

PART I - PRELIMINARY

101 This Code (which save as provided in paragraphs 1101 and 107 replaces all earlier Codes) was adopted by the Bar Council on 25 March 2000 with amendments approved on 10 June 2000 and came into force on 31 July 2000 (save for paragraphs 202(c) and 504 which will come into force on a date to be appointed by the Bar Council).

102 This Code includes the Annexes.

103 Amendments and additions to this Code may be made by Resolution of the Bar Council which shall be operative upon such date as the Resolution shall appoint or if no such date is appointed on the later of:

- (a) the date of the Resolution; and
- (b) the date when approval of the amendment or addition, if required, is given under Schedule 4 of the Act.

Amendments and additions will be published from time to time in such manner as the Bar Council may determine.

General purpose of the Code

104 The general purpose of this Code is to provide the requirements for practice as a barrister and the rules and standards of conduct applicable to barristers which are appropriate in the interests of justice and in particular:

- (a) in relation to barristers in independent practice to provide common and enforceable rules and standards which require them:
 - (i) to be completely independent in conduct and in professional standing as sole practitioners;
 - (ii) to act only as consultants instructed by solicitors and other approved persons;
 - (iii) to acknowledge a public obligation based on the paramount need for access to justice to act for any client in cases within their field of practice;
- (b) to make appropriate provision for employed barristers taking into account the fact that such barristers are employed to provide legal services to or on behalf of their employer.

Application of the Code

- 105 A barrister must comply with this Code which (save as otherwise provided) applies to all barristers whenever called to the Bar.
- 106 Subject to the International Practice Rules (reproduced in Annex A) this Code applies to International work and whether a barrister is practising in England and Wales or elsewhere.
- 107 A registered European lawyer must comply with this Code in the manner provided for by the Registered European Lawyers Rules (reproduced in Annex B).

Waiver of the Code

- 108 The Bar Council shall have the power to waive the duty imposed on a barrister to comply with the provisions of this Code in such circumstances and to such extent as the Bar Council may think fit and either conditionally or unconditionally.

PART II - PRACTISING REQUIREMENTS

General

- 201 For the purposes of this Code:
- (a) a barrister practises as a barrister if he supplies legal services and in connection with the supply of such services:
 - (i) he holds himself out or allows himself to be held out as a barrister; or
 - (ii) he exercises a right which he has by reason of being a barrister;
 - (b) any reference to the supply of legal services includes an offer to supply such services.
- 202 Subject to the provisions of this Code a barrister may practise as a barrister provided that:

- (a) he has complied with any applicable training requirements imposed by the Consolidated Regulations which were in force at the date of his Call to the Bar;
- (b) he has complied with any applicable requirements of the Continuing Professional Development Regulations (reproduced in Annex C);
- (c) he has a current practising certificate issued by the Bar Council in accordance with the Practising Certificate Regulations (reproduced in Annex D);
- (d) he has provided in writing to the Bar Council details of the current address(es) with telephone number(s) of the chambers or office from which he supplies legal services and (if he is an employed barrister) the name address telephone number and nature of the business of his employer;
- (e) Not used.
- (f) a barrister who practises as a barrister in independent practice may not also practise as an employed barrister except as permitted by paragraph 806.

Rights of audience

- 203.1 A barrister may exercise any right of audience which he has by reason of being a barrister provided that:
- (a) he is entitled to practise as a barrister in accordance with paragraph 202; and
 - (b) if he is of less than three years' standing his principal place of practice is a chambers or office which is also the principal place of practice of a qualified person who is able to provide guidance to the barrister.
- 203.2 For the purpose of paragraph 203.1(b) a barrister shall be treated as being of a particular number of years' standing if he:
- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body;
 - (b) has made such practice his primary occupation; and
 - (c) has been entitled to exercise a right of audience before every Court in relation to all proceedings

for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years.

203.3 A person shall be a qualified person for the purpose of paragraph 203.1(b) if he:

- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body for a period (which need not have been as a member of the same authorised body) of at least six years in the previous eight years;
- (b) for the previous two years
 - (i) has made such practice his primary occupation, and
 - (ii) has been entitled to exercise a right of audience before every Court in relation to all proceedings;
- (c) is not acting as a qualified person in relation to more than two other people; and
- (d) has not been designated by the Bar Council as unsuitable to be a qualified person.

