10, rC12, rC15, rC19, rC20, rC28, rC73, rC75, rC79, rC82 and rC86 (and, where relevant rC80, rC81, rC83, C74 and C110).
- gC122** References to “organisation” in Rules rC81 and C82 include *BSB entities* and *authorised (non-BSB) bodies*, as well as non-authorised bodies. So, if you have an interest, as owner, or manager, in any such body, your relationship with any such organisation is caught by these rules.
- gC123** These rules do not permit you to accept *instructions* from a third party in any case where that would give rise to a potential conflict of interest contrary to CD2 or any relevant part of Rule rC79.
- gC124** You should only refer a *client* to an organisation in which you have a material commercial interest if it is in the *client's* best interest to be referred to that organisation. This is one aspect of what is required of you by CD2. Your obligations of honesty and integrity, in CD3, require you to be open with *clients* about any interest you have in, or arrangement you have with, any organisation to which you properly refer the *client*, or from which the *client* is referred to you. It is inherently unlikely that a general referral arrangement obliging you (whether or not you have an interest in such organisation) to refer to that organisation, without the option to refer elsewhere if the *client's* circumstances make that more appropriate, could be justified as being in the best interests of each individual *client* (CD2) and it may well also be contrary to your obligations of honesty and integrity (CD3) and compromise your independence (CD4).
- gC125** The *Bar Standards Board* may require you to provide copies of any protocols that you may have in order to ensure compliance with these rules.
- gC126** Your obligations under CD5 require you not to act in an *association* with a person where, merely by being associated with such person, you may reasonably be considered as bringing the profession into disrepute or otherwise diminishing the trust that the public places in you and your profession.
- gC127** Members of *chambers* are not in partnership but are independent of one another and are not responsible for the conduct of other members. However, each individual member of *chambers* is responsible for their own conduct and the constitution of *chambers* enables, or should enable, each individual member of *chambers* to take steps to terminate another person's membership in specified circumstances. Rule C87 does not require you to sever connection with a member of *chambers* solely because to your knowledge he or she is found to breach this *Handbook*, provided that he or she is not disbarred and complies with such sanctions as may be imposed for such breach; however, your *chambers* constitution should be drafted so as to allow you to exclude from *chambers* a member whose conduct is reasonably considered such as to diminish the trust the public places in you and your profession and you should take such steps as are reasonably available to you under your constitution to exclude any such member.



## R Rules

### Outsourcing

**rC86** Where you outsource to a third party any support services that are critical to the delivery of any *legal services* in respect of which you are instructed:

- .1 any outsourcing does not alter your obligations to your *client*;
- .2 you remain responsible for compliance with your obligations under this *Handbook* in respect of the *legal services*;
- .3 you must ensure that such outsourcing is subject to contractual arrangements which ensure that such third party:
  - .a is subject to confidentiality obligations similar to the confidentiality obligations placed on you in accordance with this *Handbook*;
  - .b complies with any other obligations set out in this Code of Conduct which may be relevant to or affected by such outsourcing;
  - .c processes any personal data in accordance with your *instructions* and, for the avoidance of doubt, as though it were a data controller under the Data Protection Act; and
  - .d is required to allow the *Bar Standards Board* or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of such third party in relation to the outsourced activities or functions.

## G Guidance

### Guidance on Rule rC85

**gC128** Rule C86 applies to the outsourcing of clerking services.

**gC129** Rule C86 does not apply where the *client* enters into a separate agreement with the third party for the services in question.

**gC130** Rule C86 does not apply where you are instructing a *pupil* or a *devil* to undertake work on your behalf. Instead rC15 will apply in those circumstances.

**gC131** Notwithstanding Rule rC86.3.c you are still likely to remain the data controller of the personal data in question. Therefore, Rule rC86.3.c does not relieve you of your obligations to comply with the Data Protection Act in respect of such data.

### C5.2 Administration and conduct of self-employed practice

## R Rules

**rC87** You must take reasonable steps to ensure that:

- .1 your practice is efficiently and properly administered having regard to the nature of your practice; and
- .2 proper records of your practice are kept.

## G

## Guidance

## Guidance on Rule C87.2

**gC132** The *Supervision Team* of the *Bar Standards Board* reviews the key controls that are in place in *chambers* and *BSB entities* to manage the risks in relation to key processes. These key processes are shown in guidance that is published on the Supervision section of the *Bar Standards Board's* website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>. You should retain relevant policies, procedures, monitoring reports and other records of your practice so that they are available to view if a Supervision visit is arranged.

When deciding how long records need to be kept, you will need to take into consideration various requirements, such as those of this *Handbook* (see, for example, Rules C108, C129 and C141), the Data Protection Act and HM Revenue and Customs. You may want to consider drawing up a Records Keeping policy to ensure that you have identified the specific compliance and other needs of your *practice*.

## R

## Rules

**rC88** You must:

- .1 ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:
  - a your fees have been paid; and
  - b any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;
- .2 provide your *client* with such records or details of the work you have done as may reasonably be required for the purposes of verifying your charges.

## C5.3 Administration of chambers

## R

## Rules

**rC89** Taking into account the provisions of Rule rC90, you must take reasonable steps to ensure that:

- .1 your *chambers* is administered competently and efficiently;
- .2 your *chambers* has appointed an individual or individuals to liaise with the *Bar Standards Board* in respect of any regulatory requirements and has notified the *Bar Standards Board*;
- .3 your *chambers* does not employ any person who has been disqualified from being employed by an authorised person or a *licensed body* by another *approved regulator* pursuant to its or their powers as such and such disqualification is continuing in force;
- .4 proper arrangements are made in your *chambers* for dealing with *pupils* and *pupillage*;
- .5 proper arrangements are made in *chambers* for the management of conflicts of interest and for ensuring the confidentiality of *clients' affairs*;
- .6 all non-authorised persons working in your *chambers* (irrespective of the identity of their *employer*):

- .a are competent to carry out their duties;
  - .b carry out their duties in a correct and efficient manner;
  - .c are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;
  - .d do nothing which causes or substantially contributes to a breach of this *Handbook* by any *BSB authorised individual* or *authorised (non-BSB) individual* within *Chambers*,  
and all *complaints* against them are dealt with in accordance with the *complaints rules*;
- .7 all *registered European lawyers* and all *foreign lawyers* in your *chambers* comply with this *Handbook* insofar as applicable to them;
- .8 appropriate risk management procedures are in place and are being complied with; and
- .9 there are systems in place to check that:
- .a all persons practising from your *chambers* whether they are members of the *chambers* or not have insurance in place in accordance with Rules rC75 to rC77 above (other than any *pupil* who is covered under their *pupil supervisor's* insurance); and
  - .b every *BSB authorised individual* practising from your *chambers* has a current *practising certificate* and every other *authorised (non-BSB) individual* providing *reserved legal activities* is currently authorised by their *Approved Regulator*.

**rC90** For the purposes of Rule rC89 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

- .1 the arrangements in place in your *chambers* for the management of *chambers*;
- .2 any role which you play in those arrangements; and
- .3 the independence of individual members of *chambers* from one another.

**G****Guidance****Guidance on Rule rC88 and rC89**

**gC133** Your duty under Rule rC89.4 to have proper arrangements in place for dealing with pupils includes ensuring:

- .1 that all *pupillage* vacancies are advertised in the manner prescribed by the *Pupillage Funding and Advertising Rules* (rC113 to rC118);
- .2 that arrangements are made for the funding of *pupils* by *chambers* which comply with the *Pupillage Funding and Advertising Rules* (rC113 to rC118);

**gC134** Your duty under Rule rC89.5 to have proper arrangements in place for ensuring the confidentiality of each *client's* affairs includes:

- .1 putting in place and enforcing adequate procedures for the purpose of protecting confidential information;
- .2 complying with data protection obligations imposed by law;
- .3 taking reasonable steps to ensure that anyone who has access to such information or data in the course of their work for you complies with these obligations; and
- .4 taking into account any further guidance on confidentiality which is available on the *Bar Standards Board's* website and which can be accessed here <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.

**gC135** In order to ensure compliance with Rule rC89.6.d, you may want to consider incorporating an obligation along these lines in all new employment contracts entered into after the date of this *Handbook*.

**gC136** For further guidance on what may constitute appropriate risk management procedures in accordance with Rule rC89.8 please refer to the further guidance published by the *Bar Standards Board* which can be accessed here <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>.

**gC137** Rule rC90.3 means that you should consider, in particular, the obligation of each individual members of *chambers* to act in the best interests of his or her own *client* (CD2) and to preserve the confidentiality of his or her own *client's* affairs (CD6), in circumstances where other members of *chambers* are free (and, indeed, may be obliged by the cab rank rule (rC29) to act for *clients* with conflicting interests.

## 5.4 Administration of BSB entities

### Duties of the BSB entity, authorised (non-BSB) individuals and managers of BSB entities

## R

### Rules

**rC91** If you are a *BSB entity*, you must ensure that (or, if you are a *BSB regulated individual* working within such *BSB entity* you must use reasonable endeavours (taking into account the provisions of Rule rC95) to procure that the *BSB entity* ensures that):

- .1 the *BSB entity* has at all times a person appointed by it to act as its *HOLP*, who shall be a *manager*;
- .2 the *BSB entity* has at all times a person appointed by it to act as its *HOFA*; and
- .3 subject to rC92, the *BSB entity* does not appoint any individual to act as a *HOLP* or a *HOFA*, or to be a *manager* or *employee* of that *BSB entity*, in circumstances where that individual has been disqualified from being appointed to act as a *HOLP* or a *HOFA* or from being a *manager* or employed by an *authorised person* (as appropriate) by the *Bar Standards Board* or another *Approved Regulator* pursuant to its or their powers as such and such disqualification is continuing in force.

**rC92** Rule rC91.3 shall not apply where the *BSB entity* obtains the express written consent of the *Bar Standards Board* to the appointment of a person who has been disqualified before they are appointed.

**rC93** If you are a *manager* or *employee*, you must not do anything to cause (or substantially to contribute to) a breach by the *BSB entity* or by any *BSB authorised individual* in it of their duties under this *Handbook*.

**rC94** If you are a *BSB entity*, you must at all times have (or, if you are a *BSB regulated individual* working in such *BSB entity* you must use reasonable endeavours (taking into account the provisions of Rule rC95) to procure that the *BSB entity* shall have) suitable arrangements to ensure that:

- .1 the *managers* and other *BSB regulated individuals* working as *employees* of the *BSB entity* comply with the *Bar Standards Board's* regulatory arrangements as they apply to them, as required under section 176 of the *LSA*;
- .2 all *employees*:
  - .a are competent to carry out their duties;
  - .b carry out their duties in a correct and efficient manner;
  - .c are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;
  - .d do nothing which causes or substantially contributes to, a breach of this *Handbook* by the *BSB entity* or any of the *BSB regulated individuals* employed by it; and
  - .e co-operates with the *Bar Standards Board* in the exercise of its regulatory functions, in particular in relation to any notice issued under rC22, rC64 or rC70;
- .3 the *BSB entity* is administered in a correct and efficient manner, is properly staffed and keeps proper records of its practice;
- .4 *pupils* and *pupillages* are dealt with properly;
- .5 conflicts of interest are managed appropriately and that the confidentiality of *clients' affairs* is maintained at all times;
- .6 all *registered European lawyers* and all *foreign lawyers* employed by or working for you comply with this *Handbook* insofar as it applies to them;
- .7 every *BSB authorised individual* employed by, or working for, the *BSB entity* has a current *practising certificate* (except where a *barrister* is working as an *unregistered barrister*, in which case there must be appropriate systems to ensure that they are complying with the provisions of this *Handbook* which apply to *unregistered barristers*) and every other *authorised (non-BSB) individual* providing *reserved legal activities* is currently authorised by their *Approved Regulator*; and
- .8 adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:
  - .a your fees have been paid; and
  - .b any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;
- .9 your *client* is provided with such records or details of the work you have done as may reasonably be required for the purpose of verifying your charges;
- .10 appropriate procedures are in place requiring all *managers* and *employees* to work with the *HOLP* with a view to ensuring that the *HOLP* is able to comply with their obligations under Rule rC96;
- .11 appropriate risk management procedures are in place and are being complied with; and
- .12 appropriate financial management procedures are in place and are being complied with.

**rC95** For the purposes of Rule rC91 and rC94 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

- .1 the arrangements in place in your *BSB entity* for the management of it; and
- .2 any role which you play in those arrangements.

## G Guidance

### Guidance to Rules rC91 to rC94

**gC138** Section 90 of the *LSA* places obligations on *non-authorised individuals* who are *employees* and *managers* of *licensed bodies*, as well as on *non-authorised individuals* who hold an ownership interest in such a *licensed body* (whether by means of a shareholding or voting powers in respect of the same) to do nothing which causes, or substantially contributes to a breach by the *licensed body* or by its *employees* or *managers*, of this *Handbook*. Rule rC91 extends this obligation to *BSB entities* other than *licensed bodies*.

**gC139** Your duty under Rule rC94.4 to have proper arrangements for dealing with pupils includes ensuring:

- .1 that all pupillage vacancies are advertised in the manner prescribed by the Pupillage Funding and Advertising Rules (rC113 to rC118);
- .2 that arrangements are made for the funding of *pupils* by *chambers* which comply with the Pupillage Funding and Advertising Rules (rC113 to rC118).

### Duties of the HOLP/HOFA

## R Rules

**rC96** If you are a *HOLP*, in addition to complying with the more general duties placed on the *BSB entity* and on the *BSB regulated individuals* employed by it, you must:

- .1 take all reasonable steps to ensure compliance with the terms of your *BSB entity's* authorisation;
- .2 take all reasonable steps to ensure that the *BSB entity* and its *employees* and *managers* comply with the duties imposed by section 176 of the *LSA*;
- .3 take all reasonable steps to ensure that *non-authorised individuals* subject to the duty imposed by section 90 of the *LSA* comply with that duty;
- .4 keep a record of all incidents of non-compliance with the Core Duties and this *Handbook* of which you become aware and to report such incidents to the Bar Standards Board as soon as reasonably practicable (where such failures are material in nature) or otherwise on request by the *Bar Standards Board* or during the next monitoring visit or review by the *Bar Standards Board*.

**rC97** If you are a *HOFA*, in addition to complying with the more general duties placed on the *BSB entity* and its *BSB regulated individuals*, you must ensure compliance with Rules rC73 and rC74.

### New managers/HOLP/HOFA

**rC98** A *BSB entity* must not take on a new *manager*, *HOLP* or *HOFA* without first submitting an application to the *Bar Standards Board* for approval in accordance with the requirements of Section S.D.

# D. RULES APPLYING TO PARTICULAR GROUPS OF REGULATED PERSONS

## D1. Self-employed barristers, chambers and BSB entities

### O Outcomes

- oC26** *Clients* know that they can make a *complaint* if dissatisfied, and know how to do so.
- oC27** *Complaints* are dealt with promptly and the *client* is kept informed about the process.
- oC28** *Self-employed barristers, chambers and BSB entities* run their practices without *discrimination*.
- oC29** *Pupils* are treated fairly and all vacancies for *pupillages* are advertised openly.

### D1.1 Complaints rules

### R Rules

#### Provision of information to clients

- rC99** You must notify *clients* in writing when you are *instructed*, or, if that is if not practicable, at the next appropriate opportunity:
- .1** of their right to make a *complaint*, including their right to complain to the *Legal Ombudsman* (if they have such a right), how, and to whom, they can complain, and of any time limits for making a *complaint*;
  - .2** if you are doing referral work, that the *lay client* may complain directly to *chambers* or the *BSB entity* without going through *solicitors*.
- rC100** If you are doing public access, or licensed access work using an *intermediary*, the *intermediary* must similarly be informed.
- rC101** If you are doing referral work, you do not need to give a *professional client* the information set out in Rules rC99.1 and rC99.2, in a separate, specific letter. It is enough to provide it in the ordinary terms of reference letter (or equivalent letter) which you send when you accept *instructions* in accordance with Rule rC21.
- rC102** If you do not send a letter of engagement to a *lay client* in which this information can be included, a specific letter must be sent to them giving them the information set out at Rules rC99.1 and rC99.2.

**rC103** *Chambers'* websites and literature must display information about the *chambers'* complaints procedure. A *BSB's authorised body's* website and literature must carry information about that *BSB entity's* Complaints Procedure.

### Response to complaints

**rC104** All *complaints* must be acknowledged promptly. When you acknowledge a *complaint*, you must give the complainant:

- .1 the name of the person who will deal with the *complaint* and a description of that person's role in *chambers* or in the *BSB entity* (as appropriate);
- .2 a copy of the *chambers'* complaints procedure or the *BSB entity's* Complaints Procedure (as appropriate);
- .3 the date by which the complainant will next hear from *chambers* or the *BSB entity* (as appropriate).

**rC105** When *chambers* or a *BSB entity* (as appropriate) has dealt with the *complaint*, complainants must be told in writing of their right to complain to the *Legal Ombudsman* (where applicable), of the time limit for doing so, and how to contact them.

### Documents and record keeping

**rC106** All communications and documents relating to *complaints* must be kept confidential. They must be disclosed only so far as is necessary for:

- .1 the investigation and resolution of the *complaint*;
- .2 internal review in order to improve *chambers'* or the *BSB entity's* (as appropriate) handling of complaints;
- .3 complying with requests from the *Bar Standards Board* in the exercise of its monitoring and/or auditing functions.

**rC107** The disclosure to the *Bar Standards Board* of internal documents relating to the handling of the *complaint* (such as the minutes of any meeting held to discuss a particular *complaint*) for the further resolution or investigation of the *complaint* is not required.

**rC108** A record must be kept of each *complaint*, of all steps taken in response to it, and of the outcome of the *complaint*. Copies of all correspondence, including electronic mail, and all other documents generated in response to the *complaint* must also be kept. The records and copies should be kept for 6 years from resolution of the *complaint*.

**rC109** The person responsible for the administration of the procedure must report at least annually to either:

- .1 the *HOLP*; or
- .2 the appropriate member/committee of *chambers*,

on the number of *complaints* received, on the subject areas of the *complaints* and on the outcomes. The *complaints* should be reviewed for trends and possible *training* issues.



## D1.2 Equality and diversity

### R Rules

**rC110** You must take reasonable steps to ensure that in relation to your *chambers* or *BSB entity*:

- .1 there is in force a written statement of policy on equality and diversity; and
- .2 there is in force a written plan implementing that policy;
- .3 the following requirements are complied with:

#### Equality and Diversity Officer

- .a *chambers* or *BSB entity* has at least one *Equality and Diversity Officer*;

#### Training

- .b except in unforeseen and exceptional circumstances, the person with lead responsibility for any *selection panel* and at least one member of any *selection panel* (who may be the same person) has received recent and appropriate *training* in fair recruitment and selection processes;
- .c From July 2014, save in exceptional circumstances, every member of all selection panels must be trained in fair recruitment and selection processes;

#### Fair and objective criteria

- .d recruitment and selection processes use objective and fair criteria;

#### Equality monitoring

- .e your *chambers* or *BSB entity*:
  - .i conducts a *regular review* of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of this Rule rC110; and
  - .ii takes any appropriate *remedial action* identified in the light of that review;
- .f subject to Rule rC110.3.h *chambers* or *BSB entity* regularly reviews:
  - .i the number and percentages of its *workforce* from different groups; and
  - .ii applications to become a member of its *workforce*; and
  - .iii in the case of *chambers*, the *allocation of unassigned work*,
- .g the reviews referred to in Rule rC110.3.f above include:
  - .i collecting and analysing data broken down by race, disability and gender;
  - .ii *investigating* the reasons for any disparities in that data; and
  - .iii taking appropriate *remedial action*;
- .h the requirement to collect the information referred to in Rule C110.3.g does not apply to the extent that the people referred to in Rule rC110.3.f.i and Rule rC110.3.f.ii refuse to disclose it.

### Fair access to work

- .i if you are a *self-employed barrister*, the affairs of your *chambers* are conducted in a manner which is fair and equitable for all members of *chambers*, *pupils* and/or *employees* (as appropriate). This includes, but is not limited to, the fair distribution of work opportunities among *pupils* and members of *chambers*;

### Harassment

- .j *chambers* or *BSB entity* has a written anti-*harassment* policy which, as a minimum:
  - .i states that *harassment* will not be tolerated or condoned and that *managers*, *employees*, members of *chambers*, *pupils* and others temporarily in your *chambers* or *BSB entity* such as mini-pupils have a right to complain if it occurs;
  - .ii sets out how the policy will be communicated;
  - .iii sets out the procedure for dealing with *complaints of harassment*;

### Parental leave

- .k *chambers* has a *parental leave* policy which, in the case of a *chambers*, must cover as a minimum:
  - .i the right of a member of *chambers* to return to *chambers* after a specified period (which must be at least one year) of parental or adoption leave;
  - .ii the extent to which a member of *chambers* is or is not required to contribute to *chambers'* rent and expenses during *parental leave*;
  - .iii the method of calculation of any waiver, reduction or reimbursement of *chambers'* rent and expenses during *parental leave*;
  - .iv where any element of rent is paid on a flat rate basis, the *chambers* policy must as a minimum provide that *chambers* will offer members taking a period of *parental leave*, or leave following adoption, a minimum of 6 months free of *chambers'* rent;
  - .v the procedure for dealing with grievances under the policy;
  - .vi *chambers'* commitment to regularly review the effectiveness of the policy;

### Flexible working

- .l *chambers* or *BSB entity* has a flexible working policy which covers the right of a member of *chambers*, *manager* or *employee* (as the case may be) to take a career break, to work part-time, to work flexible hours, or to work from home, so as to enable them to manage their *family responsibilities* or disability without giving up work;

### Reasonable adjustments policy

- .m *chambers* or *BSB entity* has a reasonable adjustments policy aimed at supporting disabled *clients*, its *workforce* and others including temporary visitors;

### Appointment of Diversity Data Officer

- .n *chambers* or *BSB entity* has a Diversity Data Officer;
- .o *chambers* or *BSB entity* must provide the name and contact details of the Diversity Data Officer to the *Bar Standards Board* and must notify the *Bar Standards Board* of any change to the identity of the Diversity Data Officer, as soon as reasonably practicable;

### Responsibilities of Diversity Data Officer

- .p The Diversity Data Officer shall comply with the requirements in relation to the collection, processing and publication of *diversity data* set out in the paragraphs rC110.3.q to .t below;

### Collection and publication of diversity data

- .q The Diversity Data Officer shall invite members of the *workforce* to provide *diversity data* in respect of themselves to the Diversity Data Officer using the model questionnaire in Section 7 of the BSB's Supporting Information on the BSB Handbook Equality Rules ([https://www.barstandardsboard.org.uk/media/1596730/bsb\\_equality\\_rules\\_handbook\\_june\\_2014.pdf](https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf));
- .r The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on *chambers'* or *BSB entity's* website every three years. If *chambers* or *the BSB entity* does not have a website, the Diversity Data Officer shall make such data available to the public on request;
- .s The published summary of anonymised data shall:
  - .i exclude *diversity data* relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the members of the *workforce*; and
  - .ii exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and
  - .iii subject to the foregoing, include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the *workforce*.
- .t The Diversity Data Officer shall:
  - .i ensure that *chambers* or *BSB entity* has in place a written policy statement on the collection, publication, retention and destruction of *diversity data* which shall include an explanation that the provision of *diversity data* is voluntary;
  - .ii notify the *workforce* of the contents of the written policy statement; and
  - .iii ask for explicit consent from the *workforce* to the provision and processing of their *diversity data* in accordance with the written policy statement and these rules, in advance of collecting their *diversity data*.

**rC111** For the purposes of Rule rC110 above, the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

- .1 the arrangements in place in your *chambers* or *BSB entity* for the management of *chambers* or *the BSB entity*; and
- .2 any role which you play in those arrangements.

**rC112** For the purposes Rule rC110 above “allocation of unassigned work” includes, but is not limited to work allocated to:

- .1 *pupils;*
- .2 *barristers of fewer than four years’ standing; and*
- .3 *barristers returning from parental leave;*

**G****Guidance****Guidance to Rule rC110 and Rule rC111**

**gC140** Rule rC110 places a personal obligation on all *self-employed barristers*, however they practise, and on the *managers of BSB entities*, as well as on the entity itself, to take reasonable steps to ensure that they have appropriate policies which are enforced.

**gC141** In relation to Rule rC110, if you are a Head of *chambers* or a *HOLP* it is likely to be reasonable for you to ensure that you have the policies required by Rule rC110, that an *Equality and Diversity Officer* is appointed to monitor compliance, and that any breaches are appropriately punished. If you are a member of a *chambers* you are expected to use the means available to you under your constitution to take reasonable steps to ensure there are policies and that they are enforced. If you are a *manager of a BSB entity*, you are expected to take reasonable steps to ensure that there are policies and that they are enforced.

**gC142** For the purpose of Rule rC110 training means any course of study covering all the following areas:

- a) Fair and effective selection & avoiding unconscious bias
- b) Attraction and advertising
- c) Application processes
- d) Shortlisting skills
- e) Interviewing skills
- f) Assessment and making a selection decision
- g) Monitoring and evaluation

**gC143** Training may be undertaken in any of the following ways:

- a) Classroom sessions
- b) Online sessions
- c) Private study of relevant materials such as the Bar Council’s Fair Recruitment Guide
- d) Completion of CPD covering fair recruitment and selection processes

**gC144** The purpose of Rule rC110.3.d is to ensure that *applicants* with relevant characteristics are not refused *employment* because of such characteristics. In order to ensure compliance with this rule, therefore, it is anticipated that the *Equality and Diversity Officer* will compile and retain data about the relevant characteristics of all *applicants* for the purposes of reviewing the data in order to see whether there are any apparent disparities in recruitment.

- gC145** For the purpose of Rule rC110 “regular review”, means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that “regularly” should mean annually. In respect of managers of a *BSB entity* or tenants, it is likely to be considered reasonable that “regularly” should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.
- gC146** For the purposes of Rule rC110, “remedial action” means any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups.
- gC147** Rule rC110.3.f.iii places an obligation on *practices* to take reasonable steps to ensure the work opportunities are shared fairly among its *workforce*. In the case of *chambers*, this obligation includes work which has not been allocated by the solicitor to a named *barrister*. It includes fairness in presenting to solicitors names for consideration and fairness in opportunities to attract future named work (for example, fairness in arrangements for marketing). These obligations apply even if individual members of *chambers* incorporate their practices, or use a “ProcureCo” to obtain or distribute work, as long as their relationship between each other remains one of independent service providers competing for the same work while sharing clerking arrangements and costs.
- gC148** Rule rC110.3.k.iv sets out the minimum requirements which must be included in a parental and adoption leave policy if any element of rent is paid on a flat rate. If rent is paid on any other basis, then the policy should be drafted so as not to put any *self-employed barrister* in a worse position than they would have been in if any element of the rent were paid on a flat rate.
- gC149** For the purposes of Rule rC110 above investigation means, considering the reasons for disparities in data such as:
- .1 Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people
  - .2 Absence of particular groups e.g. men, women, different ethnic groups or disabled people
  - .3 Success rates of particular groups
  - .4 In the case of *chambers*, over or under allocation of unassigned work to particular groups
- gC150** These rules are supplemented by the BSB’s Supporting Information on the BSB Handbook Equality Rules (“*the Supporting Information*”): [https://www.barstandardsboard.org.uk/media/1562168/bsb\\_equality\\_rules\\_handbook\\_corrected.pdf](https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf). These describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they should be applied in *chambers* and in *BSB entities*. If you are a *self-employed barrister*, a *BSB entity*, or a *manager* of a *BSB entity*, you should seek to comply with the Support Information as well as with the rules as set out above.
- gC151** *The Supporting Information* is also relevant to all *pupil supervisors* and *authorised training organisations*. These will be expected to show how they comply with the *Supporting Information* as a condition of authorisation.
- gC152** Although *the Supporting Information* does not apply directly to *BSB authorised persons* working as *employed barristers* (non-authorised bodies) or *employed barristers* (*authorised non-BSB body*), they provide helpful guidance which you are encouraged to take into account in your practice.

## D1.3 Pupillage funding

### R

#### Rules

#### Funding

- rC113** The members of a set of *chambers* or the *BSB entity* must pay to each non-practising *pupil* (as appropriate), by the end of each month of the non-practising six months of their *pupillage* no less than:
- .1 the *specified amount*; and
  - .2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:
  - .3 travel for the purposes of their *pupillage* during that month; and
  - .4 attendance during that month at courses which they are required to attend as part of their *pupillage*.
- rC114** The members of a set of *chambers*, or the *BSB entity*, must pay to each practising *pupil* by the end of each month of the practising six months of their *pupillage* no less than:
- .1 the *specified amount*; plus
  - .2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:
    - a travel for the purposes of their *pupillage* during that month; and
    - b attendance during that month at courses which they are required to attend as part of their *pupillage*; less
    - c such amount, if any, as the *pupil* may receive during that month from their *practice* as a *barrister*; and less
    - d such amounts, if any, as the *pupil* may have received during the preceding months of their practising *pupillage* from their *practice* as a *barrister*, save to the extent that the amount paid to the *pupil* in respect of any such month was less than the total of the sums provided for in sub-paragraphs rC114.2.a and .b above.
- rC115** The members of a set of *chambers*, or the *BSB entity*, may not seek or accept repayment from a *chambers pupil* or an entity *pupil* of any of the sums required to be paid under Rules rC113 and rC114 above, whether before or after they cease to be a chambers pupil or an entity *pupil*, save in the case of misconduct on their part.
- rC116** If you are a *self-employed barrister*, you must pay any *chambers pupil* for any work done for you which because of its value to you warrants payment, unless the *pupil* is receiving an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work.

#### Application

- rC117** The requirements set out in Rules rC113 to rC116 above:
- .1 do not apply in the case of *pupils* who were granted exemption from the *vocational stage of training* under Rule Q73;

- .2 do not apply in the case of *pupils* who are doing a period of *pupillage* in a set of *chambers*, or in a *BSB entity*, as part of a *training* programme offered by another organisation which is authorised by the *Bar Standards Board* to take *pupils*;
- .3 do not apply in the case of *pupils* who have completed both the non-practising and the practising six months of *pupillage*;
- .4 save as provided in Rule rC117.3 above, do not apply in respect of any period after a *pupil* ceases, for whatever reason, to be a *chambers pupil* or an *entity pupil*; and
- .5 may be waived in part or in whole by the BSB.

**rC118** For the purposes of these requirements:

- .1 "*chambers pupil*" means, in respect of any set of *chambers*, a *pupil* doing the non-practising or practising six months of *pupillage* with a *pupil supervisor*, or *pupil supervisors*, who is or are a member, or members, of that set of *chambers*;
- .2 "*entity pupil*" means, in respect of a *BSB entity* a *pupil* doing the non-practising or practising six months of *pupillage* with a *pupil-master* or *pupil-masters* who are *managers* or *employees* of such *BSB entity*;
- .3 "*non-practising pupil*" means a *chambers pupil* or an *entity pupil* doing the non-practising six months of *pupillage*;
- .4 "*practising pupil*" means a *chambers pupil* or an *entity pupil* doing the practising six months of *pupillage*;
- .5 "*month*" means calendar month starting on the same day of the month as that on which the *pupil* began the non-practising, or practising, six months *pupillage*, as the case may be;
- .6 any payment made to a *pupil* by a *barrister* pursuant to Rule rC115 above shall constitute an amount received by the *pupil* from their *practice* as a *barrister*; and
- .7 the following travel by a *pupil* shall not constitute travel for the purposes of their *pupillage*:
  - a travel between their home and *chambers* or, for an *entity pupil*, their place of work; and
  - b travel for the purposes of their *practice* as a *barrister*.

## D2. Barristers undertaking public access and licensed access work

### O Outcomes

- oC30** Barristers undertaking public access or licensed access work have the necessary skills and experience required to do work on that basis.
- oC31** Barristers undertaking public access or licensed access work maintain appropriate records in respect of such work.
- oC32** Clients only instruct via public access when it is in their interests to do so and they fully understand what is expected of them.

### D2.1 Public access rules

### R Rules

- rC119** These rules apply to *barristers* instructed by or on behalf of a lay *client* (other than a *licensed access client*) who has not also instructed a *solicitor* or other *professional client* (public access clients). Guidance on public access rules is available on the *Bar Standards Board website* <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.
- rC120** Before accepting any *public access instructions* from or on behalf of a *public access client*, you must:
  - .1 be properly qualified by having been issued with a full *practising certificate*, by having satisfactorily completed the appropriate public access training, and by registering with the *Bar Council* as a public access practitioner;
  - .2 if you were already registered with the *Bar Council* to undertake public access work on October 4 2013 then you must undertake any additional training required by the *Bar Standards Board* within 24 months of that date or cease to undertake public access work;
  - .3 take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the *client* or in the interests of justice for *the* public access client to instruct a *solicitor* or other *professional client*; and
  - .4 take such steps as are reasonably necessary to ensure that the *client* is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.
- rC121** As a barrister with less than three *years' standing* who has completed the necessary training you must:
  - .1 have a *barrister* who is a qualified person within Rule S22 and has registered with the *Bar Council* as a public access practitioner readily available to provide guidance to you;
  - .2 maintain a log of public access cases you have dealt with, including any issues or problems which have arisen;
  - .3 seek appropriate feedback from your public access *clients* on the service provided;
  - .4 make this log available, on request, to the *Bar Standards Board* for review.



- rC122** You may not accept direct *instructions* from or on behalf of a public access *client* in or in connection with any matter of proceedings in which, in all the circumstances, it would be in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*.
- rC123** In any case where you are not prohibited from accepting *instructions*, you must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*. If, after accepting direct *instructions* from a public access *client* you form the view that circumstances are such that it would be in the best interests of the public access *client*, or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client* you must:
- .1 inform the public access *client* of your view; and
  - .2 withdraw from the case in accordance with the provisions of Rules rC25 and rC26 and associated guidance unless the *client* instructs a *solicitor* or other *professional client* to act in the case.
- rC124** You must have regard to guidance published from time to time by the *Bar Standards Board* in considering whether to accept and in carrying out any *public access instructions*.
- rC125** Having accepted *public access instructions*, you must forthwith notify your public access *client* in writing, and in clear and readily understandable terms, of:
- .1 the work which you have agreed to perform;
  - .2 the fact that in performing your work you will be subject to the requirements of Parts 2 and 3 of this *Handbook* and, in particular, Rules rC25 and rC26;
  - .3 unless authorised to *conduct litigation* by the *Bar Standards Board*, the fact that you cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the *conduct of litigation*;
  - .4 the fact that you are self-employed, are not a *member* of a firm and do not take on any arranging role;
  - .5 in any case where you have been instructed by an *intermediary*:
    - .a the fact that you are independent of and have no liability for the *intermediary*; and
    - .b the fact that the *intermediary* is the agent of the lay *client* and not your agent;
  - .6 the fact that you may be prevented from completing the work by reason of your professional duties or conflicting professional obligations, and what the *client* can expect of you in such a situation;
  - .7 the fees which you propose to charge for that work, or the basis on which your fee will be calculated;
  - .8 your contact arrangements; and
  - .9 the information about your complaints procedure required by D1.1 of this Part 2.
- rC126** Save in exceptional circumstances, you will have complied with Rule rC125 above if you have written promptly to the public access *client* in the terms of the model letter provided on the *Bar Standards Board* website.

- rC127** In any case where you have been instructed by an *intermediary*, you must give the notice required by Rule C123 above both:
- .1 directly to the public access *client*; and
  - .2 to the *intermediary*.
- rC128** Having accepted *public access instructions*, you must keep a case record which sets out:
- .1 the date of receipt of the *instructions*, the name of the lay *client*, the name of the case, and any requirements of the *client* as to time limits;
  - .2 the date on which the *instructions* were accepted;
  - .3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
  - .4 when agreed, the fee.
- rC129** Having accepted *public access instructions*, you must either yourself retain or take reasonable steps to ensure that the lay *client* will retain for at least seven years after the date of the last item of work done:
- .1 copies of all *instructions* (including supplemental *instructions*);
  - .2 copies of all advices given and documents drafted or approved;
  - .3 the originals, copies or a list of all documents enclosed with any *instructions*;
  - .4 notes of all conferences and of all advice given on the telephone.
- rC130** Having accepted *public access instructions*, you may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the *Bar Standards Board*.
- rC131** Save where otherwise agreed:
- .1 you shall be entitled to copy all documents received from your lay *client*, and to retain such copies permanently;
  - .2 you shall return all documents received from your lay *client* on demand, whether or not you have been paid for any work done for the lay *client*;
  - .3 you shall not be required to deliver to your lay *client* any documents drafted by you in advance of receiving payment from the lay *client* for all work done for that *client*;
  - .4 having accepted *public access instructions* in any civil matter, you may take a proof of evidence from your *client* in that matter.

## D2.2 Licensed access rules

### R Rules

- rC132** Subject to these rules and to compliance with the Code of Conduct (and to the *Scope of Practice, Authorisation and Licensing Rules*) a barrister in self-employed practice may accept *instructions* from a *licensed access client* in circumstances authorised in relation to that *client* by the Licensed Access Recognition Regulations (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>) whether that *client* is acting for themselves or another.
- rC133** These rules apply to every matter in which a *barrister* in self-employed *practice* is instructed by a *licensed access client* save that Rules rC134.2, rC136, rC137 and rC139 do not apply to any matter in which a *licensed access client* is deemed to be a *licensed access client* by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>).
- rC134** You are only entitled to accept *instructions* from a *licensed access client* if at the time of giving *instructions* the *licensed access client*:
- .1 is identified; and
  - .2 sends you a copy of the Licence issued by the *Bar Standards Board*.
- rC135** You must not accept any *instructions* from a *licensed access client*:
- .1 unless you and your *chambers* are able to provide the services required of them by that *licensed access client*;
  - .2 if you consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or other authorised litigator or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place.
- rC136** Having accepted *instructions* from a *licensed access client* otherwise than on the terms of the Licensed Access Terms of Work, you:
- .1 must first agree in writing the terms upon which you have agreed to do the work and the basis upon which you are to be paid;
  - .2 must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid.
- rC137** Having accepted *instructions* from a *licensed access client*, you:
- .1 must promptly send the *licensed access client*:
  - .2 a statement in writing that the *instructions* have been accepted (as the case may be) (1) on the standard terms previously agreed in writing with that *licensed access client* or (2) on the terms of the Licensed Access Terms of Work (and thereafter if requested a copy of the Licensed Access Terms of Work); or
  - .3 if you have accepted *instructions* otherwise than on such standard terms or on the terms of the Licensed Access Terms of Work, a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid;

- .4 unless you have accepted *instructions* on the terms of the Licensed Access Terms of Work or on terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:
- a the effect of rC21 as it relevantly applies in the circumstances;
  - b unless authorised by the *Bar Standards Board* to *conduct litigation*, the fact that you cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation obligations disclosure obligations and other obligations arising out of or related to the *conduct of litigation*;
  - c the fact that circumstances may require the *client* to retain a *solicitor* or other authorised litigator at short notice and possibly during the case.
- rC138** If at any stage you, being instructed by a *licensed access client*, consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or other authorised litigator or some other appropriate *intermediary* (as the case may be) be instructed either together with or in your place:
- .1 you must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or other authorised litigator or other appropriate *intermediary* (as the case may be); and
  - .2 unless a *solicitor* or other authorised litigator or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter you must cease to act and must return any *instructions*.
- rC139** If at any stage you, being instructed by a *licensed access client*, consider that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply either with the terms of the Licence granted by the *Bar Standards Board* or (where applicable) with the terms of the Licensed Access Terms of Work the *barrister* must forthwith report the facts to the *Bar Standards Board*.
- rC140** Having accepted *instructions* from a *licensed access client*, you must keep a case record (whether on card or computer) which sets out:
- .1 the date of receipt of the *instructions*, the name of the *licensed access client*, the name of the case, and any requirements of the *licensed access client* as to time limits;
  - .2 the date on which the *instructions* were accepted;
  - .3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
  - .4 when agreed, the fee.
- rC141** Having accepted *instructions* from a *licensed access client*, you must either yourself retain or take reasonable steps to ensure that the *licensed access client* will retain for six years after the date of the last item of work done:
- .1 copies of *instructions* (including supplemental *instructions*);
  - .2 copies of all advices given and documents drafted or approved;
  - .3 a list of all documents enclosed with any *instructions*;
  - .4 notes of all conferences and of all advice given on the telephone.

### D3. Registered European lawyers

#### O Outcomes

**oC33** Clients are not confused about the qualifications and status of *registered European lawyers*.

#### R Rules

**rC142** If you are a *registered European lawyer* and not a *barrister*, you must not hold yourself out to be a *barrister*.

**rC143** You must in connection with all professional work undertaken in England and Wales as a *registered European lawyer*:

- .1 use your *home professional title*;
- .2 indicate the name of your *home professional body* or the *court* before which you are entitled to practise in that *Member State*; and
- .3 indicate that you are registered with the *Bar Standards Board* as a *European lawyer*.

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## D4. Unregistered barristers

### O Outcomes

**oC34** *Clients who receive legal services from unregistered barristers are aware that such unregistered barristers are not subject to the same regulatory safeguards that would apply if they instructed a practising barrister.*

### R Rules

**rC144** If you are an *unregistered barrister* and you supply *legal services* (other than as provided for in Rule rC145) to any inexperienced *client* then, before supplying such services:

- .1 you must explain to the *client* that:
  - a (unless you are supplying *legal services* pursuant to Rule S12) you are not acting as a *barrister*;
  - b you are not subject to those parts of the Code of Conduct and other provisions of this *Handbook* which apply only to *BSB authorised persons*;
  - c the *Bar Standards Board* will only consider *complaints* about you which concern the Core Duties or those parts of the Code of Conduct and other provisions of this *Handbook* which apply to you;
  - d (unless you are covered by professional indemnity insurance) you are not covered by professional indemnity insurance;
  - e they have the right to make a *complaint*, how they can complain, to whom, of any time limits for making a *complaint* but that they have no right to complain to the *Legal Ombudsman* about the services you supply;
- .2 you must get written confirmation from the *client* that you have given this explanation.

For the purposes of this Rule rC144, an inexperienced *client* includes any individual or other person who would, if you were a *BSB authorised person*, have a right to bring a *complaint* pursuant to the Legal Ombudsman Scheme Rules.

### G Guidance

#### Guidance on Rule rC144

**gC153** For the purposes of determining whether Rule rC144 applies, the people who would be entitled to complain to the *Legal Ombudsman* if you were a *BSB authorised person* are:

- .1 an individual; or
- .2 a business or enterprise that was a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly a business or enterprise with fewer than 10 employees and turnover or assets not exceeding €2 million), when it referred the *complaint* to you; or
- .3 a charity with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to you; or

- .4 a club, association or organisation, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to you; or
- .5 a trustee of a trust with an asset value of less than £1 million at the time at which the complainant refers the *complaint* to you; or
- .6 a personal representative or beneficiary of the estate of a person who, before he or she died, had not referred the complaint to the *Legal Ombudsman*.

## R Rules

**rC145** rC144 does not apply to you if you supply *legal services*:

- .1 as an *employee* or *manager* of a *regulated entity*;
- .2 as an *employee* or *manager* of a body subject to regulation by a professional body or regulator;
- .3 as provided for in Section S.B9 (*Legal Advice Centres*);
- .4 pursuant to an authorisation that you have obtained from another *approved regulator*; or
- .5 in accordance with Rules S13 and S14.

## G Guidance

### Guidance on Rule rC145

**gC154** Guidance on the disclosures which unregistered barristers should consider making to *clients* covered by Rule rC145, and other *clients* who are not inexperienced *clients*, to ensure that they comply with Rule rC19 and do not mislead those *clients* is available on BSB website <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.

## D5. Cross-border activities within the European Union and the European Economic Area

### O Outcomes

**oC35** *BSB regulated persons who undertake cross-border activities comply with the terms of the Code of Conduct for European Lawyers.*

### R Rules

**rC146** If you are a *BSB regulated person* undertaking *cross-border activities* then, in addition to complying with the other provisions of this *Handbook* which apply to you, you must also comply with Rules rC147 to rC158 below.

### G Guidance

#### Guidance on Rule rC146

**gC155** Where the *cross-border activities* constitute *foreign work* (in other words, limb (a) of the definition of *cross-border activities*), you should note, in particular, Rules rC13 and rC14 and the associated guidance.

**gC156** The purpose of this section D5 is to implement those provisions of the *Code of Conduct for European Lawyers* which are not otherwise covered by the *Handbook*. If a provision of the *Code of Conduct for European Lawyers* has not been included here then the equivalent provisions of *Handbook* need to be complied with in respect of all *cross-border activities* (including where they place a higher burden on the *BSB regulated person* than the *Code of Conduct for European Lawyers* itself which is the case, for example, in respect of the handling of *client money* (Rule rC73 and rC74)).

### R Rules

#### Incompatible occupations

**rC147** If you act in legal proceedings or proceedings before public authorities in a *CCBE State* other than the *UK*, you must, in that *CCBE State*, observe the Rules regarding incompatible occupations as they are applied to lawyers of that *CCBE State*.

**rC148** If you are established in a *CCBE State* other than the *UK* and you wish to participate directly in commercial or other activities not connected with the practice of the law in that *CCBE State*, you must respect the Rules regarding forbidden or incompatible occupations as they are applied to lawyers of that *CCBE State*.

#### Fee sharing with non-lawyers

**rC149** You must not share your fees with a person situated in a *CCBE State* other than the *UK* who is not a lawyer except where otherwise permitted by the terms of this *Handbook* or Rule rC150 below.

**rC150** Rule rC149 shall not preclude you from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.



### Co-operation among lawyers of different member states

- rC151** If you are approached by a lawyer of a *CCBE State* other than the UK to undertake work which you are not competent to undertake, you must assist that lawyer to obtain the information necessary to find and instruct a lawyer capable of providing the service asked for.
- rC152** When co-operating with a lawyer of a *CCBE State* other than the UK you must take into account the differences which may exist between your respective legal systems and the professional organisations, competencies and obligations of lawyers in your respective states.

