

## **7. Directions and setting hearing dates**

### **Introduction**

- 7.1 Regulations concerning Directions are contained within Part 5: Enforcement Regulations of the Handbook within the Disciplinary Tribunal Regulations at rE107-123.
- 7.2 Directions Judges are either High Court Judges or Queen's Counsel and are appointed by the President of COIC. Oral directions hearings are likely to be quite rare and most Directions will either be Standard Directions or dealt with on paper by a Directions Judge.

### **Types of Directions**

- 7.3 There are two types of Directions: Standard or Special. Standard Directions are the starting point for all cases and are likely to be sufficient in most circumstances. A copy of the Standard Directions template is set out at the back of this section. If the Standard Directions are not considered sufficient when advising on evidence in respect of any Disciplinary Tribunal matter, please consider whether Special Directions are also required. If so, please set out the Special Directions separately. Permitted examples of Special Directions that can be sought can be found at rE107.2 of the Handbook.

### **Directions process**

- 7.4 The Standard Directions will be sent to the barrister when the charge sheet and bundle of documents is served. The barrister has 21 days from the date of service to challenge the Standard Directions, submit any proposed amendments or request any Special Directions. Where a barrister either fails to respond or does not propose any amendments within the specified 21 days, the barrister will be deemed to have accepted the Standard Directions and they shall be deemed to apply. The Case Officer is responsible for serving these Directions on BTAS.

- 7.5 Where the BSB has additionally sought Special Directions, the scenario is different, in that, even where the barrister fails to respond, the Directions **must** go to the President of COIC for a Directions Judge to consider.
- 7.6 Where a barrister provides written submissions to the Directions (whether Standard and/or Special), the BSB then has 14 days to try and agree the directions with the barrister. Where agreement is reached and the directions include Special Directions, these agreed directions must then be served on the President of COIC for a Directions Judge to consider. If the directions are Standard Directions, they are deemed to apply and no further action is required.
- 7.7 Where either party cannot agree the directions within the allotted timeframe, the prosecutor must make written representations addressing the barrister's objections and/or proposed amendments (rE112) . All materials generated in relation to the directions will be sent to the President of COIC for a Directions Judge to consider and make the Directions Order.
- 7.8 It is a matter for the Directions Judge whether an oral hearing is necessary. Where the Directions Judge considers that no such hearing is necessary, he must make an Order setting out the directions for the case, taking into account all relevant factors including the written submissions of the parties. The Directions Judge has the power to consider and decide any other issues in relation to the case. Examples are set out at paragraph rE116.2 of the Handbook.
- 7.9 Where the Directions Judge gives notice that an oral hearing is necessary, he will set a time estimate for that hearing. The parties must provide their availability for the next 6 weeks within 7 days of that notice being given. If the prosecutor is not available within that timeframe another prosecutor may need to be assigned for the directions hearing.

### **Oral Directions Hearing**

- 7.10 At an Oral Directions hearing, there will be a COIC appointed clerk who must take a note of the proceedings and must draw up a record of the directions given as well as the formal Order. BTAS will circulate a copy of the Order after the hearing to all parties.
- 7.11 The issue of costs may arise. The BSB accepts that a Directions Judge has the jurisdiction to award costs. In most circumstances, costs applications should be resisted. (See section 10 on Costs.)

7.12 There is no right of appeal against any Directions Order.

### **Compliance with Directions and setting hearing dates**

7.13 Once the Directions have been agreed or ordered by a Judge, a period for compliance with the Directions follows.

7.14 The substantive hearing date may have been set (as a result of Special Directions or by the Directions Judge) at the directions stage but it is usually arranged towards the end of the compliance period for the directions.

7.15 Where a date has not been set, each party has to provide the President of COIC with their availability in accordance with the directions. The President of COIC must fix a hearing date with regard to the availability of the parties (if provided) and must observe the need for the prompt determination of any charges against the barrister.