203.4 This paragraph 203 is subject to the transitional provisions at paragraphs 1102 to 1105.

Supply of legal services to the public

204 A practising barrister may supply legal services to the public provided that:

- (a) he complies with the requirements of paragraph 203.1; and
- (b) he is covered (and in the case of an employed barrister his employer is covered) by insurance against claims for professional negligence arising out of the supply of his services in such amount and upon such terms as are currently required by the Bar Council.

205 A practising barrister must not supply legal services to the public through or on behalf of any other person (including a partnership company or other corporate body) except as permitted by paragraph 502.

PART III - FUNDAMENTAL PRINCIPLES

Applicable to all barristers

- 301 A barrister must have regard to paragraph 104 and must not:
- (a) engage in conduct whether in pursuit of his profession or otherwise which is:
 - (i) dishonest or otherwise discreditable to a barrister;
 - (ii) prejudicial to the administration of justice; or
 - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
 - (b) engage directly or indirectly in any occupation if his association with that occupation may adversely affect the reputation of the Bar or in the case of a practising barrister prejudice his ability to attend properly to his practice.

Applicable to practising barristers

- 302 A barrister has an overriding duty to the Court to act with independence in the interests of justice: he must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court.
- 303 A barrister:
- (a) must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any professional client or other intermediary or another barrister);
 - (b) owes his primary duty as between the lay client and any professional client or other intermediary to the lay client and must not permit the intermediary to limit his discretion as to how the interests of the lay client can best be served;
 - (c) when supplying legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service owes his primary duty to the lay client subject only to compliance with paragraph 304.

- 304 A barrister who supplies legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service must in connection with the supply of such services comply with any duty imposed on him by or under the Access to Justice Act 1999 or any regulations or code in effect under that Act and in particular with the duties set out in Annex E.
- 305.1 A barrister must not in relation to any other person (including a client or another barrister or a pupil or a student member of an Inn of Court) discriminate directly or indirectly or victimise because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion.
- 305.2 A barrister must not in relation to any offer of a pupillage or tenancy discriminate directly or indirectly against a person on grounds of age, save where such discrimination can be shown to be objectively and reasonably justifiable.
- 305.3 In respect of indirect discrimination, there is no breach of paragraph 305.1 and 305.2 if the barrister against whom the complaint is brought proves that the act of indirect discrimination was committed without any intention of treating the claimant unfavourably on any ground in that paragraph to which the complaint relates.
- 306 A barrister is individually and personally responsible for his own conduct and for his professional work: he must exercise his own personal judgment in all his professional activities.
- 307 A barrister must not:
- (a) permit his absolute independence integrity and freedom from external pressures to be compromised;
 - (b) do anything (for example accept a present) in such circumstances as may lead to any inference that his independence may be compromised;
 - (c) compromise his professional standards in order to please his client the Court or a third party;
 - (d) give a commission or present or lend any money for any professional purpose to or (save as a remuneration in accordance with the provisions of this Code) accept any money by way of loan or otherwise from any client or any person entitled to instruct him as an intermediar

- (e) make any payment (other than a payment for advertising or publicity permitted by this Code or in the case of a barrister in independent practice remuneration paid to any clerk or other employee or staff of his chambers) to any person for the purpose of procuring professional instructions;
- (f) receive or handle client money securities or other assets other than by receiving payment of remuneration or (in the case of an employed barrister) where the money or other asset belongs to his employer.

PART IV - BARRISTERS IN INDEPENDENT PRACTICE

Instructions

401 A barrister in independent practice whether or not he is acting for a fee:

- (a) may supply legal services only if he is instructed by a professional client or by a BarDIRECT client or is appointed by the Court;
- (b) must not in the course of his practice:
 - (i) undertake the management administration or general conduct of a lay client's affairs;
 - (ii) conduct litigation or inter-partes work (for example the conduct of correspondence with an opposite party);
 - (iii) investigate or collect evidence for use in any Court;
 - (iv) except as permitted by paragraph 707, take any proof of evidence in any criminal case;
 - (v) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews.
 - (vi) act as a supervisor for the purposes of section 84(2) of the Immigration and Asylum Act 1999.
- (c) must not enter into a contract for the supply of legal services by him with any person other than a professional client or BarDIRECT client;
- (d) must if he is instructed by a BarDIRECT client comply with the BarDIRECT Rules (reproduced in Annex F).

Insurance

- 402.1 Every barrister in independent practice (other than a pupil who is covered under his pupil-master's insurance) must be entered as a member with BMIF.
- 402.2 Every barrister entered as a member with BMIF shall:
- (a) pay immediately when due the appropriate insurance premium required by BMIF for the purpose of insurance against claims for professional negligence for such amount and upon such terms as may be approved by the Bar Council from time to time;
 - (b) supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its Rules.