### Correspondence between lawyers in different CCBE states

- rC153** If you want to send to a lawyer in a *CCBE State* other than the UK a communication which you wish to remain “confidential” or “without prejudice”, you must, before sending the communication, clearly express your intention in order to avoid misunderstanding, and ask if the lawyer is able to accept the communication on that basis.
- rC154** If you are the intended recipient of a communication from a lawyer in another *CCBE State* which is stated to be “confidential” or “without prejudice”, but which you are unable to accept on the basis intended by that lawyer, you must inform that lawyer accordingly without delay.

### Responsibility for fees

- rC155** If in the course of practice you instruct a lawyer of a *CCBE State* other than the UK to provide *legal services* on your behalf, you must pay the fees, costs and outlays which are properly incurred by that lawyer (even where the *client* is insolvent) unless:
- .1 you were simply introducing the *client* to them and the lawyer of the *CCBE State* other than the UK has since had a direct contractual relationship with the *client*; or
  - .2 you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date; or the lawyer of the *CCBE State* other than the UK is, in the particular matter, practising as a lawyer in England or Wales (whether authorised by the *BSB* or any other *Approved Regulator*).

### Disputes amongst lawyers in different member states

- rC156** If you consider that a lawyer in a *CCBE State* other than the UK has acted in breach of a rule of professional conduct you must draw the breach to the other lawyer’s attention.
- rC157** If any personal dispute of a professional nature arises between you and a lawyer in a *CCBE State* other than the UK you must first try to settle it in a friendly way.
- rC158** You must not commence any form of proceedings against a lawyer in a *CCBE State* other than the UK on matters referred to in Rules rC156 or rC157 without first informing the *Bar Council* and the other lawyer’s bar or law society in order to allow them an opportunity to assist in resolving the matter.

## Part 3

# Scope of practice, *authorisation and licensing rules*

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3

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# A. APPLICATION

- rS1** Section 3.B applies to all *BSB regulated persons* and *unregistered barristers* and “You” and “Your” should be construed accordingly. It provides that you must not carry on any *reserved legal activity* or practise as a *barrister* unless you are authorised to do so, and explains the different capacities within which you may work if you are so authorised and any limitations on the scope of your *practice*. It also explains the further requirements which you must follow if you intend to work in more than one capacity.
- rS2** Section 3.C applies to *barristers* and *registered European lawyers* and sets out the basis on which they may apply for a *practising certificate* which will entitle them to practise within England and Wales.
- rS3** Section 3.D applies to *European lawyers* and provides details about how to apply to become a *registered European lawyer* in England and Wales, thus entitling them to apply for a *practising certificate* in accordance with the provisions of 3.C.
- rS4** Section 3.E applies to all entities wishing to be regulated by the BSB and sets out the basis upon which entities may be:
- .1 authorised to practise as a *BSB authorised body*; or
  - .2 licensed to practise as a *BSB licensed body*.
- rS5** Section 3.F applies to all *BSB entities*. It contains the continuing compliance requirements which apply to them.

# B. SCOPE OF PRACTICE

## B1. No practise without authorisation

**rS6** You must not carry on any *reserved legal activity* unless you are entitled to do so under the *LSA*.

### G

#### Guidance

#### Guidance to Rule rS6

**gS1** You are not entitled to carry on any *reserved legal activity*, whether on your own behalf or acting as a *manager* or *employee*, unless you are either authorised or exempt in respect of that *reserved legal activity*. Where you are a *manager* or *employee* of a *person* who, as part of their *practice*, supplies services to *the public* or to a section of *the public* (with or without a view to profit), which consist of, or include, the carrying on of *reserved legal activities*, that *person* must also be entitled to carry on that *reserved legal activity* under the *LSA*. Authorisation in accordance with this Part 3 permits you to carry on the *reserved legal activities* specified in your authorisation.

**rS7** You must not permit any third party who is not authorised to provide *reserved legal activities* to provide such *reserved legal activities* on your behalf.

**rS8** If:

- .1 you are an individual and do not have a *practising certificate*; or
- .2 you are an entity and you have not been authorised or licensed to provide *reserved legal activities* in accordance with Section 3.E,

then:

- .a you may not practise as a *barrister* or a *registered European lawyer* or as a *BSB entity* (as appropriate); and
- .b you are not authorised by the *Bar Standards Board* to carry on any *reserved legal activity*.

**rS9** For the purposes of this *Handbook*, you practise as a *barrister* or a *registered European lawyer*, or a *BSB entity* if you are supplying *legal services* and:

- .1 you are an individual and you hold a *practising certificate*; or
- .2 you hold yourself out as a *barrister* or a *registered European lawyer* (as appropriate) or
- .3 you are an entity and you have been authorised or licensed to provide *reserved legal activities* in accordance with Section 3.E; or
- .4 you act as a *manager* of, or have an ownership interest in, an *authorised (non-BSB) body* and as such you are required by the rules of that body's *Approved Regulator* to hold a *practising certificate* issued by the *Bar Council* (as the case may be).

- rS10** For the purposes of this Section 3.B1 any reference to the supply of *legal services* includes an offer to supply such services.
- rS11** Rule rS9.1 above does not apply to you if you are a *pupil* in the non-practising six months of *pupillage* if and insofar as you accept a noting brief with the permission of your *pupil supervisor* or head of *chambers* or *HOLP*.
- rS12** If you are an *unregistered barrister* or *registered European lawyer* but do not hold a *practising certificate* and you supply *legal services* in the manner provided for in Rules rS13, rS14 and rS15 below, then you shall not, by reason of supplying those services:
- .1 be treated for the purposes of this Section B of Part 3 as *practising barrister* or a *registered European lawyer*; or
  - .2 be subject to the rules in Part 2 of this *Handbook* or the rules in this Section 3.B which apply to *practising barristers*.
- rS13** Rule rS12 applies to you if and insofar as:
- .1 you are practising as a *foreign lawyer*; and
  - .2 you do not:
    - (a) give advice on *English Law*; or
    - (b) supply *legal services* in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law).
- rS14** Rule rS12 applies to you if:
- .1 you are authorised and currently permitted to carry on reserved legal activities by another *Approved Regulator*; and
  - .2 you hold yourself out as a *barrister* or a *registered European lawyer* (as appropriate) other than as a *manager* or *employee* of a *BSB entity*; and
  - .3 when supplying *legal services* to any *person* or *employer* for the first time, you inform them clearly in writing at the earliest opportunity that you are not practising as a *barrister* or a *registered European lawyer*.
- rS15** Rule rS12 applies to you provided that:
- .1 you supplied *legal services* prior to 31 March 2012 pursuant to paragraph 206.1 or 206.2 of the 8th Edition of the Code; and
  - .2 if you supply any *legal services* in England and Wales, you were called to the *Bar* before 31 July 2000; and
  - .3 before 31 March in each year, and promptly after any change in the details previously supplied to the *Bar Council* (acting by the *Bar Standards Board*), you provide in writing to the *Bar Council* (acting by the *Bar Standards Board*), details of the current address(es) with telephone number(s) of the office or premises from which you do so, and:
    - (a) if you are employed, the name, address, telephone number and nature of the *practice* of your *employer*; or

- (b) if you are an *employee* or *manager* of, or you have an ownership interest in, a *regulated entity*, the name, address, email address, telephone number and the name of the *regulated entity* and its *Approved Regulator*; and
- .4 unless you only offer services to your *employer* or to the *regulated entity* of which you are a *manager* or an *employee* or which you have an ownership interest in, you are (or, if you are supplying *legal services* to *clients* of your *employer* or *regulated entity* of which you are an *owner*, *manager* or an *employee*, your *employer* or such body is) currently insured in accordance with the requirements of Rule C76r and you comply with the requirements of Section 2.D4.

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## B2. Provision of *reserved* legal activities and of legal services

**rS16** You may only carry on *reserved legal activities* or supply other *legal services* in the following capacities:

- .1 as a *self-employed barrister*, subject to the limitations imposed by Section 3.B3;
- .2 as a *BSB entity* subject to the limitations imposed by Section 3.B4;
- .3 as a *manager* of a *BSB entity* or as an *employed barrister (BSB entity)*, subject to the limitations imposed by Section 3.B5;
- .4 as a *manager* of an *authorised (non-BSB) body* or as an *employed barrister (authorised non-BSB body)*, subject to the limitations imposed by Section 3.B6;
- .5 as an *employed barrister (non authorised body)*, subject to the limitations imposed by Section 3.B7; or
- .6 as a *registered European lawyer* in any of the above capacities, in which case the equivalent limitations that would have applied if you were practising as a *barrister* shall apply to your *practice* as a *registered European lawyer*.

**rS17** Where you carry on *reserved legal activities* in one of the capacities set out at Rule rS16, so as to be subject to regulation by the *Bar Standards Board* in respect of those *reserved legal activities*, any other *legal services* you may supply in that same capacity will also be subject to regulation by the *Bar Standards Board*, even if unreserved.

**rS18** You may only *practise* or be involved with the supply of *legal services* (whether *reserved legal activities* or otherwise) in more than one of the capacities listed in Rule rS16 after:

- .1 having obtained an amended *practising certificate* from the *Bar Standards Board* which recognises the capacities in respect of which you are intending to practise; and
- .2 having agreed with each *employer* or *regulated entity* with which you are involved a protocol that enables you to avoid or resolve any conflict of interests or duties arising from your *practice* and/or involvement in those capacities,

and provided always that you do not work in more than one capacity in relation to the same case or issue for the same *client*, at the same time.

**rS19** If you are a *pupil* who has completed or been exempted from the non-practising six months of *pupillage*, you may only supply *legal services* to *the public* or exercise any right which you have by reason of being a *barrister*, if you have the permission of your *pupil supervisor*, or head of *chambers* or *HOLP* (as appropriate).

**rS20** Subject to Rule rS21, if you are a *barrister* of less than three *years' standing*, you may:

- .1 only supply *legal services* to *the public* or exercise any *right of audience* by virtue of authorisation by the *Bar Standards Board*; or
- .2 only *conduct litigation* by virtue of authorisation by the *Bar Standards Board*,

if your principal place of *practice* (or if you are *practising* in a dual capacity, each of your principal places of *practice*) is either:

- .a a *chambers* or an annex of *chambers* which is also the principal place of *practice* of a relevant qualified *person* who is readily available to provide guidance to you; or

- .b an office of an organisation of which an *employee, partner, manager* or *director* is a relevant qualified *person* who is readily available to provide guidance to you.

**rS21** If you are an *employed barrister (non-authorized body)* and you are only providing *legal services*, exercising a *right of audience* or conducting litigation for those *persons* listed at Rule rS39.1 to rS39.6, then the place of *practice* from which you perform such duties is only required to be an office of an organisation of which an *employee, partner, manager* or *director* is a relevant qualified *person* who is readily available to provide guidance to you if you are of less than one year's standing.

**rS22** In Rule rS20 and Rule rS21 above, the references to "qualified *person*" mean the following:

#### Supply of legal services to the public – qualified person

.1 Where you are a *barrister* intending to supply *legal services* to the *public*, a *person* shall be a qualified *person* for the purpose of Rule rS20 if they:

- .a have been entitled to *practise* and have *practised* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the *Bar Training Regulations*) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and
- .b for the previous two years have made such *practice* their primary occupation; and
- .c are not acting as a qualified *person* in relation to more than two other people; and
- .d has not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person*.

#### The exercise of a right of audience – qualified person

.2 Where:

- .a you are a *barrister* exercising a *right of audience* in England and Wales, a *person* is a qualified *person* for the purpose of Rule rS20 if they:
  - .i have been entitled to *practise* and have *practised* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the *Bar Training Regulations*) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and
  - .ii for the previous two years:
    - (1) have made such *practice* their primary occupation; and
    - (2) have been entitled to exercise a *right of audience* before every *court* in relation to all proceedings; and
  - .iii are not acting as a qualified *person* in relation to more than two other people; and
  - .iv have not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person*; or
- .b you are a *barrister* exercising a *right of audience* in a *Member State* other than the United Kingdom pursuant to the *Establishment Directive*, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a *person* shall be a qualified *person* for the purposes of Rule rS20 if they:

- .i have been designated by the *Bar Standards Board* as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by Rule rS22.3.a.i and rS22.3.a.ii above; and
- .ii are not acting as a qualified *person* in relation to more than two other people; and
- .iii have not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person*.

### The exercise of a right to conduct litigation – qualified person

#### .3 Where:

- .a you are a *barrister* exercising a *right to conduct litigation* in England and Wales, a *person* is a qualified *person* for the purpose of Rule rS20 if they:
  - .i have been entitled to *practise* and have *practised* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the *Bar Training Regulations*) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and
  - .ii for the previous two years have made such *practice* their primary occupation; and
  - .iii are entitled to *conduct litigation* before every *court* in relation to all proceedings; and
  - .iv are not acting as a qualified *person* in relation to more than two other people; and
  - .v have not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person*; or
- .b you are a *barrister* exercising a *right to conduct litigation* in a *Member State* other than the United Kingdom pursuant to the *Establishment Directive*, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a *person* is a qualified *person* for the purposes of Rule rS20 and rS21 if they:
  - .i have been designated by the *Bar Standards Board* as having qualifications and experience in that state or country which are equivalent to the qualifications and experience required by Rule rS22.3.a.i and rS22.3.a.ii above; and
  - .ii are not acting as a qualified *person* in relation to more than two other people; and
  - .iii have not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person*.

## G

### Guidance

#### Guidance to Rules rS20 and rS22

- gS2** If you are a *practising barrister* of less than three *years' standing* and you are authorised to *conduct litigation*, you will need to work with a qualified *person* who is authorised to do litigation as well as with someone who meets the criteria for being a qualified *person* for the purpose of providing services to *the public* and exercising *rights of audience*. This may be, but is not necessarily, the same *person*.

## B3. Scope of practice as a self-employed barrister

**rS23** Rules rS24 and rS25 below apply to you where you are acting in your capacity as a *self-employed barrister*, whether or not you are acting for a fee.

**rS24** You may only supply *legal services* if you are appointed or instructed by the *court* or instructed:

- .1 by a *professional client* (who may be an *employee* of the *client*); or
- .2 by a *licensed access client*, in which case you must comply with the *licensed access rules*; or
- .3 by or on behalf of any other *client*, provided that:
  - .a the matter is *public access instructions* and:
    - .i you are entitled to provide public access work and the *instructions* are relevant to such entitlement; and
    - .ii you have notified the *Bar Standards Board* that you are willing to accept *instructions* from lay *clients*; and
    - .iii you comply with the *public access rules*; or
  - .b the matter relates to the *conduct of litigation* and
    - .i you have a litigation extension to your *practising certificate*; and
    - .ii you have notified the *Bar Standards Board* that you are willing to accept *instructions* from lay *clients*.

### G

#### Guidance

##### Guidance to Rule rS24

**gS3** References to *professional client* in Rule rS24.1 include *foreign lawyers* and references to *client* in Rule rS24.3 include *foreign clients*.

**gS4** If you are instructed by a *foreign lawyer* to provide advocacy services in relation to *court* proceedings in England and Wales, you should advise the *foreign lawyer* of any limitation on the services you can provide. In particular, if *conduct of litigation* will be required, and you are not authorised to *conduct litigation* or have not been instructed to do so, you should advise the *foreign lawyer* to take appropriate steps to instruct a *person* authorised to *conduct litigation* and, if requested, assist the *foreign lawyer* to do so. If it appears to you that the *foreign lawyer* is not taking reasonable steps to instruct someone authorised to *conduct litigation*, then you should consider whether to return your *instructions* under rules C25 and C26.

**rS25** Subject to Rule rS26, you must not in the course of your *practice* undertake the management, administration or general conduct of a *client's* affairs.

**rS26** Nothing in Rule rS25 prevents you from undertaking the management, administration or general conduct of a *client's* affairs where such work is *foreign work* performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular *foreign work* or *foreign work* in general.

## B4. Scope of practice as a BSB entity

**rS27** Rules rS28 and rS29 apply to you where you are acting in your capacity as a *BSB entity*.

**rS28** You may only supply *legal services* if you are appointed or instructed by the *court* or instructed:

- .1 by a professional *client* (who may be an *employee* of the *client*);
- .2 by a *licensed access client*, in which case you must comply with the *licensed access rules*; or
- .3 by or on behalf of any other *client*, provided that:
  - .a at least one manager or employee is suitably qualified and experienced to undertake public access work; and
  - .b you have notified the *Bar Standards Board* that you are willing to accept *instructions* from lay *clients*.

### G

#### Guidance

##### Guidance to Rule rS28

**gS5** References to professional client in Rule rS28.1 include foreign lawyers and references to client in Rule rS28.3 include foreign clients.

**gS6** If you are instructed to provide advocacy services in relation to *court* proceedings in England and Wales by a *foreign lawyer* or other professional *client* who does not have a *right to conduct litigation* pursuant to Rule rS28.1 and you are not authorised to *conduct litigation* yourself or you are otherwise not instructed to conduct the litigation in the particular matter, then you must:

- .1 advise the *foreign lawyer* to take appropriate steps to instruct a *solicitor* or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the *foreign lawyer* to do so;
- .2 cease to act and return your *instructions* if it appears to you that the *foreign lawyer* is not taking reasonable steps to instruct a *solicitor* or other authorised litigator to conduct the litigation; and
- .3 not appear in *court* unless a *solicitor* or other authorised litigator has been instructed to conduct the litigation.

**gS7** The public access and licensed access rules do not apply to *BSB entities* as their circumstances will vary considerably. Nevertheless those rules provide guidance on best practice. In the case of a barrister, “suitably qualified and experienced to undertake public access work” will mean successful completion of the public access training required by the BSB or an exemption for the requirement to do the training. If you are a *BSB entity*, you will also need to have regard to relevant provisions in the Code of Conduct (Part 2 of this Handbook), especially C17, C21.vii, C21.viii and C22. You will therefore need to consider whether:

- .1 You have the necessary skills and experience to do the work, including, where relevant, the ability to work with a vulnerable client;
- .2 The employees who will be dealing with the *client* are either authorised to *conduct litigation* or entitled to do public access work or have had other relevant training and experience;
- .3 it would be in the best interests of the client or of the interests of justice for the client to instruct a solicitor or other professional client if you are not able to provide such services;
- .4 If the matter involves the *conduct of litigation* and you are not able or instructed to *conduct litigation*, whether the client will be able to undertake the tasks that you cannot perform for them;
- .5 The *client* is clear about the services which you will and will not provide and any limitations on what you can do, and what will be expected of them;
- .6 If you are not able to act in legal aid cases, the *client* is in a position to take an informed decision as to whether to seek legal aid or proceed with public access.

**gS8** You will also need to ensure that you keep proper records.

**rS29** Subject to Rule rS30, you must not in the course of your *practice* undertake the management, administration or general conduct of a *client's* affairs

**rS30** Nothing in Rule rS29 prevents you from undertaking the management, administration or general conduct of a client's affairs where such work is foreign work performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular foreign work or foreign work in general.

## B5. Scope of practice as a manager of a BSB entity or as an employed barrister (BSB entity)

**rS31** Rules rS32 and rS33 below apply to you where you are acting in your capacity as a *manager* of a *BSB entity* or as an *employed barrister (BSB entity)*.

**rS32** You may only supply *legal services* to the following *persons*:

- .1 the *BSB entity*; or
- .2 any *employee, director, or company secretary* of the *BSB entity* in a matter arising out of or relating to that *person's employment*;
- .3 any *client* of the *BSB entity*;
- .4 if you supply *legal services* at a *Legal Advice Centre*, *clients* of the *Legal Advice Centre*; or
- .5 if you supply *legal services* free of charge, members of the public.

**rS33** Subject to Rule rS34, you must not in the course of your *practice* undertake the management, administration or general conduct of a *client's* affairs.

**rS34** Nothing in Rule rS33 prevents you from undertaking the management, administration or general conduct of a *client's* affairs where such work is foreign work performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular foreign work or foreign work in general.

## B6. Scope of practice as a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)

**rS35** Rules rS36 and rS37 apply to you where you are acting in your capacity as a *manager* of an *authorised (non-BSB) body* or as an *employed barrister (authorised non-BSB body)*

**rS36** You may only supply *legal services* to the following *persons*:

- .1 the *authorised (non-BSB) body*;
- .2 any *employee, director* or company secretary of the *authorised (non-BSB) body* in a matter arising out of or relating to that *person's employment*;
- .3 any *client* of the *authorised (non-BSB) body*;
- .4 if you provide *legal services* at a *Legal Advice Centre*, *clients* of the *Legal Advice Centre*; or
- .5 if you supply *legal services* free of charge, members of the public.

**rS37** You must comply with the rules of the *Approved Regulator* or *licensing authority* of the *authorised (non-BSB) body*.

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## B7. Scope of practice as an employed barrister (non authorised body)

**rS38** Rule rS39 applies to you where you are acting in your capacity as an *employed barrister (non authorised body)*.

**rS39** Subject to s. 15(4) of the Legal Services Act 2007, you may only supply *legal services* to the following *persons*:

- .1 your *employer*;
- .2 any *employee, director* or company secretary of your *employer* in a matter arising out of or relating to that *person's employment*;
- .3 if your *employer* is a public authority (including the Crown or a Government department or agency or a local authority), another public authority on behalf of which your *employer* has made arrangements under statute or otherwise to supply any *legal services* or to perform any of that other public authority's functions as agent or otherwise;
- .4 if you are employed by or in a Government department or agency, any Minister or Officer of the Crown;
- .5 if you are employed by a *trade association*, any individual member of the association;
- .6 if you are, or are performing the functions of, a *Justices' clerk*, the Justices whom you serve;
- .7 if you are employed by the *Legal Aid Agency*, members of the public;
- .8 if you are employed by or at a *Legal Advice Centre*, *clients* of the *Legal Advice Centre*;
- .9 if you supply *legal services* free of charge, members of the public; or
- .10 if your *employer* is a *foreign lawyer* and the *legal services* consist of foreign work, any *client* of your *employer*.

## B8. Scope of practice of a barrister called to undertake a particular case

**rS40** If you are called to the *Bar* under rQ98 of the *Bar Training Regulations* (temporary membership of the *Bar*), you may not *practise* as a *barrister* other than to conduct the case or cases specified in the certificate referred to in rQ99.

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## B9. Legal Advice Centres

- rS41** You may supply *legal services* at a *Legal Advice Centre* on a voluntary or part time basis and, if you do so, you will be treated for the purposes of this *Handbook* as if you were employed by the *Legal Advice Centre*.
- rS42** If you supply *legal services* at a *Legal Advice Centre* to *clients* of a *Legal Advice Centre* in accordance with Rule rS41:
- .1 you must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any *legal services* to any *client* of the *Legal Advice Centre* other than a salary paid by the *Legal Advice Centre*;
  - .2 you must ensure that any fees in respect of *legal services* supplied by you to any *client* of the *Legal Advice Centre* accrue and are paid to the *Legal Advice Centre*, or to the Access to Justice Foundation or other such charity as prescribed by order made by the Lord Chancellor under s.194(8) of the Legal Services Act 2007; and
  - .3 you must not have any financial interest in the *Legal Advice Centre*.

### G

#### Guidance

##### Guidance to Rules rS41 and rS42

- gS9** You may provide *legal services* at a *Legal Advice Centre* on an unpaid basis irrespective of the capacity in which you normally work.
- gS10** If you are a *self-employed barrister*, you do not need to inform the Bar Standards Board that you are also working for a *Legal Advice Centre*.
- gS11** Transitional arrangements under the *LSA* allow *Legal Advice Centres* to provide *reserved legal activities* without being authorised. When this transitional period comes to an end, the Rules relating to providing services at *Legal Advice Centres* will be reviewed.

## B10. Barristers authorised by other approved regulators

- rS43** If you are authorised by another *Approved Regulator* to carry on a *reserved legal activity* and currently permitted to *practise* by that *Approved Regulator*, you must not *practise* as a *barrister* and you are not eligible for a *practising certificate*.

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# C. PRACTISING CERTIFICATE RULES

## C1. Eligibility for practising certificates and litigation extensions

**rS44** In this Section 3.C, references to “you” and “your” are references to *barristers* and *registered European lawyers* who are intending to apply for authorisation to *practise* as a *barrister* or a *registered European lawyer* (as the case may be) or who are otherwise intending to apply for a *litigation extension* to their existing *practising certificate*.

**rS45** You are eligible for a *practising certificate* if:

- .1 you are a *barrister* or *registered European lawyer* and you are not currently *suspended* from *practice* and have not been *disbarred*; and
- .2 you meet the requirements of Rules rS46.1, rS46.2, rS46.3 or rS46.4; and
- .3 [either:
  - .a within the last 5 years either (i) you have held a *practising certificate*; or (ii) you have satisfactorily completed (or have been exempted from the requirement to complete) either the non-practising period of 6 months of *pupillage* or 12 months of *pupillage*; or
  - .b if not, you have complied with such training requirements as may be imposed by the *Bar Standards Board*.]<sup>1</sup>

**rS46** You are eligible for:

- .1 a *full practising certificate* if either:
  - .a you have satisfactorily completed 12 months *pupillage*; or
  - .b you have been exempted from the requirement to complete 12 months of *pupillage*; or
  - .c on 30 July 2000, you were entitled to exercise full *rights of audience* by reason of being a *barrister*; or
  - .d you were called to the *Bar* before 1 January 2002 and:
    - .i you notified the *Bar Council* that you wished to exercise a *right of audience* before every *court* and in relation to all proceedings; and

1. Rule rS45.3 does not come into effect until 1 April 2015

.ii you have complied with such training requirements as the *Bar Council* or the *Bar Standards Board* may require or you have been informed by the *Bar Council* or the *Bar Standards Board* that you do not need to comply with any such further requirements;

in each case, before 31 March 2012;

- .2 a *provisional practising certificate* if you have satisfactorily completed (or have been exempted from the requirement to complete) the non-practising period of 6 months of *pupillage* and at the time when you apply for a *practising certificate* you are registered as a *Pupil*;
- .3 a *limited practising certificate* if you were called to the *Bar* before 1 January 2002 but you are not otherwise eligible for a *full practising certificate* in accordance with Rule rS46.1 above; or
- .4 a *registered European lawyer's practising certificate* if you are a *registered European lawyer*.

**rS47** You are eligible for a litigation extension:

- .1 where you have or are due to be granted a *practising certificate* (other than a *provisional practising certificate*); and
- .2 where you are:
  - .a more than three *years' standing*; or
  - .b less than three *years' standing*, but your principal place of *practice* (or if you are *practising* in a dual capacity, each of your principal places of *practice*) is either:
    - .i a *chambers* or an annex of *chambers* which is also the principal place of *practice* of a qualified *person* (as that term is defined in Rule rS22.3) who is readily available to provide guidance to you; or
    - .ii an office of an organisation of which an *employee, partner, manager* or *director* is a qualified *person* (as that term is defined in Rule rS22.3) who is readily available to provide guidance to you;
- .3 you have the relevant administrative systems in place to be able to provide *legal services* direct to *clients* and to administer the *conduct of litigation*; and
- .4 you have the procedural knowledge to enable you to *conduct litigation* competently.

## G

### Guidance

#### Guidance to Rules rS47.3

**gS12** You should refer to the more detailed guidance published by the *Bar Standards Board* from time to time which can be found at <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/authorisation-to-conduct-litigation/>. This provides more information about the evidence you may be asked for to show that you have procedural knowledge to enable you to *conduct litigation* competently.

## C2. Applications for practising certificates and litigation extensions by barristers and registered European lawyers

**rS48** You may apply for a *practising certificate* by:

- .1 completing the relevant application form supplied by the *Bar Council* (acting by the *Bar Standards Board*) and submitting it to the *Bar Council* (acting by the *Bar Standards Board*); and
- .2 submitting such information in support of the application as may be prescribed by the *Bar Council* (acting by the *Bar Standards Board*); and
- .3 paying (or undertaking to pay in a manner determined by the *Bar Council*) the appropriate *practising certificate fee* in the amount determined in accordance with Rule rS50 (subject to any reduction pursuant to Rule rS53).

**rS49** You may apply for a litigation extension to a *practising certificate* (other than a *provisional practising certificate*) by:

- .1 completing the relevant application form supplied by the *Bar Council* (acting by the *Bar Standards Board*) and submitting it to the *Bar Council* (acting by the *Bar Standards Board*); and
- .2 confirming that you meet the relevant requirements of Rule rS47.1;
- .3 paying (or undertaking to pay in a manner determined by the *Bar Council*) the *application fee* (if any) and the *litigation extension fee* (if any);
- .4 confirming, in such form as the *Bar Standards Board* may require from time to time, that you have the relevant administrative systems in place to be able to provide *legal services* direct to *clients* and to administer the *conduct of litigation* in accordance with Rule rS47.3; and
- .5 confirming, in such form as the *Bar Standards Board* may require from time to time, that you have the procedural knowledge to enable you to *conduct litigation* competently in accordance with Rule rS47.4.

**rS50** An application will only have been made under either Rule rS48 or rS49 once the *Bar Council* (acting by the *Bar Standards Board*) has received, in respect of the relevant application, the application form in full, together with the *application fee*, the *practising certificate fee*, the *litigation extension fee* (if any, or an undertaking to pay such fees in a manner determined by the *Bar Council*), all the information required in support of the application and confirmation from you, in the form of a declaration, that the information contained in, or submitted in support of, the application is full and accurate.

**rS51** On receipt of the application, the *Bar Council* (acting by the *Bar Standards Board*) may require, from you or a third party (including, for the avoidance of doubt, any *BSB entity*), such additional information, documents or references as it considers appropriate to the consideration of your application.

**rS52** You are *personally* responsible for the contents of your application and any information submitted to the *Bar Council* (acting by the *Bar Standards Board*) by you or on your behalf and you must not submit (or cause or permit to be submitted on your behalf) information to the *Bar Council* (acting by the *Bar Standards Board*) which you do not believe is full and accurate.

**rS53** When applying for a *practising certificate* you may apply to the *Bar Council* for a reduction in the *practising certificate fee payable by you* if your gross fee income or salary is less than such amount as the *Bar Council* may decide from time to time. Such an application must be submitted by completing the form supplied for that purpose by the *Bar Council* which can be found through Barrister Connect.

### C3. Practising certificate fees and litigation extension fees

**rS54** The *practising certificate fee* shall be the amount or amounts prescribed in the Schedule of *Practising Certificate Fees* issued by the *Bar Council* from time to time, and any reference in these Rules to the "*appropriate practising certificate fee*" or the "*practising certificate fee payable by you*" refers to the *practising certificate fee* payable by you pursuant to that Schedule, having regard, amongst other things, to:

- .1 the different annual *practising certificate fees* which may be prescribed by the *Bar Council* for different categories of *barristers*, e.g. for Queen's Counsel and junior counsel, for *barristers* of different levels of seniority, and/or for *barristers practising* in different capacities and/or according to different levels of income (i.e. *self-employed barristers, employed barristers, managers or employees of BSB entities or barristers practising with dual capacity*);
- .2 any reductions in the annual *practising certificate fees* which may be permitted by the *Bar Council* in the case of *practising certificates* which are valid for only part of a *practising certificate year*;
- .3 any discounts from the annual *practising certificate fee* which may be permitted by the *Bar Council* in the event of payment by specified methods;
- .4 any reduction in, or rebate from, the annual *practising certificate fee* which may be permitted by the *Bar Council* on the grounds of low income, change of category or otherwise; and
- .5 any surcharge or surcharges to the annual *practising certificate fee* which may be prescribed by the *Bar Council* in the event of an application for renewal of a *practising certificate* being made after the end of the *practising certificate year*.

**rS55** The *litigation extension fee* shall be the amount or amounts prescribed by the *Bar Council* from time to time, and in these Rules the "*appropriate litigation extension fee*" or the "*litigation extension fee payable by you*" is the *litigation extension fee* payable by you having regard to, among other things:

- .1 any reductions in the annual *litigation extension fees* which may be permitted by the *Bar Council* in the case of *litigation extensions* which are valid for only part of a *practising certificate year*;
- .2 any discounts from the annual *litigation extension fee* which may be permitted by the *Bar Council* in the event of payment by specified methods;
- .3 any reduction in, or rebate from, the annual *litigation extension fee* which may be permitted by the *Bar Council* on the grounds of low income, change of category, or otherwise; and
- .4 any surcharge or surcharges to the annual *litigation extension fee* which may be prescribed by the *Bar Council* in the event of an application for a *litigation extension* being made at a time different from the time of your application for a *practising certificate*.

**rS56** If you have given an undertaking to pay the *practising certificate fee* or the *litigation extension fee*, you must comply with that undertaking in accordance with its terms.



## C4. Issue of practising certificates and litigation extensions

**rS57** The *Bar Council* (acting by the *Bar Standards Board*) shall not issue a *practising certificate* to a *barrister* or *registered European lawyer*:

- .1 who is not eligible for a *practising certificate*, or for a *practising certificate* of the relevant type; or
- .2 who has not applied for a *practising certificate*; or
- .3 who has not paid or not otherwise undertaken to pay in a manner determined by the Bar Council, the appropriate *practising certificate fee*; or
- .4 who is not insured against claims for professional negligence as provided for in Rule C76.

**rS58** The *Bar Council* (acting by the *Bar Standards Board*) shall not grant a *litigation extension* to a *barrister* or *registered European lawyer*:

- .1 in circumstances where the Bar Council (acting by the Bar Standards Board) is not satisfied that the requirements of *litigation extension* are met; or
- .2 who has not applied for a *litigation extension*; or
- .3 who has not paid or not otherwise undertaken to pay in a manner determined by the Bar Council, the appropriate *application fee* (if any) and the *litigation extension fee* (if any).

**rS59** The *Bar Council* (acting by the *Bar Standards Board*) may refuse to issue a *practising certificate* or to grant a *litigation extension*, or may revoke a *practising certificate* or a *litigation extension* in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the *practising certificate* or *litigation extension* (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant *barrister* or *registered European lawyer*:

- .1 does not hold adequate insurance in accordance with Rule C76;
- .2 has failed and continues to fail to pay the *appropriate practising certificate fee* or *litigation extension fee* when due;
- .3 would be, or is, *practising* in breach of the provisions of Section 3.B; or
- .4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to them.

**rS60** When the *Bar Council* (acting by the *Bar Standards Board*) issues a *practising certificate* or a *litigation extension*, it shall:

- .1 inform the relevant *barrister* or *registered European lawyer* of that fact; and
- .2 in the case of a *practising certificate*, publish that fact, together with the name and *practising address* of the *barrister* and *registered European lawyer* and the other details specified in Rule rS61 in the register on the *Bar Standards Board's* website; or
- .3 in the case of a *litigation extension*:
  - .a issue a revised and updated *practising certificate* to incorporate an express reference to such *litigation extension* in accordance with Rule rS66; and
  - .b amend the register maintained on the Bar Standards Board's website to show that the relevant *barrister* or *registered European lawyer* (as the case may be) is now authorised to *conduct litigation*.

- rS61** A *practising certificate* must state:
- .1 the name of the *barrister or registered European lawyer* (as the case may be);
  - .2 the period for which the *practising certificate* is valid;
  - .3 the *reserved legal activities* which the *barrister or registered European lawyer* (as the case may be) to whom it is issued is thereby authorised to carry on;
  - .4 the capacity (or capacities) in which the *barrister or registered European lawyer* (as the case may be) practises; and
  - .5 whether the *barrister or registered European lawyer* (as the case may be) is registered with the *Bar Council* as a *Public Access* practitioner.
- rS62** A *practising certificate* may be valid for a *practising certificate year* or part thereof and for one month after the end of the *practising certificate year*.
- rS63** A *full practising certificate* shall authorise a *barrister* to exercise a *right of audience* before every *court* in relation to all proceedings.
- rS64** A *provisional practising certificate* shall authorise a *pupil* in their second six to exercise a *right of audience* before every *court* in relation to all proceedings.
- rS65** A *limited practising certificate* shall not authorise a *barrister* to exercise a *right of audience*, save that it shall authorise a *barrister* to exercise any *right of audience* which they had by reason of being a *barrister* and was entitled to exercise on 30 July 2000.
- rS66** A *practising certificate* shall authorise a *barrister* to *conduct litigation* in relation to every *court* and all proceedings if the *practising certificate* specifies a *litigation extension*.
- rS67** Every *practising certificate* issued to a *barrister* shall authorise the *barrister*:
- .1 to undertake:
    - a *reserved instrument activities*;
    - b *probate activities*;
    - c *the administration of oaths*; and
    - d *immigration work*.
- rS68** A *registered European lawyer's practising certificate* shall authorise a *registered European lawyer* to carry on the same *reserved legal activities* as a *full practising certificate* issued to a *barrister*, save that:
- .1 a *registered European lawyer* is only authorised to exercise a *right of audience* or *conduct litigation* in proceedings which can lawfully only be provided by a *solicitor, barrister* or other qualified *person*, if they act in conjunction with a *solicitor* or *barrister* authorised to *practise* before the *court, tribunal* or public authority concerned and who could lawfully exercise that right; and
  - .2 a *registered European lawyer* is not authorised to prepare for remuneration any instrument creating or transferring an interest in land unless they have a *home professional title* obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia.

## C5. Amendment and revocation of practising certificates and litigation extensions

**rS69** You must inform the *Bar Council* (acting by the *Bar Standards Board*) as soon as reasonably practicable, and in any event within 28 days, if any of the information submitted in support of your *practising certificate* application form or *litigation extension* application form:

- .1 was incomplete or inaccurate when the application form was submitted; or
- .2 changes before the expiry of your *practising certificate*.

**rS70** If you wish to:

- .1 change the capacity in which you *practise* (e.g. if you change from being an *employed barrister* or a *manager* or *employee* of a *BSB entity* or an *authorised (non-BSB) body* to a *self-employed barrister*, or vice versa, or if you commence or cease *practice* in a dual capacity); or
- .2 cease to be authorised to *conduct litigation*,

before the expiry of your *practising certificate*, you must:

- a notify the *Bar Council* (acting by the *Bar Standards Board*) of such requested amendment to your *practising certificate*; and
- b submit to the *Bar Council* (acting by the *Bar Standards Board*) such further information as the *Bar Council* (acting by the *Bar Standards Board*) may reasonably require in order for them to be able to determine whether or not to grant such proposed amendment to your *practising certificate*; and
- c within 14 days of demand by the *Bar Council* pay to the *Bar Council* the amount (if any) by which the *annual practising certificate fee* which would apply to you in respect of your amended *practising certificate* exceeds the *annual practising certificate fee* which you have already paid (or undertaken to pay) to the *Bar Council*. In the event that the revised *annual practising certificate fee* is less than the amount originally paid to the *Bar Council* (acting by the *Bar Standards Board*) or in circumstances where you wish to cease to be authorised to *conduct litigation*, the *Bar Council* (acting by the *Bar Standards Board*) is not under any obligation to refund any part of the *annual practising certificate fee* or *litigation extension fee* already paid although it may in its absolute discretion elect to do so in the circumstances contemplated by the Schedule of *Practising Certificate Fees* issued by the *Bar Council* from time to time.

**rS71** The *Bar Council* (acting by the *Bar Standards Board*) may amend a *practising certificate* if it is satisfied that any of the information contained in the relevant application form was inaccurate or incomplete or has changed, but may not amend a *practising certificate* (except in response to a request from the *barrister* or a *registered European lawyer*) without first:

- .1 giving written notice to the *barrister* or *registered European lawyer* of the grounds on which the *practising certificate* may be amended; and
- .2 giving the *barrister* or *registered European lawyer* a reasonable opportunity to make representations.

**rS72** The *Bar Council* (acting by the *Bar Standards Board*) shall endorse a *practising certificate* to reflect any qualification restriction or condition imposed on the *barrister* or *registered European lawyer* by the *Bar Council* (acting by the *Bar Standards Board*) or by a *Disciplinary Tribunal*, *Interim Suspension or Disqualification Panel*, *Fitness to Practise Panel*, the *Visitors to the Inns of Court* or the High Court.

**rS73** The *Bar Council* (acting by the *Bar Standards Board*):

- .1 shall revoke a *practising certificate*:
  - .a if the *barrister* becomes authorised to practise by another *approved regulator*;
  - .b if the *barrister or registered European lawyer* is *disbarred or suspended from practice* as a *barrister or registered European lawyer* whether on an interim basis under section D of Part 5 or otherwise under section B of Part 5;
  - .c if the *barrister or registered European lawyer* has notified the *Bar Council* or the *Bar Standards Board* that they no longer wish to have a *practising certificate*; and
- .2 may revoke a *practising certificate*:
  - .a in the circumstances set out in Rule rS59; or
  - .b if the *barrister or registered European lawyer* has given an undertaking to pay the appropriate *practising certificate fee* and fails to comply with that undertaking in accordance with its terms,but in either case only after:
  - (i) giving written notice to the relevant *barrister or registered European lawyer* of the grounds on which the *practising certificate* may be revoked; and
  - (ii) giving the relevant *barrister or registered European lawyer* a reasonable opportunity to make representations.

**rS74** The *Bar Council* (acting by the *Bar Standards Board*):

- .1 shall revoke a *litigation extension* if the *barrister or registered European lawyer* has notified the *Bar Council* or the *Bar Standards Board* that they no longer wish to have the *litigation extension*; and
- .2 may revoke a *litigation extension*:
  - .a in the circumstances set out in Rule rS59; or
  - .b if the *barrister or registered European lawyer* has given an undertaking to pay the appropriate *litigation extension fee* and fails to comply with that undertaking in accordance with its terms,but in either case only after:
  - (i) giving written notice to the relevant *barrister or registered European lawyer* of the grounds on which the *litigation extension* may be revoked; and
  - (ii) giving the relevant *barrister or registered European lawyer* a reasonable opportunity to make representations.

## C6. Applications for review

**rS75** If you contend that the *Bar Council* (acting by the *Bar Standards Board*) has:

- .1 wrongly failed or refused to issue or amend a *practising certificate*; or
- .2 wrongly amended or revoked a *practising certificate*; or
- .3 wrongly failed or refused to issue a *litigation extension*; or
- .4 wrongly revoked a *litigation extension*,

in each case in accordance with this Section 3.C, then you may lodge an application for review using the form supplied for that purpose by the *Bar Standards Board* which can be found here <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/forms-and-guidelines/applications-authorisations,-exemptions,-waivers-and-reviews/>. For the avoidance of doubt, this Section 3.C6 does not apply to any amendment or revocation of a *practising certificate* or *litigation extension* made by order of a *Disciplinary Tribunal*, *Interim Suspension or Disqualification Panel*, *Fitness to Practise Panel*, the *Visitors to the Inns of Court* or the High Court.

**rS76** The decision of the *Bar Council* (acting by the *Bar Standards Board*) shall take effect notwithstanding any application for review being submitted in accordance with Rule S75. However, the *Bar Council* (acting by the *Bar Standards Board*) may, in its absolute discretion, issue a temporary *practising certificate* or *litigation extension* to a *barrister* or *registered European lawyer* who has lodged an application for review.

**rS77** If the review finds that the *Bar Council* (acting by the *Bar Standards Board*):

- .1 has wrongly failed or refused to issue a *practising certificate*, then the *Bar Council* (acting by the *Bar Standards Board*) must issue such *practising certificate* as ought to have been issued; or
- .2 has wrongly failed or refused to amend a *practising certificate*, then the *Bar Council* (acting by the *Bar Standards Board*) must make such amendment to the *practising certificate* as ought to have been made; or
- .3 has wrongly amended a *practising certificate*, then the *Bar Council* (acting by the *Bar Standards Board*) must cancel the amendment; or
- .4 has wrongly revoked a *practising certificate*, then the *Bar Council* (acting by the *Bar Standards Board*) must re-issue the *practising certificate*; or
- .5 has wrongly failed or refused to grant a *litigation extension*, then the *Bar Council* (acting by the *Bar Standards Board*) must grant such *litigation extension* as ought to have been granted; or
- .6 has wrongly revoked a *litigation extension*, then the *Bar Council* (acting by the *Bar Standards Board*) must re-grant the *litigation extension*.

## D. THE REGISTRATION OF EUROPEAN LAWYERS RULES

**rS78** If you are a *European lawyer* and wish to *practise* on a permanent basis in England and Wales under a *home professional title*, you may apply to the *Bar Standards Board* to be registered as a *registered European lawyer*.

**rS79** An application for registration must be made in such form as may be prescribed by the *Bar Standards Board* and be accompanied by:

- .1 a certificate, not more than three months old at the date of receipt of the application by the *Bar Standards Board*, that you are registered with the Competent Authority in a *Member State* as a lawyer qualified to *practise* in that *Member State* under a *Member State* professional title;
- .2 a declaration that:
  - .a you have not on the grounds of misconduct or of the commission of a *criminal offence* been prohibited from practising in your *Member State* and are not currently *suspended* from so practising;
  - .b no *bankruptcy order* or *directors disqualification order* has been made against you and you have not entered into an individual voluntary arrangement with your creditors;
  - .c you are not aware of any other circumstances relevant to your fitness to *practise* under your *home professional title* in England and Wales; and
  - .d you are not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland; and
- .3 the prescribed fee.

**rS80** Provided that it is satisfied that the application complies with the requirements of Rule rS79, the *Bar Standards Board* will:

- .1 register you as a *registered European lawyer*; and
- .2 so inform you and the competent authority in your *Member State* which has issued the certificate referred to in Rule rS79.1.

**rS81** The *Bar Standards Board* will:

- .1 remove a *registered European lawyer* from the register:
  - .a pursuant to a sentence of a *Disciplinary Tribunal*; or
  - .b if the *registered European lawyer* ceases to be a *European lawyer*;

- .2 suspend a *registered European lawyer* from the register:
- .a pursuant to a sentence of either a *Disciplinary Tribunal* or an *Interim Suspension Panel*; or
  - .b if the *registered European lawyer's* authorisation in their *home State* to pursue professional activities under their *home professional title* is *suspended*; and
- in each case, notify the *European lawyer's home professional body*:
- .c of their removal or suspension from the register; and
  - .d of any criminal *conviction* or *bankruptcy order* of which it becomes aware against a *registered European lawyer*.

