

9. Appeals

Background

- 9.1. All defendant barristers have a right to appeal the findings and/or sentence of a Disciplinary Tribunal.

Appeals to the Visitors

- 9.2. For appeals made on or before 5 January 2014 these will continue to be made to the Visitors to the Inns of Court and will be governed by the Hearings before the Visitors Rules (Part 5 section C of the Handbook). However, from 6 January 2014 under the Crimes and Courts Act 2013, the Visitors jurisdiction has been abolished for appeals against Tribunal decisions taken on or after 6 January 2014. The jurisdiction to hear appeals will transfer to the High Court (Administrative Court). The Visitors jurisdiction remains in relation to decisions taken before 6 January 2014 and any appeals already in process on that date.
- 9.3. In respect of appeals made on or before 5 January 2014, the power to hear appeals is conferred on the Lord Chief Justice who delegates authority to a Judge of the Court of Appeal or a High Court Judge. The term "Visitors" applies to the Panel nominated to hear the appeal. Normally, the Panel will consist of a High Court Judge as Chair with a lay member and a barrister member. A High Court Judge is appointed as a standing Directions Judge and the administrative aspects of appeals are dealt with by the Clerk to the Visitors who is a member of staff at the Judicial Office of the Royal Courts of Justice.
- 9.4. If a barrister appeals a finding or sentence, the original prosecutor in the case will be expected to represent the BSB at the appeal and draft the BSB's Answer to the Petition.
- 9.5. In all cases where High Court judges are involved in the appeal process they are not acting as High Court Judges but in their role as Visitors to the Inns of Court. Nevertheless, they should still be addressed as though they were sitting as a High Court Judge.

The process

- 9.6. In order to lodge an appeal against a Disciplinary Tribunal a barrister must submit a Notice of Intention to Appeal to the Visitors and pay a fee of £250 to the BSB within 21 days of the Tribunal decision i.e. the date of the hearing. Thereafter he/she has up to 42 days from the date of the Tribunal decision to submit a Petition of Appeal along with a transcript of the proceedings. The BSB then has 28 days to submit an Answer to the Petition. Even if the Petition has been submitted and the fee paid, the 28 day period for provision of the BSB's Answer only starts running from the date of receipt of the transcript. .
- 9.7. Once the Petition and the Answer have been filed, the appeal is ready for listing, although it is often many months before the substantive hearing takes place.

Directions

- 9.8. The Directions Judge has the power to dismiss Petitions and grant extensions to the time limits. The most common reasons for dismissal of a Petition are failure to comply with the time limits and failure to pay the fee and/or provide the transcript.

Setting dates for an Appeal hearing

- 9.9. After all the necessary documents have been served, the Clerk to the Visitors will contact the defendant and the BSB to ascertain availability for the hearing. However, the Clerk to the Visitors must then find a Judge to preside at the appeal hearing. The Clerk has a full time job within the Judicial Office as well as taking responsibility for the Visitors work and this combined with the availability of High Court Judges means it can often take many months for an appeal hearing to be arranged.

Appeal hearings

- 9.10. The procedure for Appeal hearings is at the discretion of the Chair. However, the usual procedure is for the appellant to put his/her case; the BSB will then be given the opportunity to respond and answer any questions the Panel may have. In most cases the Panel will deliver its decision at the hearing, but in some cases it may reserve its decision in order to provide written reasons.

- 9.11. Appeal panels are provided with a copy of *Regina v Visitors to the Inns of Court, Ex parte Calder* [1993] 3 WLR (and a copy can be found at Annex 4). *Calder* states that the Visitors will look afresh at the matters and form their own views and that an appeal to the Visitors is akin to an appeal in the Civil Division of the Court of Appeal.

Appeal costs

- 9.12. The Visitors have the power to make a costs order both for and against the BSB. For more information on costs see section 10.

Appeals to the High Court

- 9.13. As stated above any appeal against a decision of a Disciplinary Tribunal which is made on or after 6 January 2014 will need to be made to the Administrative Court and not to the Visitors.
- 9.14. The procedure is set out in the Civil Procedure Rules Part 52 (Appeals) and Practice Directions 52A and 52D.

The Process

- 9.15. The first stage in the appeal process is for the barrister to file the appellant's notice in the Administrative Court and to pay the appropriate fee. This must be done within 21 days after the Tribunal decision. It is important to note that the appellant's notice must be lodged at the Administrative Court Office. A copy of the issued (stamped) appellant's notice must then be served on the BSB as soon as practicable and in any event within 7 days after it is filed. The notice must also be served on the Council of the Inns of Court.
- 9.16. The BSB as respondent may file with the Court a respondent's notice within 14 days of service of the appellant's notice and must serve this notice on the appellant as soon as practicable and in any event within 7 days after it is filed. The dates for filing notices may only be varied by the Court and not by agreement between the parties.
- 9.17. Unless the Administrative Court or the Tribunal orders otherwise an appeal does not stay the decision of the Tribunal. The Court has power to strike out the whole or part of an appellant's or respondent's notice where there is a compelling reason.

- 9.18. The Administrative Court may make an order for the costs of an appeal and may have regard to the means of the parties and all the circumstances of the case.
- 9.19. The Administrative Court has all the powers of the Tribunal and may affirm, set aside or vary any order of the Tribunal or order a new hearing. If the Court strikes out an appellant's notice or dismisses an appeal and it considers that the notice or appeal is totally without merit it shall record that fact.
- 9.20. The appeal hearing will be limited to a review of the Tribunal's decision unless the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing. Unless it orders otherwise the Court will not receive oral evidence or evidence which was not before the Tribunal. An appeal will be allowed where the Tribunal's decision was wrong or unjust due to a serious procedural or other irregularity at the Tribunal stage. At the hearing a party may not rely on a matter not contained in an appellant's or respondent's notice without the permission of the Court.
- 9.21. Section V of Practice Direction 52A sets out provisions relating to the skeleton arguments to be used on appeals.