Administration and conduct of independent practice

- 403.1 A barrister in independent practice must not practise from the office of or in any unincorporated association (including any arrangement which involves sharing the administration of his practice) with any person other than a barrister in independent practice or any of the following:
- (a) a registered European lawyer;
 - (b) subject to compliance with the Foreign Lawyers (Chambers) Rules (reproduced in Annex H) and with the consent of the Bar Council a foreign lawyer;
 - (c) a non-practising barrister or retired judge who is practising as an arbitrator or mediator.
- 403.2 A barrister in independent practice:
- (a) must take all reasonable steps to ensure that:
 - (i) his practice is efficiently and properly administered having regard to the nature of his practice;
 - (ii) proper records are kept;
 - (iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.

- (b) must have ready access to library facilities which are adequate having regard to the nature of his practice;
- (c) must have regard to any relevant guidance issued by the Bar Council including guidance as to:
 - (i) the administration of chambers;
 - (ii) pupillage and further training; and
 - (iii) good equal opportunities practice in chambers in the form of the Equality Code for the Bar.
- (d)
 - (i) must deal with all complaints made to him promptly, courteously and in a manner which addresses the issues raised; and
 - (ii) must have and comply with an appropriate written complaints procedure and make copies of the procedure available to a client on request.

Heads of chambers

404.1 The obligations in this paragraph apply to the following members of chambers:

- (a) any barrister who is head of chambers;
- (b) any barrister who is responsible in whole or in part for the administration of chambers;
- (c) if there is no one within (a) and (b) above, all the members of the chambers.

404.2 Any person referred to in paragraph 404.1 must take all reasonable steps to ensure that:

- (a) his chambers are administered competently and efficiently and are properly staffed;
- (b) the affairs of his chambers are conducted in a manner which is fair and equitable for all barristers and pupils;
- (c) proper arrangements are made in his chambers for dealing with pupils and pupillage and, in particular,
 - (i) that all pupillage vacancies are advertised in the manner prescribed by the Bar Council;
 - (ii) that such arrangements are made for the funding of pupils by chambers as the Bar Council may by resolution from time to time require;
 - (iii) that in making arrangements for pupillage, regard is had to the pupillage guidelines issued from time to

time by the Bar Council and to the Equality Code for the Bar;

- (d) all barristers practising from his chambers whether they are members of the chambers or not are entered as members with BMIF and have effected insurance in accordance with paragraph 402 (other than any pupil who is covered under his pupil-master's insurance);
- (e) all barristers practising from his chambers comply with paragraph 403(b)(iii);
- (f) all employees and staff in his chambers (i) are competent to carry out their duties, (ii) carry out their duties in a correct and efficient manner, (iii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties and (iv) all complaints against them are dealt with in the manner set out in paragraph 403(e) above;
- (g) all registered European lawyers and all foreign lawyers in his chambers comply with this Code to the extent required by the Registered European Lawyers Rules (reproduced in Annex B) and the Foreign Lawyers (Chambers) Rules (reproduced in Annex H);
- (h) fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients and in the event of non-payment within a reasonable time, pursued efficiently.
- (i) every barrister practising from his chambers has a current practising certificate in accordance with paragraph 202(c) of the Code of Conduct and the Practising Certificate Regulations (reproduced in Annex D).

404.3 In carrying out the obligations referred to in paragraph 404.2 any person referred to in paragraph 404.1 must have regard to any relevant guidance issued by the Bar Council including guidance as to:

- (a) the administration of chambers;
- (b) pupillage and further training; and
- (c) good equal opportunities practice in chambers in the form of the Equality Code for the Bar

Fees and remuneration

405 Subject to paragraph 307 a barrister in independent practice may charge for any work undertaken by him (whether or not it involves an appearance in Court) on any basis or by any method he thinks fit provided that such basis or method:

- (a) is permitted by law;
- (b) does not involve the payment of a wage or salary.

406.1 A barrister in independent practice who receives fees in respect of work done by another barrister must himself and without delegating the responsibility to anyone else pay forthwith the whole of the fee in respect of that work to that other barrister.

406.2 Subject to paragraph 805 a barrister in independent practice who arranges for another barrister to undertake work for him (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience) must himself and without delegating the responsibility to anyone else:

- (a) pay proper financial remuneration for the work done;
- (b) make payment within a reasonable time and in any event within three months after the work has been done unless otherwise agreed in advance with the other barrister.