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# E. ENTITY APPLICATION AND AUTHORISATION

## E1. Eligibility for authorisation to practise as a *BSB entity*

**rS82** In this Section 3.E, “you” and “your” refer to the *partnership, LLP or company* which is applying for, or has applied for (in accordance with this Section 3.E) authorisation or (if a licensable body) a licence to practise as a *BSB entity*, and references in these Rules to “authorisation to practise” mean the grant by the Bar Council as Approved Regulator or *licensing authority* of an authorisation or a licence (as the case may be) under this Section 3.E (distinguishing between the two only where the context so requires).

**rS83** To be eligible for authorisation to *practise* as a *BSB entity*, you:

- .1 must have arrangements in place designed to ensure at all times that any obligations imposed from time to time on the *BSB entity*, its *managers, owners or employees* by or under the *Bar Standards Board’s* regulatory arrangements, including its rules and disciplinary arrangements, are complied with and confirm that the *BSB entity* and all *owners and managers* expressly consent to be bound by the *Bar Standards Board’s* regulatory arrangements (including disciplinary arrangements);
- .2 must have arrangements in place designed to ensure at all times that any other statutory obligations imposed on the *BSB entity*, its *managers, owners or employees*, in relation to the activities it carries on, are complied with;
- .3 must confirm that, subject to the provisions of rS131, you will have in place, at all times, individuals appointed to act as a *HOLP* (who must also be a *manager*) and a *HOFA* of the *BSB entity*;
- .4 must confirm that you have or will have appropriate insurance arrangements in place at all times in accordance with Rule C76 and you must be able to provide evidence of those insurance arrangements if required to do so by the *Bar Standards Board*;
- .5 must confirm that, in connection with your proposed *practice*, you will not directly or indirectly hold *client money* in accordance with Rule C73 or have someone else hold *client money* on your behalf other than in those circumstances permitted by Rule C74;
- .6 must confirm that no individual that has been appointed or will be appointed as a *HOLP, HOFA, manager or employee* of the *BSB entity* is disqualified from acting as such by the *Bar Standards Board* or any *Approved Regulator* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements;
- .7 must confirm that you will at all times have a *practising address* in England or Wales;
- .8 must confirm that:
  - .a if you are an *LLP*, you are incorporated and registered in England and Wales, Scotland or Northern Ireland under the Limited Liability Partnerships Act 2000;



- .b if you are a *Company*, you are:
  - .i incorporated and registered in England and Wales, Scotland or Northern Ireland under Parts 1 and 2 of the Companies Act 2006; or
  - .ii incorporated in an *Establishment Directive* state and registered as an overseas company under Part 34 of the Companies Act 2006; or
  - .iii incorporated and registered in an *Establishment Directive* state as a *societas Europaea*
- .9 must confirm that at least one *manager* or *employee* is an *authorised individual* in respect of each *reserved legal activity* which you wish to provide;
- .10 must confirm that you will pay annual fees as and when they become due.

**rS84** In addition to the requirements set out at Rule rS83:

- .1 to be eligible for authorisation to *practise* as a *BSB entity*:
  - .a all of the *managers* of the *partnership*, *LLP* or *company* (as the case may be) must be *BSB authorised individuals* or *authorised (non-BSB) individuals*; and
  - .b all of the owners (whether or not the ownership interest is material) of the *partnership*, *LLP* or *company* (as the case may be) must be *BSB authorised individuals* or *authorised (non-BSB) individuals*;
- .2 to be licensed to *practise* as a *BSB licensed body*:
  - .a the body must be a *licensable body*, as defined by section 72 of the *LSA* but must also meet the eligibility requirements set out at Rule rS83; and
  - .b all of the non-authorised *owners* in the *partnership*, *LLP* or *company* (as the case may be) must be approved by the *Bar Standards Board* as being able to hold such interest taking into account the relevant *suitability criteria*.

**rS85** In the event that you meet the eligibility criteria set out in Rule rS83, you may submit an application in accordance with Section 3.E2 and the *Bar Standards Board* will review that application in accordance with Section 3.E3 and 3.E4 to determine whether or not to authorise you or to grant you a licence (as appropriate) to *practise* as a *BSB entity*. In the event that the *Bar Standards Board* determines that you should be authorised or licensed (as appropriate) to practise as a *BSB entity* then it may either:

**rS86** Authorise you to *practise* as a *BSB entity* in the event that you also meet the eligibility criteria set out in Rule rS84.1 and you have applied to be authorised as such in your relevant application form; or

- .1 license you to *practise* as a *BSB licensed body*, in the event that you also meet the eligibility criteria set out in Rule rS84.2 and you have applied to be authorised as such in your relevant application form.

**rS87** Such authorisation or licence (as appropriate) will entitle you to:

- .1 to exercise a *right of audience* before every *court* in relation to all proceedings;
- .2 to carry on:
  - .a *reserved instrument activities*;

- .b *probate activities;*
- .c *the administration of oaths;*
- .3 *to do immigration work; and*
- .4 *if you have been granted a litigation extension, to conduct litigation.*

**G****Guidance****Guidance on Rules rS82 to rS85**

- gS13** Single person entities are permitted under these arrangements. Therefore, a *BSB entity* may (subject to any structural requirements imposed by general law for the particular type of entity) comprise just one barrister who is both the owner and manager of that entity.
- gS14** These are mandatory eligibility requirements. The *Bar Standards Board* has a discretion to take other factors into account in deciding whether an *applicant body* is one which it would be appropriate for it to regulate (see Section 3.E3 and 3.E4 below).

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## E2. Applications for authorisation

### Application to be authorised or licensed as a BSB entity

**rS88** To apply for authorisation to *practise* as a *BSB entity* you must:

- .1 complete the application form supplied by the *Bar Standards Board* and submit it to the *Bar Standards Board*; and
- .2 submit such other information, documents and references in support of the application as may be required by the application form or by the *Bar Standards Board* from time to time; and
- .3 pay the *application fee* in the amount determined in accordance with Rule rS94 and the *authorisation or licence fee* for the first year.

### Application for a litigation extension

**rS89** To apply for a *litigation extension* you must:

- .1 make this clear on your application form submitted in accordance with rS88 (where appropriate) or otherwise submit the relevant application form made available by the Bar Standard Board on its website for this purpose; and
- .2 pay (or undertake to pay in a manner prescribed by the Bar Standards Board) the *application fee* (if any) and the relevant *litigation extension fee* (if any) in the amount determined in accordance with Rule rS94; and
- .3 provide such other information to the *Bar Standards Board* as it may require in order to satisfy itself that:
  - a you have the relevant administrative systems in place to be able to provide *legal services* direct to *clients* and to administer the *conduct of litigation*; and
  - b you have a sufficient number of *persons* who are authorised to *conduct litigation* and to provide guidance to any *managers* or *employees* that may be involved in assisting in the *conduct of litigation* who are not themselves authorised and that you have an adequate number of qualified *persons* to provide guidance to any persons authorised to *conduct litigation* who are of less than three years' standing.

## G

### Guidance

#### Guidance on Rules rS88 and rS89

**gS15** In the event that your application is rejected, the *authorisation fee* and/or *litigation fee* (as appropriate) will be reimbursed to you but the *application fee(s)* shall be retained by the Bar Standards Board.

**gS16** a qualified *person* referred to in Rule rS89.3 shall be defined in accordance with Rule S22.3.

#### Approval applications for any new HOLPs, HOFAs, owners and/or managers

**rS90** If, following authorisation or the grant of a licence (as appropriate), a *BSB entity* wishes to appoint a new *HOLP*, *HOFA*, *owner* or *manager*, the *BSB entity* must:

- .1 notify the *Bar Standards Board* of such a proposed appointment before it is made; and
- .2 make an application to the *Bar Standards Board* for approval of the new *HOLP*, *HOFA*, *owner* or *manager* (as appropriate); and

- .3 ensure that the new *HOLP*, *HOFA*, *owner* or *manager* (as appropriate) has expressly consented to be bound by the *Bar Standards Board's* regulatory arrangements (including disciplinary arrangements); and
- .4 pay any fees set by the *Bar Standards Board* in respect of such approval applications.

### Application Process

- rS91** An application for authorisation and/or a *litigation extension* is only made once the *Bar Standards Board* has received the application form in full, together with the appropriate fees, all the information required in support of the application and confirmation from you in the form of a declaration that the information contained in, or submitted in support of, the application is full and accurate.
- rS92** On receipt of the application, the *Bar Standards Board* may require, from you or from a third party, such additional information, documents or references as it considers appropriate to the consideration of your application.
- rS93** You are responsible for the contents of your application and any information submitted to the *Bar Standards Board* by you, or on your behalf, and you must not submit (or cause or permit to be submitted on your behalf) information to the *Bar Standards Board* which you do not believe is full and accurate.
- rS94** The *application fee* and the *litigation extension fee* shall be the amount or amounts prescribed by the *Bar Standards Board* from time to time. The *authorisation fee* and *litigation fee* shall also be payable and shall be the amount or amounts prescribed by the *Bar Standards Board* from time to time.

## G

### Guidance

#### Guidance on Rules rS91 to rS93

- gS17** Application forms and guidance notes for completion can be found on the *Bar Standard Board's* website.
- gS18** Once you have submitted an application, if you fail to disclose to the *Bar Standards Board* any information of which you later become aware and which you would have been required to supply if it had been known by you at the time of the original application the *Bar Standards Board* may refuse your application in accordance with rS101.5
- gS19** Details of the relevant *application fee*, *litigation extension fee*, *authorisation fee*, *licence fee* and *litigation fee* can be found on the *Bar Standards Board's* website.

### E3. Decision process

**rS95** Subject to Rules rS96 and rS97, the *Bar Standards Board* must make a decision in respect of each valid and complete application within the *decision period*.

**rS96** In the event that the *Bar Standards Board* is not able to reach a decision within the *decision period*, it must notify you and must confirm to you the latest date by which you will have received a response to your application from the *Bar Standards Board*.

**rS97** The *Bar Standards Board* may issue more than one notice to extend the *decision period* except that:

- .1 any notice to extend must always be issued before the decision period expires on the first occasion, and before any such extended *decision period* expires on any second and subsequent occasions; and
- .2 no notice to extend can result in the total *decision period* exceeding more than 9 months.

**rS98** During its consideration of your application form, the *Bar Standards Board* may identify further information or documentation which it needs in order to be able to reach its decision. If this is the case, you must provide such additional information or documentation as soon as possible after you receive the relevant request from the *Bar Standards Board*. Any delay in providing this information shall further entitle the *Bar Standards Board* to issue an extension notice in accordance with Rule rS96 and rS97 (as the case may be) or to treat the application as having been withdrawn.

## E4. Issues to be considered by the Bar Standards Board

### Applications for authorisation or the grant of a licence

- rS99** In circumstances where the mandatory conditions in Rules rS83 and rS84 have been met, the *Bar Standards Board* must then consider whether to exercise its discretion to grant the authorisation or licence (as appropriate). In exercising this discretion, the *Bar Standards Board* will consider whether the entity is one which it would be appropriate for the *Bar Standards Board* to regulate, taking into account its analysis of the risks posed by you, the *regulatory objectives* of the *LSA* and the Entity Regulation Policy Statement of the *Bar Standards Board* as published from time to time.
- rS100** In circumstances where the mandatory conditions set out at Rules S83 and S84 have not been met, the *Bar Standards Board* must refuse to grant the authorisation or licence (as appropriate).

## G

### Guidance

- gS20** In exercising its discretion whether to grant the authorisation or licence the *Bar Standards Board* will have regard to its current Entity Regulation Policy Statement.
- rS101** Where the *Bar Standards Board* concludes that you are an entity which it is appropriate for it to regulate the *Bar Standards Board* may nonetheless in its discretion refuse your application for authorisation if:
- .1 it is not satisfied that your *managers* and *owners* are suitable as a group to operate or control a *practice* providing services regulated by the *Bar Standards Board*;
  - .2 if it is not satisfied that your proposed *HOLP* and *HOFA* meet the relevant *suitability criteria*;
  - .3 it is not satisfied that your management or governance arrangements are adequate to safeguard the *regulatory objectives* of the *LSA* or the policy objectives of the *Bar Standards Board* as set out in the Entity Regulation Policy Statement;
  - .4 it is not satisfied that, if the authorisation is granted, you will comply with the *Bar Standards Board's* regulatory arrangements including this *Handbook* and any conditions imposed on the authorisation;
  - .5 you have provided inaccurate or misleading information in your application or in response to any requests by the *Bar Standards Board* for information;
  - .6 you have failed to notify the *Bar Standards Board* of any changes in the information provided in the application;
  - .7 you have applied for authorisation to become a *BSB entity* (other than a *BSB Licensed Body*) and the *Bar Standards Board* has concluded that it may require the intervention powers allocated to it in respect of licensed bodies under the *LSA* in respect of you; or
  - .8 for any other reason, the *Bar Standards Board* considers that it would be inappropriate for the *Bar Standards Board* to grant authorisation to you, having regard to its analysis of the risk posed by you, the *regulatory objectives* of the *LSA* or the Entity Regulation Policy Statement of the *Bar Standards Board*.

**G** Guidance**Guidance to Rule rS101**

**gS21** In circumstances where the *Bar Standards Board* rejects your application on the basis of Rule rS101, you will have the opportunity to make the necessary adjustments to your composition and to re-apply to become a *BSB entity*.

**Applications for authorisation to conduct litigation**

**rS102** If the *Bar Standards Board* is unable to satisfy itself that the *BSB entity* meets the requirements set out in Rule rS89, it can refuse to grant the litigation extension.

**Approval applications for any new HOLPs, HOFAs, owners and/or managers**

**rS103** The *Bar Standards Board* must consider any approval applications for any new *HOLPs*, *HOFAs*, *owners* and/or *managers* made in accordance with Rule rS90 and must determine any application by deciding whether the relevant individual meets the *suitability criteria* which apply relevant to such a proposed appointment.

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## E5. Suitability criteria in respect of HOLPs, HOFAs, owners and managers

**rS104** The *Bar Standards Board* must conclude that an individual does not meet the suitability criteria to undertake the role of a *HOLP* if:

- .1 they are not an *authorised individual*;
- .2 they are disqualified from acting as a *HOLP* by the *Bar Standards Board* or an *Approved Regulator* or *licensing authority* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements; or
- .3 It determines that the individual is not able effectively to carry out the duties imposed on a *HOLP* by section 91 of the *LSA*.

**rS105** The *Bar Standards Board* may conclude that an individual does not meet the suitability criteria to undertake the role of a *HOLP* if any of the circumstances listed in Rule rS110 apply to the individual designated as the *HOLP*.

**rS106** The *Bar Standards Board* must conclude that an individual does not meet the suitability criteria for acting as a *HOFA* if:

- .1 they are disqualified from acting as a *HOFA* by the *Bar Standards Board* or by an *Approved Regulator* or *licensing authority* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements; or
- .2 the *Bar Standards Board* determines that they are not able effectively to carry out the duties imposed on a *HOFA* by section 92 of the *LSA*.

**rS107** The *Bar Standards Board* may conclude that an individual does not meet the suitability criteria for acting as a *HOFA* if any of the circumstances listed in Rule rS110 apply to them.

**rS108** If an *owner* is also a *non-authorised individual*, the *Bar Standards Board* must approve them as an *owner*. The *Bar Standards Board* shall approve a *non-authorised individual* to be an *owner* of a *BSB licensed body* if:

- .1 their holding of an ownership interest does not compromise the *regulatory objectives*; and
- .2 their holding of an ownership interest does not compromise compliance with the duties imposed pursuant to section 176 of the *LSA* by the *licensed body* or by any authorised individuals who are to be *employees* or *managers* of that *licensed body*; and
- .3 they otherwise meet the *suitability criteria* to hold that ownership interest taking into account:
  - (a) their probity and financial position;
  - (b) whether they are disqualified pursuant to section 100(1) of *LSA* or included in the list maintained by the *Legal Services Board* pursuant to paragraph 51 of Schedule 13 of the *LSA*; and
  - (c) their *associates*; and
  - (d) the *suitability criteria* in Rule rS110 which apply to *managers* and *employees*.



**rS109** If a *manager* is a *non-authorised individual*, the *Bar Standards Board* must approve them as a *manager*. The *Bar Standards Board* must approve a *non-authorised individual* to be a *manager* of a *BSB licensed body* if they meet the *suitability criteria* to hold that interest taking into account:

- .1 their probity;
- .2 whether they are disqualified pursuant to section 100(1) of the *LSA* or included in the list maintained by the *Legal Services Board* pursuant to paragraph 51 of Schedule 13 of the *LSA*; and
- .3 the *suitability criteria* in Rule rS110 which apply to *managers* and *employees*.

**rS110** The *Bar Standards Board* may reject an application if it is not satisfied that:

- .1 an individual identified in an application for authorisation or the grant of a licence as a proposed *owner, manager, HOLP* or *HOFA* of the relevant *applicant body*; or
- .2 any individual identified as a replacement *owner, manager, HOLP* or *HOFA*,

meets the *suitability criteria* to act as an *owner, manager, HOLP* or *HOFA* of a *BSB entity*. Reasons why the *Bar Standards Board* may conclude that an individual does not meet the *suitability criteria* include where an individual:

- .3 has been committed to prison in civil or criminal proceedings (unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies, this is subject to any conviction being unspent under the Rehabilitation of Offenders Act 1974 (as amended));
- .4 has been disqualified from being a *director*;
- .5 has been removed from the office of charity trustee or trustee for a charity by an order under section 72(1)(d) of the Charities Act 1993;
- .6 is an undischarged bankrupt;
- .7 has been adjudged bankrupt and discharged;
- .8 has entered into an individual voluntary arrangement or a *partnership* voluntary arrangement under the Insolvency Act 1986;
- .9 has been a *manager* of a *regulated entity* or a *BSB entity* which has entered into a voluntary arrangement under the Insolvency Act 1986;
- .10 has been a *director* of a *company* or a *member* of an *LLP* (as defined by section 4 of the Limited Liability Partnerships Act 2000) which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been otherwise wound up or put into administration in circumstances of insolvency;
- .11 lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to that individual;
- .12 is the subject of an outstanding judgment or judgments involving the payment of money;
- .13 is currently charged with an *indictable offence*, or has been convicted of an *indictable offence*, any offence of dishonesty, or any offence under the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006 (unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies, this is subject to the Rehabilitation of Offenders Act 1974 (as amended));

- .14 has been disqualified from being appointed to act as a *HOLP* or a *HOFA* or from being a *manager* or employed by an *authorised or licensed body* (as appropriate) by the *Bar Standards Board* or another *Approved Regulator* or *licensing authority* pursuant to its or their powers under section 99 of the *LSA* or otherwise as a result of its regulatory arrangements;
- .15 has been the subject in another jurisdiction of circumstances equivalent to those listed in Rules rS110.1 to rS110.14;
- .16 has an investigation or disciplinary proceedings pending against them and/or has professional conduct findings against them either under the disciplinary scheme for *barristers* or otherwise; or
- .17 has been involved in other conduct which calls into question his or her honesty, integrity, or respect for the law;
- .18 has not consented to be bound by the regulatory arrangements (including disciplinary arrangements) of the *Bar Standards Board*.

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## E6. Notification of the authorisation decision

**rS111** The *Bar Standards Board* will notify you of its decision in writing within the *decision period* or by such later date as may have been notified to the *applicant body* in accordance with Rules rS96 or rS97. In the event that the *Bar Standards Board* decides to refuse to grant the application, it must give the reasons for such refusal.

### G

#### Guidance

##### Guidance to rule S110

**gS21.1** For the avoidance of doubt rS110 does not oblige you to disclose cautions or criminal convictions that are “spent” under the Rehabilitation of Offenders Act 1974 unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies. The latter entitles the BSB to ask for disclosure of unprotected cautions or criminal convictions that are “spent” in relation to *HOLPs* and *HOFAs* of *licensed bodies* when seeking authorisation and owners who require approval under Schedule 13 to the LSA.

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## E7. Terms of authorisation

**rS112** Any authorisation given by the *Bar Standards Board* to a *BSB entity*, and the terms of any licence granted by the *Bar Standards Board* to a *BSB licensed body* in accordance with this Section 3.E must specify:

- .1 the activities which are *reserved legal activities* and which the *BSB entity* is authorised to carry on by virtue of the authorisation or the licence (as the case may be); and
- .2 any conditions subject to which the authorisation or the licence (as the case may be) is given (which may include those in Rule rS114).

**rS113** Authorisations and licences must, in all cases, be given on the conditions that:

- .1 any obligation which may from time to time be imposed on you (or your *managers, employees, or owners*) by the *Bar Standards Board* is complied with; and
- .2 any other obligation imposed on you (or your *managers, employees or owners*) by or under the *LSA* or any other enactment is complied with.
- .3 you (and your *managers, employees, and owners*) consent to be bound by the regulatory arrangements (including the disciplinary arrangements) of the *Bar Standards Board*; and
- .4 if the conditions outlined at rS113.5 apply, the *Bar Standards Board* may without notice:
  - .a modify an authorisation granted under rS116;
  - .b revoke an authorisation under rS117;
  - .c require specific co-operation with the *Bar Standards Board* as provided for in rC64 and rC70;
  - .d take such action as may be necessary in the public or *clients'* interests and in the interests of the regulatory objectives; and
  - .e recover from the *BSB entity* any reasonable costs that were necessarily incurred in the exercise of its regulatory functions.
- .5 The conditions referred to in rS113.4 are that:
  - .a one or more of the terms of the *BSB entity's* authorisation have not been complied with;
  - .b a person has been appointed receiver or manager of the property of the *BSB entity*;
  - .c a relevant insolvency event has occurred in relation to the *BSB entity*;
  - .d the *Bar Standards Board* has reason to suspect dishonesty on the part of any *manager or employee* of the *BSB entity* in connection with either that *BSB entity's* business or the business of another body of which the person was a manager or employee, or the *practice* or former *practice* of the *manager or employee*;
  - .e the *Bar Standards Board* is satisfied that it is necessary to exercise any of the powers listed in rS113.4 in relation to the *BSB entity* to protect the interests of *clients* (or former or potential *clients*) of the *BSB entity*.

**rS114** In addition to the provisions in Rule rS113, an authorisation or a licence may be given subject to such other terms as the *Bar Standards Board* considers appropriate including terms as to:

- .1 the *non-reserved activities* which you may or may not carry on; and/or
- .2 in the case of *licensed bodies*:
  - (a) the nature of any interest held by a non-authorised *owner* provided always that the *Bar Standards Board* complies with its obligations under paragraph 17 of Schedule 13 to the *LSA*; and/or
  - (b) any limitations on the shareholdings or voting controls which may be held by non-authorised *owners* in accordance with paragraph 33 of Schedule 13 to the *LSA*.

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## E8. Duration of the authorisation/licence granted

**rS115** Except where indicated otherwise in the authorisation or licence, any authorisation or licence granted in accordance with this Section 3.E will be of unlimited duration except that the authorisation or licence:

- .1 the authorisation or licence shall cease to have effect on the occurrence of any of the following:
  - (a) if you have your authorisation/licence withdrawn in accordance with Rule rS117; or
  - (b) if you obtain authorisation/licence from an *Approved Regulator* or *licensing authority*;
- .2 the authorisation or licence may cease to have effect on the occurrence of any of the following:
  - (a) if you fail to provide the relevant monitoring information or fail to pay any relevant fees in circumstances where the *Bar Standards Board* has notified you (i) that such information or payment is required within a particular time; and (ii) that failure to provide such information or payment within that time may result in the withdrawal of your authorisation or licence in accordance with this Rule rS115; or
  - (b) if you fail to replace your *HOLP/HOFA* in accordance with the requirements of this *Handbook*.
- .3 The licence of a partnership or other unincorporated body ("the existing body") may continue where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business subject to the following in rS115.3(a)-(b):
  - (a) you have notified the *Bar Standards Board* of such a change within 28 days;
  - (b) if there is no remaining *partner* who was a *partner* before the existing body ceased to exist the licence shall cease to have effect from the date the existing body ceased to exist.

## E9. Modification of an authorisation/licence

**rS116** In addition to any powers which the *Bar Standards Board* may have in accordance with Part 5, the *Bar Standards Board* may modify the terms of an authorisation or licence granted by it:

- .1 if you apply to the *Bar Standards Board* for the terms of such authorisation or licence (as the case may be) to be modified; or
- .2 if it is satisfied that any of the information contained in the relevant application form was inaccurate or incomplete or has changed; or
- .3 if such modification is required in accordance with the provisions of this *Handbook*; or
- .4 where the *Bar Standards Board* reasonably considers that such modification is appropriate and in accordance with the *regulatory objectives* under the *LSA* or the policy objectives of the *Bar Standards Board*; or
- .5 where the conditions in rS113.5 are met,

but, in the circumstances set out in Rules rS116.2 to rS116.4 above, shall only be entitled to do so after:

- a giving notice to *you* in writing of the modifications which the *Bar Standards Board* is intending to make to your authorisation or licence (as the case may be); and
- b giving you a reasonable opportunity to make representations about such proposed modifications.

## E10. Revocation or suspension of an authorisation/licence

**rS117** In addition to any powers which the Bar Standards Board may have in accordance with Part 5, the *Bar Standards Board* may:

- .1 revoke an authorisation or licence granted by it:
  - (a) subject to Section 3.F, in the event that you no longer comply with the mandatory requirements set out in Rules rS83 and rS84; or
  - (b) if your circumstances have changed in relation to the issues considered by the *Bar Standards Board* in Section 3.E4; or
  - (c) if revocation otherwise appears appropriate taking into account the *regulatory objectives* of the *Bar Standards Board*; or
  - (d) where the conditions in rS113.5 are met.
- .2 suspend an authorisation or licence granted by it to give it an opportunity to investigate whether or not your authorisation or licence should be revoked in accordance with Rule rS117 (for the avoidance of doubt a *BSB entity* whose authorisation has been suspended remains a *BSB regulated person*),

but (except for when the conditions in rS113.5 are met) in either case only after:

- (i) giving written notice to the relevant *BSB entity* of the grounds on which the authorisation or licence may be revoked; and
- (ii) giving the relevant *BSB entity* a reasonable opportunity to make representations.



## E11. Applications for review

**rS118** If you consider that the *Bar Standards Board* has (other than pursuant to [Section 5]):

- .1 wrongly refused an application for authorisation or licence; or
- .2 wrongly imposed a term or condition on an authorisation or licence; or
- .3 wrongly modified the terms of your authorisation or licence; or
- .4 wrongly refused to modify the terms of your authorisation or licence; or
- .5 wrongly revoked or *suspended* your authorisation or licence; or
- .6 wrongly done any of these things in relation to a litigation extension to your authorisation or licence; or
- .7 failed to provide to you notice of a decision in accordance with this Section 3.E,

then you may lodge an application for review of that decision using the form supplied for that purpose by the *Bar Standards Board*. Such application for review will only have been made once the *Bar Standards Board* has received the relevant fee in respect of such application for review.

**rS119** Any individual:

- .1 designated to act as a *HOLP* or a *HOFA*; or
- .2 identified as a non-authorized *owner* or *manager* of the *applicant body*,

who considers that the *Bar Standards Board* has wrongly concluded that they do not meet the *suitability* criteria which apply to their proposed position in the entity, may lodge an application for a review of that decision using the form supplied for that purpose by the *Bar Standards Board*. Alternatively, you may lodge an application for review on their behalf whether or not they have asked you to. In either case, such an application for a review will only have been made once the *Bar Standards Board* has received the relevant fee for it.

**rS120** Any application for a review of the decision must be made within 28 days from the date when the decision is notified to you.

**rS121** The decision of the *Bar Standards Board* will take effect notwithstanding the making of any application for a review in accordance with Rule rS118 or rS119. However, the *Bar Standards Board* may, in its absolute discretion, issue a temporary authorisation, licence or litigation extension to a *BSB entity* which has lodged an application for a review in accordance with this Section 3.E11.

**rS122** If the review finds that the *Bar Standards Board*:

- .1 has wrongly failed or refused to grant an authorisation or licence; or
- .2 has wrongly imposed a term or condition on an authorisation or licence;

then in each case the *Bar Standards Board* must issue such authorisation or licence as ought to have been issued.

**rS123** If the review finds that the *Bar Standards Board*:

- .1 finds that the *Bar Standards Board* has wrongly modified an authorisation or licence; or
- .2 finds that the *Bar Standards Board* has wrongly refused to modify an authorisation or licence,

then in each case the *Bar Standards Board* shall make such modification to the authorisation or licence as ought to have been made.

**rS124** If the review finds that the *Bar Standards Board* has wrongly revoked or *suspended* an authorisation or licence, then the *Bar Standards Board* shall re-issue such authorisation or licence.

- .1 If the review finds that the *Bar Standards Board* has wrongly done any of the things described in rS122 or–rS123 in relation to your *litigation extension*, then the *Bar Council* (acting by the *Bar Standards Board*) shall grant such *litigation extension* as ought to have been granted.

**rS125** If the review finds that the *Bar Standards Board* has wrongly concluded that an individual does not meet the *suitability criteria* relevant to their proposed position, the *Bar Standards Board* shall amend its decision and confirm that they do meet the *suitability criteria* which apply to their proposed position.

**rS126** If, after such a review, you or the relevant individual(s) (as the case may be) do not agree with the decision or the relevant individual(s) may appeal to the High Court against the decision.

**rS127** Any appeal to the High Court against a decision of the BSB must be lodged within 28 days from the date that the decision is notified to you.

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## E12. Register

- rS128** The *Bar Standards Board* must keep a public register containing the names and places of practice of all *BSB entities* (together with details of the reserved *legal activities* which such *BSB entities* are able to undertake) as well as details of any bodies which have in the past been granted authorisation or obtained a licence from the *Bar Standards Board* but where such licence and/or authorisation is no longer current.
- rS129** If an authorisation or licence is, at any time, suspended or made subject to conditions, this must be noted on the register of *BSB entities* by the Bar Standards Board.

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# F. CONTINUING COMPLIANCE WITH THE AUTHORISATION AND LICENSING REQUIREMENTS

## F1. Non-compliance with the mandatory conditions

**rS130** If, at any time, and for whatever reason, you fail to meet the mandatory conditions in Rules rS83 and rS84 which apply to the type of *BSB entity* which you are, then you must notify the *Bar Standards Board* of your failure to comply with the mandatory conditions within seven days of your failure to comply and, at the same time, you must submit your proposals for rectifying that non-compliance which, for the avoidance of doubt, must include your proposed timetable for rectifying them. If the *Bar Standards Board* considers that your proposals for rectifying them are not sufficient, the *Bar Standards Board* may issue a notice suspending or revoking your authorisation or licence (as appropriate) in accordance with Section 3.E10.

### G Guidance

**gS22** Examples of non-compliance include:

- .1 where your last remaining *authorised person*:
  - .a dies; or
  - .b abandons, retires or resigns from the *practice*; or
- .2 where you are a *BSB entity* (other than a BSB licensed body) a *non-authorised individual* is appointed as a *manager* of or otherwise acquires an ownership interest in such a practice, or where you are a *licensable body* and a *non-authorised individual* who is not a *manager* becomes an *owner* (for example on inheriting the interest from a *manager* who dies);
- .3 where you cease to have available at least one employee who is authorised to carry on a particular reserved activity which you are authorised to provide. Examples of situations where an individual should be considered to be unavailable to a *BSB entity* include where:
  - .a they are committed to prison;
  - .b they are unable to attend to the *practice* because of incapacity caused by illness, accident or age;
  - .c they become and continue to lack capacity under Part 1 of the Mental Capacity Act 2005;

- .d they are made subject to a condition on their *practising certificate* or registration which would be breached if they continue to be an *owner* and/or *manager* of the body; or
  - .e they are no longer authorised to perform the particular *reserved legal activity*.
- .4 you cease to have a *HOLP* or a *HOFA* appointed;
  - .5 your *HOLP*, *HOFA*, any *manager* or *owner* ceases to meet the relevant *suitability criteria*; or
  - .6 where you are a *licensed body*, your last remaining *owner* and/or *manager* who is a *non-authorised individual* dies or otherwise leaves the *practice*.

**gS23** Examples of proposals that you may submit in order to rectify such non-compliance include:

- .1 In the case of Guidance gS22.1, that you are seeking to appoint a different *authorised person* to be an *owner* and/or a *manager* of a *BSB entity*;
- .2 In the case of Guidance gS22.2, confirmation that you will take the necessary steps to rectify your status, whether by submitting an application to the *Bar Standards Board* for authorisation to *practise* as a *licensed body* and/or for approval of the *non-authorised individual* as a *manager* or by ensuring that the *non-authorised person* divest themselves of their interest as soon as is reasonably practicable, or by seeking a licence from another *licensing authority*, as the case may be [but note Guidance gS24];
- .3 in the case of Guidance gS22.4, that you are seeking to appoint a replacement *HOLP* or *HOFA* (as appropriate) in accordance with the relevant procedure in Rule sS90;
- .4 in the case of Guidance gS22.5, that you are taking the necessary steps to exclude the *relevant individual* from the *practice* and, where necessary, you are taking steps to replace them; and
- .5 in the case of Guidance gS22.6, you confirm whether or not you are likely to appoint a replacement *non-authorised individual* or, if not, whether you will be seeking authorisation from the *Bar Standards Board* to *practise* as a *BSB authorised body*.

**gS24** In respect of Guidance gS23.2, it may be the case that a *non-authorised individual* obtains an ownership interest in a *BSB entity* following the death of a *barrister* or a *non-authorised person*. Similarly, a *non-authorised person* who has not been approved pursuant to the *suitability criteria* may acquire an ownership interest in a *licensed body*. In these cases, it may be that the *BSB entity* will not need to apply for authorisation to *practise* as a *licensed body* or for approval of such *non-authorised individual* (as appropriate) if the *BSB entity* instead satisfies the *Bar Standards Board* that it is taking steps to ensure that such *non-authorised individual* divest themselves of their interest as soon as is reasonably practicable (for example, on completion of the relevant probate).

## F2. Temporary emergency approvals for HOLPs and HOFA

**rS131** If a *BSB entity* ceases to have a *HOLP* or *HOFA* whose designation has been approved by the *Bar Standards Board*, the *BSB entity* must immediately and in any event within seven days:

- .1 notify the *Bar Standards Board*;
- .2 designate another *manager* or *employee* to replace its previous *HOLP* or *HOFA*, as appropriate; and
- .3 make an application to the *Bar Standards Board* for temporary approval of the new *HOLP* or *HOFA*, as appropriate.

**rS132** The *Bar Standards Board* may grant a temporary approval under this Section 3.F2 if on the face of the application and any other information immediately before the *Bar Standards Board*, there is no evidence suggesting that the new *HOLP* or *HOFA* is not suitable to carry out the duties imposed on them under this *Handbook*.

**rS133** If granted temporary approval under Rule rS132 for its designation of a new *HOLP* or *HOFA*, the *BSB entity* must:

- .1 designate a permanent *HOLP* or *HOFA*, as appropriate; and
- .2 submit a substantive application for approval of that designation in accordance with Rule rS90,

before the expiry of the temporary approval or any extension of that approval by the *Bar Standards Board*, otherwise the *Bar Standards Board* may be entitled to suspend or revoke the authorisation or licence in accordance with Section 3.E10.

Part 4

# Qualification Rules

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## A. APPLICATION

- r01** Section 4.B applies to all *persons* who wish to be called to the *Bar* and to become qualified to practise as a *barrister*, to *pupil supervisors* and to *approved training organisations*.
- r02** Section 4.C applies to all *practising barristers*.

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## B. BAR TRAINING RULES

### B1. Purpose of the Bar training rules

**r01** To ensure that any *person* who qualifies to *practise* as a *barrister* is a fit and proper *person*, and competent to do so.

#### R

#### Rules

**r03** To be called to the *Bar* by an *Inn* a *person* must:

- .1 be a member of that *Inn*;
- .2 complete (or be exempted from):
  - (a) the Academic Stage, and
  - (b) the *Vocational stage*

of training; and

- .3 fulfil any applicable requirement to attend *qualifying sessions*.

**r04** To become qualified to *practise* as a *barrister* a *person* must:

- .1 be called to the *Bar* by an *Inn*;
- .2 complete (or be exempted from) the Professional Stage of training; and
- .3 satisfy such further requirements as are set out in Part 3 of this *Handbook*.

**r05** The *Bar Standards Board* may charge such fees as it prescribes for dealing with applications, conducting assessments or examinations and issuing certificates under this Section 4.B.

**r06** Any function or power which under this Section 4.B is exercisable by the *Bar Standards Board* may be delegated (and sub-delegated) to any committee, body or *person* to the extent permitted by the standing orders of the *Bar Standards Board*.

## B2. Admissions to an Inn of Court

### Eligibility for admission

**rQ7** To be eligible for *admission to an Inn* under this Section 4.B a *person* must:

- .1 have the necessary educational qualifications; and
- .2 be a fit and proper *person* to become a *practising barrister*.

**rQ8** A *person* has the necessary educational qualifications to be admitted to an *Inn* if that *person*:

- .1 is reading for a qualifying law degree; or
- .2 is attending (or has been accepted for and is about to attend) a Conversion Course; or
- .3 has completed (or been exempted under Section 4.B7 from) the Academic Stage of training.

**rQ9** A *person* is a fit and proper *person* to become a *practising barrister* if:

- .1 there is no reason to expect that that *person*, if admitted to an *Inn*, will engage in conduct which is dishonest or which otherwise makes that *person* unfit to become a *practising barrister*; and
- .2 that *person* does not suffer from serious incapacity due to mental disorder (within the meaning of the Mental Health Act 1983), addiction to alcohol or drugs or any other condition which makes that *person* unfit to become a *practising barrister*.

**rQ10** In the case of an applicant who is authorised to *practise* by another *Approved Regulator* or who is a *Qualified European Lawyer*, a *certificate of good standing* is to be treated as conclusive evidence that the applicant is a fit and proper *person* to become a *practising barrister*.

**rQ11** A *person* whose application for *admission to an Inn* has been rejected on the ground that that *person* is not a fit and proper *person* to become a *practising barrister* or who has been expelled from an *Inn* because of a disciplinary offence may not apply for *admission to an Inn* unless a period of at least five years (or such other period as the *Bar Standards Board* may determine in the particular case) has elapsed from the date of such rejection or expulsion.

### Application procedure

**rQ12** To apply for *admission to an Inn* a *person* ("the applicant") must submit to the Inn:

- .1 a duly completed and signed application including an *admission declaration* in the form prescribed by the *Bar Standards Board* from time to time;
- .2 two certificates of good character which comply with the requirements in Rule rQ13 below or, if the applicant is a *qualified lawyer*, a *certificate of good standing*, which (in either case) was issued within the previous three months; and
- .3 the fee prescribed by the Inn.

### Certificates of good character

**rQ13** A certificate of good character must contain the information specified by the *Bar Standards Board* from time to time and be provided by a professional *person* or *person* of standing in the community who:

- .1 has known the applicant for at least one year;

- .2 does not have a close family or personal relationship with the applicant; and
- .3 has read the *admission declaration* submitted by the applicant under Rule rQ12.1.

### Decision to admit or refuse admission

**rQ14** Before deciding whether to admit the applicant, the *Inn* may make any further enquiries or require the applicant to provide any further information that it considers relevant.

**rQ15** The *Inn* must admit the applicant if the applicant:

- .1 is eligible for *admission to an Inn* and has given the undertaking on the *admission declaration* to commence the *Vocational stage* within five years of *admission to an Inn* and complete that Stage within ten years of admission; and
- .2 has complied with Rule rQ12,

otherwise the *Inn* must reject the application and inform the applicant of its reasons for doing so.

**rQ16** If the applicant falls within Rule rQ17, the *Inn* must refer the question whether the applicant is a fit and proper *person* to become a *practising barrister* to the Inns' Conduct Committee to decide and must notify the applicant that it has done so.

**rQ17** An applicant falls within this Rule rQ17 if:

- .1 the applicant applicant has been convicted of a *Criminal offence* (or is the subject of pending Criminal Proceedings); or
- .2 the applicant has been convicted of a disciplinary offence by a professional or regulatory body (or is the subject of pending proceedings for such an offence); or
- .3 the applicant has been found guilty of an academic offence by a higher education institution (and has not successfully appealed against that finding); or
- .4 the applicant has been the subject of a *Bankruptcy Order* or *director's disqualification* order or has entered into an individual voluntary arrangement with creditors; or
- .5 the applicant has previously been refused admission to or expelled from an *Inn*; or
- .6 there is any other circumstance which in the opinion of the *Inn* calls into question the applicant's fitness to become a *practising barrister*.

**rQ18** When the Inns' Conduct Committee is asked to decide whether the applicant is a fit and proper *person* to become a *practising barrister*, it must send a report of its decision and the reasons for the decision to the applicant and to the *Inn*.

**rQ19** If the Inns' Conduct Committee decides that the applicant is not a fit and proper *person* to become a *practising barrister* or if the *Inn* rejects an application for admission for any other reason, the applicant may request a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.

**rQ20** If on a review under Section 4.B10 the *Bar Standards Board* is satisfied that the applicant is eligible for *admission to an Inn* and has complied with Rule rQ12, the *Inn* must admit the applicant.

## B3. The Academic Stage

**r021** A *person* completes the Academic Stage of training by:

- .1 obtaining a qualifying law degree; or
- .2 obtaining a qualifying degree and successfully completing a Conversion Course.

**r022** For the purpose of Rule rQ21.1 a qualifying law degree is a qualifying degree approved by the *Bar Standards Board* which includes a course of study of the *foundations of legal knowledge*.

**r023** For the purpose of Rule rQ21.2 a qualifying degree is:

- .1 a degree of the required standard awarded by a *University* in the United Kingdom following a course of study of the minimum period; or
- .2 a degree awarded by a *University* or establishment of equivalent level outside the United Kingdom which the *Bar Standards Board* accepts as equivalent to a degree satisfying the requirements of Rule rQ23.1.

and a *person* obtains a qualifying degree on being adjudged to have successfully completed the academic requirements of the degree irrespective of when the degree is actually conferred.

**r024** For the purpose of Rule rQ23.1, unless the *Bar Standards Board* on an application showing good grounds permits otherwise, the required standard is first or second class honours.

**r025** A Conversion Course is a course approved by the *Bar Standards Board* which includes study of the *foundations of legal knowledge*.

**r026** For the purpose of Rules rQ22 and rQ25, *foundations of legal knowledge* means those subjects the study of which is prescribed by the *Bar Standards Board* for the purposes of obtaining a qualifying law degree and for inclusion in any Graduate Conversion Course, and which currently comprise:

- .1 Obligations I (Contract)
- .2 Obligations II (Tort)
- .3 Criminal Law
- .4 Public Law
- .5 Property Law
- .6 Equity & The Law of Trusts
- .7 Foundations of EU Law

## B4. The Vocational Stage

**r027** A person starts the *vocational stage* of training on starting to attend at a *Bar Professional Training Course*, and completes the *vocational stage* on being certified by the course provider that they have successfully completed a *Bar Professional Training Course*.

**r028** Before starting the *vocational stage*, a person must:

- .1 have completed (or been exempted under Section 4.B7 from) the Academic Stage; and
- .2 have successfully completed the *Bar Course Aptitude Test*, the *pass score* for which is set by the *Bar Standards Board* from time to time; and
- .3 be a member of an *Inn* of Court.

**r029** A person may not start the *vocational stage* more than five years after completing the Academic Stage except with the permission of the *Bar Standards Board* and after complying with any condition which the *Bar Standards Board* may impose.

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## B5. The Professional Stage

**r030** A *person* starts the professional stage of training when they start *pupillage* in accordance with this Section 4.B5 and completes the professional stage by:

- .1 satisfactorily completing 12 months of *pupillage* and such further training as may be required by the *Bar Standards Board*; and
- .2 being issued with a *full qualification certificate*.

**r031** Before starting the professional stage, a *person* must have completed (or been exempted under Section 4.B7 from) the *vocational stage*.

**r032** A *person* may not start the Professional Stage more than five years after completing the *vocational stage* except with the permission of the *Bar Standards Board* and after complying with any condition which the *Bar Standards Board* may impose.

### Pupillage

**r033** *Pupillage* is divided into two parts:

- .1 a non-practising period of six months; and
- .2 a practising period of six months.

**r034** Except with the written permission of the *Bar Standards Board*, the non-practising period of *pupillage* must be done :

- .1 in a *Member State* of the European Union; and
- .2 in a continuous period of six months.

**r035** Except with the written permission of the *Bar Standards Board*, the practising period of *pupillage* must:

- .1 start within 12 months after completion of the non-practising period;
- .2 be done in a *Member State*; and
- .3 be completed within an overall period of nine months.

**r036** Any period of *pupillage* must provide training which is adequate and which complies with such criteria as may be published by the *Bar Standards Board*.

**r037** Except as provided in Rule r060, any period of *pupillage* must be done :

- .1 in an *approved training organisation*; and
- .2 with a *barrister* who is a registered *pupil supervisor*.

**r038** During any period of *pupillage* the *pupil* must;

- .1 be diligent in receiving the instruction given; and
- .2 observe all legal and professional obligations of confidence.

## Approved training organisations

**r039** The *Bar Standards Board* may authorise any organisation as an *approved training organisation* subject to such terms as the *Bar Standards Board* may from time to time determine.

**r040** The *Bar Standards Board* may withdraw approval from an *approved training organisation* if it considers after investigation:

- .1 that *pupillage* training provided by the organisation is or has been seriously deficient; or
- .2 that the organisation has not made proper arrangements for dealing with pupils and *pupillage* in accordance with the Code of Conduct.

**r041** The *Bar Standards Board* will give notice in writing:

- .1 in the case of a decision to refuse to designate an organisation as an *approved training organisation*, to that organisation; and
- .2 in the case of a decision to withdraw approval from an *approved training organisation*, to:
  - a that organisation;
  - b any *person* who is undertaking or has agreed to undertake a *pupillage* in that organisation; and
  - c the *Inn* of which any such *person* is a member.

**r042** Any *person* or organisation to whom the *Bar Standards Board* is required to give notice of a decision under Rule r041 may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.

**r043** If the *Bar Standards Board* withdraws approval from an *approved training organisation*, the organisation may not claim repayment of any *pupillage* award or other sum paid to any *pupil* or prospective *pupil*.

## Acting as a pupil supervisor

**r044** A *barrister* may act as a *pupil supervisor* if the *barrister*:

- .1 is on the register of approved *pupil supervisors* kept by the *Bar Standards Board*;
- .2 has a current practising certificate; and
- .3 has regularly practised as a *barrister* during the previous two years.

## Registration as a pupil supervisor

**r045** The *Bar Standards Board* may enter a *barrister* on the register of approved *pupil supervisors* if the *barrister* is approved by an *Inn* of which the *barrister* is a member.

**r046** The *Bar Standards Board* may refuse to enter a *barrister* on the register of approved *pupil supervisors* if the *Bar Standards Board* finds that the *barrister* is unsuitable for any reason to act as a *pupil supervisor*.

**r047** If the *Bar Standards Board* refuses to enter a *barrister* on the register of approved *pupil supervisors*, it will notify the *barrister* and the *Inn* which approved the *barrister* as a *pupil supervisor* of its decision and of the reasons for it.



**rQ48** An *Inn* must approve a *barrister* as a *pupil supervisor* if:

- .1 the *barrister* has a current *practising certificate*;
- .2 the *Inn* is satisfied that the *barrister* has the necessary experience and is otherwise suitable to act as a *pupil supervisor*; and
- .3 the *barrister* has submitted an application in accordance with Rule rQ50.

**rQ49** To have the necessary experience to act as a *pupil supervisor* a *barrister* should normally:

- .1 have practised in the United Kingdom or another *Member State* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with this Section 4.B5) or as a *person* authorised to exercise a *right of audience* or to *conduct litigation* by another *Approved Regulator* for a period for at least six years in the previous eight years; and
- .2 for the previous two years have regularly practised as a *barrister* and been entitled to exercise a *right of audience* before every *court* in England and Wales in relation to all proceedings.

### Application procedure to become a pupil supervisor

**rQ50** A *barrister* who wishes to be entered on the register of approved *pupil supervisors* must submit to the *Inn* an application in the form currently prescribed by the *Bar Standards Board*. The application must be supported:

- .1 by an independent *person* who is a High Court Judge or Circuit Judge, a Leader of a Circuit, a Deputy High Court Judge, a Recorder, a Queen's Counsel, a Master of the Bench of an *Inn*, Treasury Counsel or a *person* of comparable standing who is able to comment from *personal* knowledge on the applicant's suitability to act as a *pupil supervisor*; and
- .2 Subject to Rule rQ50.3 below,
- .3 in the case of a *self-employed barrister*, by the applicant's Head of *chambers*, or
  - .a in the case of an employed *barrister*, by a more senior lawyer employed in the same organisation and who has direct knowledge of the work of the applicant;
- .4 If the applicant is a Head of *chambers*, or there is no more senior lawyer employed in the same organisation with the required knowledge, or for any other reason the support of the *person* referred to in Rule rQ50.2 is not available, by a second *person* falling within Rule rQ50.1 above.

### Training of pupil supervisors

**rQ51** The *Bar Standards Board*, in consultation with the *Inns*, may and will normally require *pupil supervisors* to undertake training before they may be entered or after they have been entered on the register of approved *pupil supervisors*.

### Removal from the register of pupil supervisors

**rQ52** The *Bar Standards Board* may remove a *barrister's* name from the register of approved *pupil supervisors* if the *barrister*:

- .1 ceases to practise as a *barrister* or is *suspended from practice* as a *barrister*; or
- .2 requests the *Bar Standards Board* in writing to be removed from the register; or
- .3 fails to complete any training required under Rule rQ51; or

- .4 is found by the *Bar Standards Board* to be unsuitable for any reason to act as a *pupil supervisor*;  
or
- .5 has not acted as a *pupil supervisor* for the previous five years.

**r053** If the *Bar Standards Board* decides that a *barrister's* name should be removed from the register of approved *pupil supervisors*, it will notify the *barrister* and the *Inn* which approved the *barrister* as a *pupil supervisor* of its decision and of the reasons for it.

### Duties of pupil supervisors

**r054** A *pupil supervisor* must when responsible for supervising any pupil:

- .1 take all reasonable steps to provide the *pupil* with adequate tuition, supervision and experience;
- .2 have regard to any *pupillage* guidelines issued by the *Bar Standards Board* and to the Equality and Diversity Rules of the Code of Conduct; and
- .3 ensure that the *pupil* prepares for and attends any further training required by the *Bar Standards Board* such as advocacy training provided by the *pupil's* Circuit or *Inn*.

**r055** A *pupil supervisor* may not be responsible for supervising more than one *pupil* at a time except with the approval in writing of the *Bar Standards Board*.

### Complaints about pupil supervisors

**r056** If any complaint or other matter which appears to affect the suitability of a *barrister* to continue to act as a *pupil supervisor* comes to the notice of the *Inn* which approved the *barrister*, the *Inn* must inform the *Bar Standards Board* of the matter.

**r057** If any complaint or other matter which appears to affect the suitability of a *barrister* to continue to act as a *pupil supervisor* comes to the notice of the *Bar Standards Board*, the *Bar Standards Board* will investigate the matter.

**r058** After such an investigation, the *Bar Standards Board* may:

- .1 dismiss any complaint; or
- .2 take no action; or
- .3 if in its opinion the matter is such as to require informal treatment, draw it to the *barrister's* attention in writing and if thought desirable direct the *barrister* to attend upon a nominated *person* for advice; or
- .4 if in its opinion the conduct disclosed shows that the *barrister* is unsuitable to act as a *pupil supervisor*, remove the name of the *barrister* from the register of approved *pupil supervisors*.

**r059** A *barrister* whose application to be approved as a *pupil supervisor* is rejected or whose name is removed from the register of approved *pupil supervisors* may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.

### External training

**r060** With the written permission of the *Bar Standards Board*, part or all of the practising period of *pupillage* may be satisfied by training:

- .1 with a *solicitor*, judge or other suitably *qualified lawyer* who is not a registered *pupil supervisor*; and/or
- .2 in an organisation which is not an *approved training organisation* but which, in the opinion of the *Bar Standards Board*, provides suitable training and experience.

## Advertising

**r061** Subject to Rule C114, all vacancies for *pupillage* must be advertised on a website designated by the *Bar Council* and the following information must be provided:

- .1 In respect of *chambers*:
  - .a the name and address of *chambers*;
  - .b the number of tenants;
  - .c a brief statement of the work done by *Chambers*, e.g., “predominantly criminal”;
  - .d the number of *pupillage* vacancies;
  - .e the level of award;
  - .f the procedure for applying;
  - .g the minimum educational or other qualifications required;
  - .h the closing date for applications;
  - .i the date by which the decisions will be made;
- .2 in respect of entities:
  - .a the name and address of the *BSB entity*;
  - .b the number of *barristers* employed by that entity;
  - .c a brief statement of the work done by the entity, eg, “predominantly criminal”;
  - .d the number of *pupillage* vacancies;
  - .e the level of award;
  - .f the procedure for application;
  - .g the minimum educational or other qualifications required;
  - .h the closing date for applications;
  - .i the date by which the decisions will be made.

## Registration of pupillage

**r062** Before starting any period of *pupillage* (including any period of external training) a *person* must apply to the *Bar Standards Board* for registration of the *pupillage* by submitting an application in the form prescribed by the *Bar Standards Board*.

- rQ63** The *Bar Standards Board* will register the *pupillage* if it is satisfied that the application has been duly completed and that the *pupillage* complies with this Section 4.B5.
- rQ64** If a *person* applies to the *Bar Standards Board* for registration of a *pupillage* after the *pupillage* has started, the *pupillage* will be treated as having started on the date the application is received, unless the *Bar Standards Board* permits otherwise.
- rQ65** If the *Bar Standards Board* refuses to register a *pupillage*, it will inform the *pupil* in writing of its decision and of the reasons for it.
- rQ66** If the *Bar Standards Board* refuses to register a *pupillage*, the *pupil* may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.
- rQ67** If any of the information provided in an application for registration of a *pupillage* changes before the *pupillage* has been completed, the *pupil* must promptly notify the *Bar Standards Board* in writing of the change.

### Qualification certificates

- rQ68** On completion of the non-practising period of *pupillage*, the *Bar Standards Board* will issue the *pupil* with a *provisional qualification certificate* provided that the *pupil* has been called to the *Bar* under Section 4.B9 and the *Bar Standards Board* is satisfied:
- .1 that the *pupil* has satisfactorily completed the non-practising period of *pupillage* and any further training required under Rule rQ30.1; and
  - .2 that the *pupillage* is registered and complied with this Section 4.B5.
- rQ69** When the *pupil* completes the practising period of *pupillage*, the *Bar Standards Board* will issue them with a *full qualification certificate*, if the *pupil* has a *provisional qualification certificate* and the *Bar Standards Board* is satisfied:
- .1 that the *pupil* has satisfactorily completed the practising period of *pupillage* and any further training required under Rule rQ30.1; and
  - .2 that the *pupillage* is registered, and has complied with this Section 4.B5.
- rQ70** For the purpose of this Section 4.B5, a *pupil* is to be treated as having satisfactorily completed a period of *pupillage* if the *pupil*:
- .1 has been diligent in receiving the instruction given; and
  - .2 has achieved the minimum level of competence required of a *pupil* at the end of the relevant period.
- rQ71** The *Bar Standards Board* may accept as evidence that a *pupil* has satisfactorily completed any period of *pupillage* a certificate to this effect from the *pupil supervisor* (or the *person* responsible for external training) with whom the *pupil* has completed that period.
- rQ72** If a *pupil supervisor* is unable or unwilling to provide a certificate that a *pupil* has satisfactorily completed a period of *pupillage*, the *Bar Standards Board* may accept such a certificate signed by the Head of *chambers* or *person* in charge of *pupillage* in the training organisation where the *pupillage* has been done if the certificate contains a satisfactory explanation of why the *pupil supervisor* has not signed it.

**r073** If the *Bar Standards Board* is not satisfied:

- .1 that the *pupil* has satisfactorily completed a period of *pupillage*, and/or
- .2 that the *pupillage* is registered and complied with this Section 4.B5;

the *Bar Standards Board* may specify further training which the *pupil* must satisfactorily complete before the *Bar Standards Board* will issue the *pupil* with a *provisional qualification certificate* or a *full qualification certificate* (as the case may be).

**r074** If the *Bar Standards Board* refuses to issue a *provisional qualification certificate* or a *full qualification certificate*, the *pupil* may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.

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## B6. Qualifying sessions

- r075** In this Part 4.B6 a qualifying session means an event (or part of an event) of an educational and collegiate nature arranged by or on behalf of an Inn;
- r076** Subject to Rules rQ77 and rQ82, a *person* who is admitted to an *Inn* must attend 12 *qualifying sessions* during a period of no more than five years ending on the date on which that *person* is called to the Bar.
- r077** An *Inn* may on an application showing such exceptional grounds as satisfy criteria agreed by all four Inns waive or modify the requirement to attend *qualifying sessions*.
- r078** Each *Inn* is responsible, in cooperation with the other Inns, for:
- .1 ensuring that suitable *qualifying sessions* are available for its members; and
  - .2 deciding what requirements must be satisfied for a *person* to be credited with attendance at one or more qualifying sessions; and
  - .3 agreeing criteria which specify the grounds on which the requirement to attend qualifying sessions may be waived or modified.

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## B7. Exemptions from training requirements

**r079** The *Bar Standards Board* may grant exemptions from part or all of:

- .1 the Academic Stage,
- .2 the *vocational stage*, and/or
- .3 the Professional Stage,

of training.

**r080** In exercising its discretion whether to grant an exemption from part or all of any Stage of training, the *Bar Standards Board* will determine whether the relevant knowledge and experience of the applicant make it unnecessary for the applicant to do such training.

**r081** An exemption from part or all of any Stage of training may be granted unconditionally or subject to conditions, which may include in an appropriate case:

- .1 a requirement to do training instead of the training prescribed by this Section 4.B; and/or
- .2 a condition that the applicant must pass a *Bar Transfer Test*.

**r082** Where the *Bar Standards Board* exempts a *person* from the Vocational or Professional Stage of training, it may also:

- .1 grant exemption in whole or in part from the requirement to attend *qualifying sessions*; and
- .2 specify the period within which any requirement to attend *qualifying sessions* must be fulfilled, which may be a period ending after the *person* concerned has been called to the *Bar* and in the case of a Specially Qualified Applicant is usually a period of three years during which the applicant must attend six *qualifying sessions* unless special circumstances apply.

### Applications

**r083** An application for exemption under this Section must be in such form as may be prescribed by the *Bar Standards Board* and contain or be accompanied by the following:

- .1 details of the applicant's educational and professional qualifications and experience;
- .2 evidence (where applicable) that the applicant is or has been entitled to exercise rights of audience before any court, specifying the rights concerned and the basis of the applicant's entitlement to exercise such rights
- .3 any other representations or evidence on which the applicant wishes to rely in support of the application;
- .4 verified English translations of every document relied on which is not in the English language; and
- .5 the prescribed fee.

**r084** Before deciding whether to grant any exemption under this Section, the *Bar Standards Board* may make any further enquiries or require the applicant to provide any further information that it considers relevant.

**r085** A *person* whose application for exemption is rejected may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.

## Full exemption

**rQ86** If the *Bar Standards Board* is satisfied that an applicant falls within Rule Q87, the *Bar Standards Board* will:

- .1 exempt the applicant from any Stage of training prescribed by this Section 4.B which the applicant has not fulfilled;
- .2 issue the applicant with a *full qualification certificate*; and
- .3 authorise the applicant to practise as a *barrister* on their being admitted to an *Inn* and called to the *Bar* under Section 4.B9 subject to complying with the Code of Conduct.

**rQ87** The following categories of *person* fall within this Rule rQ87:

- .1 a *person* who has been granted rights of audience by an *approved regulator* and is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;
- .2 subject to Rule rQ88, a *person* who has been granted rights of audience by an *approved regulator* and is entitled to exercise those rights in relation to either all proceedings in the High Court or all proceedings in the Crown Court of England and Wales (but not both);
- .3 a *barrister* of Northern Ireland who has successfully completed *pupillage* in accordance with the rules of the *Bar* of Northern Ireland;
- .4 subject to Rule rQ89, a *Qualified European Lawyer*.

**rQ88** The *Bar Standards Board* may exceptionally require an applicant who falls within Rule rQ87.2 to do part or all of the practising six months of *pupillage* if it considers this necessary having regard in particular to the knowledge, professional experience and intended future *practice* of the applicant.

**rQ89** Subject to Rules rQ91 to rQ95, the *Bar Standards Board* may require a *Qualified European Lawyer* to pass a *Bar Transfer Test* if the *Bar Standards Board* determines that:

- .1 the matters covered by the education and training of the applicant differ substantially from those covered by the Academic, Vocational and Professional Stages of training; and
- .2 the knowledge acquired by the applicant in the course of their professional experience does not fully cover this substantial difference.

## Registered European Lawyers

**rQ90** The Rules governing registration as a *Registered European Lawyer* in Section 3.D of this *Handbook*.

**rQ91** The *Bar Standards Board* may not require an applicant who is a *Registered European Lawyer* and who falls within Rule rQ93 or rQ94 to pass a *Bar Transfer Test* unless it considers that the applicant is unfit to *practise* as a *barrister*.

**rQ92** In considering whether to require an applicant who falls within Rule rQ94 to pass a *Bar Transfer Test*, the *Bar Standards Board* must:

- .1 take into account the professional activities the applicant has pursued while a *Registered European Lawyer* and any knowledge and professional experience gained of, and any training received in, the law of any part of the United Kingdom and of the rules of professional conduct of the *Bar*; and
- .2 assess and verify at an interview the applicant's effective and regular pursuit of professional activities and capacity to continue the activities pursued.



**rQ93** To fall within this Rule rQ93 an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*; and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales under a Home Professional Title professional activities in the law of England and Wales.

**rQ94** To fall within this Rule rQ94 an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*; and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales professional activities under a Home Professional Title; and
- .3 for a period of less than three years effectively and regularly pursued in England and Wales under a Home Professional Title professional activities in the law of England and Wales.

**rQ95** For the purpose of this Section 4.B17, activities are to be regarded as effectively and regularly pursued if they are actually exercised without any interruptions other than those resulting from the events of everyday life.

### Partial exemption

**rQ96** If the *Bar Standards Board* is satisfied that an applicant falls within Rule rQ97, the *Bar Standards Board* will:

- .1 exempt the applicant from the Academic Stage and the *vocational stage* and, if the *Bar Standards Board* thinks fit, from part or all of the Professional Stage of training; and
- .2 if the applicant is exempted from the whole of the non-practising six months of *pupillage*, issue the applicant with a *provisional qualification certificate*.

**rQ97** The following categories of *person* fall within this Rule rQ97:

- .1 a *person* who has been granted rights of audience by another Approved Regulator and is entitled to exercise those rights in relation to any class of proceedings in any of the *Senior Courts* or all proceedings in county courts or magistrates' courts in England and Wales;
- .2 a *Qualified Foreign Lawyer* who has for a period of at least three years regularly exercised full rights of audience in courts which administer law substantially similar to the common law of England and Wales;
- .3 a teacher of the law of England and Wales of experience and academic distinction.

### Temporary call to the Bar of Qualified Foreign Lawyers

**rQ98** A *Qualified Foreign Lawyer* ("the applicant") who falls within Rule rQ97.2 is entitled to be admitted to an *Inn* and called to the *Bar* on a temporary basis for the purpose of appearing as counsel in a particular case before a *court* of England and Wales without being required to satisfy any other requirements of this Section 4.B if the applicant has:

- .1 obtained from the *Bar Standards Board* and submitted to an *Inn* a *Temporary Qualification Certificate* specifying the case for the purposes of which the applicant is authorised to be called to the *Bar*;

- .2 duly completed and signed a *call declaration* in the form prescribed by the *Bar Standards Board* from time to time; and
- .3 paid the fee prescribed by the Inn.

**rQ99** The *Bar Standards Board* will issue a Temporary Qualification Certificate if the applicant submits to the *Bar Standards Board*:

- .1 evidence which establishes that the applicant is a *Qualified European Lawyer* or falls within Rule rQ97.2;
- .2 a *certificate of good standing*; and
- .3 evidence which establishes that a Professional *Client* wishes to instruct the applicant to appear as counsel in the case or cases for the purposes of which the applicant seeks temporary *call* to the Bar.

**rQ100** *Admission to an Inn* and *call* to the *Bar* under Rule rQ98 take effect when the applicant is given notice in writing by the *Inn* that the applicant has been admitted to the *Inn* and called to the *Bar* under Rule rQ98 and automatically cease to have effect on conclusion of the case or cases specified in the applicant's Temporary Qualification Certificate.

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## B8. Conduct of students

**rQ101** References in this Section to “the Inn” are to any *Inn* of which the *student* concerned is a member.

**rQ102** A *student* must observe any regulations about conduct and discipline made by the Inn.

**rQ103** If a *student*:

- .1 becomes the subject of *pending Criminal Proceedings* or is convicted of a *Criminal offence*, or
- .2 becomes the subject of pending disciplinary proceedings or is convicted of a disciplinary offence by a professional or regulatory body, or
- .3 is the subject of a *Bankruptcy Order* or *directors disqualification order* or enters into an individual voluntary arrangement with creditors, or
- .4 is found guilty of an academic offence by a higher education institution (and has not successfully appealed against that finding),

the *student* must immediately notify the *Inn* in writing.

**rQ104** This Rule rQ104 applies where notification is given or a *complaint* or report is made or it appears to an *Inn* from information given in the *student’s call declaration* or otherwise that a *student* of the *Inn* has or may have:

- .1 made any false statement or acted in breach of any undertaking given in the *student’s admission declaration* or *call declaration*; or
- .2 while a *student*:
  - a committed any breach of any regulations made by the *Inn* concerning the conduct and discipline of its members; or
  - b been convicted of a *Criminal offence*; or
  - c been convicted of a disciplinary offence by a professional or regulatory body; or
  - d been the subject of a *Bankruptcy Order* or *directors disqualification order* or entered into an individual voluntary arrangement with creditors; or
  - e been found guilty by the course provider of cheating or other misconduct on a *Bar Professional Training Course* (and has not successfully appealed against that finding); or
  - f otherwise been guilty of any conduct discreditable to a member of an Inn.

**rQ105** Where Rule rQ104 applies, the Inn:

- .1 may make any enquiries or require the *student* to provide such information as it may think fit; and
- .2 must consider whether the matter is a *serious matter*.

**rQ106** If the *Inn* decides that the matter is not a *serious matter*, the *Inn* may deal with the matter under its internal disciplinary procedure and at the conclusion of that procedure may:

- .1 dismiss any complaint; or
- .2 decide to take no action; or

- .3 advise the *student* as to future conduct; or
- .4 reprimand the *student*; or
- .5 ban the *student* for a specified period from using some or all of the Inn's facilities.

**rQ107** A *student* may appeal from a decision of an *Inn* under its internal disciplinary procedure to the Inns' Conduct Committee.

**rQ108** If at any stage the *Inn* decides that the matter is a *serious matter*, the *Inn* must refer the matter to the Inns' Conduct Committee for determination. After determining the matter, the Inns' Conduct Committee must send a report of its findings and reasons to the *student* and to the *Inn*.

**rQ109** If the Inns' Conduct Committee (or the *Bar Standards Board* on a review under Section 4.B10) finds a *serious matter* proved, it may:

- .1 advise the *student* as to future conduct; or
- .2 reprimand the *student*; or
- .3 order that the *student's call* to the *Bar* be postponed for a specified period; or
- .4 direct that the *student* be expelled from the *Inn* (in which case the *Inn* must expel the *student*).

**rQ110** If the Inns' Conduct Committee finds a *serious matter* proved, the *student* may ask for a review under Section 4.B10 of the decision of the Inns' Conduct Committee, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given.

**rQ111** Where Rule rQ104 applies, the *student* is not entitled to be called to the *Bar*:

- .1 until the *Inn* has decided that the matter is not a *serious matter*; or
- .2 if the *Inn* decides that the matter is a *serious matter*, until the matter has been determined; or
- .3 if the Inns' Conduct Committee (or the *Bar Standards Board* following a review under Section 4.B10) orders that the *student's call* to the *Bar* be postponed for a specified period, until that period has expired.

## B9. Call to the Bar

### Requirements for call

- rQ112** Subject to Rules rQ111, rQ113 and, rQ117 a *person* is entitled to be called to the *Bar* by an *Inn* of which that *person* is a member if that *person* has:
- .1 completed or been exempted from the *vocational stage* of training in accordance with this Section 4.B;
  - .2 complied with any applicable requirement to attend *qualifying sessions*;
  - .3 submitted to the *Inn* a duly completed and signed a *call declaration* in the form prescribed by the *Bar Standards Board* from time to time; and
  - .4 paid the fee prescribed by the *Inn*.
- rQ113** Before deciding whether a *person* who has complied with Rule rQ112 (“the candidate”) is entitled to be called to the *Bar*, the *Inn*:
- .1 may make any enquiries or require the candidate to provide any further information that it considers relevant;
  - .2 must consider whether Rule rQ104 applies; and
  - .3 if Rule rQ104 applies, must give effect to Rule rQ111.
- rQ114** If the *Inn* decides that the candidate is not entitled to be called to the *Bar*, the *Inn* must inform the candidate of its decision and of the reasons for it.
- rQ115** If the *Inn* decides that the candidate is not entitled to be called to the *Bar*, the candidate may request a review of the decision under Section 4.B10, provided that the request is made in writing to the *Bar Standards Board* within one month of the date when notice of the decision was given by the *Inn*.
- rQ116** If on a review under Section 4.B10 the *Bar Standards Board* decides that the candidate is entitled to be called to the *Bar*, the *Inn* must *call* the candidate to the *Bar*.
- rQ117** Where it is alleged that the *call declaration* made by a *barrister* on *call* is false in any material respect or that the *barrister* has engaged before *call* in conduct which is dishonest or otherwise discreditable to a *barrister* and which was not, before *call*, fairly disclosed in writing to the Benchers of the *Inn* calling them or where any undertaking given by a *barrister* on *call* to the *Bar* is breached in any material respect that shall be treated as an allegation of a breach of this *Handbook* and will be subject to the provisions of Part 5.

### Call days and procedure

- rQ118** Calls to the *Bar* will take place on such days as may be authorised from time to time by the Inns’ Council.
- rQ119** A candidate must be called to the *Bar* in *person* unless given written permission by the *Inn* to be absent from the *call* ceremony.

## B10. Review and appeals

**rQ120** Where provision is made under this Section 4.B for a review by the *Bar Standards Board* of a decision, any request for such a review must be accompanied by:

- .1 a copy of any notice of the decision and the reasons for it received by the *person* or organisation requesting the review ("the applicant");
- .2 where the decision is a decision of an *Inn* or of the Inns' Conduct Committee, copies of all documents submitted or received by the applicant which were before the *Inn* or the Inns' Conduct Committee (as the case may be);
- .3 any further representations and evidence which the applicant wishes the *Bar Standards Board* to take into account; and
- .4 the prescribed fee.

**rQ121** Where the decision under review is a decision of an *Inn* or of the Inns' Conduct Committee, the *Bar Standards Board* will invite the *Inn* or the Inns' Conduct Committee (as the case may be) to comment on any further representations and evidence which the applicant submits under Rule rQ120.3.

**rQ122** On a review under this Section the *Bar Standards Board*:

- .1 may affirm the decision under review or substitute any other decision which could have been made on the original application;
- .2 may in an appropriate case reimburse the fee paid under Rule rQ120.4; and
- .3 will inform the applicant and any other interested *person* of its decision and the reasons for it.

**rQ123** Where under this Section 4.B provision is made for a review by the *Bar Standards Board* of a decision, no appeal may be made to the High Court unless such a review has taken place.

**rQ124** Subject to Rule rQ123, a *person* or organisation who is adversely affected by a decision of the *Bar Standards Board* may appeal to the High Court against the decision, in accordance with Civil Procedure Rules.

## B11. Powers of the Inns

### Inns' Conduct Committee

**r0125** Subject to this Section 4.B, the Inns' Conduct Committee shall have power to carry out the functions specified in the Inns' Conduct Committee Rules.

**r0126** The Inns' Conduct Committee Rules must be approved by the *Bar Standards Board* and any amendment to those rules will take effect on:

- .1 the date when the amendment is approved by the *Bar Standards Board*; or
- .2 such later date as the *Bar Standards Board* appoints.

**r0127** The *Bar Standards Board* may:

- .1 issue guidance which the Inns' Conduct Committee must follow in carrying out its functions; and
- .2 ask for information about the performance of those functions which the Inns' Conduct Committee must provide to the *Bar Standards Board*.

### Other powers

**r0128** Subject to the approval of the *Bar Standards Board*, an *Inn* may charge such fees as it prescribes for dealing with applications and calling *persons* to the *Bar* under this Section 4.B.

**r0129** Any function or power which under this Section 4.B is exercisable by an *Inn* or by the Inns' Conduct Committee may be delegated (and sub-delegated) to any committee, body or *person* to the extent permitted by the standing orders of the *Inn* or the Inns' Conduct Committee Rules (as the case may be).

# C. THE CPD RULES

## The mandatory continuing professional development requirements

**rQ130** For the purpose of this Section 4.C:

- .1 “calendar year” means a period of one year starting on 1 January in the year in question;
- .2 “continuing professional development” (“CPD”) means work undertaken over and above the normal commitments of a *barrister* and is work undertaken with a view to developing the *barrister’s* skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the *barrister* up to date and maintain the highest standards of professional practice.
- .3 “CPD Guidance” means guidance issued by the Bar Standards Board from time to time which sets out the CPD structure with which an EPP *barrister* should have regard to.
- .4 “EPP” means the Established Practitioners Programme which requires *barristers*, once they have completed the NPP, to undertake CPD during each calendar year in accordance with these Rules.
- .5 the “mandatory requirements” are those in Rules Q131 to Q138 below.
- .6 “NPP” means the New Practitioner Programme which requires *barristers* to complete CPD in their first three calendar years of practice in accordance with these rules.
- .7 a “*pupillage* year” is any calendar year in which a *barrister* is at any time a *pupil*.
- .8 a “learning objective” is a statement of what a *barrister* intends to achieve through their CPD activities for that calendar year with reference to a specific aim and one or more outcomes.

**rQ131** Any practising *barrister* who, as at 1 October 2001, had started but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of CPD during their first three years of *practice*.

### G

### Guidance

#### Guidance on Rule rQ131

**gQ1** Rule rQ131 is intended to apply only in those limited circumstances where a *barrister* started *practice* before 1 October 2001 but after the NPP first came into force, left *practice* before completing the NPP, but has since returned. Rule rQ131 requires them to finish their NPP during whatever is left of their first three years of *practice*.

**rQ132** Any practising NPP *barrister* who starts *practice* on or after 1 October 2001 must during the first three calendar years in which the *barrister* holds a *practising certificate* after any *pupillage* year complete a minimum of 45 hours of CPD.



## G

## Guidance

## Guidance on Rule Q132

- g02** NPP *barristers* should have regard to rQ137 and the NPP guidance which will note the details of any compulsory courses the NPP *barristers* must complete. It also provides guidance as to the types of activities that count towards CPD.
- rQ133** Subject to Rule Q136, any EPP *barrister* who holds a *practising certificate* or certificates during a calendar year must undertake CPD.
- rQ134** An EPP *barrister* who is required to undertake CPD must:
1. prepare a written CPD Plan setting out the *barrister's* learning objectives and the types of CPD activities he or she proposes to undertake during the calendar year
  2. keep a written record of the CPD activities the *barrister* has undertaken in the calendar year
  3. keep a written record in the CPD Plan for each calendar year of:
    - a. the *barrister's* reflection on the CPD he or she has undertaken;
    - b. any variation in the *barrister's* planned CPD activities; and
    - c. the *barrister's* assessment of his or her future learning objectives.
  4. Retain a record of the CPD Plan and completed CPD activities for three years.
  5. submit to the Bar Standards Board an annual declaration of completion of CPD in the form specified by the BSB.

## G

## Guidance

## Guidance on Rules Q133 and Q134

- g03** EPP *barristers* who are required by these Rules to undertake CPD should refer to the CPD Guidance. The CPD Guidance provides further detailed information which EPP *barristers* should have regard to when planning, undertaking and recording their CPD. The CPD Guidance is not prescriptive. Its purpose is to provide a structure that would represent good practice for most *barristers* when considering their CPD requirements.
- g04** The CPD Guidance explains that these Rules do not specify a minimum number of CPD hours which an EPP *barrister* must undertake in a calendar year: it is the responsibility of the individual *barrister* to determine the CPD activities he or she will undertake in order meet the requirements of CPD. The Bar Standards Board will assess and monitor *barristers'* compliance with CPD.
- g05** The underlying principle behind the requirement to plan CPD and set learning objectives is that *barristers* consider their own circumstances and development needs when they complete CPD activities. This best ensures that activities completed contribute to the development of the *barrister's* practice.
- rQ135** Upon the request of the Bar Standards Board, a *barrister* must produce his or her CPD Plan and record of CPD activities for assessment.

**rQ136** Rule Q133 does not apply:

.1 in the case of a *barrister* to whom Rule Q131 applies, to any calendar year forming or containing part of the period of 3 years referred to in Rule Q131;

or

.2 in the case of a *barrister* to whom Rule Q132 applies, during any *pupillage* year or during the first three calendar years in which the *barrister* holds a *practising certificate*.

**rQ137** The *Bar Standards Board* may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by *barristers* (or by any category of *barristers*) in order to satisfy the mandatory requirements.

**rQ138** The *Bar Standards Board* may, by resolution and after consultation with the Inns, Circuits and other providers as appropriate, vary the minimum number of hours of CPD which must be completed by an NPP *barrister* in order to satisfy any of the mandatory requirements.

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## Part 5

# Enforcement regulations

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# A. THE COMPLAINTS REGULATIONS

## A1. Powers and functions of the PCC

**rE1** The membership of the PCC shall be as prescribed by the Standing Orders of the *Bar Standards Board* from time to time.

**rE2** The powers of the PCC shall be as set out in this Part 5, and shall include (but not be limited to) the power:

- .1 to consider *complaints* made by *persons* other than the *Bar Standards Board*;
- .2 to raise *complaints* on behalf of the *Bar Standards Board*, and to withdraw such *complaints*;
- .3 to determine whether any *complaint*:
  - (1) discloses a potential breach of the *Handbook*; and/or
  - (2) discloses a potential case of *professional misconduct*; and/or
  - (3) potentially satisfies the *disqualification condition*,and if so to deal with it in accordance with this Section 5.A;
- .4 to direct the investigation of *complaints*;
- .5 to seek, in appropriate cases, to resolve *complaints* using the *determination by consent procedure*;
- .6 to bring and prosecute charges of *professional misconduct* or make an application for *disqualification* before *Disciplinary Tribunals* (as provided by Section 5.B);
- .7 to seek an immediate interim suspension or immediate *disqualification order* in accordance with Section 5.D of this *Handbook*;
- .8 to seek an interim *suspension* or *disqualification order* in accordance with Section 5.D of this *Handbook*;
- .9 to refer *practising barristers* to a *Fitness to Practise Panel* in accordance with Section 5.E of this *Handbook*;
- .10 to refer to *disciplinary tribunals* any *legal aid complaint* relating to the conduct of a *BSB regulated person* and to be responsible for prosecuting any such charges or *legal aid complaints* before such *disciplinary tribunals*;
- .11 to refer any *complaint* for supervisory action by the *supervision team*;

- .12 to take such other actions in relation to *complaints* or infringements of the *handbook* as are permitted by this Section 5.A;
- .13 to impose, or direct the imposition, of an *administrative sanction* in accordance with the provisions of rE37.3 below;
- .14 to make recommendations on matters of professional conduct to the *Bar Standards Board* or to any of its committees, as the *PCC* may think appropriate; and
- .15 to make rulings on matters of professional conduct in accordance with the *determination by consent procedure*.

**rE3** The *PCC* and the Chair of the *PCC* shall each have the power to authorise any *person*, group or body to fulfil any function or exercise any power given to them by this Section 5.A. Any authorisations given under rE3 must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.

**rE4** Save in respect of the matters dealt with at rE29.2 (time limits for making a *complaint*), the *PCC* or the Chair of the *PCC* shall have the power to extend any time limits prescribed by this Section 5.A, in their absolute discretion, whenever it appears to be appropriate to do so.

**rE5** In determining which of its powers under this Section 5.A to use the *PCC* will take into account all the circumstances, including:

- .1 the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant; and
- .2 any other factor relevant to the issue including whether it is appropriate, sufficient, proportionate and effective, in the public interest, to proceed in that manner.

**rE6** The *PCC* may at any time postpone consideration of a *complaint*, whether to permit further investigation of the *complaint* to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.

**rE7** The *PCC* may at any time seek information or assistance, orally or in writing, as it thinks fit, from any *person*, group or body.

**rE8** If at any time the *PCC* decides in accordance with this Section 5.A:

- .1 to refer a *complaint* to another *person* or body for consideration; or
- .2 to dismiss a *complaint*; or
- .3 to postpone consideration of a *complaint*;

it must give written reasons for that decision, and provide those reasons to the *applicable person* against whom the *complaint* was made and (where the *complaint* was made by a *person* other than the *Bar Standards Board*) the complainant.

**rE9** Any *complaint* received from a *person* other than the *Bar Standards Board* shall first be dealt with by the *PCC* in accordance with Section 5.A2 and, where relevant, shall then be considered by the *PCC* in accordance with Section 5.A3 below.

**rE10** Any *complaint* raised by the *Bar Standards Board* itself shall be considered by the *PCC* in accordance with Section 5.A3 below.

A2: Initial procedure to be followed by the *PCC* when dealing with complaints received from *persons* other than the *Bar Standards Board*

## A2. Initial procedure to be followed by the *PCC* when dealing with complaints received from *persons* other than the *Bar Standards Board*

### Referral of complaints to other persons or to the supervision team

**rE11** When it receives a *complaint*, the *PCC* may consider whether it is appropriate to refer the *complaint* to another *person* or to the *supervision team*, in accordance with rE13 to rE28 below. If at any time the *PCC* decides to refer a *complaint* to another *person* or body for consideration or to the *supervision team* it must give written reasons for that decision, and provide such reasons to the *applicable person* against whom the *complaint* was made and the complainant.

**rE12** The *PCC*'s decision under rE11 is final and no one has the right to appeal against it.

### Reference to the Legal Ombudsman

**rE13** If a *complaint* is made by or on behalf of a *client* of a *BSB regulated person* (excluding for the purposes of this rE13 only, *unregistered barristers*) against that *BSB regulated person* (or, in the case of a *BSB entity*, such a *complaint* is made against any individual working as an *employee* or *manager* of such *BSB entity*), the *PCC* must refer such *complaint* without further consideration to the *Legal Ombudsman*, or will signpost the complainant to the *Legal Ombudsman* and must in the case of a referral notify the complainant of the referral, unless it is clear on the face of the *complaint* that the matter falls outside the jurisdiction of the *Legal Ombudsman*.

**rE14** If a *complaint* is made by or on behalf of a *client* of an *unregistered barrister* against that *unregistered barrister*, the *PCC* may refer such *complaint* to the *Legal Ombudsman* if it is satisfied that the *Legal Ombudsman* may have jurisdiction in relation to such *complaint*, and the *PCC* shall notify the complainant of the referral.

**rE15** For the avoidance of doubt, such a referral does not prevent the immediate operation of the *Interim Suspension and Disqualification Regulations* or the *Fitness to Practise Regulations*, where appropriate.

**rE16** When a *complaint* is referred, or referred back, to the *Bar Standards Board* by the *Legal Ombudsman*, rE29 and following, below, apply.

### Reference to chambers/BSB entities

**rE17** If it appears to the *PCC* that a *complaint* against an *applicable person* (which is not a *complaint* made by or on behalf of *BSB regulated person's client* against that *BSB regulated person*) may appropriately be resolved by:

- .1 *chambers* (where the *complaint* is against a *self-employed barrister* who is a *member* of, or other *applicable person* who is working at, such *chambers* at the relevant time); or
- .2 a *BSB entity* (where the *complaint* is against a *BSB entity* or the *complaint* is against an *applicable person* acting in their capacity as a *manager* or *employee* of such *BSB entity* at the relevant time),
- .3 the *PCC* may refer the *complaint* to the *chambers* or *BSB entity* for investigation and resolution. For the avoidance of doubt, where a *complaint* is made against an *employed barrister (authorised non-BSB body)* or an *employed barrister (non-authorised body)*, the provisions of rE28 apply.

A2: Initial procedure to be followed by the *PCC* when dealing with complaints received from *persons* other than the *Bar Standards Board*

- rE18** When deciding whether to refer a *complaint* in accordance with rE16 above, the *PCC* must take into account all the circumstances, including the factors referred to at rE4 above, and the relationship (if any) between the complainant and the relevant *chambers/BSB entity* and whether such a relationship continues.
- rE19** The *PCC* must consider whether the *complaint* should be dismissed on the grounds that it has not been made within the period identified in rE29.2 below before it decides whether to refer the *complaint* to the relevant *chambers/BSB entity* in accordance with rE17 above.
- rE20** Where a *complaint* is referred to the relevant *chambers/BSB entity* in accordance with rE17 above, the *PCC* will send any information held by it relating to the *complaint* to the head of *chambers* or to the *person* nominated by the *chambers* as being responsible for such issues (in the case of a referral to *chambers*) or to the *HOLP* (in the case of a referral to a *BSB entity*).
- rE21** Following a referral to a *chambers/BSB entity* in accordance with rE17 above, the *PCC* must inform the complainant of the complainant's rights under rE22.2 below.
- rE22** If:
- .1 the *PCC* considers that progress made by the *chambers/BSB entity* in investigating and resolving the *complaint*, or the outcome of such an investigation, is unsatisfactory; or
  - .2 a complainant informs the *PCC* that they are dissatisfied with the progress or outcome of the *chambers/BSB entity's* investigation, giving reasons for such dissatisfaction,
- then the *PCC* must consider the *complaint* in accordance with rE29 and following below.

### Reference where BSB regulated individual acting in judicial or quasi-judicial capacity

- rE23** If it appears to the *PCC* that the *complaint* arises out of an *applicable person's* actions in a part-time or temporary judicial or quasi-judicial capacity, it must act as follows:
- .1 if it appears to the *PCC* that the *complaint* would otherwise fall to be dismissed under this Section 5.A, the *PCC* must dismiss it; or
  - .2 if it appears to the *PCC* that the *complaint* would otherwise not fall to be dismissed:
    - (a) where it appears that the Office of Judicial Complaints, the Lord Chancellor, other Minister of the Crown, or other body or person with appropriate responsibilities in respect of the judicial or quasi-judicial appointment concerned (the "appropriate body") should consider the *complaint*, the *PCC* must refer the *complaint* without further consideration to the appropriate body, requesting notification to the *PCC* of the outcome of the complaint as soon as it has been dealt with;
    - (b) where it appears that there is no appropriate body, or where the appropriate body refuses to deal with a *complaint*, the *PCC* may consider the *complaint* and direct it to be proceeded with in accordance with rE29 and following provisions below.
  - .3 When the appropriate body has dealt with a *complaint*, or the *PCC* considers that the appropriate body has not dealt with a *complaint* within a reasonable time or fully or satisfactorily, the *PCC* may reconsider the *complaint* and shall consider any finding made and any action taken by the appropriate body and may direct that the *complaint* be proceeded with in accordance with rE29 and following below.



A2: Initial procedure to be followed by the *PCC* when dealing with complaints received from *persons* other than the *Bar Standards Board*

- .4 No direction shall be given under rE23.2(b) or rE23.3 above in respect of a *complaint* which the *PCC* considers to have arisen in substance from dissatisfaction or disagreement with anything decided, done or said by the *applicable person* in the proper exercise of their judicial or quasi-judicial functions.

**rE24** For the purposes of rE23 above, “quasi-judicial” refers to acting:

- .1 in any capacity which requires an approach of a judicial nature and compliance with the basic requirements of natural justice; and/or
- .2 as an arbitrator; or
- .3 as a neutral evaluator between parties; or
- .4 as a mediator.

**rE25** Removed from 3 April 2017.

### Reference to the Lord Chancellor or appropriate body

**rE26** If it appears to the *PCC* that the *complaint* relates to the conduct of a *BSB regulated individual* who, since the events giving rise to the *complaint* took place, has been appointed to and continues to hold full-time judicial office and has ceased *practice*, the *PCC* shall not consider the *complaint* further and must inform the complainant that their *complaint* should be directed to the Lord Chancellor or the Office of Judicial Complaints or to such other *person* or appropriate body with responsibility for addressing complaints about judges.

### Reference to the supervision team

**rE27** If it appears to the *PCC* that a *complaint* received in respect of an *applicable person* relates to a matter which might more appropriately be dealt with by the *supervision team* rather than investigation in accordance with rE29 onwards, it may refer the *complaint* to the *supervision team*. If, the *supervision team* then concludes that the *complaint* is best dealt with more formally by the *PCC* in accordance with rE29 onwards, then the *supervision team* may refer the *complaint* back to the *PCC*. The *PCC* must then deal with the *complaint* in accordance with rE29 and following below.

### Reference to any other person

**rE28** If it appears to the *PCC* that a *complaint* received in respect of an *applicable person* relates to a matter which might more appropriately be dealt with by an *Inn*, *Circuit*, *employer* or any other professional or regulatory body (including, for the avoidance of doubt, any other *approved regulator*), it may refer the *complaint* to such other body. If, having referred a *complaint* to another body under rE28, the *PCC* subsequently considers that the *complaint* has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the *PCC* may in its discretion then choose to consider the *complaint* in accordance with rE11 above and/or rE29 and following below.

### PCC’s powers before investigation of complaints

**rE29** In determining whether a *complaint* raised by a *person* other than the *Bar Standards Board* potentially discloses a breach of the *Handbook*, a potential case of *professional misconduct* or a breach of the *Handbook* satisfying the *disqualification condition*, and whether, if it does, it is apt for further consideration, the *PCC* must first consider:

- .1 whether the *complaint* concerns an *applicable person*; and

A2: Initial procedure to be followed by the *PCC* when dealing with complaints received from *persons* other than the *Bar Standards Board*

- .2 whether the *complaint* has been made:
  - .a within twelve months of the conduct of which *complaint* is made, or
  - .b where a complainant has indicated to the *PCC* their dissatisfaction with the outcome of a *chambers/BSB* entity's investigation in accordance with rE22 above, within three months of the end of the investigation by *chambers/BSB* entity, whichever is the later; and

in either case, where the conduct of which a *complaint* is made is (or was) continuing or consisted of a series of related acts or omissions, the conduct must for the purposes of this rule be treated as having taken place at the time when the continuing conduct ceased or at the date of the last of any such acts or omissions.

**rE30** Where the *PCC* decides that the *complaint* does not relate to an *applicable person* or that it relates to a *non-authorized person* in circumstances where the nature of the *complaint* is unlikely to satisfy the *disqualification condition*, it must dismiss the *complaint*.

**rE31** Where the *PCC* decides that the *complaint* has not been made within the period identified in rE29.2 above it must dismiss the *complaint* unless it decides that further consideration of the *complaint* is justified in the public interest, having regard to the *regulatory objectives*.