PART V - EMPLOYED BARRISTERS

501 An employed barrister whilst acting in the course of his employment may supply legal services to his employer and to any of the following persons:

- (a) any employee, director or company secretary of the employer in a matter arising out of or relating to that person's employment;
- (b) where the employer is a public authority (including the Crown or a Government department or agency or a local authority):
 - (i) another public authority on behalf of which the 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;
 - (ii) in the case of a barrister employed by or in a Government department or agency, any Minister or Officer of the Crown;
- (c) where the barrister is or is performing the functions of a justices' clerk, the justices whom he serves;
- (d) where the barrister is employed by a trade association, any individual member of the association.

- 502 An employed barrister may supply legal services only to the persons referred to in paragraph 501 and must not supply legal services to any other person save that whilst acting in the course of his employment:
- (a) a barrister employed by a solicitor or other authorised litigator or by an incorporated solicitors' practice may supply legal services to any client of his employer;
 - (b) a barrister employed by the Legal Services Commission may supply legal services to members of the public;
 - (c) a barrister employed by or at a Legal Advice Centre may supply legal services to clients of the Legal Advice Centre;
 - (d) any employed barrister may supply legal services to members of the public free of charge (to any person).
- 503 A barrister employed to supply legal services under a contract for services may be treated as an employed barrister for the purpose of this Code provided that the contract is:
- (a) in writing;
 - (b) (subject to any provision for earlier termination on notice) for a determinate period; and
 - (c) the only contract under which the barrister is supplying legal services during that period (unless the Bar Council grants a specific waiver of this requirement).
- 504 An employed barrister shall have a right to conduct litigation in relation to every Court and all proceedings before any Court and may exercise that right provided that he complies with the Employed Barristers (Conduct of Litigation) Rules (reproduced in Annex I).

PART VI - ACCEPTANCE AND RETURN OF INSTRUCTIONS

Acceptance of instructions and the 'Cab-rank rule'

- 601 A barrister who supplies advocacy services must not withhold those services:
- (a) on the ground that the nature of the case is objectionable to him or to any section of the public;

- (b) on the ground that the conduct opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
- (c) 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 (for example, on the ground that such support will be available as part of the Community Legal Service or Criminal Defence Service).

602

A barrister in independent practice must comply with the 'Cab-rank rule' and accordingly except only as otherwise provided in paragraphs 603 604 605 and 606 he must in any field in which he professes to practise in relation to work appropriate to his experience and seniority and irrespective of whether his client is paying privately or is publicly funded:

- (a) accept any brief to appear before a Court in which he professes to practise;
- (b) accept any instructions;
- (c) act for any person on whose behalf he is instructed;

and do so irrespective of (i) the party on whose behalf he is instructed (ii) the nature of the case and (iii) any belief or opinion which he may have formed as to the character reputation cause conduct guilt or innocence of that person.

603

A barrister must not accept any instructions if to do so would cause him to be professionally embarrassed and for this purpose a barrister will be professionally embarrassed:

- (a) if he lacks sufficient experience or competence to handle the matter;
- (b) if having regard to his other professional commitments he will be unable to do or will not have adequate time and opportunity to prepare that which he is required to do;
- (c) if the instructions seek to limit the ordinary authority or discretion of a barrister in the conduct of proceedings in Court or to require a barrister to act otherwise than in conformity with law or with the provisions of this Code;
- (d) if the matter is one in which he has reason to believe that he is likely to be a witness or in which whether by reason of any connection with the client or with the Court or a member of it or otherwise it will be difficult for him to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (e) if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients (unless all relevant persons consent to the barrister accepting the instructions);

- (f) if there is a risk that information confidential to another client or former client might be communicated to or used for the benefit of anyone other than that client or former client without their consent;
- (g) if he is a barrister in independent practice where the instructions are delivered by a solicitor or firm of solicitors in respect of whom a Withdrawal of Credit Direction has been issued by the Chairman of the Bar pursuant to the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) unless his fees are to be paid directly by the Legal Services Commission or the instructions are accompanied by payment of an agreed fee or the barrister agrees in advance to accept no fee for such work or has obtained the consent of the Chairman of the Bar.