**rE32** Where the *PCC* has not dismissed a *complaint* in accordance with rE30 or rE31 above, the *PCC* must next consider, having regard to the *enforcement strategy*, whether further consideration of the *complaint* is justified. If the *PCC* considers that:

- .1 the *complaint* for any reason lacks substance; or
- .2 the *complaint* cannot be properly or fairly investigated; or
- .3 the *complaint* or its consequences are insufficiently serious to justify further action; or
- .4 for any other reason the *complaint* is not apt for further consideration,

then the *PCC* must dismiss the *complaint*, although it may also elect in such circumstances to refer the matter for to the *supervision team* in accordance with rE27 above (except that the *supervision team* can not refer the matter back to the *PCC* unless and until further evidence comes to light such that the matter would warrant further consideration by the *PCC*). The *PCC* must give written reasons for referring the matter to the *supervision team*.

**rE33** If a *complaint* is not dismissed by the *PCC* after its initial consideration, it must be investigated and dealt with in the manner set out in Section 5.A3 below and the complainant and *barrister* must be informed, in writing, that such an investigation is to take place.

## A3. Procedure for dealing with complaints to be handled by the PCC – general

### Investigation of complaints

**rE34** The investigation of *complaints* must be conducted by the Professional Conduct Department under the direction of the PCC.

**rE35** When an investigation into a *complaint* is complete, the PCC must exercise the powers given to it by rE36 and following below.

### Additional potential breaches of the Handbook

**rE36** If in the course of its investigation or consideration of a *complaint* ("the original complaint") the PCC considers that there is any matter other than that originally complained of which might give rise to a potential breach of this *Handbook*, and/or a potential case of *professional misconduct*, and/or potentially satisfy the *disqualification condition*, the PCC may raise a *complaint* about that matter on behalf of the *Bar Standards Board* ("the new complaint").

- .1 Then, unless the new matter falls within rE36.2 below:
  - a *the new complaint* must be investigated in the manner set out in rE34 and following above;
  - b the PCC must not consider whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect of the disqualification condition being satisfied* in respect of *the new complaint* unless and until the *applicable person* has been given the opportunity to comment in writing on the matter complained of in *the new complaint*. The PCC must take any comments made by the *applicable person* into account when it decides whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect that the disqualification condition will be satisfied* in respect of *the new complaint*;
  - c the PCC may defer further consideration of *the original complaint* until the *the new complaint* has been investigated.
- .2 No further investigation or opportunity to respond is required where the subject matter of *the new complaint* has already been investigated in the course of investigations into *the original complaint* and the *applicable person* has already been given an opportunity to comment thereon.

### PCC consideration of complaints

**rE37** When any investigation is complete, the PCC must consider the *complaint*, together with the results of any investigation thereof, and may conclude (having regard to the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the PCC to be relevant) in respect of *complaints* made against an *applicable person* (but subject always to rE38 and rE40 below):

- .1 that the conduct did not constitute a breach of the *Handbook*, in which case the PCC must dismiss the *complaint* and rE43 to rE45 apply; or
- .2 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) but that, in all the circumstances, no enforcement action should be taken in respect of the breach in which case rE43 to rE45 apply; or
- .3 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) and that that breach should be dealt with by an *administrative sanction* in which case rE50 to rE55 apply; or

- .4 that the conduct may constitute a breach of the *Handbook*; and (ii) if such breach were to be proved, that an *administrative sanction* pursuant to rE37.3 would not be appropriate in all the circumstances, in which case rE38, rE41, rE42 and rE56 to rE66 apply; or
- .5 that the subject matter of the *complaint* against a *BSB regulated person* involves a *conviction* for an offence of dishonesty or deception, in which case the *PCC* must direct that the *complaint* should form the subject matter of a charge before a *Disciplinary Tribunal* in which case rE42 and rE56 to rE66 shall apply.

**rE38** Where the *PCC* has concluded that rE37.4 is applicable, it must refer the *complaint* to a *Disciplinary Tribunal*, subject to rE40, provided that no *complaint* shall be referred unless the *PCC* is satisfied that:

- .1 there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*; and
- .2 that it is in the public interest, having regard to the *regulatory objectives* to pursue disciplinary proceedings.

**rE39** For the avoidance of doubt, where the *applicable person* is a *non-authorised individual* the *PCC* may not impose an *administrative sanction* or make a referral to a *Disciplinary Tribunal* on charges of *professional misconduct*. The *PCC* may only decide to dismiss the *complaint* or make an application to the *Disciplinary Tribunal* that the *non-authorised individual* be subject to a *disqualification order*.

**rE40** The *PCC* must not conclude that any conduct alleged by an external complainant did constitute a breach of the *Handbook* (on the balance of probabilities) if the *applicable person* has not had a reasonable opportunity to respond in writing to the allegation on which the *complaint* is based unless the matter has already been investigated by the *Legal Ombudsman*. For the avoidance of doubt, complaints referred to the *PCC* by the *supervision team* are not caught by this requirement.

**rE41** Where the *PCC* is minded to refer the matter to a *Disciplinary Tribunal* for determination it may, in appropriate cases and with the consent of the *defendant*, instead direct that the *complaint* be subject to the *determination by consent procedure* (under Section 5.A4 below).

**rE42** Where the *BSB regulated person* referred to a *Disciplinary Tribunal* is a *registered European Lawyer*, the *PCC* shall:

- .1 inform the professional body of which the registered *European lawyer* is a member in their home *Member State*;
- .2 offer the professional body the opportunity to make representations to the *Disciplinary Tribunal* to which the *complaint* has been referred or (where the *determination by consent procedure* is used) to the *PCC*; and
- .3 inform the professional body of findings made by the *Disciplinary Tribunal*, the *PCC* or any other *Bar Standards Board Panel*.

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

### Dismissal

- rE43** Where a decision to dismiss a *complaint* in accordance with rE37.1 or rE37.2 is being taken at a meeting of the *PCC* and not by some other *person*, group or body authorised in accordance with rE3 of this Section 5.A, the majority of the *lay members* present at the meeting must consent to such dismissal.
- rE44** Where the *PCC* takes the decision to dismiss a *complaint*, but the *BSB regulated person's* conduct is nevertheless such as to give cause for concern, the *PCC* may in those circumstances, and either before or after any disposal of the *complaint*, do any or both of the following:
- .1 draw to the *BSB regulated person's* attention in writing the *PCC's* concerns;
  - .2 advise the *BSB regulated person* as to their future conduct either in writing or by directing them to attend on the Chair of the *PCC* or on some other *person* nominated by the *PCC*, to receive such advice.
- rE45** Any decision by the *PCC* to dismiss a *complaint* must only be disclosed in accordance with rE92 and rE93.
- rE46** Removed from 2 September 2015.
- rE47** Removed from 2 September 2015.
- rE48** Removed from 2 September 2015.
- rE49** Removed from 2 September 2015.

### Administrative fines and warnings

- rE50** Pursuant to rE37.3 above, the *PCC* may impose an *administrative sanction* on a *BSB regulated person* only where:
- .1 there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by that *person*; and
  - .2 the *PCC* considers that to impose an *administrative sanction* is a proportionate and sufficient in the public interest.
- rE51** In determining the level of *administrative sanction* to be imposed, the *PCC* must have due regard to the *enforcement strategy* and may have regard to such other matters as the *Bar Standards Board* may consider relevant from time to time.
- rE52** The maximum level of a fine which can be imposed by the *PCC* under rE51 is:
- .1 £1,000 (one thousand pounds) where the fine is to be imposed on a *BSB regulated individual*; and
  - .2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on a *BSB entity*.
- rE53** Any decision by the *PCC* to impose an administrative fine or warning will be formally recorded and may, where appropriate, be referred to the *supervision team* for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with rE92 and rE93.

**rE54** Any failure by the *BSB regulated person* to pay the administrative fine within the relevant time is likely to be treated as *professional misconduct* and shall entitle the PCC to refer the matter to a full *Disciplinary Tribunal* for disposal.

**rE55** The *BSB regulated person* may appeal a decision of the PCC to impose an *administrative sanction* in accordance with Section 5.A6.

## Disciplinary charges

**rE56** If the PCC directs under rE37.5 or rE38 above that a *complaint* shall form the subject matter of a charge of *professional misconduct* before a *Disciplinary Tribunal* and/or that an application should be made to a *Disciplinary Tribunal* for a *disqualification order*, the following rules apply.

**rE57** At the same time as the PCC directs that a *complaint* shall form the subject matter of a disciplinary charge and/or *disqualification* application before a *Disciplinary Tribunal*, the PCC must also decide whether a three-person panel or a five-person panel is to be constituted.

**rE58** Where the direction is made pursuant to rE37.5 (*complaint* involving *conviction* for dishonesty or deception), the PCC must direct that a five-person panel is to be constituted.

**rE59** In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the PCC shall consider the sanction which it considers is likely to be imposed on the *applicable person* if the charge or application is proved, having regard to:

- .1 any applicable sentencing policy and guidelines issued by the *Bar Standards Board* and/or the *Council of the Inns of Court* from time to time; and
- .2 the previous disciplinary record of the *applicable person*; and
- .3 any deferred sentence which would be activated if the *applicable person* were to be found guilty of the charges alleged.

**rE60** The PCC:

- .1 shall direct that a five-person panel is to be constituted if the PCC considers that:
  - a the *BSB authorised individual* would be likely to be *disbarred* or *suspended* from *practice* for more than twelve months; or
  - b that the *applicable person* would be likely to be *disqualified* indefinitely or for a defined term of more than twelve months; or
  - c that the *BSB entity* would be likely to have its authorisation or licence revoked or *suspended* for a period of more than twelve months;
- .2 may refer to a five person panel where it considers it desirable to have a broader range of expertise available, having regard to the subject matter of the complaint.

Otherwise, the PCC must direct that a three-person panel is to be constituted

**rE61** The PCC must inform the *BSB regulated person* and the complainant (if any) of the direction that it has made pursuant to rE57. No one may appeal against the decision taken by the PCC under that rE57 (and those following).

**rE62** Where the PCC directs that a three-person panel is to be constituted, the PCC may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chair of the Panel, giving reasons for any such recommendation.

**rE63** The *PCC* may :

- .1 refer to the same *Disciplinary Tribunal* any charges and/or *disqualification* applications which the *PCC* considers may conveniently be dealt with together;
- .2 refer any additional charges or *disqualification* applications relating to the same *BSB regulated person* to the *Disciplinary Tribunal* which is dealing with the original disciplinary charge or *disqualification* application (as the case may be), even if the additional charge or application, by itself, may be regarded as insufficiently serious to merit disposal by a *Disciplinary Tribunal* of that level.

**rE64** The *PCC*:

- .1 may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions is satisfied:
  - a the facts of the *complaint* are unlikely to be disputed (for example because it involves a criminal *conviction*); or
  - b witnesses are unlikely to be called for the hearing; or
  - c the case should be resolved urgently; or
  - d there is some other good reason for expedition; and
- .2 must direct that the prosecution of the charges be expedited if the *defendant* has requested an expedited hearing under Section 5.D.

**rE65** When the *PCC* has directed that a *complaint* shall form the subject matter of a charge or application before a *Disciplinary Tribunal*, the *PCC* must be responsible for bringing the charge or application on behalf of the *Bar Standards Board* and prosecuting that charge before such *Disciplinary Tribunal*. If so:

- .1 the *PCC* may arrange for the appointment of counsel to settle the charge and to present the case before the *Disciplinary Tribunal*; and
- .2 any charges shall be brought in the name and on behalf of the *Bar Standards Board*.

**rE66** Section 5.B applies in respect of the procedure to be followed by the *Disciplinary Tribunal*.

## A5. Determination by consent

- rE67** A *complaint* which the *PCC* is otherwise intending to refer to the *Disciplinary Tribunal* in accordance with rE38 above may, with the consent of the *applicable person* against whom the *complaint* is made, be finally determined by the *PCC*. This is referred to as the “*determination by consent procedure*”.
- rE68** The circumstances in which the *determination by consent procedure* is to be used, and how it is to be used, are set out below.
- rE69** The *PCC* must, in deciding whether to make a *complaint* subject to the *determination by consent procedure*, consider all the circumstances. The *PCC* may make the *complaint* subject to the *determination by consent procedure* only if:
- .1 the *applicable person* submits to the jurisdiction of the *PCC*; and
  - .2 the *PCC* considers that:
    - a there is a *realistic prospect of a finding of professional misconduct being made* in respect of the *complaint*; and
    - b there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
    - c there are no exceptional circumstances which would warrant the *complaint* being dismissed; and
    - d having regard to the *regulatory objectives*, it is in the public interest to resolve the *complaint* under the *determination by consent procedure*; and
    - e the potential *professional misconduct or disqualification condition*, if proved, combined with:
      - .i the *applicable person’s* previous disciplinary history, and
      - .ii any deferred sentences which would be activated if the breach or breaches were proved, do not appear to be such as to warrant a period of suspension or disbarment, the withdrawal of an *authorisation* or *licence* (as appropriate) or the imposition of a *disqualification order* (or equivalent by another *Approved Regulator*).
- rE70** The *determination by consent procedure* will be conducted in accordance with such procedures as the *PCC* may prescribe from time to time.
- rE71** The *PCC* may terminate the *determination by consent procedure* at any time if it no longer considers that the requirements of rE69 are satisfied, or for any other good reason.
- rE72** If the *determination by consent procedure* ends other than by a finding and sentence to which the *applicable person* consents, then the *complaint* may be referred to a full *Disciplinary Tribunal*.
- rE73** The *PCC* must publish any finding and sentence resulting from the *determination by consent procedure* to the same extent as such publication would have taken place on a finding and sentence by a *Disciplinary Tribunal*, as provided for in the *Disciplinary Tribunal Regulations 2014*.
- rE74** If the *applicable person* accepts a *determination by consent*, no one may appeal against it.
- rE75** In determining what sanction, if any, to be imposed under the *determination by consent procedure*, the *PCC* shall have regard to the relevant *enforcement strategy* and to any sentencing policy or guidelines issued by the *Bar Standards Board* and/or by the *Council of the Inns of Court* from time to time.



- rE76** The *PCC* may impose on an *applicable person* against whom a charge of *professional misconduct* has been found proved under the *determination by consent procedure* any one or more the following sanctions:
- .1 An order to pay a fine to the *Bar Standards Board* (the amount of such fine to be determined in accordance with the relevant fines policy);
  - .2 the imposition of any conditions on their licence or authorisation (where appropriate);
  - .3 a reprimand by the *PCC* or an order to attend on a nominated *person* to be reprimanded;
  - .4 advice by the *PCC* as to the *applicable person's* future conduct or an order to attend on a nominated *person* to be given advice as to their future conduct;
  - .5 an order to complete (or, in the case of a *BSB* entity, an order to procure that any relevant *managers* or *employees* complete) continuing professional development of such nature and duration as the *PCC* shall direct and to provide satisfactory proof of compliance with this order to the *PCC*.
- rE77** Where the *PCC* has imposed a fine, the confirmation letter to the *applicable person* must indicate that the *applicable person* must pay the fine within 28 days of the date when that letter is received, subject to any representations that the *applicable person* needs extra time to pay. Any application to pay a fine in instalments is to be decided in their discretion by the Chair of the *PCC*.
- rE78** Any failure by the *BSB regulated person* to pay a fine within the relevant timescale is likely to be treated as *professional misconduct* and will entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.
- rE79** Where a sanction imposed by the *PCC* includes a fine, that element of the sentence may be directed by the *PCC* to have deferred effect. A sentence may be deferred for a period which is no less than six months and no more than two years long (the "*period of deferral*").
- rE80** A deferred sentence is liable be activated where the *applicable person* is later found (whether during the *period of deferral* or afterwards) to have committed *professional misconduct* during the *period of deferral*.
- rE81** Where the *PCC* finds that there has been *professional misconduct* during the *period of deferral*, it must (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, save in exceptional circumstances.
- rE82** For the avoidance of doubt, the *PCC* may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a *Disciplinary Tribunal*, so long as the total sanction imposed does not exceed the powers of the *PCC* set out in rE76 above.
- rE83** The *PCC* may not make an award of costs when dealing with a *complaint* under the *determination by consent procedure*.

## A6. Appeals

### ***BSB regulated person's right to appeal from a decision to impose an administrative sanction***

- rE84** A *BSB regulated person* has a right to appeal from a decision to impose an *administrative sanction*. That appeal is to an *appeal panel* constituted under the auspices of the *Council of the Inns of Court* in the same composition as a three-person panel constituted under rE133 of the *Disciplinary Tribunal Regulations 2014*.
- rE85** An appeal, if made, shall be made by the *BSB regulated person* sending to the Chair of the *PCC*, within 28 days of the imposition of the administrative sanction, a notice identifying the decision of the *PCC* appealed against, the decision the *BSB regulated person* contends for, the grounds of such appeal and a statement whether the *BSB regulated person* requires their appeal to be disposed of at an oral hearing. If the *BSB regulated person* does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.
- rE86** The notice must be accompanied by such sum as may be prescribed by the *Bar Standards Board* from time to time, such sum being payable to the *Bar Standards Board* to defray expenses.
- rE87** Where the appeal is to be dealt with at an oral hearing then:
- .1 at least 5 working days before the time set for the appeal, the *PCC* will provide each member of the *appeal panel* and the *BSB regulated person* with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and
  - .2 the *BSB regulated person* may be represented at the hearing.
- rE88** The *appeal panel* must decide whether to set aside or to vary the original decision.
- rE89** If the *appeal panel* allows the appeal in whole or in part, the *appeal panel* may direct that any administrative fine or appeal fee already paid by the *BSB regulated person* be refunded either in whole or in part: but the *appeal panel* has no power to award costs.

## A7. Reopening or reconsidering complaints which have been disposed of

**rE90** The *PCC* may reopen or reconsider a *complaint* which has been disposed of, unless it has been disposed of by a *Disciplinary Tribunal*:

- .1 where new evidence becomes available to the *PCC* which leads it to conclude that it should do so, or
- .2 for some other good reason.

**rE91** Following such reopening or reconsideration, the *PCC* may take any further or different action it thinks fit, as if any earlier decision had not been made, provided that if the *complaint* has already been referred to a *Disciplinary Tribunal* and charges have been served on the *defendant* or the application has been served on the *Respondent* (as the case may be) then the *PCC* may only instruct counsel for the *Bar Standards Board* to:

- .1 offer no evidence on a charge or application, or
- .2 apply to the *Directions Judge* for:
  - .a the making of amendments to the charge or application; or
  - .b leave to bring additional charges or applications.

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## A8. Confidentiality

**rE92** The *Bar Standards Board* must keep *complaints* confidential. The *Bar Standards Board* must not disclose the fact that a *complaint* has been made or details of the *complaint*, or of its disposal save as specified in this Section 5.A8 or as otherwise required by law.

**rE93** Disclosure may be made:

- .1 for the purpose of investigating the *complaint*; or
- .2 for the purpose of keeping the complainant and the *applicable person* informed of the progress of the *complaint*; or
- .3 for the purpose of publicising any forthcoming public hearing of charges arising from the *complaint*; or
- .4 where the complainant and the *applicable person* consent; or
- .5 for the purposes of rE42 of this Section 5.A; or
- .6 where the publication of a finding is required by the provisions of the *Disciplinary Tribunals Regulations 2014* or the *Disqualification Panel Regulations*; or
- .7 subject to rE94, in response to a request from the selection panel or a member of its secretariat in respect of an application by a *barrister* for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the *authorised individual* for a *certificate of good standing* in respect of a *barrister*; or from one of the Inns of Court in respect of an application from a *barrister* to become a *pupil supervisor*; or
- .8 for the purposes of providing examples of the types of behaviour that may constitute breaches of the *Handbook* either externally or internally within the *Bar Standards Board*, provided that where disclosure occurs in these circumstances although details of the individual complaints may be published, any relevant party's identities will remain anonymous; or
- .9 with the approval of the *PCC*, for any other good reason.

**rE94** Where a disclosure is made pursuant to rE93.7 above, if any *complaint* has been made against the *barrister* concerned which has not been disposed of by the *PCC* under these Rules, or dismissed by any *Disciplinary Tribunal* or by any other body to which it may have referred by the *PCC*, the *Bar Standards Board* shall simply indicate that a *complaint* has been received which has not been dismissed.

**rE95** Where any finding of *professional misconduct* has been made (whether by a *Disciplinary Tribunal*, the *Visitors*, the High Court or the *PCC* in the course of a *determination by consent*), the *Bar Standards Board* and/or the *Council of the Inns of Court* must publish on the relevant website(s) the name of the *BSB regulated person* against whom that finding was made, the nature of that finding, the sentence imposed and any other information about the finding and sentencing which the *Bar Standards Board* considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.

**rE96** Where any *disqualification order* has been made (whether by a *Disciplinary Tribunal* or the *Visitors* or the High Court), the *Bar Standards Board* and/or the *Council of the Inns of Court* shall publish on the relevant website(s) the name of the *applicable person* against whom the order has been made and its terms.

**rE97** Where any interim suspension or interim *disqualification order* has been made or interim conditions imposed, the *Bar Standards Board* must publish on the *Bar Standards Board's* website the name of the *applicable person* against whom the order has been made and its terms.

## A9. Interpretation

**rE98** In these *Complaints Regulations* all italicised terms shall be interpreted in accordance with the definitions in Part 4.

**rE99** If a *barrister* is a member of more than one Inn, references in these Regulations to their *Inn* shall mean the *Inn* by which they were called, unless they are a Bencher in which case their *Inn* shall mean the *Inn* of which they are a Bencher.

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## A10. Commencement

**rE100** This Section 5.A shall come into force in accordance with the provisions of Part 1 of this *Handbook*.

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# B. THE DISCIPLINARY TRIBUNALS REGULATIONS 2014

## B1. Arrangement of regulations

These *Disciplinary Tribunal* Regulations 2014 are organised as follows:

- Service of Charges and/or Applications
- Documents to be served on the defendant
- Directions etc
- Setting the date, appointing a tribunal and issuing a Convening Order
- The *Disciplinary Tribunal*
- Provision of documents to the *Disciplinary Tribunal*
- Procedure at the hearing
- Decision of a court or tribunal
- Absence of defendant
- Recording of proceedings
- Amendment of charge(s) and/or application(s)
- Adjournment
- The finding
- The sentence
- Sentence of suspension from practice or from authorisation or licensing
- Power to order that a sentence has deferred effect
- Power to activate a deferred sentence
- Wording of the sentence when defendant not present
- Report of finding and sentence
- Appeal to the High Court
- Appeal: sum payable
- Action to be taken by the Inn (in circumstances where a Barrister has been sentenced to be disbarred or suspended)
- Action to be taken by the Council of the Inns of Court (in all other circumstances)
- Publication of finding and sentence
- Suspension/withdrawal of practising rights pending the hearing of any appeal
- Costs
- Miscellaneous
- Exclusion from providing representation funded by the Legal Aid Agency – Application for termination
- Citation, commencement and revocation
- Annex 1: Sentencing powers against Barristers
- Annex 2: Sentencing powers against BSB entities other than BSB licensed bodies
- Annex 3: Sentencing powers against licensed bodies
- Annex 4: Sentencing powers against registered European Lawyers
- Annex 5: Sentencing powers against all other BSB regulated persons
- Annex 6: Standard Directions

## B2. The regulations

### Service of charges and/or applications

**rE101** Once the *PCC* has decided to refer a matter to a *Disciplinary Tribunal* in accordance with Section 5.A, the *Bar Standards Board* must appoint a *person* or *persons* to represent the *Bar Standards Board* in respect of the charge(s) and or application(s).

**rE102** The *BSB Representative*, once appointed, must ensure that a copy of the charge(s) and/or application(s) is 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 by the *PCC* decides to refer the matter to a *Disciplinary Tribunal*.

**rE103** The *BSB Representative* must at the same time ensure that copies of the charge(s) and/or application(s) are sent to the *President*.

### Documents to be served on the defendant

**rE104** As soon as practicable after the issue of the charges and/or applications to the *defendant(s)*, the *BSB representative* must give the *defendant(s)*:

- .1 a copy of the evidence of any witness intended to be called in support of any charge(s) or application(s) (which, for the avoidance of doubt, may be a formal witness statement or an informal document such as a letter or attendance note); and
- .2 a copy of any other documents intended to be relied on by the *BSB Representative*; and
- .3 either:
  - .a the *standard directions* which, subject to rE107, automatically apply to the case and must include such timetable as may be considered reasonable by the *BSB representative*, having regard to the facts of that case; or
  - .b the *standard directions*, together with any proposed amendments to the *standard directions* that the *BSB representative* considers reasonable; and
- .4 details of any *special directions* for which the *BSB Representative* proposes, in default of agreement, to apply for (which may include, but are not limited to):
  - .a any of the matters listed at rE107.2 below; or
  - .b an application for leave to amend and/or add charges and/or applications.

**rE105** If the documents referred to in rE104.1 and/or rE104.2 are not sent to the *defendant(s)* within 28 days of the service of the charges on *the defendant(s)* in accordance with rE102 above, then the *BSB representative* must provide to the *defendant(s)* within that period:

- .1 details of the *evidence* that is still being sought; and
- .2 details of when it is believed that it will be practicable to supply that evidence to the *defendant(s)*.

**rE106** Nothing in rE104 or rE105 above shall prevent a *Disciplinary Tribunal* from receiving the evidence of a witness which has not been served on the *defendant(s)* in accordance with s rE104 or rE105, or of a document not included in the list of documents referred to at rE104.2 above, provided that the Tribunal is of the opinion either that this does not materially prejudice the *defendant(s)*, or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.



## Directions etc

**rE107** Within 21 days, after they receive the *standard directions* (or, where relevant, the special direction of which the *BSB Representative* has given notice in accordance with rE104.4) the *defendant(s)* must:

- .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 rE104.4 above, should be amended, withdrawn or added to; and
- .2 confirm whether they intend, if no of agreement is reached, to make any of the following applications for special directions, namely:
  - a an application to sever the charges and/or applications;
  - b an application to strike out the charges and/or applications which relate to the *defendant* who makes the application;
  - c an application to stay the proceedings;
  - d an application about the admissibility of documents;
  - e an application for disclosure of documents in accordance with rE116.2.c;
  - f an application to extend or abridge any relevant time limits;
  - g an application to adjourn the substantive hearing;
  - h an application for the hearing to be held in private;
  - i an application for separate hearings or an application that proceedings pending against separate *defendants* be dealt with at the same hearing; or
  - j any other application for special directions (which the *defendant* considers reasonable, having regard to the facts of the case).

**rE108** If, in a case where the *BSB representative* has not suggested any amendments to the *standard directions* pursuant to rE104.3.b above or proposed any special directions in accordance with rE104.4 above, a *defendant* does not provide the information referred to in rE107.1 within the relevant twenty one day period, the *defendant* will be deemed to have accepted the *standard directions* and they shall be deemed to apply to the particular matter, save and in so far as they may have been modified on the application of any other *defendant* to the same proceedings which was made within the relevant twenty one day period. The *BSB representative* must forthwith serve on the *President* any directions which are deemed to apply to the matter in accordance with this rE108.

**rE109** If, in a case where the *BSB representative* has suggested amendments to the *standard directions* pursuant to rE104.3.b above and/or has proposed some special directions in accordance with rE104.4 above, a *defendant* does not provide the information referred to in rE107.1 within the relevant twenty one day period, the *BSB representative* must invite the *President* to appoint a *Directions Judge* in accordance with rE113 below and, once a *Directions judge* has been appointed, the *BSB representative* must apply to him to endorse the proposed amendments to the *standard directions* or the proposed special directions (as appropriate), in accordance with the procedure in rE114 to rE123 below.

**rE110** Within fourteen days of the date when he receives any written submissions from a *defendant* in accordance with rE107.1 and/or rE107.2 above, the *BSB representative* must consider them and must during that fourteen day period:

- .1 inform the *defendant(s)* of those changes to the *standard directions* or the special directions (as appropriate) which he is able to agree; and
- .2 seek to agree with the *defendant(s)* such other changes to the *standard directions* or the special directions (as appropriate) as may be acceptable to all parties.

**rE111** Where the parties, pursuant to rE110 above, agree the directions and special directions which are to apply to the case, those directions will apply to the case and the *BSB representative* must forthwith serve those directions on *the President*.

**rE112** If, after the end of the fourteen day period referred to in rE110 above the parties have not agreed any of the *standard directions* or special directions (as appropriate) the *BSB representative* must send to the *President* the following (where relevant):

- .1 a copy of the *standard directions* and/or special directions which have been agreed;
- .2 any written submissions received from the *defendant(s)* in accordance with rE107.1;
- .3 any notice from the *defendant(s)* that they may be intending to make an application referred to at rE107.2; and
- .4 the *BSB Representative's* response to any such request(s) and/or submissions.

**rE113** When the *President* has received the documents referred to in rE112 above, the *President* must 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 the *Directions Judge* must not be the person who Chairs the *Disciplinary Tribunal*, once convened subject to rE218.

**rE114** The *President* must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE112 above, are sent to the *Directions Judge* once he has been designated.

**rE115** When he receives the relevant documents, the *Directions Judge* must consider any submissions about directions. In an appropriate case, the *Directions Judge* may decide that an oral directions hearing is necessary.

**rE116** If the *Directions Judge* considers that no oral hearing is necessary, then:

- .1 he must make an order setting out those directions which are to apply in the case taking into account all the relevant circumstances, including any written submissions of the parties and his own findings; and
- .2 he may consider and decide any other issues which may be necessary including but not limited to:
  - .a how any of the applications referred to at rE104.4 and/or rE107.2 are to be dealt with;
  - .b what documents are to be admitted ;
  - .c what documents which are in the *Bar Standards Board's* possession or control, and/or documents which later come into the possession of the *Bar Standards Board*, and which may support a defence or undermine the *Bar Standards Board's* case should be disclosed;
  - .d what facts should be made the subject of admissions;
  - .e the provision of a statement that the *defendant* has been duly served (in accordance with rE215 of these Regulations) with the documents required by rE102 and rE104;

- .f the extension or abridgement of any time limit governing the proceedings;
- .g fixing the date for the hearing;
- .h such other matters as he consider are expedient for the efficient conduct of the hearing.

- rE117** If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* must give written notice to the *BSB representative* and the *defendant(s)* that an oral hearing is to be held for the purpose of giving directions and taking such other steps as he considers suitable for the clarification of the issues before the 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 a time estimate for the oral directions hearing.
- rE118** Within 7 days of receiving the notice referred to in rE117 above the *BSB representative* and the *defendant(s)* must 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 after the date of that notice.
- rE119** The *President* must try to find a date and time within that six week period which are convenient for all parties. If that is not possible, the *Directions Judge* must fix a date and time for the oral directions hearing within that six week period and must notify the *BSB representative* and the *defendant(s)* of that date and time.
- rE120** At the hearing when convened the *Directions Judge* may deal with, amongst other things, all of the issues referred to at rE116 above.
- rE121** A Clerk must take a note of the proceedings at any oral directions hearing and must draw up a record of the directions given and/or any admissions made at it.
- rE122** After the oral directions hearing (or, if one was not required, after the review of the papers by the *Directions Judge*) the *President* must ensure that copies of the directions order are served on the *BSB representative* and on the *defendant(s)*.
- rE123** The directions order served by the *President* under rE122 is be final, and there is no appeal against it.
- rE123a** For the avoidance of doubt, the *Directions Judge*, or the Chair of the Disciplinary Tribunal designed in the Convening Order (or failing the *Directions Judge* or the Chair, any other Judge nominated by the *President*) may:
- .1 upon the application of either party at any time extend or abridge any time limit governing the disciplinary procedures on such terms as he thinks just;
  - .2 upon the application of either party, or of his own motion, hold preliminary hearings for the purpose of giving any further directions or taking any other steps which he considers necessary for the proper conduct of the proceedings;
  - .3 adjourn any preliminary hearing from time to time and for such periods of time as he considers appropriate and set such time limits as he may decide for action to be taken during such adjournments; or
  - .4 consider applications for adjournments of the substantive hearing prior to that Hearing and grant such adjournments as he considers appropriate.

### Setting the date, appointing a tribunal and issuing a convening order

- rE124** This regulation applies where, after the deemed acceptance, later agreement, of directions, or the service of a directions order by *the President*, the date of the hearing has not been fixed. Where this Regulation applies, each party must submit details of its availability for the substantive hearing to

the *Council of the Inns of Court* in accordance with the directions. After he receives such details, or, where no such details are provided, once the time for providing such details has expired, the *President* must fix, the date of the substantive hearing having regard to the availability of the parties (if provided) and the need for the prompt determination of any charges and/or application(s) made against the *defendant(s)*, in accordance with the provisions of these Regulations. *The President* must also inform all parties of the date fixed for the hearing as soon as reasonably practicable after he has fixed the date.

**rE125** On

- .1 the deemed acceptance or later agreement of *the standard directions* by the parties; or receipt of the directions order from the *President*; or
- .2 where the date of the hearing has not been fixed in the directions referred to in rE125.1 above, the fixing of the date of the hearing in accordance with rE124 above,

*the President* must, in all cases,

- a appoint an appropriate *Disciplinary Tribunal* to sit on the relevant date(s), taking into account the requirements of these Regulations;
- b appoint a *person* or *persons* to act as Clerk or Clerks to the *Disciplinary Tribunals* to perform the functions specified in these Regulations and such other functions as the *President*, *Directions Judge* or the Chair 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 of proceedings under these Regulations arising out of that *complaint*;
- c not less than fourteen days before the date of the substantive hearing, serve an order on the *defendant(s)* ("the *convening order*") specifying:
  - i the name of the *defendant(s)* to the proceedings and such other information as may be relevant to the *defendant(s)*, for example:
    - (1) where any *defendant* is a *barrister*, details of the *barrister's* Inn, his date of *call* and (if appropriate) the date of his appointment as Queen's Counsel, and details of whether or not the *barrister* was acting as a *self-employed barrister* or an *employed barrister* (and, in the latter case, details of his *employer*, including whether or not it is a *BSB entity*) and if the *barrister* was acting as a *HOLP* or *manager* of a *regulated entity*, identifying this fact and identifying the *regulated entity* and whether or not it is a *BSB entity*;
    - (2) where any *defendant* is a *BSB entity*, details of the date when that body was so authorised or licensed with a summary of the number of *barristers* and other individuals working within that *BSB entity*; and
    - (3) 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 of that individual, including whether he was acting as a *HOLP*, *HOFA*, *manager* or *employee* of a *regulated entity* and identifying that *regulated entity* and its Approved Regulator;
    - (4) where any *defendant* is a *non-authorised individual* employed by a *BSB authorised person*, details of the role of by that individual and identifying the *BSB authorised person* who directly or indirectly employs the *defendant*;

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

and send copies of that *Convening Order* to the nominated members of the *Disciplinary Tribunal*, the BSB Representative, and the Clerk. In the Order the attention of the *defendant(s)* will be drawn to:

- (1) their right to represent themselves or be represented by counsel, with or without instructing a *solicitor*, as they shall think fit; and
- (2) their right to inspect and be given copies of documents referred to in the list served pursuant to rE104 above; and
- (3) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

**rE126** The *defendant(s)* may, when they receive the *Convening Order*, give notice to the *President* objecting to any one or more of the proposed members of the *Disciplinary Tribunal*. He must give this notice as soon as is reasonably practicable and must specify the grounds for his objection.

**rE127** When the *President* receives such an objection, he must, if satisfied that it is justified (but subject to rE128), exercise the power conferred on him by rE139 to nominate a substitute member or members of the Tribunal, and must notify the *defendant(s)* accordingly. When they receive that notification, the *defendant(s)* may; object to any substitute member or members, in the same way as they may object under rE126; above.

**rE128** No objection to any member of the Tribunal may be made, or if made, may be upheld, on the grounds only that he knows, or might have known, about a previous application to *disqualify*, or a charge of *professional misconduct*, or of 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 any sentence imposed on the *defendant(s)* in connection with any such application or charge.

**rE129** The Convening Order must inform the *defendant(s)* of the rights conferred by rE126.

## The Disciplinary Tribunal

### Hearing in private

**rE130** The hearing before a *Disciplinary Tribunal* must be in public, unless it has been directed that it is not to be held in public, and that direction has not been over-ruled by the tribunal.

### Composition of disciplinary tribunals

**rE131** A *Disciplinary Tribunal* must consist of either three persons or five persons.

**rE132** A five-person panel must include the following *persons* nominated by the *President*:

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

- rE133** A three-person panel shall include the following *persons* nominated by *the President*:
- .1 as Chair, a Queen's Counsel or a Judge; and
  - .2 one *lay member*; and
  - .3 one *practising barrister of not less than seven years' standing*.
- rE134** In deciding who will sit on the panel the *President* must have regard to the nature of the charge(s) and/or application(s) being determined and to 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 rE132 and rE133 above and rE135 below, the *President* must 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 Queen's Counsel be appointed to act as Chair of a three-person panel.
- rE135** A *person* must not be nominated to serve on a *Disciplinary Tribunal* if they:
- .1 are a member of the *Bar Council* or of any of its committees; or
  - .2 are a member of the *Bar Standards Board* or of any of its committees; or
  - .3 was a member of the *Bar Standards Board* or of any of its committees at any time when the matter was being considered by the *Bar Standards Board*.
- rE136** *The President* may publish qualifications or other requirements made for those appointed to serve on a *Disciplinary Tribunal* and those appointed to be Clerks.
- rE137** For the purposes of rE132 and rE133, a Judge includes:
- .1 a puisne judge of the High Court;
  - .2 a judge of the Court of Appeal;
  - .3 a Circuit judge;
  - .4 a Recorder who has been authorised to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;
  - .5 a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and
  - .6 a *person* who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that he remains permitted by virtue of section 9 of the Supreme Court Act 1981 to be requested to act as a judge of the High Court, or is eligible for appointment as a deputy Circuit judge under section 24 of the Courts Act 1971.
- rE138** If a vacancy in the *Disciplinary Tribunal* arises before the substantive hearing of the charge, the *President* must choose another member of the relevant class to fill that vacancy.
- rE139** At any time before the substantive hearing of the charge starts, the *President* may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as, in the exercise of his discretion, he deems necessary or expedient, provided always that *the President* notifies the *defendant(s)* of the identity of such substitutes as soon as is reasonably practicable after he has chosen them. The *defendant(s)* may object to such substitute members in the same way as they may object under rE126.

**rE140** The proceedings of a five-person panel will not be invalidated on the sole ground that after the *Convening Order* has been issued (in accordance with rE125 above), one or more of the members becomes unable to act or is *disqualified* from acting, provided that:

- .1 the Chair and at least one *lay member* are still able to act and are present throughout the substantive hearing; and
- .2 the number of members present throughout the substantive hearing of the charge is not reduced below three.

**rE141** 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**

**rE142** There shall be provided to each member of the *Disciplinary Tribunal* before the start of the substantive hearing copies of the following documents:

- .1 the *convening order*;
- .2 the charge(s) and/or application(s) and any particulars of them;
- .3 any documents which the *BSB representative* or the *defendant(s)* propose to rely on, unless a direction has been made that copies of such documents be withheld;
- .4 any written answer to the charge(s) and/or application(s) submitted by or on behalf of the *defendant(s)*;
- .5 such other documents as have been agreed or directed to be laid before the Tribunal before the start of the hearing; and
- .6 the *standard directions* (as amended by the parties) and any agreed special directions, or failing such agreement, the directions order served by the *President* pursuant to rE122.

#### **Procedure at the hearing**

**rE143** The Tribunal must apply the criminal standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

**rE144** The rules of natural justice apply to proceedings of a *Disciplinary Tribunal*. Subject to those, the Tribunal may:

- .1 (subject to rE145 below) admit any evidence, whether oral or written, whether given in *person*, or over the telephone, or by video link, or by such other means as the Tribunal may deem appropriate, whether direct or hearsay, and whether or not it would be admissible in a *court* of law;
- .2 give such directions with regard to the conduct of, and procedure at, the hearing, and, with regard to the admission of evidence at the hearing, 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;
- .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.

**rE145** Any party may refer to the fact (if relevant) that the *determination by consent* procedure was used before the *complaint* was referred as a charge before a *Disciplinary Tribunal*. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the *determination by consent* procedure ended), unless and until the *defendant* refers to the substance

of the procedure in the course of presenting his case, or when he is being sentenced, once the facts have been found.

#### Decision of a court or tribunal

**rE146** In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *defendant* was a party, the following rules shall apply:

- .1 a copy of the certificate of *conviction* relating to the offence shall be conclusive proof that the *defendant* committed the offence;
- .2 any *court* record of the findings of fact upon which the *conviction* was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate;
- .3 the finding and 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 proof of those facts, unless proved to be inaccurate; and
- .4 the judgment of any civil *court* may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be proof of those facts, unless proved to be inaccurate.

**rE147** In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *defendant* was not a party, the provisions of rE146 do not apply.

#### Absence of defendant

**rE148** If a *Disciplinary Tribunal* is satisfied that the relevant procedure has been complied with and the *defendant* has been duly served (in accordance with rE216 of these Regulations) with the documents required by rE102, rE104, and rE125.2.c (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 rE180.1 in respect of that *defendant* if the *Disciplinary Tribunal* finds any charge or application proved.

**rE149** If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with it, 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 rE180.2 in respect of that *defendant* if the *Disciplinary Tribunal* finds any charge or application proved.

**rE150** If the procedure under rE149 has been followed, the *defendant* may apply to the *Directions judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

#### Recording of proceedings

**rE151** The Clerk must arrange for a record of the proceedings before a *Disciplinary Tribunal* to be made, either by a shorthand writer, or by a recording machine.

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

**rE152** A *Disciplinary Tribunal* may at any time before or during the hearing direct the charge(s) and/or application(s) against any *defendant* to be amended, or that new charge(s) and/or application(s) be added, provided that:

- .1 that the Tribunal is satisfied that no *defendant* will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of his defence; and



- .2 that the Tribunal will, 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

**rE153** Subject to the provisions of rE154, the *Disciplinary Tribunal* must sit from day to day until it has made a finding and, if any charge or application is found proved, until sentence has been pronounced.

**rE154** A *Disciplinary Tribunal* may, if the Tribunal decides an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

### The finding

**rE155** At the end of the hearing, the *Disciplinary Tribunal* must record in writing its finding(s) on each charge or application, and its reasons. That record must be signed by the Chair and by all members of the Tribunal. If the members of the *Disciplinary Tribunal* do not agree on any charge or application, the finding to be recorded on that charge or application must be that of the majority. If the members of the *Disciplinary Tribunal* are equally divided on any charge or application, then, as the burden of proof is on the *Bar Standards Board*, the finding to be recorded on that charge or application must be that which is the most favourable to the *defendant*. The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* finding on the charge(s) or application(s), and state whether each such finding was unanimous or by a majority.

**rE156** In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the *defendant* about his future conduct.

### The sentence

**rE157** If the *Disciplinary Tribunal* finds any of the charges or applications proved against a *defendant*, it may hear evidence of any previous *disqualification order*, or finding of *professional misconduct*, or of breach of proper professional standards by the *Bar Standards Board*, or by any other regulator, or any finding on a charge consisting of a *legal aid complaint* against that *defendant*, or of the outcome of any previous *determination by consent procedure*. After hearing any representations by or on behalf of the *defendant(s)*, the *Disciplinary Tribunal* must decide what sentence to impose on a *defendant*, taking into account the *sentencing guidelines*, must record its sentence in writing, together with its reasons. If the members of the Tribunal do not agree on the sentence to be imposed on a *defendant*, the sentence to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sentence to be imposed on a *defendant*, the sentence to be recorded must be that which is the most favourable to the *defendant*. The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* decision on sentence and state whether the decision was unanimous or by a majority.

**rE158** Subject to rE159 below:

- .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 *BSB entity*, 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 2 to these Regulations;
  - .e in the case of all other *BSB regulated persons*, in accordance with Annex 3 to these Regulations;

- .2 in the case of a *defendant* who is an *applicable person* in respect of whom the *Disciplinary Tribunal* finds the *disqualification condition* to be established, the *Disciplinary Tribunal* may make a *Disqualification Order* if the *Disciplinary Tribunal* considers that the making of such a *Disqualification Order* is a proportionate sanction and is in the public interest (there being no other available sentence in respect of an *applicable person* who is a *non-authorised individual* directly or indirectly employed by a *BSB authorised person*).

**rE159** In any case where a charge of *professional misconduct* has been found proved, the *Disciplinary Tribunal* may decide that no further action should be taken against the *defendant*.

**rE160** A three-*person* panel must not:

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

This Regulation does not prevent a three-*person* panel making an order in accordance with rE161 below.

**rE161** In the event that a three-*person* panel considers that a case before it merits (in conjunction with any deferred sentence) the imposition on a *defendant* of any of the sentences referred to in rE160 above or the three-*person* panel otherwise considers that the case of a particular *defendant* is complex enough to warrant sentencing by a five-*person* panel:

- .1 the three-*person* panel must refer the case to a five-*person* panel for it to sentence that *defendant* (but may proceed to sentence any other *defendants* to the proceedings in respect of whom this rE161 does not apply);
- .2 the three-*person* panel must, in order to help the five-*person* panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other *defendants* to the proceedings). The *defendant* cannot challenge the facts found by the three-*person* panel; and
- .3 the three-*person* panel must direct within what period of time the sentencing hearing before the five-*person* panel is to be held and make appropriate directions for the parties to provide the *President* with their dates of availability.

**rE162** Following a referral by a three-*person* panel under rE161, the five-*person* panel must be constituted in accordance with rE132. The *defendant* must be informed as soon as practicable of the names and status (that is, as *Chair*, as *lay member*, as *barrister* or other) of those *persons* who it is proposed will constitute the five-*person* panel. The *defendant* may, when he is so informed, give notice to the *President* objecting to any one or more of the proposed members of the panel. That notice must be given as soon as is reasonably practicable, must specify the ground of objection, and must be dealt with in accordance with rE127 and rE128.

**rE163** The *President* must fix the date for the sentencing hearing and in so doing shall have regard to the availability of the parties, save that the *President* may disregard the availability of any party where that party has failed to provide any, or any reasonable dates of availability. As soon as is reasonably

practicable after he has fixed the sentencing hearing, the *President* must inform all the parties of that date.