604 Subject to paragraph 601 a barrister in independent practice is not obliged to accept instructions:

- (a) requiring him to do anything other than during the course of his ordinary working year;
- (b) other than at a fee which is proper having regard to:
 - (i) the complexity length and difficulty of the case;
 - (ii) his ability experience and seniority; and
 - (iii) the expenses which he will incur;and any instructions in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment shall for this purpose unless the Bar Council or the Bar in general meeting otherwise determines (either in a particular case or in any class or classes of case or generally) be deemed to be at a proper professional fee;¹
- (c) to do any work under a conditional fee agreement;
- (d) save in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service:
 - (i) unless and until his fees are agreed;
 - (ii) if having required his fees to be paid before he accepts the instructions those fees are not paid;

¹ On the 30 April 2001 the Bar Council decided that, with effect from 1 May 2001, all cases subject to family graduated fees are no longer deemed to be at a proper professional fee for the purposes of paragraph 604(b).

- (e) in a BarDIRECT matter or in a matter where the lay client is also the professional client.
- (f) to do any work under the Contractual Terms on which Barristers offer their Services to Solicitors 2001 as amended and in force from time to time (reproduced in Appendix G2) or on any other contractual terms.

605 A Queen's Counsel in independent practice is not obliged to accept instructions:

- (a) to settle alone any document of a kind generally settled only by or in conjunction with a junior;
- (b) to act without a junior if he considers that the interests of the lay client require that a junior should also be instructed.

606.1 A barrister (whether he is instructed on his own or with another advocate) must in the case of all instructions consider whether consistently with the proper and efficient administration of justice and having regard to:

- (a) the circumstances (including in particular the gravity complexity and likely cost) of the case;
- (b) the nature of his practice;
- (c) his ability experience and seniority; and
- (d) his relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct him in that matter.

606.2 Where a barrister is instructed in any matter with another advocate or advocates the barrister must in particular consider whether it would be in the best interests of the client to instruct only one advocate or fewer advocates.

606.3 A barrister who in any matter is instructed either directly by the lay client or by an intermediary who is not a solicitor or other authorised litigator should consider whether it would be in the interests of the lay client or the interests of justice to instruct a solicitor or other authorised litigator or other appropriate intermediary either together with or in place of the barrister.

606.4 In cases involving several parties, a barrister must on receipt of instructions and further in the event of any change of circumstances consider whether, having regard to all the circumstances including any actual or potential conflict of interest, any client ought to be separately represented or advised

or whether it would be in the best interests of any client to be jointly represented or advised with another party.

- 607 If at any time in any matter a barrister considers that it would be in the best interests of any client to have different representation, he must immediately so advise the client.

Withdrawal from a case and return of instructions

- 608 A barrister must cease to act and if he is a barrister in independent practice must return any instructions:
- (a) if continuing to act would cause him to be professionally embarrassed within the meaning of paragraph 603 provided that if he would be professionally embarrassed only because it appears to him that he is likely to be a witness on a material question of fact he may retire or withdraw only if he can do so without jeopardising the client's interests;
 - (b) if having accepted instructions on behalf of more than one client there is or appears to be:
 - (i) a conflict or risk of conflict between the interests of any one or more of such clients; or
 - (ii) risk of a breach of confidence;and the clients do not all consent to him continuing to act;
 - (c) if in any case funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service it has become apparent to him that such funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client;
 - (d) if the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make;
 - (e) if having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery the client fails forthwith to disclose it;
 - (f) if having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it before he realises that it ought to have been returned unread to the person entitled to possession of it he would thereby be embarrassed in the discharge of his duties by his knowledge of the contents of the document provided that he may retire or withdraw only if he can do so without jeopardising the client's interests.

- 609 Subject to paragraph 610 a barrister may withdraw from a case where he is satisfied that:
- (a) his instructions have been withdrawn;
 - (b) his professional conduct is being impugned;
 - (c) advice which he has given in accordance with paragraph 607 or 703 has not been heeded; or
 - (d) there is some other substantial reason for so doing.
- 610 A barrister must not:
- (a) cease to act or return instructions without having first explained to the client his reasons for doing so;
 - (b) return instructions to another barrister without the consent of the client;
 - (c) return a brief which he has accepted and for which a fixed date has been obtained or (except with the consent of the lay client and where appropriate the Court) break any other engagement to supply legal services in the course of his practice so as to enable him to attend or fulfil an engagement (including a social or non-professional engagement) of any other kind;
 - (d) except as provided in paragraph 608 return any instructions or withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

PART VII - CONDUCT OF WORK

General

- 701 A barrister:
- (a) must in all his professional activities be courteous and act promptly conscientiously diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the Court's time and to ensure that professional engagements are fulfilled;
 - (b) must not undertake any task which:
 - (i) he knows or ought to know he is not competent to handle;