**rE164** If the five-person panel is satisfied that the requirements of rE162 and rE163 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 sentence the *defendant*, provided that it complies with rE180.3.

**rE165** If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE162 and rE163, above, and the *defendant* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sentence the *defendant*, provided that it complies with rE180.4.

**rE166** If the procedure under rE165 has been followed, the *defendant* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel.

**rE167** Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and as amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the *Legal Aid Agency* in connection with services provided as part of Criminal Legal Aid and Civil Legal Aid and to the exclusion from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid) on a *Disciplinary Tribunal* in the cases to which those Sections apply). Accordingly:

- .1 any *Disciplinary Tribunal* which hears a charge consisting of a *legal aid complaint* relating to the conduct of a *defendant* who is a *barrister* may if it thinks fit (and whether or not it sentences the *defendant* in accordance with rE158.1 in respect of any conduct arising out of the same *legal aid complaint*) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;
- .2 where a *Disciplinary Tribunal* hears a charge of *professional misconduct* against a *defendant* who is a *barrister* it may (in addition to, or instead of, sentencing that *defendant* in accordance with rE158.1) order that he be excluded from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid, either temporarily, or for a specified period, if it determines that there is a good reason to exclude him arising from (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.

**rE168** Whether or not a *Disciplinary Tribunal* finds any charge or application proved against a *barrister* who is a *pupil supervisor*, if the *Disciplinary Tribunal* considers that the circumstances of the *complaint* are relevant to the *defendant* in his capacity as a *pupil supervisor*, it may notify the *defendant's Inn* of those concerns in such manner as it sees fit.

**rE169** If a *barrister* is a member of more than one *Inn*, each *Inn* of which he is a member must be mentioned in the sentence imposed on him.

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

**rE170** For the purposes of rE171 to rE173:

- .1 The effect of a sentence of suspension for a *BSB authorised individual* is that:
  - .a the *defendant's practising certificate* is *suspended* for the period of the suspension;
  - .b any and all enjoyment of all rights and privileges as a member of the *Inn(s)* of which he is a member are *suspended* for the period of the suspension; and

- .c the *defendant* is prohibited from practising as a *barrister*, or holding themselves out as being a *barrister* when providing *legal services* or as otherwise being authorised by the *Bar Standards Board* to provide *reserved legal activities* or when describing themselves as a *Barrister* in providing services other than *legal services* (whether or not for reward) unless he discloses the suspension);
  - .2 the effect of 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*:
    - .a prohibited from holding themselves out as registered with the *Bar Standards Board*; and;
    - .b not authorised to *practice*.
  - .3 The effect of a sentence of *suspension* for a *BSB entity* 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;
  - .4 The effect of a sentence on a *BSB authorised individual* or a *registered European lawyer* requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this *Handbook*.
- rE171** The period for which a sentence of suspension from *practice* is expressed to run may be:
- .1 a fixed period; or
  - .2 until the *defendant* has complied with any conditions specified in the order imposing the sentence of suspension.
- rE172** Conditions may be imposed on a *barrister's practising certificate* or on the authorisation or licence of a *BSB entity*:
- .1 without its being *suspended*; or
  - .2 to take effect on a *barrister's practising certificate* or on the authorisation or licence of a *BSB entity* when a period of suspension ends.
- rE173** Conditions may (depending on the circumstances) include conditions limiting the scope of the *defendant's practice* (after the end of any suspension, if relevant ) to such part as the *Disciplinary Tribunal* may determine, either indefinitely or for a defined period; and/or imposing requirements that the *defendant*, or in the case of a *BSB entity*, its *managers* or *employees*, undergo such further *training* as the *Disciplinary 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 repetition of the conduct in question.

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

- rE174** Where a sentence imposed by a *Disciplinary Tribunal* includes a fine, condition and/or a suspension from *practice*, the *Disciplinary Tribunal* may direct that those elements of the sentence are to have deferred effect.
- rE175** A sentence may be directed to 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

- rE176** A deferred sentence must be activated if the *defendant* is later found (whether during the period of suspension. or afterwards) to have committed *professional misconduct* during the *period of deferral*.
- rE177** Where a *Disciplinary Tribunal* finds that there has been *professional misconduct* during the *period of deferral*, it shall (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, unless there are exceptional circumstances.
- rE178** 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.
- rE179** Where a deferred sentence is activated pursuant to this Regulation, the sentence must then be pronounced, and any action as may be required to give effect to the sentence must be taken, in accordance with rE189 to rE179 below.

## Wording of the sentence when defendant not present

- rE180** If a *defendant* has not been present throughout the proceedings, the sentence in respect of that *defendant* must include one or more of the following statements:
- .1 if the relevant procedure under rE148 has been complied with, that the finding and sentence were made in the absence of the *defendant* in accordance with rE148;
  - .2 if the procedure under rE149 has been complied with, that the finding and the sentence were made in the absence of the *defendant* and that he has the right to apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*;
  - .3 if the relevant procedure under rE163 has been complied with, that the sentence was made in the absence of the *defendant* in accordance with rE164;
  - .4 if the procedure under rE165 has been complied with, that the sentence was made in the absence of the *defendant* and that he may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

## Report of finding and sentence

- rE181** As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal*, the Chair must prepare a report in writing of the finding(s) on the charges of *professional misconduct* and/or on any applications, and the reasons for those findings and the sentence, if any. At the discretion of the Chair, the report may also refer to matters which, in the light of the evidence given to the *Disciplinary Tribunal*, appear to require investigation or comment. He must send copies of the report to:
- .1 the *defendant*;
  - .2 the Director of the *Bar Standards Board*;
  - .3 the Treasurers of the *defendant's Inn of Call* and of any other *Inns* of which he is a member.
- rE182** He must also send copies of the report to:
- .1 those of the following whom he deems, in his absolute discretion, to be appropriate taking into account the circumstances:
    - .a the Lord Chancellor;

- .b the Lord Chief Justice;
  - .c the Attorney General;
  - .d the Director of Public Prosecutions;
  - .e the Chair of the *Bar Council*; and
  - .f the Chair of the *PCC*; and
- .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 rE167, the *Legal Aid Agency*.

## Appeal

**rE183** In cases where one or more charges of *professional misconduct* have been proved, and/or a *disqualification order* has been made, an appeal may be lodged with the High Court in accordance with the Civil Procedure Rules:

- .1 by the *defendant* against *conviction* and/or sentence;
- .2 with the consent of the Chair of the *Bar Standards Board* or the Chair of the *PCC*, by the *Bar Standards Board* against sentence on any of the grounds in rE185 below.

**rE184** In any case where any charge of *professional misconduct* or application to *disqualify* has been dismissed, the *Bar Standards Board* may (with the consent of the Chair of the *Bar Standards Board* or of the Chair of the *PCC*) lodge an appeal with the High Court, in accordance with the Civil Procedure Rules, on any of the grounds in rE185 below.

**rE185** The *Bar Standards Board* may only lodge an appeal (against sentence or dismissal) where the *Bar Standards Board* considers the *Disciplinary Tribunal* has:

- .1 taken into account irrelevant considerations;
- .2 failed to take into account relevant considerations;
- .3 reached a decision that is wrong in law; and/or
- .4 reached a decision which no reasonable Tribunal could properly have reached.

**rE186** 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 High Court an appeal against any requirement imposed pursuant to rE203 to rE205 as appropriate.

**rE187** A complainant (other than the *Bar Standards Board*) has no right of appeal.

## Appeal: sum payable

**rE188** Removed

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

- rE189** When the Treasurer of the *defendant's Inn of Call* receives a report prepared in accordance with rE181, he must, not fewer than 21 days after the end of the Tribunal's proceedings (or, where the *defendant* has given notice of appeal to the High Court against the finding and/or sentence, once the time for appeal to the High Court has expired and any appeal to the High Court 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 must inform the *persons* specified in rE181 of the date on which the sentence is to take effect, (which must be no later than two working days after the date when that sentence is pronounced).
- rE190** Similar action must 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*.
- rE191** In any case in which the *defendant* has given notice of appeal to the High Court against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in rE189 and rE190 may be taken until the appeal has been heard by the High Court, or otherwise disposed of without a hearing.
- rE192** Where, pursuant to rE203, 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 an appeal ("the Interim Measure"), the Treasurer must direct that any period of suspension to which the *defendant* has been sentenced will be deemed to have taken effect on the date on which the Interim Measure came into effect, or on the date on which the *defendant* would otherwise have been eligible to be issued with a *practising certificate*, whichever is later.

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

- rE193** If the *Disciplinary Tribunal* has imposed a sentence (other than disbarring or suspending a *barrister* see rE189 to rE192, above), the *Council of the Inns of Court*, when it receives the report prepared in accordance with rE181, must, not fewer than 21 days after the end 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 rE181 of the date on which the sentence is to take effect. That date must be no later than two clear days after the date when the sentence is pronounced.
- rE194** 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*, no action referred to in rE193 may be taken until the appeal has been heard by *the Visitors*, or otherwise disposed of without a hearing.
- rE195** The *Council of the Inns of Court* must take all such steps as may be necessary or expedient to give effect to any requirement made by the Tribunal pursuant to rE189 above.

### Action to be taken by the Bar Council/Bar Standards Board

- rE196** Subject to rE197, below, after the sentence has been pronounced in accordance with rE189, above, the *Bar Council/Bar Standards Board* must, as appropriate, in accordance with the finding and/or sentence of the Tribunal:
- 1 remove the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake public access work (as appropriate),
  - 2 impose conditions on the relevant *BSB authorised person's* authorisation and/or licence (as appropriate);

- .3 either include a note on the *Bar Standards Board's* register of *BSB authorised persons* that the *BSB authorised person* is *disqualified, suspended* or is otherwise subject to certain conditions on the terms of his authorisation/licence or that the *applicable person* is the subject of a *disqualification order*,

except that in any case in which a *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in this rE196 may be taken until the appeal has been heard by the High Court or otherwise disposed of without a hearing.

**rE197** Where the finding and/or sentence of the Tribunal is that the *BSB authorised person* should be subject to an immediate suspension and/or immediate imposition of conditions in accordance with rE202 below, the *Bar Council/Bar Standards Board* must immediately:

- .1 remove the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to do public access work (as appropriate),
- .2 impose conditions on the relevant *BSB authorised person's* authorisation and/or licence (as appropriate);
- .3 either include a note on the *Bar Standards Board's* register of *BSB authorised persons* that the *BSB authorised person* is suspended or is otherwise subject to certain conditions on the terms of his authorisation/licence,

the actions of the *Bar Council/Bar Standards Board* must not be deferred even if the *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*.

**rE198** The *Bar Standards Board* and/or the *Council of the Inns of Court* also:

- .1 must publish the finding and sentence of the Tribunal on the relevant website(s) within fourteen (14) days of the date when the Tribunal's proceedings end, unless the Chair of the Tribunal directs that publication shall be delayed until *the President* has published the finding under rE198; and
- .2 may where charges have been dismissed publish the decision of the Tribunal on their websites at any time provided that in this case all details of the relevant parties involved in the hearing are anonymised.

## Publication of finding and sentence

**rE199** The following procedures apply to the publication of the finding and sentence of a *Disciplinary Tribunal*:

- .1 When the Tribunal has found that one or more charges of *professional misconduct* are proved, then, as soon as it has heard from the Inn. or from the *Council of the Inns of Court* (as the case may be), of the date that any sentence is to take effect, *the President* must publish those charges, the sentence, and the date when that sentence is to take effect.
- .2 When the Tribunal has found that the *disqualification condition* is established and has made a *Disqualification order*, as soon as it has heard from the *Council of the Inns of Court* on what date that order is to take effect, *the President* must publish the findings on which that order was based, the terms of the *Disqualification Order*, and the date when that order is to take effect.
- .3 When the Tribunal has found that any charge of *professional misconduct* has not been proved *the President* must not publish that charge, or the finding unless the *defendant* asks him to subject to rE198.2.



**rE200** When publishing any finding, sentence or decision in accordance with rE198, *the President* must communicate it in writing to:

- .1 the *defendant*;
- .2 the Chair of the *Bar Standards Board*;
- .3 the *defendant's* head of *chambers*, *HOLP*, or *employer* (as appropriate);
- .4 in the case of a *registered European lawyer*, his *home professional body*;
- .5 the Treasurers of the *defendant's Inn of Call* and of any other Inns of which he is a member;
- .6 other *Approved Regulators* and the *LSB*; and
- .7 one or more press agencies or other publications.
- .8 the following *persons* only where *the President* deems, in his absolute discretion, to be appropriate, taking into account the circumstances:
  - a the Lord Chancellor;
  - b the Lord Chief Justice;
  - c the Attorney General;
  - d the Director of Public Prosecutions;
  - e the Chair of the Bar Council.

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

**rE201** rE202 to rE209 below apply to any *defendant* who:

- .1 is a *barrister*, who has been sentenced to be disbarred or to be *suspended* or to be prohibited from accepting or doing any public access work or *instructions* for more than one year;
- .2 is a *BSB authorised individual*, who has been sentenced to be *disqualified* or to be *suspended* for more than one year;
- .3 is a *BSB entity*, which has been sentenced to have its authorisation or licence revoked or *suspended* for more than one year; or
- .4 is a *BSB authorised person*, who has been sentenced to have conditions placed on his *practising certificate*, authorisation or licence (as appropriate) prohibiting him from accepting any *public access instructions* or *conducting any litigation* or for more than one year.

**rE202** Where rE201 applies the Tribunal must seek representations from the *defendant* and from the *BSB representative* on the appropriateness or otherwise of taking action under rE203 below.

**rE203** Having heard any representations under rE201 above, the Tribunal must (unless in the circumstances of the case it appears to the Tribunal to be inappropriate to do so), either:

- .1 in relation to rE201.1 and rE201.2, require the *defendant* to suspend his *practice* immediately, in which case the Bar Standards Board must suspend that *defendant's practising certificate* with immediate effect; or
- .2 in relation to rE201.3, decide that the condition prohibiting the *defendant* from accepting *public access instructions* or conducting any litigation, shall take effect immediately; or
- .3 where the *defendant* has been sentenced to be disbarred or to be *suspended*, and where that *defendant* does not currently hold a *practising certificate*, require the Bar Standards Board not to issue any *practising certificate* to him.

**rE204** If the Tribunal decides that it would be inappropriate to require immediate suspension or immediate imposition of conditions (as the case may be) it may nonetheless require the *defendant* to suspend his *practice* or to impose conditions, from such date as the Tribunal may specify.

**rE205** Where the *defendant* is permitted to continue to practise for any period before being *suspended* under rE204, the Tribunal may require the *Bar Standards Board* to impose such terms on the *defendant's practice* as the Tribunal deems necessary to protect *the public* until the suspension comes into effect.

**rE206** Where an order is made in respect of a *defendant* under rE203 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 it to be varied.

**rE207** When *the President* receives an application made pursuant to rE206 above, he must refer it to the Chair and to one of the *lay members* of the Tribunal which originally made the order.

**rE208** Any application made pursuant to rE206 above must 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*.

**rE209** The *persons* to whom an application made pursuant to rE206 above is referred may vary or confirm the order in relation to which the application has been made.

**rE210** References in rE206 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 entities*.

## Costs

**rE211** A *Disciplinary Tribunal* may make such Orders for costs, whether against or in favour of a *defendant*, as it shall think fit.

**rE212** It makes such an Order a *Disciplinary Tribunal* must either itself decide the amount of such costs or appoint a suitably qualified *person* to do so on its behalf.

**rE213** Any costs ordered to be paid by or to a *defendant* must be paid to or by the *Bar Standards Board*.

**rE214** All costs incurred by the *PCC* preparatory to the hearing before the Tribunal must be borne by the *Bar Standards Board*.

## Miscellaneous

### Representation of complainant's interests

**rE215** The *BSB representative* must keep the complainant (if any) informed of the progress of the *complaint*.

*Service of documents*

**rE216** In any documents required to be served on a *defendant* in connection with proceedings under these Regulations shall be deemed to have been validly served:

- .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 him pursuant to the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing it ) as his *practising address*; or
  - .b in the case of a *BSB regulated person* or *non-authorised individual* acting as a manager or *employee* of a *BSB entity*, the address provided by the *BSB entity* as his home address or, in the absence of such information, the address of the relevant *BSB entity* notified pursuant to the requirements of Part 2 of this *Handbook*; or
  - .c in either case, an address to which the *defendant* has asked 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 entity*, the last known address of the relevant *BSB entity*,

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

- .2 If served by e-mail, where:
  - .a the *defendant's* e-mail address is known to the *Bar Standards Board*; and
  - .b the *defendant* has asked for or agreed to service by e-mail, or it is not possible to serve by other means;

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

- .c If actually served;
- .d If served in any way which may be directed by the *Directions judge* or the Chair of the *Disciplinary Tribunal*.

**rE217** 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 by a relevant representative of the *defendant* (including, for example, his clerk, a *manager* or *employee* of the *BSB entity* at which he works).

**Delegation**

**rE218** The powers and functions conferred by these Regulations on a *Directions judge* may be exercised by any other Judge or Queen's Counsel nominated by *the President*, including the Judge designated in the *convening order* as Chair of the Tribunal appointed to hear and determine the charge or charges against the *defendant*, if the *Directions judge* is unable to act due to absence, or to any other reason.

**rE219** 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 to 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.

**rE220** Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, *the President* may be done or exercised by, or given to, any *person* authorised by *the President* (either prospectively or retrospectively and either generally or for a particular purpose) subject to rE218.

#### **Other**

**rE221** When the Treasurer of an *Inn* is a Royal Benchler, references in these Regulations to the Treasurer shall be read as references to his deputy.

#### **Exclusion from providing representation funded by the Legal Aid Agency – application for termination**

**rE222** A *defendant* who has been excluded from legal aid work under Section 42 of the Administration of Justice Act 1985 may apply for an order ending his exclusion from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid in accordance with this rE222 and rE223 below.

**rE223** Any such application must be in writing and addressed to *the President*.

**rE224** *The President* may dismiss the application, or may decide that the *defendant's* exclusion from providing representation funded by *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date.

**rE225** *The President* must notify his decision in writing to all those *persons* who received copies of the report of the *Disciplinary Tribunal* which ordered that the *defendant* be excluded from providing such representation.

**rE226** When the Treasurer of the applicant's *Inn* of Call, and of any other *Inn* of which he is a member, receives any such report, he shall take action equivalent to that which he took in respect of the report of the *Disciplinary Tribunal* which sentenced the *defendant* to be excluded from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid.

**rE227** The procedures about the publication of the decision of *the President* on any such application as is referred to in this Regulation are those which applied to the publication of the finding and sentence by which the applicant was excluded from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid.

**rE228** *The President* may make such order for costs as he thinks fit and rE211 to rE214 apply with all necessary modifications.

#### **Interpretation**

**rE229** In Section 5.B2 all italicised terms shall be interpreted in accordance with the definitions in Part 4.

### B3. Citation and commencement

**rE230** These Regulations may be cited as “The *Disciplinary Tribunal* Regulations 2014.”

**rE231** These Regulations come into force in accordance with the provisions of Part 1 of this *Handbook*.

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## B4. Annexes to the *Disciplinary Tribunals* Regulations 2014

### Annex 1 – Sentencing powers against barristers

When a charge of *professional misconduct* has been found proved against a *barrister*<sup>1</sup> by a *Disciplinary Tribunal*, the *Disciplinary Tribunal* may decide:

1. to disbar him;
2. to suspend his *practising certificate* and suspend his rights and privileges as a member of his *Inn* for a prescribed period (either unconditionally or subject to conditions);
3. not to renew his *practising certificate*;
4. to impose conditions on his *practising certificate*;
5. be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;
6. to remove or to suspend his authorisation to *conduct litigation* or to impose conditions on it;
7. to order him to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to his time as an *employee* or *manager of a licensed body*);
8. to order him to complete continuing professional development of such nature and duration as the Tribunal may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
9. to order him to be reprimanded by the Treasurer of his *Inn*;
10. to order him to be reprimanded by the Tribunal;
11. to give him advice about his future conduct;
12. to order him to attend on a nominated *person* to be reprimanded; or
13. to order him to attend on a nominated *person* to be given advice about his future conduct.

1. If an application to disqualify the *Barrister* from acting as HOLF, 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 BSB entities

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *BSB entity*, the *Disciplinary Tribunal* may decide to :

1. remove its authorisation to practise as a *BSB entity*;
2. impose conditions on its authorisation to practise as a *BSB entity*;
3. suspend its authorisation to *practise* for a prescribed period (either unconditionally or subject to conditions);
4. withdraw, or suspend its authorisation to *conduct litigation* or to impose conditions on it;
5. order a fine of up to £250,000 to the *Bar Standards Board*;
6. order that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal may direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
7. reprimand it;
8. give it advice about its future conduct; or
9. order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.

### Annex 3 – Sentencing powers against *licensed bodies*

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved, against a *licensed body* the *Disciplinary Tribunal* may decide to :

1. revoke its licence to practise;
2. suspend its licence to practise for a prescribed period (either unconditionally or subject to conditions);
3. impose conditions on its licence to practise;
4. withdraw or suspend its *right to conduct litigation* or to impose conditions on it;
5. order it to pay a fine of up to £250,000,000 to the *Bar Standards Board*;
6. order it to ensure that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
7. reprimand it;
8. give advice to it about its future conduct; or
9. order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.



## Annex 4 – Sentencing powers against registered European lawyers

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *registered European lawyer*, the *Disciplinary Tribunal* may decide to:

1. remove him from the *register of European lawyers*;
2. suspend him from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);
3. impose a condition on him 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. order him to pay a fine of up to £50,000 to the *Bar Standards Board* (or of up to £50,000,000 if, the charges relate to his time as an *employee* or *manager of a licensed body*);
5. order him 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 *supervision team*;
6. reprimand him;
7. give him advice about his future conduct;
8. order him to attend on a nominated *person* to be reprimanded; or
9. order him to attend on a nominated *person* to be given advice about his future conduct.

### Annex 5 – Sentencing powers against all other *BSB regulated persons*

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against any other *BSB regulated person*<sup>2</sup>, the *Disciplinary Tribunal* may decide to:

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

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

## Annex 6 – Standard directions

Pursuant to the *Disciplinary Tribunal* Regulations 2014:

1. The hearing will be in public;
  2. That by  the *defendant* is required to specify:
    - (a) whether he admits the charges;
    - (b) whether any of the facts relied on by the *Bar Standards Board* and set out in the documents provided pursuant to rE104 are admitted;
  3. That the *defendant* provide by  a list of the documents, rely and of the witnesses, on which and on whom he intends to rely, and copies of any witness statements on which he intends to rely;
  4. That on or before  both the *BSB representative* and the *defendant* serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;
  5. That the *defendant* provide to the *Bar Standards Board* at least fourteen days before the date fixed for the substantive hearing  copies of any defence bundle already provided pursuant to direction (3) above for circulation to the Tribunal members;
  6. That the estimated length duration of the hearing is  days/hours;
  7. That the substantive hearing shall take place on .
- OR
8. By  all parties I provide *the President* with dates when they are available for the substantive hearing, failing which *the President* may fix the hearing without reference to the availability of any party;
  9. Any skeleton argument to be relied on at the hearing be served on *the President* and on the other parties at least 48 hours before the time fixed for the hearing.
  10. That there be liberty for the parties to agree in writing to vary these directions;
  11. That there be liberty to apply to the *Directions judge* for further directions.

# C. THE HEARINGS BEFORE *THE VISITORS* RULES

## C1. The Rules

Expiration of Rules: These rules shall cease to have effect in respect of appeals against relevant decisions made on or after 7 January 2014. For the avoidance of doubt, these rules shall continue to have effect in respect of appeals against relevant decisions made before 7 January 2014 and where notice required under rule rE233.1 (notice of intention to appeal) is served before 18 April 2014, until the disposal of the appeal.

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

### rE232 Service of documents

- .1 Where pursuant to these Rules any document is to be served on any of the *persons* specified in the first column of Table 1 in the Annexe to these Rules, that document shall be served on that *person* by sending it to the *person* specified and the address specified in the second column of that table against the *person* to be served.
- .2 Such documents shall be served
  - .a by recorded delivery post, or
  - .b by hand delivery, if a written confirmation of receipt is obtained, or
  - .c (save where any fee is payable on the service of a document) by fax or other electronic means in accordance with rE232.4 below.
- .3 Where, in accordance with Table 1, the address for service on a *respondent* is their last known address, service by first class post shall constitute good service.
- .4 Where a document is to be served by fax or other electronic means, the party who is to be served must previously have indicated in writing to the party serving:
  - .a that the party to be served is willing to accept service by fax or other electronic means; and
  - .b the fax number, e-mail address or other electronic identification to which it must be sent.
- .5 Documents shall be deemed to be served on the date set out in Table 2 in the Schedule to these Rules.
- .6 For the purpose of this rule, a "written confirmation of receipt" means a receipt signed by or on behalf of the intended recipient.

**rE233 Notice of intention to appeal**

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

**rE234 Directions judge**

- .1 The Lord Chief Justice shall nominate judges of the High Court or the Court of Appeal to exercise the functions conferred by this Rule.
- .2 No *person* shall act as a *Directions judge* in relation to any appeal if they were a member of any committee of the BSB at any time when the matter was being considered by that committee.
- .3 A *Directions Judge* shall consider the course of any appeal and may at any time prior to the appointment of a panel to hear the appeal give such directions and take such steps as appear to them to be necessary or desirable for the purpose of securing the just, expeditious and economical disposal of the appeal.
- .4 Any applications to be heard by a *Directions Judge* must be served on the Clerk to *the Visitors*.
- .5 Any applications to the *Directions Judge* will be heard on paper and without an oral hearing, unless there is good reason for an oral hearing.
- .6 The directions that may be given and the steps that may be taken by the *Directions Judge* may relate to (but shall not be limited to) the following matters:
  - .a the anticipated duration of the hearing (which shall not, absent good reason, exceed one day);
  - .b the variation of any timetable specified in these Rules;
  - .c further procedural steps that should be taken before the hearing;
  - .d the failure by either party to comply with any timetable specified in these Rules or directed by the *Directions Judge*;
  - .e the adjournment of the hearing; and
  - .f where (in the case of an appeal against a decision of a *Disciplinary Tribunal*) the sentence of the original *Disciplinary Tribunal* has been pronounced, whether it should be stayed pending the outcome of the appeal.
- .7 The *Directions Judge* may, on application made by the *appellant* (which must be served on the BSB at the time of making the application) and after giving the BSB the opportunity to respond to the application, vary or set aside an order made against the *appellant* under Regulations [30(3) or (4)] of the *Disciplinary Tribunal* Regulations 2009 (Code of Conduct of the Bar Council of England

and Wales 8th Edition) on such terms and subject to such conditions (if any) as they consider appropriate.

- .8 If, at any time, the *Directions Judge* concludes that a party has failed to comply with any obligation imposed by, or timetable specified in, these Rules or directed by them in exercise of their functions and powers (as the case may be), they may also
  - .a make a final order for compliance by the party in default;
  - .b direct that that party may not serve a *petition* or *answer*;
  - .c dismiss or strike out the *petition* or *answer* of that party;
  - .d order that any further step that appears to them to be necessary or desirable in order to provide for a fair and expeditious hearing of the matter be undertaken within a specified period;
  - .e direct an expedited hearing where the party in default has been prohibited from serving an *answer* or the *answer* has been struck out.

#### **rE235 No appeal from directions judge**

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

#### **rE236 Service of petition**

- .1 A written *petition* of appeal containing the information required by rE238.1 below must be served by the *appellant* on the *persons* specified in rE236.2 below within the period of 42 days beginning with the date of the *relevant decision* or within such further time as may be allowed by the Lord Chief Justice or the *Directions Judge*.
- .2 The *persons* to be served are
  - .a the Clerk to *the Visitors*; and
  - .b the *respondent*.
- .3 Service of the *petition* will be valid only if
  - .a the *petition* is served on both *persons* identified in rE236.2 above, and
  - .b where the *appellant* is a *defendant*,
  - .c the *petition* served on the Clerk to *the Visitors* is accompanied by any fee payable in accordance with rE237.1 below, or by an application pursuant to rE237.2, and
  - .d a copy of such fee or such application is served on the BSB.
- .4 If an application for an extension of the period of 42 days specified in rE236.1 above is made, the *Directions Judge* may, if they see fit, extend the period within which the *petition* must be served.

#### **rE237 Fees**

- .1 Where an appeal is lodged with *the Visitors* by the *defendant*, the *petition* must (subject to the provisions of this rule) be accompanied by the sum of £250 payable to the BSB to defray expenses, such sum to be refunded in the discretion of *the Visitors* in the event of an appeal which is successful wholly or in part.

- .2 Where payment of the sum required by rE237.1 above would cause undue hardship to the *appellant*, the *appellant* may apply to the *Directions Judge* for an order reducing the amount payable.
- .3 If the *Directions Judge* is satisfied that payment of the sum required by rE237.1 above would cause undue hardship to the *appellant*, they shall:
  - .a direct that some lesser (or nil) amount be paid; and
  - .b (where applicable) direct by when such amount be paid.

### rE238 Petition of appeal

- .1 Where the appeal is against a decision of a *Disciplinary Tribunal*, the *petition* shall state whether the appeal is against the findings or sentence of the *Disciplinary Tribunal*, or both, and shall contain the following particulars
  - .a the charges;
  - .b a summary of the facts on which the charges were based;
  - .c the findings of the *Disciplinary Tribunal*;
  - .d the sentence;
  - .e any finding against which the *appellant* appeals (if any);
  - .f the grounds for appeal, including for each matter appealed against the specific evidence on which the *appellant* will place reliance;
  - .g the relief sought; and
  - .h if the hearing is estimated to last longer than one day, an estimate of the time required for the hearing and the reasons for that estimation.
- .2 In the case of an appeal against sentence the *petition* may also refer to
  - .a any factors which it is contended make the sentence unduly severe (or lenient) in relation to the *appellant's* (or the *defendant's*) record; and
  - .b sentences in other similar cases.
- .3 Where the appeal is against a Qualification Decision, the *petition* shall contain the following particulars:
  - .a the decision, on review, of the BSB against which the appeal is being made;
  - .b a summary of the facts giving rise to that decision;
  - .c the grounds for appeal; and
  - .d the relief sought.
- .4 Subject to rE240.5, the *appellant* may not, without the permission of the *Directions Judge*, support the appeal on a ground not relied upon before the body which took the *relevant decision*.

**rE239 Service of other documents**

- .1 Subject to rE239.2 below, the *appellant* against a decision of a *Disciplinary Tribunal* shall, at the same time as serving the *petition*, serve on the Clerk to *the Visitors* the number of copies specified in rE239.4 below of the transcript of the proceedings before the *Disciplinary Tribunal* whose decision is being appealed.
- .2 If any transcript to be served pursuant to rE239.1 above is not available when the *petition* is served, the copies of that transcript shall be served on the Clerk to *the Visitors* as soon as practicable thereafter.
- .3 Not less than 14 days before the date set for the hearing of an appeal
  - .a a copy of every document intended to be produced at the hearing by any party shall be served by that party on every other party; and
  - .b the number of copies of any such document specified in rE239.4 below shall be served on the Clerk to *the Visitors*.
- .4 The number of copies required to be served on the Clerk to *the Visitors* is
  - .a if the appeal is of a type falling within rE241.2 below, three copies; and
  - .b in any other case, two copies.

**rE240 Answer**

- .1 The *respondent* may (or, if so directed by the *Directions Judge*, shall) serve on the Clerk to *the Visitors* an *answer* to the *petition* within the period of 28 days starting with the date on which the *petition* is served or on which the transcript of the lower hearing is provided pursuant to rE239.2 (whichever is the later) or such further time as may be allowed by the *Directions Judge*.
- .2 Where an *answer* is served pursuant to rE240.1 the *respondent* shall also serve forthwith a copy of that *answer* on the *appellant*.
- .3 The *answer* shall follow the form of the *petition* and shall state which points in the *petition* are accepted and which are rejected.
- .4 If, in the view of the *person* serving an *answer*, the hearing is likely to last longer than one day, the *answer* shall include an estimation of the time required for the hearing and the reasons for that estimation.
- .5 The BSB may, in any *answer* it serves in respect of an appeal against a decision of a *Disciplinary Tribunal*, refer to any factors which it is contended make the sentence unduly lenient in relation to the *appellant's* record or to sentences in other cases.

**rE241 Appointment of panel to hear appeal**

- .1 When a *petition* is served upon the Clerk to *the Visitors* (whether or not served in time), and after the period for service of any *answer* in accordance with rE240.1 above has elapsed, the Lord Chief Justice shall nominate the *persons* who are to hear the appeal.
- .2 An appeal against a decision of a *Disciplinary Tribunal* presided over by a Judge of the High Court shall be heard by a panel comprised of
  - .a a Judge of the Court of Appeal;



- .b a Queen's Counsel; and
  - .c a *lay representative*.
- .3 Subject to rE241.4 below, an appeal that is not of a type mentioned in rE241.2 and is an appeal against a decision of a *Disciplinary Tribunal* shall be heard by a panel comprised of
- .a a Judge of the High Court;
  - .b a *Barrister* (who, where the *defendant* is a Queen's Counsel, shall themselves be a Queen's Counsel); and
  - .c a *lay representative*.
- .4 An appeal that is not of a type mentioned in rE241.2 and that is an appeal against a decision of a *Disciplinary Tribunal* may be heard by a Judge of the High Court or of the Court of Appeal sitting alone, if the Lord Chief Justice or the *Directions Judge* directs that the appeal relates solely to a point of law and is appropriate to be heard by a judge sitting alone.
- .5 Any other appeal shall be heard by a Judge of the High Court or the Court of Appeal.
- .6 No *person* shall be nominated to serve on a panel if they
- .a are a member of the *Bar Council* or of any of its committees; or
  - .b are a member of the BSB or of any of its committees; or
  - .c were a member of any committee of the BSB at any time when the matter was being considered by that committee.

**rE242 Date of hearing**

- .1 Unless the *Directions Judge* orders otherwise, the time allocated for the hearing of an appeal shall be one day.
- .2 The appeal shall be listed by the Clerk to *the Visitors* for a hearing on the first available date after the expiry of a period of four weeks beginning with the date of service on the Clerk to *the Visitors* of the *answer* (or, where no *answer* is served, beginning with the last date for service of the *answer* under rE240.1 above).
- .3 A notice of the hearing of the appeal shall be served on the *appellant* and on the *respondent* at least 14 days before the date fixed for hearing of the appeal.

**rE243 Procedure at hearing**

- .1 Subject to the following paragraphs of this Rule, *the Visitors* may give any directions with regard to the conduct of, and procedure at, a hearing of an appeal they consider appropriate.
- .2 *The Visitors* may give such directions before or during the hearing.
- .3 The hearing shall be held in public unless either party has made an application that the hearing shall not be in public and the public interest does not require that it shall be held in public.
- .4 A hearing may proceed in the absence of an *appellant* (or *defendant*), but not in the absence of a representative of the BSB.
- .5 No witness may be called at the hearing without the consent of *the Visitors*.

- .6 Evidence that was not before the *Disciplinary Tribunal* whose decision is being appealed may be given at the hearing only in exceptional circumstances and with the consent of *the Visitors*.
- .7 Grounds of appeal based on issues that were not relied upon before the body making the *relevant decision* may be relied upon only with the permission of the *Directions Judge* in accordance with rE238.4 above or, in exceptional circumstances, with the consent of *the Visitors*.
- .8 An *appellant* or *defendant* (as the case may be) may only challenge before *the Visitors* a decision of a court of law on which the *relevant decision* was based in exceptional circumstances and with the consent of *the Visitors*.
- .9 The proceedings of *the Visitors* shall continue to be valid notwithstanding that one or more of the members of the panel becomes unable to continue or is or becomes *disqualified* from continuing to act, if the remaining members of the panel include a judge (other than a retired judge) and a *lay representative*.
- .10 A full record shall be made of the hearing.
- .11 A transcription of the audio recording shall be provided upon request to either party to the hearing but at their own expense.

#### rE244 Findings of the Visitors

- .1 The findings of *the Visitors* shall be pronounced in a single decision. The decision shall state whether it has been reached unanimously or by a majority.
- .2 The findings may be pronounced in public or in private but should normally be pronounced in public unless a party to the hearing requests otherwise and the public interest does not require that the findings be pronounced in public.
- .3 In respect of an appeal against a decision of a *Disciplinary Tribunal*, *the Visitors* may
  - a dismiss the appeal;
  - b allow an appeal in whole or in part;
  - c confirm or vary an order of the *Disciplinary Tribunal* whose decision is being appealed;
  - d order a re-hearing on such terms as they may deem appropriate in the circumstances;
  - e in the case of an appeal brought by the BSB against a decision of a *Disciplinary Tribunal*, issue a declaration, but only where this will have no consequences whatsoever for the *defendant*.
- .4 In respect of an appeal against a Qualification Decision, *the Visitors* may:
  - a allow an appeal in whole or in part;
  - b confirm or vary the decision of the BSB;
  - c order the BSB to reconsider its decision on such terms as the panel appointed to hear the panel may determine to be appropriate in the circumstances.
- .5 *The Visitors* shall give reasons for their decision. These reasons may be given orally or in writing.
- .6 *The Visitors* may order, in the event of an appeal against a decision of a *Disciplinary Tribunal* by the *defendant* which is successful wholly or in part, a refund to the *appellant* of any sum paid to the BSB in accordance with rE237.1 above.

- .7 There is no appeal against a decision of *the Visitors*.

**rE245 Barrister's exclusion from providing representation funded by the Legal Aid Agency as part of Criminal Legal Aid and Civil Legal Aid**

- .1 These Rules shall apply in relation to an appeal against an order of the *Disciplinary Tribunal* that a *Barrister's* exclusion from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid pursuant to section 42(3) of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and amended by section 24, Schedule 4, s 32 and 35 of the Access to Justice Act 1999) is not to be terminated, subject to the following modifications set out in the following paragraphs of this rule.
- .2 The *petition* shall contain the following particulars
- a the date of the order of the *Disciplinary Tribunal* that excluded the *appellant* from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid and Civil Legal Aid;
  - b the charges in respect of which that order was made;
  - c a summary of the facts on which those charges were based;
  - d the findings of the *Disciplinary Tribunal*;
  - e the findings against which the appeal is brought; and
  - f the grounds for appeal.
- .3 An order of the *Disciplinary Tribunal* to terminate a *Barrister's* exclusion from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid only from a date that is subsequent to that order shall, for the purposes of any appeal, be treated as an order that the *Barrister's* exclusion from such work is not to be terminated.

**rE246 Costs**

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

**rE247 Transition**

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

**rE248 Revocation**

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

**rE249 Citation and commencement**

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

**rE250 Interpretation**

- .1 The Interpretation Act 1978 shall apply in relation to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.
- .2 These Rules shall be interpreted in accordance with Part 6.
- .3 Where a *Disciplinary Tribunal* has made a finding and imposed sentence in two separate decisions, whether in accordance with [regulation 19(5)] of the *Disciplinary Tribunal* Regulations 2009 (Code of Conduct of the Bar Council of England and Wales 8th Edition) or otherwise, the date of the *relevant decision* shall be deemed to be the date of the later decision.
- .4 Where the *relevant decision* is a decision, on review, under Section B10 of Part 4, the date of the *relevant decision* shall be deemed to be the date upon which notice of the decision was sent by the BSB to the *person* affected by the decision.
- .5 Any term defined in this Section 5.C shall carry the same meaning as it does in Part 6 of this *Handbook*.
- .6 The powers conferred upon the Lord Chief Justice by these Rules can be exercised on their behalf by a Judge of the Court of Appeal or a Judge of the High Court who is selected by them to act in this capacity. This delegation does not prevent the Lord Chief Justice from exercising these powers.
- .7 In these Rules a period of time expressed as a number of days shall be computed as clear days.

On behalf of the Judges of Her Majesty's  
High Court of Justice

Lord Chief Justice  
President of the Queen's Bench Division  
President of the Family Division  
The Chancellor of the High Court

## C2. Annexes to the hearings before *the Visitors* Rules

### Annex 7 – Addressee and place for service of documents

Person to be served	Addressee and place of service
The Clerk to the Visitors	Addressed to the Clerk to the Visitors at the Royal Courts of Justice, Strand, London WC2A 2LL.
The Council of the Inns of Court	Addressed to the President of the Council of the Inns of Court, c/o The Honourable Society of the Inner Temple, c/o 10 Fleet Street, London EC4Y 1AU.
The BSB	<i>In respect of a decision of a Disciplinary Tribunal:</i> Addressed to the Secretary to the Complaints Committee of the BSB at 289-293 High Holborn, London WC1V 7HZ.
An <i>appellant</i> other than the BSB	Addressed to them at the address specified by them pursuant to rE233.3.
A <i>defendant</i>	Addressed to them at - (a) the address notified by them pursuant to [paragraphs 202(d) or 206.1(a)(i) of the Code of Conduct of the <i>Bar</i> of England and Wales 8th Edition] (or any provisions amending or replacing those paragraphs); (b) if they have specified in writing an address to which documents may be sent, that address; or (c) where no address has been notified pursuant to the provisions mentioned in paragraph (a) above or specified as mentioned in paragraph (b) above, to their last known address.

**Annex 8 – Deemed date of service of documents**

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

# D. THE INTERIM SUSPENSION AND *DISQUALIFICATION* REGULATIONS

## D1. Application

**rE251** This Section 5.D prescribes the manner in which the BSB may seek to take interim action to:

- .1 suspend a *BSB authorised person* (excluding, for the avoidance of doubt, any *unregistered barrister*); or
- .2 *disqualify* any *applicable person* from acting as an a *HOLP* or a *HOFA* or from working as a *manager* or *employee* of a *BSB authorised person*;

subject to the criteria outlined at rE257 and rE258 below, and pending consideration by a *Disciplinary Tribunal* under Section 5.B.

**rE252** In addition to the above, this Section 5.D sets out the basis upon which the *PCC* may impose an immediate interim suspension or *disqualification* on any *applicable person* subject to the criteria outlined at rE259 to rE261 below, and pending consideration by an *interim panel* in accordance with this Section 5.D.

**rE253** Anything required by this Section 5.D to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* or the *PCC* may be done or exercised by, or given to, any *person* or body authorised by the *President* or by the *PCC* as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

## D2. The regulations

### Composition of panels

**rE254** An *interim panel* shall consist of three members nominated by the *President* being a Chair (who shall be a Queen's Counsel) and two others, of whom at least one must be a *lay member*. Provided that:

- .1 the proceedings of an *interim panel* shall be valid notwithstanding that one of the members becomes unable to act or is *disqualified* from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chair and one *lay member*;
- .2 no *person* shall be appointed to serve on a panel if s/he:
  - .a is a member of the *Bar Council* or of any of its committees; or
  - .b is a member of the *Bar Standards Board* or of any of its committees; or
  - .c was 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*.

**rE255** A *review panel* shall consist of three members nominated by *the President* being a Chair (who shall be a Queen's Counsel) and two others, of whom at least one must be a *lay member*. Provided that:

- .1 the proceedings of a *review panel* shall be valid notwithstanding that one of the members becomes unable to act or is *disqualified* from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chair and one *lay member*;
- .2 no *person* shall be appointed to serve on a panel if s/he:
  - .a is a member of the *Bar Council* or of any of its committees; or
  - .b is a member of the *Bar Standards Board* or of any of its committees; or
  - .c was 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*;
- .3 no individual who is intended to sit on the *review panel* shall have sat on either the *interim panel* or the *appeal panel* considering the same matter.

**rE256** An *appeal panel* shall consist of three members nominated by *the President* being:

- .1 two Queen's Counsel, each of whom is entitled to sit as a Recorder or a Deputy High Court Judge or who has been Queen's Counsel for at least ten years. Unless the *appeal panel* otherwise decides, the senior *barrister* member will be the Chair of the *appeal panel*; and
- .2 a *lay member*.

Provided that:

- .a the proceedings of an *appeal panel* shall be valid notwithstanding that one of the members, becomes unable to act or is *disqualified* from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chair and the *lay member*;
- .b no *person* shall be appointed to serve on an *appeal panel* if s/he:



- .i is a member of the *Bar Council* or of any of its committees; or
  - .ii is a member of the *Bar Standards Board* or of any of its committees; or
  - .iii was 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*;
- .3 no individual who is intended to sit on the *appeal panel* shall have sat on either the *interim panel* or the *review panel* considering the same matter.

### Referral to an interim panel

**rE257** On receipt of a *complaint* or any other information, the *PCC* may refer a *defendant* to an *interim panel* if:

- .1 subject to rE258:
  - .a the *defendant* has been convicted of, or charged with, a *criminal offence* in any jurisdiction other than a *minor criminal offence*; or
  - .b the *defendant* has been convicted by another *Approved Regulator*, for which they have been sentenced to a period of suspension or termination of the right to practise; or
  - .c the *defendant* is a *BSB licensed body* and has been intervened into by the *Bar Standards Board*; or
  - .d the *defendant* is a *BSB entity* and the grounds for intervention would have been met in relation to it had the *BSB entity* been a *BSB licensed body*; or
  - .e the referral is necessary to protect the interests of *clients* (or former or potential *clients*); and
- .2 the *PCC* decides having regard to the *regulatory objectives* that pursuing an interim suspension or an interim *disqualification order* is appropriate in all the circumstances.

**rE258** No matter shall be referred to an *interim panel* on any of the grounds of referral set out in rE257.1.a to rE257.1.b unless the *PCC* considers that, whether singly or collectively, the relevant grounds of referral would warrant, in the case of a *BSB authorised person*, a charge of *professional misconduct* and referral to a *Disciplinary Tribunal*, or, in the case of an *applicable person*, an application to a *Disciplinary Tribunal* for *disqualification* (in each case such referral or application to be made in accordance with Section 5.B).

**rE259** If the *PCC* refers a *defendant* to an *interim panel* under rE257, the *PCC* (or the Chair on its behalf) shall go on to consider whether or not the *defendant* should be subject to an immediate interim suspension or *disqualification* under rE261 pending disposal by the *interim panel*.

**rE260** An immediate interim suspension or *disqualification* may only be imposed if the *PCC* is satisfied that such a course of action is justified having considered the risk posed to the *public* if such interim suspension or *disqualification* were not implemented and having regard to the *regulatory objectives*.

**rE261** Any immediate interim suspension or *disqualification* imposed by the *PCC* shall:

- .1 take immediate effect;
- .2 be notified in writing by the *PCC* to the *defendant*;
- .3 remain in force until the earlier of:

- a such time as an *interim panel* has considered the matter; or
  - b the date falling four weeks after the date on which the immediate interim suspension or *disqualification* is originally imposed;
- 4 where relevant, result in the removal of the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake public access work (as appropriate);
  - 5 where relevant, result in the imposition of conditions on the relevant *BSB authorised person's* authorisation and/or licence (as appropriate);
  - 6 be published on the *Bar Standards Board's* website; and
  - 7 be annotated on the *Bar Standards Board's* register of *BSB authorised persons* which is to be maintained by the *Bar Standards Board* in accordance with S123r or be included on the *Bar Standards Board's* register of individuals that are the subject of a *disqualification order* (as appropriate).

## G

## Guidance

- gE1** If an immediate interim suspension or *disqualification* has been imposed by the *PCC* it must be considered by an *interim panel* within four weeks of the date that the immediate interim suspension or *disqualification* is originally imposed. If it is not considered by an *interim panel* within that period, it shall automatically fall away and no further period of interim suspension or *disqualification* may be imposed on the *defendant* until the matter is considered by an *interim panel*.
- gE2** If, subsequent to the imposition of an immediate suspension or *disqualification* under rE260, the *applicable person* agrees to provide to the *PCC* an undertaking in written terms in accordance with the provisions of rE263.4 below which is satisfactory to the *PCC* and which is subject to such conditions and for such period as the *PCC* may agree, the *PCC* may elect to remove or qualify the immediate interim suspension or *disqualification* pending the disposal of any charges or application by a *Disciplinary Tribunal*. For the avoidance of doubt, in these circumstances the referral to the *interim panel* shall also be withdrawn in accordance with the provisions of rE264 below.

### Procedure after referral to an Interim Panel and, where relevant, the decision to impose an immediate interim suspension or disqualification

- rE262** As soon as practicable after the *PCC* has made a decision to refer a *defendant* to an *interim panel*, the *Bar Standards Board* shall write to the *President* notifying them of the decision and informing them about whether or not an immediate interim suspension or *disqualification* has also been imposed on such *defendant*.
- rE263** As soon as practicable after receipt of the notice referred to in rE262, the *President* shall write to the *defendant* notifying them of the decision, together with a copy of these *Enforcement Regulations*, and briefly setting out the details that have caused the referral to the *interim panel*. The letter of notification shall:
- 1 where relevant, inform the *defendant* that they are the subject of an immediate interim suspension or *disqualification* (as appropriate) together with a summary of the consequences of that decision;
  - 2 lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;
  - 3 invite the *defendant* to accept one or other of the dates proposed or to provide a written representation to the *President*, which should be copied to the Chair of the *PCC*, objecting to both dates with reasons and providing two further alternative dates which shall be not more than:

- .a four weeks after the date of the imposition of the immediate interim suspension or *disqualification*, where relevant; or
- .b in all other cases, twenty-one days from the date of the letter of notification;

Any such representation must be received by the *President* not more than ten days from the date of the letter of notification. The *President* shall consider any such representation together with any representations from the Chair of the *PCC*, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within ten days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rE263.2 above. The *President's* decision, which shall be notified in writing to the *defendant* by the *President*, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the *President*:

- .4 inform the *defendant* that they may by letter to the Chair of the *PCC* undertake, pending the disposal of any charge(s) or application(s) by a *Disciplinary Tribunal*:
  - .a to be immediately *suspended* or *disqualified* (in which case the consequences set out at rE261.4 to rE261.7 would apply);
  - .b not to accept or carry out any *public access instructions*; and/or
  - .c to inform their professional and/or lay *clients* about any *convictions*, charges or other matters leading to a referral, in written terms satisfactory to the Chair of the *PCC*;

and summarising the consequences of the *defendant* electing to make such an undertaking (which for the avoidance of doubt, may include those set out at rE261.4 to rE261.7 above);

- .5 shall inform the *defendant* that they are entitled to make representations in writing or orally, by themselves or by others on their behalf; and
- .6 shall inform the *defendant* that they are entitled to request an expedited hearing of any charges of *professional misconduct* or applications for *disqualification orders* by a *Disciplinary Tribunal*.

**rE264** If a *defendant* sends a letter in accordance with rE263.3 above which is satisfactory to the Chair of the *PCC*, the Chair shall accept the undertaking contained in the letter in lieu of the *interim panel* imposing any period of interim suspension or interim *disqualification* pending the disposal by a *Disciplinary Tribunal* of any charges of *professional misconduct* or applications for a *disqualification order* (as the case may be).

## Procedure and powers of interim panels

**rE265** At any hearing of an *interim panel* the proceedings shall be governed by the rules of natural justice, subject to which:

- .1 the procedure shall be informal, the details being at the discretion of the Chair of the *interim panel*;
- .2 the *defendant* shall be entitled to make representations in writing or orally, by themselves or by another on their behalf, as to:
  - .a why a period of interim suspension or interim *disqualification* should not be imposed; or
  - .b why the *interim panel* should not direct the *defendant* to notify their professional *clients* and/or lay *clients* about any *convictions*, charges or other matters leading to a referral; or

- .c any further or alternative direction which the *interim panel* is empowered to make in relation to the *defendant* under rE267.3 below;

pending the disposal of any charges or applications by a *Disciplinary Tribunal*;

- .3 no witnesses may be called without the prior consent of the Chair of the Panel and without the submission of a proof of evidence;
- .4 the attendance of the *defendant* shall be required. Should they nevertheless fail to attend, the hearing may proceed in their absence subject to the *interim panel* being satisfied that this course is appropriate. Should the *interim panel* not be so satisfied, it shall have the power to adjourn the hearing;
- .5 the hearing shall not be in public unless so requested by the *defendant* and a record shall be taken electronically; and
- .6 if the *interim panel* decides an adjournment is necessary for any reason, it may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.

**rE266** If the members of the *interim panel* are not unanimous as to any decision, the decision made shall be that of the majority of them. If the members of the *interim panel* are equally divided the decision shall be that which is most favourable to the *defendant*.

**rE267** At the conclusion of the hearing the *interim panel*:

- .1 may decide not to impose any period of interim suspension, interim *disqualification* or other order;
- .2 may impose a period of interim suspension or interim *disqualification* (in each case, either unconditionally or subject to conditions) pending the hearing before a *Disciplinary Tribunal*, provided that no interim suspension or interim *disqualification* may be imposed unless the *interim panel* considers that:
  - .a were a *Disciplinary Tribunal* to find a related charge of *professional misconduct* proven, it would be likely to impose a sentence of disbarment (with respect to *barrister defendants*), a sentence of suspension (with respect to *barrister defendants* or *registered European lawyer defendants* or *BSB entity defendants*), revocation of the licence or authorisation (with respect to *BSB entity defendants*) or a *disqualification order* (with respect to *applicable person defendants*); and
  - .b such interim suspension or interim *disqualification* is in the public interest;
- .3 in lieu of imposing a period of interim suspension or interim *disqualification*, the *interim panel* may either:
  - .a where the *defendant* is a *BSB authorised person*, direct the *defendant* to carry out their or its future activities in accordance with such interim conditions on the *defendant's* authorisation or licence as the *interim panel* may think fit pending final disposal of the charges or application against them or it; or
  - .b where the *defendant* is a *manager* or *employee* of a *BSB authorised person*, direct such *person* (after affording the *BSB authorised person* an opportunity to be heard) to take such steps in relation to the *defendant* as the *interim panel* may think fit, which may include limits on the type of work the *defendant* is to be permitted to do, or requirements as to their supervision or training, pending final disposal of the charges or application against them;
  - .c accept from the *defendant* an undertaking in written terms satisfactory to the *interim panel* (and subject to such conditions and for such period as the *interim panel* may agree):

- .i to be immediately *suspended or disqualified*; or
- .ii not to accept or carry out any *public access instructions* or to *conduct litigation*; or
- .iii to inform their professional and lay *clients* about any *convictions*, charges or other matters leading to a referral;

pending the disposal of any charges or application by a *Disciplinary Tribunal* provided always that the *defendant* accepts that the following consequences may arise as a result of such undertaking being provided depending on the nature of the undertaking being provided:

- (1) the removal of the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake *public access* work (as appropriate);
  - (2) the imposition of conditions on the relevant *BSB authorised person's* authorisation and/or licence (as appropriate);
  - (3) publication of the details of such interim suspension or *disqualification* on the *Bar Standards Board's* website; and
  - (4) either the inclusion of a note on the *Bar Standards Board's* register of *BSB authorised persons* to the effect that such *BSB authorised person* is temporarily *suspended* from *practice* or the inclusion of the details of such interim *disqualification* on the *Bar Standards Board's* register of individuals that are the subject of a *disqualification order*;
- .4 shall set down in writing signed by the Chair of the *interim panel* the decision of the *interim panel* and the terms of any period of interim suspension, interim *disqualification* or interim condition imposed under these *Interim Suspension and Disqualification Regulations* or accepted (in the form of an undertaking) under rE267.3.c above.
- a Where the *defendant* is a *BSB authorised individual*, the imposition of any period of suspension shall be recorded as follows:
 

"That.....be suspended from *practice* as a ..... and from enjoyment of all rights and privileges as a member of the Honourable Society of.....and be prohibited from holding themselves out as being a ..... for a period expiring on [the ..... day of...../insert applicable condition/event on which expiry is contingent] or such earlier date as a *Disciplinary Tribunal* shall have disposed of any charges that have caused the interim suspension or such *Disciplinary Tribunal* may otherwise direct." (Note: If the Panel decides that the suspension should apply to only part of the *defendant's practice* or shall be subject to conditions, such part or such conditions (as the case may be) shall be);
  - b Where the *defendant* is a *BSB entity*, the imposition of any period of suspension shall be recorded as follows:
 

"That ..... have its BSB licence/authorisation *suspended* for a period expiring on [the ..... day of...../insert applicable condition/event on which expiry is contingent] or such earlier date as a *Disciplinary Tribunal* shall have disposed of any charges that have caused the interim suspension or such *Disciplinary Tribunal* may otherwise direct." (Note: If the Panel decides that the suspension should apply to only part of the *defendant's practice* or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);
  - c Where the *defendant* is an *applicable person*, the imposition of any period of *disqualification* shall be recorded as follows:

"That ..... be *disqualified* from [specify here the relevant capacities in respect of which the order applies, which may be some or all of: acting as a *HOLP*, *HOFA* or manager of any *BSB* entity or being an employee of any *BSB* authorised person] and that any *BSB* regulated person is prohibited from permitting the *defendant* to work in any such capacity for a period expiring on [the ..... day of...../[insert applicable condition/event on which expiry is contingent] or such earlier date as a *Disciplinary Tribunal* shall have disposed of any charges that have caused the interim *disqualification* or such *Disciplinary Tribunal* may otherwise direct";

- .5 shall, if a period of interim suspension or interim *disqualification* or an interim condition is imposed or a written undertaking is accepted under these *Interim Suspension and Disqualification Rules*:
- a inform the *defendant* of their right to request a *review panel* to review the matter as provided in rE268 below;
  - b inform the *defendant* of their right of appeal as provided in rE272 below;
  - c inform the *defendant* that they are entitled to request an expedited hearing of any charges or applications by a *Disciplinary Tribunal* and, if so requested, the Chair of the Panel may so direct;
- .6 may, if it has not already been referred to a *Disciplinary Tribunal*, refer the matter to a *Disciplinary Tribunal*.

## Review

- rE268** In the event of a significant change in circumstances or other good reason the *defendant* may at any time while on interim suspension, interim *disqualification* or subject to interim conditions make a request in writing to the *President* for a *review panel* to be convened to review the matter.
- rE269** The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the *President* may seek representations from the Chair of the *PCC* and may in their discretion convene a *review panel* or refuse the request. In either case the *President* shall notify the *defendant* in writing of the decision. If the *President* decides to convene a *review panel* the procedure to be followed for fixing the time and date of the hearing shall be as set out in rE263.2 and rE263.3.
- rE270** The proceedings before a *review panel* shall be by way of a rehearing and the provisions of rE265 above shall apply as if for references therein to the *interim panel* and the Chair of the *interim panel* there were substituted references respectively to the *review panel* and the Chair of the *review panel*.
- rE271** Unless in the meantime the hearing before a *Disciplinary Tribunal* of any charges or applications arising from and/or related to the referral to an *interim panel* has commenced, a hearing by a *review panel* convened pursuant to rE268 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the *review panel* which may reconsider the matter as if there had been no previous hearing.
- rE272** If the hearing before a *Disciplinary Tribunal* of any charges or applications arising from and/or related to the referral to an *interim panel* has commenced before the date fixed for a rehearing by a *review panel*, the date fixed for the rehearing shall be vacated and any interim suspension, interim *disqualification* or interim conditions made or undertaking accepted by the *interim panel* shall continue until such charges or applications have been disposed of by the *Disciplinary Tribunal*.

## Appeals

**rE273** A *defendant* may by letter served on the *President* and on the Chair of the *PCC* not more than fourteen days after the date of the *relevant decision* of an *interim panel* give notice of their wish to appeal against the decision.

**rE274** As soon as practicable after receipt of a letter in accordance with rE273 above the *President* shall convene an *appeal panel* and write to the *defendant* notifying them of a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The *defendant* may make a written representation, addressed to the Chair of the proposed *appeal panel*, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chair of the *appeal panel* not more than fourteen days from the date of the letter of notification. The Chair shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the *defendant*. The Chair's decision, which shall be notified in writing to the *defendant* shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chair of the *appeal panel*.

**rE275** The proceedings before an *appeal panel* shall be by way of a rehearing and the provisions of rE265 above shall apply as if for references therein to the *interim panel* and the Chair of the *interim panel* there were substituted references respectively to the *appeal panel* and the Chair of the *appeal panel*.

**rE276** At the conclusion of the hearing the *appeal panel*:

- .1 may remove the period of interim suspension or interim *disqualification* and/or any interim conditions imposed under this Section 5.D;
- .2 may confirm the period of interim suspension or interim *disqualification* or impose further or alternative interim conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;
- .3 in lieu of confirming or imposing a period of interim suspension or interim *disqualification* or imposing interim conditions, may accept from the *defendant* in terms satisfactory to the Chair of the Panel an undertaking in writing to continue to be *suspended, disqualified* and/or to submit to such conditions and for such period as the *appeal panel* may agree, pending the disposal of any charges by a *Disciplinary Tribunal*;
- .4 shall set down in writing signed by the Chairman of the *appeal panel* the decision of the *appeal panel* and the terms of any interim suspension, interim *disqualification* or interim conditions confirmed or imposed under rE276.2 above or undertaking accepted under rE276.3 above;
- .5 may, if it has not already been referred to a *Disciplinary Tribunal*, refer the matter to a *Disciplinary Tribunal*;

If the members of the *appeal panel* are not unanimous as to the decision, the decision made shall be that of the majority of them. If the members of the *appeal panel* are equally divided, the decision shall be that which is most favourable to the *defendant*. Any period of interim suspension or interim *disqualification* or interim conditions having been set, which is confirmed or imposed, shall be recorded as set out in rE267.4 above.

**rE277** A pending appeal to an *appeal panel* shall not operate as a stay of any period of interim suspension or interim *disqualification* or interim conditions having been set or the terms of any direction or undertaking which is/are the subject of the appeal.

**rE278** There shall be no right of appeal from the decision of an *appeal panel*.

## Suspension or disqualification ceases to have effect

**rE279** Unless a *Disciplinary Tribunal* shall otherwise direct, any period of interim suspension or *disqualification* and any interim conditions imposed by the *interim panel* or *appeal panel* under this Section 5.D shall cease and the *defendant* shall cease to be bound by the terms of any direction made or undertaking accepted by a *interim panel* or an *appeal panel* immediately upon:

- .1 a *Disciplinary Tribunal* dismissing or making an order disposing of all charges of *professional misconduct* or applications for *disqualification* based on the referral from the *interim panel* or the *PCC* (as appropriate);
- .2 any appeal by the *defendant* against the *conviction* or all the *conviction(s)* which had caused the referral to a *interim panel* being successful;
- .3 the acquittal of the *defendant* of the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to a *interim panel*;
- .4 the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to an *interim panel* being withdrawn.

## Costs

**rE280** An *interim panel*, *review panel* and an *appeal panel* shall have no power to award costs.

## Report and publication of decisions

**rE281** As soon as practicable after the conclusion of an *interim panel* hearing or an *appeal panel* hearing, the *President* shall confirm the decision to the *defendant* in writing.

**rE282** In any case where a period of interim suspension or interim *disqualification* is imposed or an interim condition is imposed under this Section 5.D or a direction is made requiring notification to lay and/or professional *clients* or an undertaking from a *defendant* is accepted, the *President* shall communicate brief details in writing of the fact that the *defendant* is on an interim basis *suspended*, *disqualified* and/or subject to conditions (as the case may be) to:

- .1 the *defendant*;
- .2 the Chair of the Bar Standards Board;
- .3 the *defendant's* head of *chambers*, *HOLP*, or *employer* (as appropriate);
- .4 in the case of a *registered European lawyer*, their *home professional body*;
- .5 the Treasurers of the *defendant's Inn of Call* and of any other Inns of which they are a member;
- .6 other *Approved Regulators* and the *LSB*; and
- .7 those of the following whom the *President* deems, in their absolute discretion, to be 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 Chair of the Bar Council;
- .f the Leaders of the six circuits;
- .g the Chair of the *PCC*; and
- .h such one or more press agencies or other publications, as the Chair of the *PCC* may direct.

**rE283** The *Bar Standards Board* shall keep a record of those who are subject to suspension or *disqualification orders* or conditions imposed on their authorisation made under the procedures in this *Handbook* and shall publish details of any interim suspension, interim *disqualification* or interim conditions on its website and in such of its registers as it considers appropriate, for as long as they remain in effect.

### Service of documents

**rE284** 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:

- .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 2 of this *Handbook* (or any provisions amending or replacing the same) as being their *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 entity*, the address provided by the *BSB entity* as being their home address or, in the absence of such information, the address of the relevant *BSB entity* notified pursuant to the requirements of Part 2 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 their 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 entity*, the last known address of the relevant *BSB entity*;

and such service shall be deemed to have been made on the second day after it was posted, left with, delivered to or collected by the relevant service provider, (provided that that day is a business day, or, if not, the next business day after that day) or on the next working day after receipted hand delivery;

- .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;

- .3 if actually served;
- .4 if served in any way which may be directed by the *President* of the *Council of the Inns of Court*.

**rE285** For the purpose of this regulation “received 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, their clerk and a *manager* or *employee* of the *BSB entity* at which they work).

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### D3. Interpretation

**rE286** In this Section 5.D unless the context otherwise requires all italicized terms shall be defined and all terms shall be interpreted in accordance with the definitions in Part 6.

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## D4. Commencement

**rE287** These rules shall come into force in accordance with the provisions of Part 1 of this *Handbook*.

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# E. THE FITNESS TO PRACTISE REGULATIONS

These Regulations, commencing 6 January 2014, are made by the *Bar Standards Board*, in liaison with the *Council of the Inns of Court*, under section 21 (regulatory arrangements) *Legal Services Act 2007*, under authority delegated by the General Council of the Bar as the Approved Regulator of the Bar under Part 1 of Schedule 4 to the *Legal Services Act 2007*, and with the approval of the *Legal Services Board* under Paragraph 19 of Schedule 4 to the *Legal Services Act 2007*.

## E1. Preliminaries

### Commencement and application

- rE288** These Regulations will come into effect on 6 January 2014 and shall apply to all cases referred to a *Fitness to Practise Panel* or an *Appeal Panel* prior to that date under the Regulations then applying, and any step taken in relation to any *Fitness to Practise Panel* or *Appeal Panel* pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.
- rE289** Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* of the Council of the Inns of Court or the *PCC*, may be done or exercised by, or given to, any *person* or body authorised by the *President* or by the *PCC* as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

### Definitions

- rE290** Any term defined in *Definitions Section* of the *Handbook* shall carry the same meaning in these Regulations. For the purpose of the *Fitness to Practise Regulations*, "Individual" means any '*BSB authorised individual*'

## E2. Constitution of panels

**rE291** The *President* shall constitute *Fitness to Practise Panels* and *Review Panels* to exercise the functions afforded to those Panels under these Regulations, in accordance with the provisions set out Schedule 1.

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## E3. The Fitness To Practise Procedure

### Referral to a Fitness to Practise Panel

**rE292** Where the *PCC* receives information suggesting that an *Individual* is *unfit to practise*, the matter shall be considered under Regulation E294.

**rE293** The *PCC* may carry out any investigation, appropriate to the consideration of whether the *Individual* may be *unfit to practise*, prior to consideration of any referral under Regulation E295.

**rE294** Where the *PCC* receives information under Regulation E292, the Chair of the *PCC* shall, subject to Regulation 6, as soon as reasonably practicable, write to the *Individual* concerned:

- .1 notifying him or her that information has been received which appears to raise a question of whether he or she is *unfit to practise*; and,
- .2 providing him or her with copies of any information received under Regulation 5 or obtained under Regulation E293.

**rE295** Where the *PCC*, following receipt of information under Regulation E292 or during its consideration of a complaint of professional misconduct under the *Complaints Regulations*, considers that an *Individual* may be *unfit to practise*, it shall refer the matter to a *Fitness to Practise Panel* for determination (Regulation E298).

**rE296** No decision to refer shall be taken under Regulation E295 without the *Individual* having been provided with a reasonable opportunity (as to the circumstance) to make representations on the matter.

**rE297** In reaching a decision under Regulation E295, the *PCC* shall take into account any information received under Regulation E292 or obtained under Regulation E293, and any representations submitted by the *Individual*.

### Preliminary Hearings

**rE298** As soon as reasonably practicable after referral of a matter by the *PCC* to a *Fitness to Practise Panel*, the Chair of the Panel shall send a notice in writing of the referral to the *Individual* which shall:

- .1 contain a summary of the case and the reasons why it has been referred to a *Fitness to Practise Panel*;
- .2 inform the *Individual* of the time and date for a preliminary hearing before the Panel;
- .3 inform the *Individual* of his or her right to attend and be represented at the preliminary hearing, and to produce evidence at the preliminary hearing, in accordance with Regulations E324.2 and E324.3 below;
- .4 inform the *Individual* of the Panel's powers at a preliminary hearing under Regulations E299 and rE302 to rE305 below; and,
- .5 inform the *Individual* of his or her right to appeal under Regulation E317 below.

### Directions

**rE299** At a preliminary hearing, the *Fitness to Practise Panel* may give directions for the full hearing before the Panel, which may include that:

- .1 the *Individual*, within a specified period of time, submit to a relevant medical examination to be carried out by a *Medical Examiner* nominated by the Panel;

- .2 the *PCC* instruct a *Medical Examiner* to conduct such examination and to provide a report setting out an opinion as to whether the *Individual* is *unfit to practise* and as to any other matters as may be specified by the Panel;
- .3 the *Individual* authorise disclosure to the *PCC* and the *Medical Examiner*, of such of his or her relevant medical records as may be reasonably required for the purposes of the medical examination and subsequent report; and,
- .4 the *PCC* carry out such other investigations or seek such advice or assistance as the Panel considers appropriate to the matters for consideration at the full hearing, and where it gives a direction under Paragraph .1 or .3 above, it shall inform the *Individual* that failure to comply with the direction may be taken into account by the Panel in accordance with Regulation E308.2

## Medical examinations

**rE300** Where a *Medical Examiner* is nominated by a Panel under Regulation E299.1 or E309.2.a, the *Medical Examiner* shall:

- .1 within the period specified by the Panel, undertake a relevant medical examination of the *Individual* in accordance with any directions from the Panel;
- .2 prepare a report which shall express an opinion as to:
  - a whether the *Individual* has a physical or mental condition;
  - b whether the *Individual* is fit to practise either generally or on a restricted basis; and
  - c any other matters which he or she has been instructed to address, in accordance with any directions of the Panel; and
- .3 where requested by the *PCC* to do so, attend a hearing to present his or her findings.

**rE301** An *Individual's* medical records and any report prepared by a *Medical Examiner* under these Regulations shall not be used for any other purpose than is provided for in these Regulations and shall not be disclosed to any other *person* or body without the consent in writing of the *Individual*.

## Interim restrictions

**rE302** At a preliminary hearing, a *Fitness to Practise Panel* may, where it is satisfied that it is necessary to protect the public, is otherwise in the public interest or is in the *Individual's* own interests to do so, direct that the *Individual* is subject to an interim *restriction*.

**rE303** An interim *restriction* may be imposed subject to such conditions as the Panel may consider appropriate, and shall have effect pending the determination of the matter at a full hearing before the *Fitness to Practise Panel* for a specified period, which shall not, save in exceptional circumstances, exceed 3 months.

**rE304** In lieu of imposing an interim *restriction* under Regulation E302 above, the Panel may accept from the *Individual* an undertaking in writing on terms satisfactory to the Panel:

- .1 agreeing to an immediate interim *restriction* for such period as may be agreed; or,
- .2 as to the *Individual's* conduct or behaviour pending the conclusion of the full hearing.

**rE305** Where it has directed an interim *restriction* under Regulation E302 or accepted undertakings under Regulation E304, a Panel may, at any point during the period of an interim restriction:



- .1 at the request of the Chair of the *PCC*, or at the request of the *PCC* or of the *Individual*, direct that the interim *restriction* or undertaking be reviewed at a further hearing of the Panel, on such date as the Panel shall specify, or on an unspecified date provided that the *Individual* is served with no less than 14 days' notice in writing of the hearing;
- .2 at the request of the *Individual*, direct an expedited full hearing of the *Fitness to Practise Panel*;  
and, shall:
  - .a inform the *Individual* of his or her right to request a *Fitness to Practise Panel* to review the interim *restriction* or undertaking under Regulation E313 below;
  - .b inform the *Individual* of his or her right of appeal under Regulation E317 below.

**rE306** The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made, interim *restriction* imposed or undertakings accepted.

### Full Hearings before a Fitness to Practise Panel

**rE307** As soon as reasonably practicable after receipt of any report prepared by a *Medical Examiner* or, where no report has been prepared, the *PCC* considers that the case is ready for hearing, the Chair of the Panel shall send a notice in writing of hearing to the *Individual* which shall:

- .1 contain a summary of the case and a copy of the report, where applicable;
- .2 inform the *Individual* of the time and date of the full hearing;
- .3 inform the *Individual* of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E324.2 and .3 below;
- .4 inform the *Individual* of the Panel's powers at a full hearing under Regulations E308 to E310 below; and,
- .5 inform the *Individual* of his or her right to appeal under Regulation E317 below.

### Decisions of a Fitness to Practise Panel

**rE308** At a full hearing, the *Fitness to Practise Panel* shall decide whether the *Individual* is *unfit to practise* and, in reaching its decision, shall be entitled to take into account:

- .1 the *Individual's* current physical or mental condition, any continuing or episodic condition experienced by the *Individual*, or any condition experienced by the *Individual* which, although currently in remission, may be expected to cause impairment if it recurs; and
- .2 any failure by the *Individual* to comply with a direction to undergo a relevant medical examination made under Regulation E300.1.

**rE309** Where a *Fitness to Practise Panel* has decided that an *Individual* is *unfit to practise*, the Panel may direct:

- .1 that the *Individual* be subject to a *restriction* which may be subject to such conditions as the Panel may consider appropriate, and which may be imposed indefinitely or for such period, not exceeding six months, as shall be specified in the direction;
- .2 that the *Individual's* right to continue to practise, or to resume practice after any period of *restriction* shall be subject to such conditions as the Panel may think fit, including that the *Individual*:

- a submit for regular examination before one or more *Medical Examiners* nominated by the Panel,
- b authorise disclosure to the *PCC* and the *Medical Examiner* such of his or her medical records as may be reasonably required for the purposes of the medical examination and subsequent report,
- c is reviewed by a registered medical practitioner and shall follow the treatment they recommend in respect of any physical or mental condition, which the Panel consider may be a cause of the *Individual* being unfit to practice.

**rE310** In lieu of imposing any direction under Regulation E309 above, the Panel may accept from the *Individual* one or more undertakings in writing in which the *Individual* agrees to such period of *restriction*, or such conditions, as the Panel would otherwise have imposed.

**rE311** Where it has made a direction under Regulation E309 or agreed undertakings under Regulation E310, the Panel shall inform the *Individual*:

- .1 of his or her right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation E313 below;
- .2 of his or her right of appeal under Regulation E317 below; and
- .3 that a failure to comply with the direction or undertakings would be likely to result in a charge of professional misconduct being brought against the *Individual* before a Disciplinary Tribunal.

**rE312** The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made or undertakings accepted.

## E4. Reviews and appeals

### Review of decisions made by a Fitness to Practise Panel

- rE313** At any time during which an *Individual* is subject to a period of *restriction* or conditions, directed or undertaken pursuant to these Regulations, the Chair of the *PCC* may, of his or her own motion, or at the request of the *PCC* or of the *Individual*, refer the matter to be reviewed before a *Fitness to Practise Panel*, where he or she considers there has been a significant change in the *Individual's* circumstances or that there is some other good reason for a review to be undertaken.
- rE314** Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation E313, Regulations E298 to E312 and E324 shall apply, save that the Chair of the Panel and the *Individual* may agree in writing that no preliminary hearing shall be held.
- rE315** At the conclusion of a review hearing, the *Fitness to Practise Panel* may:
- .1 confirm or revoke the direction made or undertakings agreed;
  - .2 extend or vary (or further extend or vary) the period for which the direction has effect, or agree with the *Individual* concerned an extension or variation of the period for which an undertaking has been agreed;
  - .3 replace the direction or undertakings, exercising any of the powers of a *Fitness to Practise Panel* under Regulations E302, E304, E309 or E310 above.
- rE316** Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation 26 above and the review hearing cannot be concluded before the expiry of any period of *restriction* imposed under Regulation E302 or E309.1, or agreed under Regulation E304.1 or E310, the Panel may extend the *restriction* for such period as it considers necessary to allow for the conclusion of the review hearing.

### Appeals before an Appeal Panel

- rE317** An *Individual* may appeal a decision of a *Fitness to Practise Panel* to impose, extend, vary or replace a period of *restriction* by notifying the *President* in writing that he or she wishes to do so, no more than 14 days after the date of the decision subject to appeal.
- rE318** As soon as reasonably practicable after receipt of an appeal under Regulation E317, the Chair of the *Appeal Panel* shall send a notice in writing of the appeal hearing to the *Individual*, which shall:
- .1 inform the *Individual* of the time and date of the appeal hearing;
  - .2 inform the *Individual* of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E324.2 and .3 below; and
  - .3 inform the *Individual* of the Panel's powers under Regulation E320 below.
- rE319** A pending appeal to an *Appeal Panel* shall not operate as a stay of the decision subject to appeal.

## Decisions of an Appeal Panel

**rE320** At the conclusion of an appeal hearing, the *Appeal Panel* may:

- .1 allow the appeal;
- .2 confirm the decision that is subject to appeal;
- .3 exercise any of the powers of a *Fitness to Practise Panel* under Regulations E309 or E310 above;

**rE321** The *Appeal Panel* shall inform the *Individual*:

- .1 of his or her right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation E313 above; and
- .2 that failure to comply with a *restriction* or condition imposed under Regulation E320.3 above would be likely to result in a charge of professional misconduct being brought before a *Disciplinary Tribunal*.

**rE322** The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons, and the terms of any *restriction* imposed or undertakings accepted.

**rE323** There shall be no right of appeal from a decision of an *Appeal Panel*.

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## E5. Conduct of Fitness to Practise and Review Panel Hearings

### Procedure before a panel

**rE324** At any hearing before a *Fitness to Practise* or *Appeal Panel*, the proceedings shall be governed by the rules of natural justice, subject to which:

- .1 the procedure shall be informal, the details being at the discretion of the Chair of the Panel;
- .2 the *Individual* shall attend the hearing and may be represented by another member of the bar or a solicitor, save that where the *Individual* does not attend and is not represented, the hearing may nevertheless proceed if the Panel is satisfied that it is appropriate to do so and that all reasonable efforts have been made to serve the *Individual* with notice in writing of the hearing in accordance with these Regulations;
- .3 the *Individual* may, on his or her own behalf or through his or her representative:
  - .a make representations in writing or orally,
  - .b produce evidence, provided (but subject to the discretion of the Chair) that a proof of such evidence has been submitted no less than 24 hours prior to the hearing, and
  - .c put questions to any *Medical Examiner* whose report is in evidence before the Panel;
- .4 the hearing shall be in private, unless the *Individual* requests a public hearing, and shall be recorded electronically;
- .5 decisions shall be taken by simple majority;
- .6 where the votes are equal the issue shall be decided, at a hearing before a *Fitness to Practise Panel*, in the *Individual*'s favour and, in an appeal case, against the *Individual*.

**rE325** If at any time it appears to a Panel that it would be appropriate to do so, the Panel may refer the case to the *PCC* for consideration of whether to refer any matter for a hearing before a *Disciplinary Tribunal*.

**rE326** Where it considers it necessary, a Panel may appoint a practising barrister or solicitor to assist it on any question of law or interpretation of these Regulations, by providing an independent advice either orally or in writing, such advice to be tendered in the presence of the parties, or, where the parties are not present at the hearing, copied to the parties as soon as reasonably practicable.

**rE327** A Panel shall have no power to award costs.

**rE328** The proceedings before an *Appeal Panel* shall be by way of a rehearing.

**rE329** At any review hearing before a *Fitness to Practise Panel* or appeal hearing before an *Appeal Panel*, copies of the report of any expert or any proof of evidence referred to at any previous hearing of the Panel in respect of the same case may be referred to by the Panel.

**rE330** In the arrangements that it makes to perform its functions, and in undertaking its functions, in particular, in reaching any decision concerning an *Individual*'s fitness to practise, a Panel shall:

- .1 take into account its duties to make reasonable adjustments which arise under the Equality Act 2010; and
- .2 have due regard to the need to:
  - .a eliminate unlawful discrimination and other conduct prohibited by the Equality Act 2010, and

- .b advance equality of opportunity and foster good relations between *persons* who share a relevant protected characteristic as set out in Section 149 of the Equality Act 2010 and those who do not.

## Postponement, adjournment and cancellation

- rE331** Before the opening of any hearing in which notice has been served in writing in accordance with these Regulations, the Chair of the Panel may, of his or her own motion or on the application of the *PCC* or the *Individual*, postpone the hearing until such time and date as he or she thinks fit.
- rE332** Where any hearing under these Regulations has commenced, the Panel considering the matter may, at any stage in the proceedings, whether of its own motion or on the application of the *PCC* or the *Individual*, adjourn the hearing until such time and date as it thinks fit.
- rE333** No hearing shall be postponed or adjourned under Regulations E335 or E336 unless the *Individual* has been given reasonable opportunity to make representations on the matter.
- rE334** Where a hearing has been postponed or adjourned, the parties shall be notified as soon as reasonably practicable of the time, of the date and place at which the hearing is to take place or to resume.
- rE335** Where notice of hearing has been served in writing under these Regulations, the Chair of the Panel may, on application of the *PCC* or the *Individual*, cancel the hearing where the Chair considers that there are no reasonable grounds for questioning whether the *Individual* is *unfit to practise*.

## Notice and publication of Decisions

- rE336** Where a decision has been taken by *Fitness to Practise Panel* or an *Appeal Panel* under these Regulations, the Chair of the Panel shall, as soon as reasonably practicable, serve notice in writing of the decision on the *Individual* concerned.
- rE337** Where a decision is taken at a full hearing of a *Fitness to Practise Panel* or at an *Appeal Panel* hearing, unless the decision is to take no action and the *Individual* is permitted to continue to practise without *restriction*, the Chair shall provide notice in writing of the decision to any *person* to whom he or she considers it to be in the public interest to do so.

## Service of documents

- rE338** Regulation rE216 of the Disciplinary Tribunals Regulations 2014 (section 5B) shall apply for the purposes of the service of any notices or documents under these Regulations save that, for the reference in Regulation rE216.2.d to the "*Directions Judge* or the Chair of the *Disciplinary Tribunal*", there shall be substituted the "Chair of the Panel".
- rE339** Where a Panel directs that an *Individual's* ability to practise be subject to *restrictions*, conditions or agreed undertakings, the *President* shall always communicate brief details of the decision, in writing to:
- .1 the *Individual*;
  - .2 the Chair of the *PCC*;
  - .3 the Director of the *Bar Standards Board*;
  - .4 the Barrister's Head of Chambers, where relevant;
  - .5 the Treasurers of the Barrister's Inn of Call and of any other Inns of which they are a member, where relevant; and
  - .6 other regulators, where relevant.

**rE340** The following shall have details of the decision of the Panel communicated to them in writing, at the discretion of the *President*:

- .1 the Chair of the *Bar Council*;
- .2 the Lord Chancellor;
- .3 the Lord Chief Justice;
- .4 the Attorney General;
- .5 the Director of Public Prosecutions; and
- .6 the Leaders of the six circuits.

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## Schedule 1

### Constitution of Fitness to Practise and Appeal Panels

1. The *President* shall appoint and maintain:
  - (a) a list of barristers and *lay persons* eligible to be members of *Fitness to Practise Panel*;
  - (b) a list of barristers and *lay persons* eligible to be members of an *Appeal Panel*; and,
  - (c) from the lists at (a) and (b), lists of Queen's Counsel eligible to act as Chairs of a *Fitness to Practise Panel* and an *Appeal Panel* respectively.
2. The *President* shall remove from the lists at Paragraph 1 *persons*:
  - (a) whose term of appointment has come to an end, unless that term is renewed;
  - (b) who resign from the relevant list by giving notice in writing to that effect to the *President*; or
  - (c) who in the opinion of the *President* have ceased to be eligible for appointment.
3. The *President* shall appoint, and ensure that arrangements are in place to be able to access suitably qualified *medical members* to sit on *Fitness to Practise* and *Appeal Panels*.
4. A *Fitness to Practise Panel* shall consist of five members selected by the *President* from the list of *persons* under Paragraph 1(a) and in line with the arrangements arising from paragraph 3, being:
  - (a) a Chair whose name appears on the relevant list at Paragraph 1(c);
  - (b) two practising barristers;
  - (c) a *medical member*; and
  - (d) a *lay member*.
5. An *Appeal Panel* shall consist of four members selected by the *President* from the list of *persons* under Paragraph 1(b) and in line with paragraph 3, being:
  - (a) two practising barristers, including a Chair whose name appears on the relevant list at Paragraph 1(c), and who shall, unless the *Appeal Panel* decide otherwise, be the most senior of the barrister members;
  - (b) a *medical member*; and
  - (c) a *lay member*.
6. No *person* shall be selected to sit on a *Fitness to Practise Panel* or an *Appeal Panel* if:
  - (a) they are a member of the *PCC* or of the *PCC* or any of its other Committees; or
  - (b) they were a member of the *PCC* when the matter being dealt with by the Panel was considered by the *PCC*.
7. No *person* shall sit on a *Fitness to Practise Panel* or an *Appeal Panel* for the hearing of a case that they have previously considered or adjudicated upon in any other capacity.



8. The proceedings of a *Fitness to Practise Panel* or an *Appeal Panel* shall be valid notwithstanding that one or more members of the Panel become unable to sit or disqualified from sitting on the Panel, or are replaced by another member from the appropriate list or by the arrangement at paragraph 3, subject to there being a minimum of three Members which shall include a Chair from the relevant list held under Paragraph 1(c), a *medical member* and a *lay member*.
9. The validity of the proceedings of a Panel shall not be affected by any defect in the appointment of a member.

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# F. INTERVENTIONS AND DIVESTITURE

## F1. Interventions

**rE341** The *Bar Standards Board* has the statutory power under Schedule 14 of the Legal Services Act 2007 to intervene into a *BSB licensed body*.

**rE342** The *Bar Standards Board* may authorise an intervention into a *BSB licensed body* where:

- .1 in relation to the *BSB licensed body*, one or more of the intervention conditions (as such term is defined in the Legal Services Act 2007) is satisfied; or
- .2 the licence granted to the *BSB licensed body* has expired and has not been renewed or replaced by the *Bar Standards Board*.

**rE343** In circumstances where the *Bar Standards Board* authorises an intervention under rE342 above, such intervention shall be carried out in accordance with the provisions of the Legal Services Act 2007

## F2. Divestiture

- rE344** The *Bar Standards Board* has the statutory power under Schedule 13 of the Legal Services Act 2007 to make an application for divestiture in relation to a *non-authorised person* and a *BSB licensed body*.
- rE345** The *Bar Standards Board* may make an application for divestiture if the divestiture condition (as such term is defined in the Legal Services Act 2007) is satisfied in relation to such *non-authorised person* and a *BSB licensed body* (as the case may be).
- rE346** In circumstances where the *Bar Standards Board* elects to make an application for divestiture under rE345 above, such application shall be carried out in accordance with the provisions of the Legal Services Act 2007.

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## Part 6

# Definitions

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In this Handbook, the following words and phrases have the meaning set out below:

(1)	accreditation	means for the purpose of the QASA Rules the status required under the QASA to be permitted to undertake criminal advocacy in the courts of England and Wales  "accredited" shall be construed accordingly
(2)	admission to an Inn	includes readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of the <i>Inn</i>
(3)	admission declaration	means the declaration referred to in Q12 in Part 4
(4)	administration of oaths	has the same meaning as set out in paragraph 8 of Schedule 2 to the <i>LSA</i>
(5)	administrative sanction	means the imposition of an administrative warning, fixed penalty fine or other administrative fine up to the prescribed maximum, or any combination of the above in accordance with Section 5.A
(6)	answer	in Part 5, means any document served in accordance with Regulation E240
(7)	appeal panel	(a) in Section 5.A means an Appeal Panel constituted in accordance with paragraph rE84, to perform the functions set out in regulations E88 and E89 of that Section 5.A;  (b) in Section 5.D means an Appeal Panel constituted in accordance with rE256 of that Section 5.D, to perform the functions set out in paragraphs rE276 and rE277 of that Section 5.D;  (c) in Section 5.E means an Appeal Panel constituted in accordance with paragraph 5 of Schedule 1 of that Section 5.E, to perform the functions set out in paragraphs rE320 to rE322 of that Section 5.E.
(8)	appellant	in Part 5 means an appellant wishing to appeal to the visitors or the High Court against a <i>relevant decision</i>
(9)	applicable person	Means <i>persons</i> who were <i>unregistered barristers</i> or <i>BSB regulated persons</i> at the time of the conduct complained of (including, for the purposes of Part 5 of the <i>Handbook</i> only, <i>persons</i> who would have fallen within the definition of <i>BSB regulated persons</i> but for the fact that, at the time of the conduct complained of, they had their authorisation or licence <i>suspended</i> or <i>revoked</i> , or were subject to a sentence of <i>suspension</i> or <i>disbarment</i> , or were subject to a disqualification order (as the case may be) that has subsequently been overturned on appeal)
(10)	applicant body	in Part 3, means a licensable body, or a <i>BSB authorised</i> body which makes an application to the <i>Bar Standards Board</i> for authorisation in accordance with the <i>Scope of Practice, Authorisation and Licensing Rules</i> in Part 3;
(11)	application fee	means the amount payable by a person to cover the cost of an application process for seeking to be authorised by the <i>BSB</i> to carry out any <i>reserved legal services</i> or seeking to extend an existing authorisation;
(12)	approved assessment organisation	means an organisation approved by the <i>Joint Advocacy Group</i> to assess the competence of advocates to conduct <i>criminal advocacy</i> against the <i>statement of standards</i> ;
(13)	approved regulator	means any body specified as an approved regulator in paragraph 1 of Schedule 4 of the <i>LSA</i> or designated as an approved regulator by an order under paragraph 17 of that Schedule;
(14)	approved training organisation	means any body or organisation (including chambers) which has been approved by the Bar Standards Board for the purpose of providing professional training under Section 4.B5;

(15)	associates	<p>has the meaning given in paragraph 5 to Schedule 13 of the <i>LSA</i> namely:</p> <p>(i) "associate," in relation to a <i>person</i> ("A") and:</p> <p>(a) a shareholding in a body ("S"); or</p> <p>(b) an entitlement to exercise or control the exercise of voting power in a body ("V");</p> <p>means a <i>person</i> listed in sub-paragraph (ii).</p> <p>(ii) The <i>persons</i> are:</p> <p>(a) the spouse or civil <i>partner</i> of A;</p> <p>(b) a child or stepchild of A (if under 18);</p> <p>(c) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest);</p> <p>(d) an undertaking of which A is a director;</p> <p>(e) an employee of A;</p> <p>(f) a <i>partner</i> of A (except, where S or V is a <i>partnership</i> in which A is a <i>partner</i>, another <i>partner</i> in S or V);</p> <p>(g) if A is an undertaking:</p> <p>(I) a <i>director</i> of A;</p> <p>(II) a subsidiary undertaking of A; or</p> <p>(III) a <i>director</i> or <i>employee</i> of such a subsidiary undertaking;</p> <p>(h) if A has with any other <i>person</i> an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in S or V (whether or not they are interests within the meaning of section 72(3) of the <i>LSA</i>), that other <i>person</i>; or</p> <p>(i) if A has with any other <i>person</i> an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to S or V, that <i>person</i></p>
(16)	an association	<p>means where:</p> <p>(a) <i>BSB</i> authorised individuals are <i>practising</i> as a chambers; or</p> <p>(b) <i>BSB</i> authorised <i>persons</i> are sharing premises and/or costs and/or using a common vehicle for obtaining or distributing work with any <i>person</i> other than a <i>BSB regulated person</i>, in a manner which does not require the <i>association</i> to be authorised as an entity under the <i>Legal Services Act 2007</i></p>
(17)	authorisation fee	means the fee prescribed from time to time by the <i>Bar Standards Board</i> in accordance with Rule S94
(18)	authorised individual	means <i>BSB authorised individuals</i> and <i>authorised (non-BSB) individuals</i>
(19)	authorised (non-BSB) body	means a <i>partnership</i> , <i>LLP</i> or company authorised or licensed by another <i>approved regulator</i> to undertake <i>reserved legal activities</i>
(20)	authorised (non-BSB) individual	means an individual that is authorised to provide reserved legal activities by another <i>approved regulator</i> where such an individual is working as a <i>manager</i> or an <i>employee</i> of a <i>BSB entity</i>
(21)	authorised (non-BSB) person	means an <i>authorised (non-BSB) body</i> or an <i>authorised (non-BSB) individual</i> (as the case may be)
(22)	authorised person	has the meaning set out in section 18(1) of the <i>LSA</i>

(23)	bankruptcy order	includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world
(24)	Bar	means the Bar of England and Wales
(25)	Bar Council	means The General Council of the Bar as constituted from time to time or a committee thereof
(26)	Bar Professional Training Course	means a course which has been approved by the <i>Bar Standards Board</i> as providing vocational <i>training</i> of appropriate content and quality to satisfy the requirements of the <i>Vocational Stage</i>
(27)	Bar Standards Board	means the board established to exercise and oversee the regulatory functions of the <i>Bar Council</i>
(28)	Bar Transfer Test	means an examination administered by the <i>Bar Standards Board</i> which: <ul style="list-style-type: none"> <li>(a) is designed to assess whether a <i>person</i> has the professional knowledge (including knowledge of the rules of professional conduct) required in order to practise as a <i>barrister</i> in England and Wales; and</li> <li>(b) covers subjects not already covered by the education and training of the <i>person</i> concerned, the knowledge of which is essential for such <i>practice</i></li> </ul>
(29)	barrister	has the meaning given in s. 207 of the <i>LSA</i> and includes <ul style="list-style-type: none"> <li>(a) <i>practising barristers</i>;</li> <li>(b) <i>pupils</i>; and</li> <li>(c) <i>unregistered barristers</i></li> </ul>
(30)	BMIF	means Bar Mutual Indemnity Fund Limited
(31)	BSB authorised body	means a body (corporate or unincorporated) which is authorised by the BSB to carry on reserved legal activities and is not a <i>licensable body</i>
(32)	BSB authorised individuals	means all individuals authorised by the <i>Bar Standards Board</i> to carry on <i>reserved legal activities</i> including: <ul style="list-style-type: none"> <li>a) <i>practising barristers</i>;</li> <li>b) <i>second six pupils</i>;</li> <li>c) <i>registered European lawyers</i></li> </ul>
(33)	BSB authorised persons	means BSB entities and BSB authorised individuals
(34)	BSB entity	means <i>BSB authorised body</i> and <i>BSB licensed body</i>
(35)	BSB licensed body	means a <i>licensed body</i> that has been licensed by the BSB
(36)	BSB regulated individuals	means <i>BSB authorised individuals</i> , authorised (non-BSB) individuals employed by BSB authorised bodies and BSB regulated <i>managers</i>
(37)	BSB regulated managers	means a <i>manager</i> of a <i>BSB entity</i>
(38)	BSB regulated person	Includes to the extent described in the application sections of the Handbook: <ul style="list-style-type: none"> <li>a) <i>Practising barristers</i>;</li> <li>b) <i>registered European lawyers</i>;</li> <li>c) <i>BSB entities</i>; and</li> <li>d) <i>Any employees or managers of the above.</i></li> </ul>

(39)	BSB Representative	means a <i>person</i> or <i>persons</i> appointed by the <i>Bar Standards Board</i> in accordance with Regulation E103 following a referral of a matter by the <i>PCC</i> to a <i>Disciplinary Tribunal</i>
(40)	call	means call to the <i>Bar</i> in accordance with the <i>Bar Training Rules</i>
(41)	call declaration	means the Declaration referred to in Rule Q112.3
(42)	CCBE	means The Council of Bars and Law Societies of Europe
(43)	CCBE State	means any state whose legal profession is a full member, an associate member or an observer member of the <i>CCBE</i>
(44)	Certificate of Good Standing	means: <p>(a) in relation to a <i>person</i> authorised by another <i>Approved Regulator</i> or by a <i>Qualified Foreign Lawyer</i>, a certificate issued by the <i>Approved Regulator</i> or the professional body or other authority responsible for regulating the profession of which the <i>person</i> concerned is a member attesting that the <i>person</i> concerned:</p> <p>(i) is of good character;</p> <p>(ii) has not been the subject of a <i>Bankruptcy Order</i> or <i>Directors Disqualification Order</i> nor entered into an individual voluntary arrangement with creditors; and</p> <p>(iii) has not been prohibited and is not currently suspended from <i>practising</i> on account of serious professional misconduct or the commission of a criminal offence;</p> <p>(b) in relation to a <i>Qualified European Lawyer</i>, evidence of the kind referred to in Regulation 9(2) of the European Qualification Regulations, that the <i>person</i> concerned:</p> <p>(i) is of good character;</p> <p>(ii) has not been the subject of a <i>Bankruptcy Order</i> or <i>Directors Disqualification Order</i> nor entered into an individual voluntary arrangement with creditors; and</p> <p>(iii) has not been prohibited and is not currently suspended from <i>practising</i> on account of serious <i>professional misconduct</i> or the commission of a <i>criminal offence</i></p>
(45)	chambers	means a place at or from which one or more <i>self-employed barristers</i> or <i>BSB authorised bodies</i> carry on their practices and also refers where the context so requires to all the <i>barristers</i> (excluding pupils) and <i>BSB authorised bodies</i> who for the time being carry on their practices at or from that place;
(46)	client	means, the <i>person</i> for whom you act and, where the context permits, includes prospective and former clients
(47)	client money	means <p>(a) money, securities or other assets beneficially owned by a <i>client</i>; or</p> <p>(b) money, securities or other assets provided by, or for the benefit of, your <i>client</i> or intended by another party to be transmitted to your <i>client</i>,</p> <p>But excludes:</p> <p>(c) a fixed fee paid in advance; or</p> <p>(d) a payment made in settlement of an accrued debt; or</p> <p>(e) money which belongs to your <i>employer</i></p>



(48)	Code of Conduct for European Lawyers	means the code of conduct adopted by the <i>CCBE</i> (as may be amended from time to time) applying to all lawyers undertaking <i>cross border activities</i> in a <i>CCBE State</i>
(49)	Company	has the same meaning as in section 1 of the Companies Act 2006
(50)	complaint	means, for the purposes of Part 2, a complaint by a <i>client</i> about the standard of service received that is addressed either to the <i>Legal Ombudsman</i> or the <i>chambers</i> or the <i>BSB authorised person</i> and, for the purposes of Part 5, an allegation, or a group of associated allegations, by any <i>person</i> or by the <i>Bar Standards Board</i> of its own motion of <i>professional misconduct</i> or a breach of the Core Duties and/or rules of this <i>Handbook</i> and includes a <i>legal aid complaint</i>
(51)	Complaints Regulations	means the Regulations set out at section 5.A
(52)	conditional fee agreement	means a conditional fee agreement as defined in Section 58 of the Courts and Legal Services Act 1990
(53)	conduct litigation or conduct of litigation	has the same meaning as set out in paragraph 4 of Schedule 2 to the <i>LSA</i> . Conducting litigation shall be construed accordingly
(54)	Convening Order	means the Order described in Rule E126
(55)	conviction	means a criminal conviction for an <i>indictable offence</i>
(56)	Council of the Inns of Court (COIC)	means the Council of the Inns of Court and its successors including any entity or part through which it exercises its functions
(57)	court	means any court or tribunal or any other <i>person</i> or body whether sitting in public or in private before whom a <i>barrister</i> appears or may appear as an advocate
(58)	criminal advocacy	means advocacy in all hearings arising out of a police-led or Serious Fraud Office-led investigation and prosecuted in the criminal courts by the Crown Prosecution Service or the Serious Fraud Office but does not include hearings arising out of Parts 2, 5 or 8 of the Proceeds of Crime Act 2002
(59)	criminal advocacy evaluation form	means a form completed by a judge to record the competence of a barrister to conduct <i>criminal advocacy</i> against the <i>statement of standards</i>
(60)	criminal offence	means any offence, wherever committed, under the criminal law of any jurisdiction (including an offence the conviction for which is a spent conviction within the meaning of the Rehabilitation of Offenders Act 1974) except:  (a) an offence for which liability is capable of being discharged by payment of a fixed penalty; and  (b) an offence which has as its main ingredient the unlawful parking of a vehicle
(61)	pending criminal proceedings	are pending if a <i>person</i> :  (a) is currently charged with, or  (b) is on bail or in detention or custody (or has failed to surrender to custody) in connection with,  any <i>criminal offence</i>

(62)	Cross border activities	means: (a) the undertaking by a <i>BSB authorised person</i> of foreign work in a <i>CCBE State</i> other than the <i>UK</i> , whether or not the <i>BSB authorised person</i> is physically present in that <i>CCBE State</i> ; and (b) any professional contact by a <i>BSB authorised person</i> with a lawyer of a <i>CCBE State</i> other than the <i>UK</i>
(63)	decision period	for the purposes of applications for authorisation in Part 3 means: in respect of an application for authorisation or licensing, the period of 6 months; in respect of a standalone application for authorisation to conduct litigation, the period of 3 months; and in respect of an application for approval of a <i>manager, owner, HOLP or HOFA</i> , the period of 1 month, in each case, commencing on the last date on which the <i>Bar Standards Board</i> receives any of the documentation, information or payments required to be submitted with such application
(64)	defendant	in Section 5.B means the <i>applicable person</i> who is the subject of the disciplinary charge or charges brought before a <i>Disciplinary Tribunal</i> and/or of a disqualification application made to the <i>Disciplinary Tribunal</i> under the <i>Complaints Regulations</i> and in Section 5.D means the <i>applicable person</i> against whom the <i>Bar Standards Board</i> is considering taking interim action in accordance with Section 5.D
(65)	Definitions Section	means Part 4 of the <i>Handbook</i>
(66)	determination by consent procedure	means the procedure set out in Regulation E67
(67)	devilling	means where a <i>self-employed barrister</i> ("A") arranges for another <i>barrister</i> ("B") in the same <i>chambers</i> to carry out work for A on the basis that A will be responsible for the payment of B's remuneration for such work and will be responsible to the client for the work as if it were their own. "devil" and "devils" will be construed accordingly
(68)	Directions Judge	means a Judge or Queen's Council designated by the <i>President</i>
(69)	Director	means a <i>director</i> of a company, and includes the director of a <i>BSB entity</i> or an <i>authorised (non-BSB) body</i> which is a company, and in relation to a <i>societas Europaea</i> includes: a) in a two-tier system, a member of the management organ and a member of the supervisory organ; b) in a one-tier system, a member of the administrative organ
(70)	directors disqualification order	includes a disqualification order made by a court, or disqualification undertaking accepted by the secretary of state, pursuant to the Company Directors Disqualification Act 1986 and any similar order made or undertaking given in any jurisdiction in the world
(71)	Disciplinary Tribunal	means a Tribunal convened pursuant to E130 of the Disciplinary Tribunal Regulations 2014 to consider an allegation of <i>professional misconduct</i> against a <i>BSB regulated person</i> or <i>unregistered barrister</i> (for which the sanctions may include disqualification, where Part 5 so provides) and/or to consider an application for <i>disqualification</i> against an <i>applicable person</i>
(72)	discrimination	has the same meaning as in chapter 2 of the Equality Act 2010

(73)	disqualification condition	means that an <i>applicable person</i> has (intentionally or through neglect): <ul style="list-style-type: none"> <li>a) breached a relevant duty to which the person is subject ; or</li> <li>b) caused, or substantially contributed to, a BSB regulated person breaching a duty imposed under this handbook (or in the case of a <i>BSB licensed body</i> a significant breach of its licence); and</li> <li>c) in either case, that the BSB is of the view that it is undesirable that the <i>applicable person</i> should engage in one or more of the relevant activities</li> </ul>
(74)	disqualification order	means an order: <ul style="list-style-type: none"> <li>a) made by a <i>Disciplinary Tribunal</i> in disposing of a disciplinary charge or disqualification application referred to it by the <i>PCC</i>; and</li> <li>b) made on the basis that the <i>disqualification condition</i> is satisfied in respect of the <i>applicable person</i> who is the subject of the <i>disqualification order</i>; and</li> <li>c) either indefinitely or for a stated period, disqualifying an <i>applicable person</i> from one or more relevant activities and prohibiting any <i>BSB authorised person</i> from appointing them or employing them in respect of such relevant activities</li> </ul>
(75)	disqualify or disqualification	means the power of the <i>Bar Standards Board</i> , pursuant to Section 5.B, to disqualify an <i>applicable person</i> from performing one or more of the <i>relevant activities</i> where the <i>disqualification condition</i> is satisfied, which power when exercised on an interim basis shall be exercised in accordance with Section 5.D
(76)	diversity data	Means information relating to the following characteristics in respect of an individual: <ul style="list-style-type: none"> <li>a) Age</li> <li>b) Disability</li> <li>c) Pregnancy and maternity</li> <li>d) Race (including ethnic or national origins, colour or nationality)</li> <li>e) Religion or belief (including lack of belief)</li> <li>f) Sex</li> <li>g) Sexual orientation</li> </ul>
(77)	effective trial	means a trial that allows for the assessment of a <i>barrister</i> against standards 1-4 as set out in the <i>statement of standards</i>
(78)	employed barrister	means: <ul style="list-style-type: none"> <li>a) an <i>employed barrister (authorised non-BSB body)</i>; or</li> <li>b) an <i>employed barrister (BSB entity)</i>; or</li> <li>c) an <i>employed barrister (non authorised body)</i></li> </ul>
(79)	employed barrister (authorised non-BSB body)	means a <i>practising barrister</i> who is employed by an authorised (non-BSB) body either: <ul style="list-style-type: none"> <li>a) under a contract of employment; or</li> <li>b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice),</li> </ul> who supplies <i>legal services</i> as a <i>barrister</i> in the course of their employment

(80)	employed barrister ( <i>BSB entity</i> )	means a <i>practising barrister</i> who is employed by a <i>BSB entity</i> either: a) under a contract of employment; or b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice), who supplies <i>legal services</i> as a <i>barrister</i> in the course of their <i>employment</i>
(81)	employed barrister (non-authorised body)	means a <i>practising barrister</i> who is employed: a) other than by a <i>regulated entity</i> ; b) either: (i) under a contract of <i>employment</i> ; or (ii) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice); or (iii) by virtue of an office under the Crown or in the institutions of the European Union; and who supplies <i>legal services</i> as a <i>barrister</i> in the course of their <i>employment</i>
(82)	employer	means <i>persons</i> by whom employed <i>barristers</i> (non-authorised bodies) are <i>employed</i> including any holding subsidiary or associated company, corporate body or firm of that <i>person</i>
(83)	enforcement strategy	means the strategy on enforcement from time to time published by the <i>Bar Standards Board</i> , in effect as at the date the complaint is made to the <i>Bar Standards Board</i> or raised by the <i>Bar Standards Board</i> of its own motion under Part 5
(84)	Enforcement Regulations	means the supervision and enforcement regulations set out at Part 5
(84)	English law	includes international law and the law of the European Communities
(86)	Equality and Diversity Officer	means the individual appointed as such by the <i>chambers</i> or the <i>BSB entity</i> (as appropriate), one of whose responsibilities is to ensure compliance with the Equality and Diversity set out at rules C110-C111
(87)	Establishment Directive	means Directive 98/5/EC of the European Parliament and of the Council of February 1998 to facilitate <i>practice</i> of the profession of lawyer on a permanent basis in a <i>Member State</i> other than that in which the qualification was obtained
(88)	European lawyer	means a <i>person</i> who is a national of a <i>Member State</i> and who is authorised in any <i>Member State</i> to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's <i>Practice</i> ) Order 1999, but who is not any of the following: a) a <i>solicitor</i> or <i>barrister</i> of England and Wales or Northern Ireland; or b) a <i>solicitor</i> or advocate under the law of Scotland
(89)	European Qualifications Regulations	means the European Union (Recognition of Professional Qualifications) Regulations 2015
(90)	family responsibilities	includes caring responsibilities for older, young, or disabled dependants or relatives

(91)	Fitness to Practise Panel	means a Fitness to Practise Panel constituted under Section 5.E, in accordance with paragraph 4 of schedule 1
(92)	foreign client	means a lay <i>client</i> who has their centre of main interests outside England and Wales, or who reasonably appears as having that characteristic
(93)	foreign lawyer	is a <i>person</i> who is a member, and entitled to <i>practice</i> as such, of a legal profession regulated within a jurisdiction outside England and Wales and who is not an <i>authorised person</i> for the purposes of the <i>LSA</i>
(94)	foreign work	means <i>legal services</i> of whatsoever nature relating to: a) court or other legal proceedings taking place or contemplated to take place outside England and Wales; or b) if no court or other legal proceedings are taking place or contemplated, any matter or contemplated matter not subject to the law of England and Wales
(95)	full accreditation	means accreditation that permits a <i>barrister</i> to undertake <i>criminal advocacy</i> in the courts in England and Wales for a period of up to five years
(96)	full practising certificate	means, in accordance with Rule S63, a <i>practising certificate</i> which entitles a <i>barrister</i> to exercise a <i>right of audience</i> before every court in relation to all proceedings
(97)	Full Qualification Certificate	means a certificate issued by the <i>Bar Standards Board</i> under Rule Q69 or Rule Q86 on satisfactory completion of, or exemption from, the <i>Professional Stage</i>
(98)	Handbook	means this Handbook
(99)	harassment	has the same meaning as in section 26 of the Equality Act 2010
(100)	Hearings before the Visitors	means an appeal hearing constituted under Section 3.V
(101)	HOFA	In relation to a <i>BSB authorised body</i> : has the meaning set out in the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2016  In relation to a <i>BSB licensed body</i> : means an individual who meets the requirements set out in paragraph 13 of Schedule 11 to the <i>LSA</i> and has been approved as a Head of Finance and Administration by the <i>BSB</i> in accordance with section E of Part 3;
(102)	HOLP	In relation to a <i>BSB authorised body</i> : has the meaning set out in the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2016  In relation to a <i>BSB licensed body</i> : means an individual who meets the requirements set out in paragraph 11 of Schedule 11 to the <i>LSA</i> and has been approved as a Head of Legal Practice by the <i>BSB</i> in accordance with section E of Part 3;  NB: This definition is not the same as the equivalent term in the Legal Services Act 2007.
(103)	home regulator	means the body in a <i>Member State</i> which authorises a European lawyer to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 and, if the European lawyer is authorised in more than one <i>Member State</i> , it shall mean any such body

(104)	home professional title	means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to their <i>home State</i> in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 under which they are authorised in their <i>home State</i> to pursue professional activities
(105)	home State	means the <i>Member State</i> in which a European lawyer acquired the authorisation to pursue professional activities under their home professional title and, if they are authorised in more than one <i>Member State</i> , it shall mean any such <i>Member State</i>
(106)	immigration work	means the provision of immigration advice and immigration services, as defined in section 82 of the Immigration and Asylum Act 1999
(107)	independent assessor	means a person appointed by the <i>Joint Advocacy Group</i> to attend court to assess the competence of a <i>barrister</i> to conduct <i>criminal advocacy</i> against the <i>statement of standards</i>
(108)	indictable offence	has the same meaning as in Schedule 1 of the Interpretation Act 1978, namely "an offence which, if committed by an adult is triable on indictment whether it is exclusively so triable or triable either way"
(109)	Inn	means one of the four Inns of Court, namely, the Honourable Societies of Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn  " <i>Inns</i> " should be construed accordingly
(110)	instructions	means <i>instructions</i> or directions in whatever form (including a brief to appear as an advocate before a Court) given to a <i>practising barrister</i> or a <i>BSB entity</i> to supply legal services whether in a contentious or in a non-contentious matter and "instructed" shall have a corresponding meaning
(111)	interim panel	means an <i>interim panel</i> constituted in accordance with paragraph rE254, to perform the functions set out in paragraphs rE265 to rE267 of Section 5.D
(112)	intermediary	means  any <i>person</i> by whom a <i>self-employed barrister</i> or <i>BSB entity</i> is instructed on behalf of a <i>client</i> excluding a <i>professional client</i> who is not also the <i>client</i> save for an <i>intermediary</i> in the context of a <i>referral fee</i> which includes a <i>professional client</i>
(113)	Joint Advocacy Group	means the group established by the <i>Bar Standards Board</i> , the Solicitors' Regulation Authority and ILEX Professional Standards, in order to oversee the quality assurance and accreditation of <i>criminal advocacy</i>
(114)	Justices' clerk	means a serving Justices' clerk or assistant Justices' clerk, appointed under the Courts Act 2003
(115)	lay member	means either:  (a) a <i>lay person</i> appointed to be a member of the <i>Bar Standards Board</i> or one of its regulatory committees; or,  (b) a <i>lay person</i> appointed by the President to serve on Disciplinary Tribunals, Interim Suspension Panels and Appeal Panels therefrom, and Fitness to Practise Panels and Appeal Panels therefrom.
(116)	Lay person	means a person who is not and never has been a barrister and who has not completed the training required in order to be called to the Bar
(117)	lay representative	means a <i>lay person</i> appointed by the Lord Chief Justice to serve on Hearings before the Visitors.
(118)	legal aid complaint	has the same meaning as in section 40 of the Administration of Justice Act 1985

(119)	Legal Advice Centre	<p>means a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and:</p> <p>a) which employs or has the services of one or more <i>solicitors</i> conducting work pursuant to rule 4.16 of the SRA <i>Practice Framework Rules 2011</i>; or</p> <p>b) which has been and remains designated by the <i>Bar Standards Board</i> as suitable for the employment or attendance of <i>barristers</i> subject to such conditions as may be imposed by the <i>Bar Standards Board</i> in relation to insurance or any other matter whatsoever</p>
(120)	Legal Ombudsman	means scheme administered by the Office for Legal Complaints under Part 6 of the <i>LSA</i>
(121)	legal services	<p>includes legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:</p> <p>a) sitting as a judge or arbitrator or acting as a mediator;</p> <p>b) lecturing in or teaching law or writing or editing law books articles or reports;</p> <p>c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;</p> <p>d) communicating to or in the press or other media;</p> <p>e) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;</p> <p>f) in relation to a <i>barrister</i> who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of their learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;</p> <p>g) early neutral evaluation, expert determination and adjudications</p>
(122)	Legal Services Board or LSB	means the independent body established under the <i>LSA</i> to be the overarching regulator for the legal profession as a whole
(123)	Legal Aid Agency	is the executive agency established under Legal Aid Sentencing and Punishment of Offenders Act 2012 to manage and administer the legal aid system
(124)	licensed access client	means a <i>person</i> or organisation approved as such by the <i>Bar Standards Board</i> in accordance with the Licensed Access Recognition Regulations <a href="https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/">https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/</a>
(125)	Licensed Access rules	means the Rules on licensed access set out at Rules C132 to C141

(126)	licensable body	<p>Has the same meaning as set out in s. 72 LSA namely:</p> <p>(1) A body (“B”) is a licensable body if a <i>non-authorised person</i>–</p> <p>(a) is a <i>manager</i> of B, or</p> <p>(b) has an interest in B.</p> <p>(2) A body (“B”) is also a licensable body if–</p> <p>(a) another body (“A”) is a <i>manager</i> of B, or has an interest in B, and</p> <p>(b) <i>non-authorised persons</i> are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A.</p> <p>(3) For the purposes of this Act, a <i>person</i> has an interest in a body if–</p> <p>(a) the <i>person</i> holds shares in the body, or</p> <p>(b) the <i>person</i> is entitled to exercise, or control the exercise of, voting rights in the body.</p> <p>(4) A body may be licensable by virtue of both subsection (1) and subsection (2).</p> <p>(5) For the purposes of this Act, a <i>non-authorised person</i> has an indirect interest in a licensable body if the body is licensable by virtue of subsection (2) and the <i>non-authorised person</i> is entitled to exercise, or control the exercise of, voting rights in A.</p> <p>(6) “shares” means–</p> <p>(a) in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts);</p> <p>(b) in relation to a body with capital but no share capital, rights to share in the capital of the body;</p> <p>(c) in relation to a body without capital, interests–</p> <p>(i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or</p> <p>(ii) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up;</p> <p>and references to the holding of shares, or to a shareholding, are to be construed accordingly.</p>
(127)	licensed body	Has the same meaning as in s71(2) of the LSA, namely a <i>licensable body</i> which has been granted a licence by the <i>Bar Standards Board</i> or other licensing authority to undertake <i>reserved legal activities</i> ;
(128)	licensing authority	means an <i>approved regulator</i> which is designated as a licensing authority under Part 1 of Schedule 10 to the LSA, and whose licensing rules have been approved for the purposes of the LSA
(129)	limited practising certificate	in accordance with rS65, a limited <i>practising</i> certificate authorises a <i>barrister</i> to exercise any right of audience that they had on 30 July 2000 as a result of them being a <i>barrister</i>
(130)	litigation extension fee	means the amount payable by a <i>BSB authorised person</i> which has a litigation extension
(131)	LLP	means a limited liability <i>partnership</i> formed by being incorporated under the Limited Liability <i>Partnerships Act 2000</i>
(132)	LSA	means the <i>Legal Services Act 2007</i> (as amended)



(133)	manager	has the same meaning as set out in s. 207 <i>LSA</i> namely: a) a member of an <i>LLP</i> ; b) a director of a company; c) a <i>partner</i> in a <i>partnership</i> ; or d) in relation to any other body, a member of its governing body.
(134)	material interest	a person holds a material interest in a body (“B”) if the person: i. holds at least 10% of the shares in B, ii. is able to exercise significant influence over the management of B by virtue of the person’s shareholding in B, iii. holds at least 10% of the shares in a parent undertaking (“P”) of B, iv. is able to exercise significant influence over the management of P by virtue of the person’s shareholding in P, v. is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B, vi. is able to exercise significant influence over the management of B by virtue of the person’s entitlement to exercise, or control the exercise of, voting rights in B, vii. is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P, or viii. is able to exercise significant influence over the management of P by virtue of the person’s entitlement to exercise, or control the exercise of, voting rights in P. and for the purposes of this definition “person” means– i. the person, ii. any of the person’s associates, or iii. the person and any of the person’s associates taken together;
(135)	mediation	means the process whereby the parties to a dispute appoint a neutral <i>person</i> (mediator) to assist them in the resolution of their dispute
(136)	medical	In relation to any person means a registered medical practitioner
(137)	Medical Examiner	means a registered medical practitioner nominated to carry out a medical examination of an Individual under Regulations rE299.1 and rE309.2a of Section 5.E and provide medical advice to the Fitness to Practise Panel.
(138)	medical member	means a person appointed by the President under Section 5.E, in accordance with paragraph 1 of schedule 1 for the purpose of serving on Fitness to Practise and Appeal Panels.
(139)	Member State	means a state which is a member of the European Union

(140)	minor criminal offence	includes: a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; c) an offence whose main ingredient is the unlawful parking of a motor vehicle
(141)	non-authorised body	any body that is not a <i>regulated entity</i>
(142)	non-authorised individual	means any individual who is not a <i>BSB authorised individual</i> or an <i>authorised (non-BSB) individual</i>
(143)	non-authorised person	means: a) non-authorised bodies; and b) <i>non-authorised individuals</i>
(144)	non-reserved activities	means any activities other than reserved legal activities
(145)	notarial activities	has the same meaning as set out in paragraph 7 of Schedule 2 to the <i>LSA</i>
(146)	Owner	means: a) in relation to a <i>BSB entity</i> that is a company or an <i>LLP</i> (or an applicant to become such a body), any <i>person</i> who holds a <i>material interest</i> in that company or <i>LLP</i> ; b) in relation to a <i>BSB entity</i> that is a <i>partnership</i> (or an applicant to become such a body), any <i>partner</i> of that <i>partnership</i> who holds a <i>material interest</i> in that <i>partnership</i>
(147)	parental leave	means leave taken by the main carer of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex
(148)	partner	means a <i>person</i> who is or is held out as a <i>partner</i> in an unincorporated firm.
(149)	partnership	means an unincorporated <i>partnership</i> , and includes any unincorporated firm in which <i>persons</i> are or are held out as <i>partners</i> , but does not include an <i>LLP</i>
(150)	PCC	means the Professional Conduct Committee and its successors in title from time to time
(151)	period of deferral	has the meaning set out in Regulation E79
(152)	person	includes a body of <i>persons</i> (corporate or unincorporated)
(153)	petition	In Part 5 means the petition of appeal served pursuant to Rule E236.1

(154)	practice	<p>means the activities, including business related activities, in that capacity, of:</p> <ul style="list-style-type: none"> <li>a) a <i>practising barrister</i>;</li> <li>b) a <i>barrister</i> exercising a <i>right of audience</i> in a <i>Member State</i> other than the United Kingdom pursuant to the <i>Establishment Directive</i>, or the European Communities (Lawyer's Practice) Regulations 2000;</li> <li>c) a <i>BSB entity</i>;</li> <li>d) a <i>manager</i> of a <i>BSB entity</i></li> <li>e) an employee of a <i>BSB entity</i></li> </ul> <p>"practise", "<i>practising</i>" and "<i>practised</i>" should be construed accordingly</p>
(155)	practising address	means an address from which the services which consist of or include the carrying on of <i>reserved legal activities</i> are being provided
(156)	practising barrister	means a <i>barrister</i> who <i>practises</i> as a <i>barrister</i> as defined in Rule S9
(157)	practising certificate	means a <i>full practising certificate</i> , a <i>provisional practising certificate</i> , a <i>limited practising certificate</i> , or an <i>European lawyer's practising certificate</i> or a temporary <i>practising certificate</i> issued by the <i>Bar Council</i>
(158)	practising certificate fee	means the amount payable for a <i>practising certificate</i> each year, such amount to be calculated by reference to the Schedule of <i>Practising Certificate Fees</i> issued by the <i>Bar Council</i> from time to time, together with the provisions of Section 3.C
(159)	practising certificate year	means the period from 1 April in any calendar year to 31 March in the next calendar year
(160)	the President	means the President of the Council of the <i>Inns of Court</i> ;
(161)	probate activities	has the same meaning as set out in paragraph 6 of Schedule 2 to the <i>LSA</i>
(162)	professional client	<p>means in relation to giving <i>instructions</i> to a <i>BSB authorised person</i>:</p> <ul style="list-style-type: none"> <li>a) any <i>person</i> authorised by another <i>approved regulator or licensing authority</i>;</li> <li>b) an <i>employed barrister</i> or registered European lawyer;</li> <li>c) any <i>practising barrister</i> or registered European lawyer acting on their own behalf;</li> <li>d) any <i>BSB authorised person</i> who is authorised to conduct litigation;</li> <li>e) a <i>foreign lawyer</i>;</li> <li>f) a Scottish or Northern Irish <i>Solicitor</i>; or</li> <li>g) the representative of any body (such as a Legal Advice Centre or Pro Bono or Free Representation Unit) which arranges for the supply of legal services to the public without a fee, and which has been and remains designated by the <i>Bar Standards Board</i> (subject to such conditions as may be imposed by the <i>Bar Council</i> or <i>Bar Standards Board</i> in relation to insurance or any other matter whatsoever) as suitable for the instruction of <i>barristers</i>, and which instructs a <i>barrister</i> to supply legal services without a fee;</li> </ul>

(163)	professional misconduct	means a breach of this Handbook by an <i>applicable person</i> which is not appropriate for disposal by way of the imposition of <i>administrative sanctions</i> , pursuant to Section 5.A
(164)	professional principles	has the same meaning as set out in s. 1(3) LSA namely: (a) that authorised <i>persons</i> should act with independence and integrity, (b) that authorised <i>persons</i> should maintain proper standards of work, (c) that authorised <i>persons</i> should act in the best interests of their clients, (d) that <i>persons</i> who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised <i>persons</i> should comply with their duty to the court to act with independence in the interests of justice, and (e) that the affairs of clients should be kept confidential.
(165)	progression	means for the purposes of the <i>QASA Rules</i> the process by which a <i>barrister</i> can increase their level under the QASA
(166)	provisional accreditation	means for the purposes of the <i>QASA Rules</i> accreditation that permits a <i>barrister</i> to undertake <i>criminal advocacy</i> in the courts in England and Wales for a period of up to 12 or 24 months, but which requires further steps to be taken to obtain <i>full accreditation</i>
(167)	provisional practising certificate	in accordance with Rule S64 a <i>provisional practising certificate</i> authorises a <i>pupil</i> in their second six to exercise a <i>right of audience</i> before every <i>court</i> in relation to all proceedings
(168)	Provisional Qualification Certificate	means a certificate issued by the <i>Bar Standards Board</i> under Q68 or Q96 following satisfactory completion of, or exemption from, the non- <i>practising</i> six months of <i>pupillage</i>
(169)	public access client	a <i>client</i> (other than a <i>licensed access client</i> ) that instructs a <i>barrister</i> directly on their behalf.
(170)	public access instructions	means <i>instructions</i> given to a <i>barrister</i> by or on behalf of a <i>public access client</i> , in accordance with Rules C119 to C131
(171)	pupil	means an individual who is undertaking either the first non- <i>practising</i> six months of <i>pupillage</i> or the second <i>practising</i> six months of <i>pupillage</i> , or a part thereof and who is registered with the <i>Bar Standards Board</i> as a <i>pupil</i>
(172)	pupil supervisor	an individual, qualified <i>barrister</i> who has been approved as a <i>pupil supervisor</i> by his or her <i>Inn of Court</i> , and in accordance with the Bar Training Regulations
(173)	pupillage	means a period of professional training under Section 4.B5 and includes a period of external training for which permission has been given by the <i>Bar Standards Board</i> under rQ45
(174)	Qualification Regulations	means the rules on qualification set out at Part 4
(175)	qualified European lawyer	means a <i>person</i> who is a national of a <i>Relevant State</i> and who either: (a) holds a diploma required in a <i>Relevant State</i> for the <i>practice</i> of a legal profession regulated by that State which diploma satisfies the requirements of Regulation 29(1)(a) of the European Qualification Regulations; or (b) satisfies the requirements of Regulation 29(1)(b) of the European Qualification Regulations

(176)	qualified foreign lawyer	means a <i>person</i> who is a member of a legal profession regulated in a jurisdiction outside England and Wales and entitled to <i>practise</i> as such
(177)	qualified lawyer	means a <i>person</i> who is authorised to <i>practise</i> by another <i>Approved Regulator</i> , a <i>Qualified European Lawyer</i> or a <i>Qualified Foreign Lawyer</i>
(178)	the Quality Assurance Committee	means the <i>Quality Assurance Committee</i> of the <i>Bar Standards Board</i> or its successor
(179)	QASA	means the Quality Assurance Scheme for Advocates developed by the <i>Joint Advocacy Group</i> and set out in the <i>QASA Rules</i> and <i>QASA Handbook</i>
(180)	<i>Quality Assurance Scheme for Advocates Rules (QASA Rules)</i>	means the rules set out in rC31 to rC63 of the <i>Handbook</i> , “QASA Rules” shall be construed accordingly
(181)	QASA Handbook	means the Handbook for the Quality Assurance Scheme for Advocates (crime) developed by the <i>Joint Advocacy Group</i> and published from time to time
(182)	QASA level	means one of the four QASA levels. Advocates will be accredited at one of these levels and this will correspond to the level of hearings that they can undertake
(183)	re-accreditation	means for the purposes of the <i>QASA Rules</i> the process by which a <i>barrister</i> demonstrates their competence and renews their accreditation at their existing level for a further five years, “re-accredited” shall be construed accordingly
(184)	a realistic prospect of a finding of professional misconduct being made	means that the <i>PCC</i> considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of a complaint, that it is more likely than not that a finding of <i>professional misconduct</i> will be made
(185)	a realistic prospect of the disqualification condition being satisfied	means that the <i>PCC</i> considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of a complaint, that it is more likely than not that it shall be determined that the <i>disqualification condition</i> has been satisfied
(186)	referral fee	means any payment or other consideration made in return for the referral of professional <i>instructions</i> by an <i>intermediary</i> ,  For the avoidance of doubt, a payment for the provision of a particular service or for some other reason, and not for the provision or referral of professional <i>instructions</i> is not a <i>referral fee</i> for the purposes of this definition
(187)	register of European lawyers	means the register of European lawyers maintained by the <i>Bar Standards Board</i> under regulation 15 of the European Communities (Lawyer’s <i>Practice</i> ) Regulations 2000 (SI 2000/1119).
(188)	registered European lawyer	means a European lawyer registered as such by the <i>Bar Council</i> and by an <i>Inn</i> in accordance with Section 3.D

(189)	Registered European lawyer's practising certificate	means, in accordance with rS68, a <i>practising certificate</i> which entitles a registered European lawyer to carry on the same reserved legal activities as a full <i>practising certificate</i> issued to a <i>barrister</i> , save that: <ul style="list-style-type: none"> <li>a) a registered European lawyer is only authorised to exercise a right of audience or a right to conduct litigation if they act in conjunction with a <i>solicitor</i> or <i>barrister</i> who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right; and</li> <li>b) a registered European lawyer is not authorised to prepare for remuneration any instrument creating or transferring an interest in land unless they have a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia</li> </ul>
(190)	registration	means for the purposes of the <i>QASA Rules</i> the process by which <i>barristers</i> enter the <i>QASA</i>
(191)	regulated entity	Means <i>BSB entity</i> or <i>authorised (non-BSB) body</i>
(192)	regulatory objectives	has the meaning given to it by section 1 of the <i>LSA</i> and consists of the following objectives: <ul style="list-style-type: none"> <li>a) protecting and promoting the public interest;</li> <li>b) supporting the constitutional principles of the rule of law;</li> <li>c) improving access to justice;</li> <li>d) protecting and promoting the interests of consumers;</li> <li>e) promoting competition in the provision of the services;</li> <li>f) encouraging an independent, strong, diverse and effective legal profession;</li> <li>g) increasing public understanding of the citizen's legal rights and duties; and</li> <li>h) promoting and maintaining adherence to the professional principles</li> </ul>
(193)	relevant activity	Means: <ul style="list-style-type: none"> <li>a) those activities set out in paragraph 7(2) of the Legal Services Act (General Council of the Bar) (Modification of Functions) Order 2016; or</li> <li>b) in relation to a <i>BSB licensed body</i>, those set out in section 99(2) of the <i>LSA</i>.</li> </ul>
(194)	relevant breach	in Parts 5.A and 5.B means a breach of the Code of Conduct amounting to <i>professional misconduct</i> .
(195)	relevant decision	means: <ul style="list-style-type: none"> <li>a) a decision of a <i>Disciplinary Tribunal</i>; or</li> <li>b) a decision, on review, by the <i>BSB</i> under Part X of the Bar Training Regulations (where the Bar Training Regulations provide for an appeal to the Visitors or the High Court against such a decision), herein a "Qualification Decision"</li> </ul>
(196)	Relevant State	means a <i>Member State</i> , Iceland, Norway, Liechtenstein or Switzerland
(197)	reserved instrument activities	has the same meaning as set out in paragraph 5 of Schedule 2 to the <i>LSA</i>

(198)	reserved legal activity	means: a) the exercise of a right of audience; b) the <i>conduct of litigation</i> ; c) reserved instrument activities; d) <i>probate activities</i> ; e) <i>notarial activities</i> ; and f) the administration of oaths; “reserved activities” shall be construed accordingly
(199)	respondent	In Part 5 means the <i>person</i> with an interest in upholding a <i>relevant decision</i> , being: (a) in the case of an appeal by the <i>BSB</i> against a decision of a <i>Disciplinary Tribunal</i> , the defendant; (b) in all other cases, the <i>BSB</i>
(200)	Restriction	in Section 5.E, means a <i>suspension</i> or <i>disqualification</i> , imposed, extended, varied or replaced by a Panel under Regulations rE302, rE304, rE309, rE310 or rE320 of Section 5.E
(201)	review panel	In Section 5.D, means a review panel constituted in accordance with rE255 of that Section V.D, to perform the functions set out in paragraphs rE270 to rE272 of that Section 5.D
(202)	right of audience	has the same meaning as set out in paragraph 3 of Schedule 2 to the <i>LSA</i> ;
(203)	right to conduct litigation	refer to <i>conduct of litigation</i> above
(204)	Scope of Practice, Authorisation and Licensing Rules	means the rules set out at Part 3 of this <i>Handbook</i>
(205)	selection panel	any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of <i>pupils</i> , assessed mini-pupils, tenants, clerks, or staff, or, in the context of a <i>BSB entity</i> , any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of <i>pupils</i> , assessed mini-pupils, <i>managers</i> or employees of that <i>BSB entity</i>
(206)	self-employed barrister	means a <i>practising barrister</i> who is self-employed
(207)	Senior Courts	means the Senior Courts of England and Wales, namely, the Court of Appeal, the High Court of Justice and the Crown Court
(208)	serious matter	For the purpose of Section 4.B8, a matter is a serious matter if it: i. falls within Rule Q104.1 or Rules Q104.2.b to .f; or ii. in the opinion of the <i>Inn</i> otherwise calls into question whether the <i>Student</i> is a fit and proper <i>person</i> to become a <i>practising barrister</i> .
(209)	solicitor	means a <i>solicitor</i> of the Supreme Court of England and Wales
(210)	specified amount	means in respect of a <i>pupil</i> , the amount payable to a <i>pupil</i> in their non- <i>practising</i> period or their <i>practising</i> period (as appropriate), such amount being specified by the <i>Bar Standards Board</i> from time to time
(211)	the standard directions	mean the standard directions set out at Annex 6 to Section 5.B (as such Annex may be amended or updated by the <i>Bar Standards Board</i> from time to time)

(212)	statement of standards	means for the purposes of the <i>QASA Rules</i> the standards against which the competence of advocates will be assessed for the purposes of <i>registration, progression</i> and <i>re-accreditation</i> .
(213)	suitability criteria	means: a) in respect of a <i>HOLP</i> , the criteria set out at Rules S104, S105 and S110; b) in respect of a <i>HOFA</i> , the criteria set out at Rules S106, S107 and S110; c) in respect of <i>owners</i> , the criteria set out at Rule S108 and S110; and d) in respect of <i>managers</i> , the criteria set out at Rule S109 and S110
(214)	Supervision Team	means the Supervision Team of the <i>Bar Standards Board</i>
(215)	suspended or suspension	means to suspend the <i>practising certificate</i> , licence or authorisation of a <i>BSB authorised person</i> , either generally or in respect of any separate authorisation that person may have to <i>conduct litigation</i> or to carry out public access work (and which includes, in the case of a <i>barrister</i> suspended by order of a Disciplinary Tribunal, the fact that they are suspended from <i>practice</i> and from the rights and privileges as a member of their <i>Inn</i> ) which power when exercised on an interim basis, shall be exercised in accordance with Section 5.D and when exercised in fitness to practise proceedings shall be exercised in accordance with Section 5.E.
(216)	trade association	means a body of <i>persons</i> (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of <i>persons</i> represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members
(217)	Temporary Qualification Certificate	means a certificate issued by the <i>Bar Standards Board</i> under Rule Q100 authorising a Qualified Foreign Lawyer to be admitted to temporary membership of an <i>Inn</i> and called to the <i>Bar</i> for the purpose of appearing as counsel in a particular case or cases before a court or courts of England and Wales
(218)	unfit to practise	when used to describe a <i>BSB authorised individual</i> means that he or she:  is incapacitated due to his or her physical or mental condition (including any addiction); and, as a result, the Individual's fitness to practise is impaired; and, the imposition of a restriction, or the acceptance of undertakings in lieu, is necessary for the protection of the public, is otherwise in the public interest or is in the Individual's own interests.
(219)	university	means an institution which makes available educational services under a name which includes the word "university" and in the case of an institution to which section 39(1) of the Higher Education Act 1998 applies which is authorised or has approval to include that word in that name as mentioned in that subsection
(220)	unregistered barrister	means an individual who does not hold a <i>practising certificate</i> but who has been called to the <i>Bar</i> by one of the <i>Inns</i> and has not ceased to be a member of the <i>Bar</i>
(221)	UK	means United Kingdom
(222)	victimisation	has the same meaning as in section 27 of the Equality Act 2010



(223)	the Visitors	means, in respect of appeals made before 7 January 2014, the panel nominated to hear an appeal pursuant to Rule E244.1 or, in the case of an appeal within Rule E244.3 to E244.5 the single judge nominated to hear the appeal
(224)	vocational stage	has the meaning set out in rQ27
(225)	workforce	means: <ul style="list-style-type: none"> <li>a) in the case of a <i>Chambers</i>, the staff, <i>barristers</i>, <i>pupils</i> and assessed mini-pupils; and</li> <li>b) in the case of a <i>BSB entity</i>, the <i>employees</i>, <i>managers</i>, <i>pupils</i> and assessed mini-pupils</li> </ul>
(226)	Years' standing	Means that a <i>barrister</i> shall be treated as being of a particular number of years' standing if they: <ul style="list-style-type: none"> <li>a) have been entitled to practise and have practised as a <i>Barrister</i> (other than as a <i>pupil</i> who has not completed <i>pupillage</i> in accordance with the <i>Bar Training Regulations</i>) or as a <i>person</i> authorised by another <i>Approved Regulator</i>;</li> <li>b) have made such <i>practice</i> their primary occupation; and</li> <li>c) have been entitled to exercise a <i>right of audience</i> before every <i>court</i> in relation to all proceedings,</li> </ul> for a period (which need not be continuous and need not have been as a <i>person</i> authorised by the same <i>Approved Regulator</i> ) of at least that number of years.

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