- (ii) he does not have adequate time and opportunity to prepare for or perform; or
 - (iii) he cannot discharge within the time requested or otherwise within a reasonable time having regard to the pressure of other work;
- (c) must read all instructions delivered to him expeditiously;
- (d) must have regard to any relevant Written Standards for the conduct of Professional Work issued by the Bar Council;
- (e) must inform his client forthwith and subject to paragraph 610 return the instructions to the client or to another barrister acceptable to the client:
 - (i) if it becomes apparent to him that he will not be able to do the work within the time requested or within a reasonable time after receipt of instructions;
 - (ii) if there is an appreciable risk that he may not be able to undertake a brief or fulfil any other professional engagement which he has accepted.
- (f) must ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the last of the following: his fees have been paid, any taxation or determination or assessment of costs in the case has been completed, or the time for lodging an appeal against assessment or the determination of that appeal, has expired, and must provide his professional or BarDIRECT client (or where the lay client is subsequently acting in person) the lay client) with such records or details of the work done as may reasonably be required.

Confidentiality

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Whether or not the relation of counsel and client continues a barrister must preserve the confidentiality of the lay client's affairs and must not without the prior consent of the lay client or as permitted by law lend or reveal the contents of the papers in any instructions to or communicate to any third person (other than another barrister, a pupil or any other person who needs to know it for the performance of their duties) information which has been entrusted to him in confidence or use such information to the lay client's detriment or to his own or another client's advantage.

Conflicts between lay clients and intermediaries

703

If a barrister in independent practice forms the view that there is a conflict of interest between his lay client and a professional client or other intermediary (for example because he considers that the intermediary may have been negligent) he must consider whether it would be in the lay client's interest to instruct another professional adviser or representative and, if he considers that it would be, the barrister must so advise and take such steps as he considers necessary to ensure that his advice is communicated to the lay client (if necessary by sending a copy of his advice in writing directly to the lay client as well as to the intermediary).

Drafting documents

704

A barrister must not devise facts which will assist in advancing the lay client's case and must not draft any statement of case, witness statement, affidavit, notice of appeal or other document containing:

- (a) any statement of fact or contention which is not supported by the lay client or by his instructions;
- (b) any contention which he does not consider to be properly arguable;
- (c) any allegation of fraud unless he has clear instructions to make such allegation and has before him reasonably credible material which as it stands establishes a prima facie case of fraud;
- (d) in the case of a witness statement or affidavit any statement of fact other than the evidence which in substance according to his instructions the barrister reasonably believes the witness would give if the evidence contained in the witness statement or affidavit were being given in oral examination;

provided that nothing in this paragraph shall prevent a barrister drafting a document containing specific factual statements or contentions included by the barrister subject to confirmation of their accuracy by the lay client or witness.

Contact with witnesses

705

A barrister must not:

- (a) rehearse practise or coach a witness in relation to his evidence;
- (b) encourage a witness to give evidence which is untruthful or which is not the whole truth;
- (c) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witness, whether or not

the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded.

Attendance of professional client

706 A barrister in independent practice who is instructed by a professional client should not conduct a case in Court in the absence of his professional client or a representative of his professional client unless the Court rules that it is appropriate or he is satisfied that the interests of the lay client and the interests of justice will not be prejudiced.

707 A barrister in independent practice who attends Court in order to conduct a case in circumstances where no professional client or representative of a professional client is present may if necessary interview witnesses and take proofs of evidence.

Conduct in Court

708 A barrister when conducting proceedings in Court:

- (a) is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked;
- (b) must not unless invited to do so by the Court or when appearing before a tribunal where it is his duty to do so assert a personal opinion of the facts or the law;
- (c) must ensure that the Court is informed of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues;
- (d) must bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;
- (e) must not adduce evidence obtained otherwise than from or through the client or devise facts which will assist in advancing the lay client's case;
- (f) must not make a submission which he does not consider to be properly arguable;
- (g) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify insult or annoy either a witness or some other person;
- (h) must if possible avoid the naming in open Court of third parties whose character would thereby be impugned;

- (i) must not by assertion in a speech impugn a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation;
- (j) must not suggest that a victim, witness or other person is guilty of crime, fraud or misconduct or make any defamatory aspersion on the conduct of any other person or attribute to another person the crime or conduct of which his lay client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to the lay client's case and appear to him to be supported by reasonable grounds.

Media comment

- 709.1 A barrister must not in relation to any anticipated or current proceedings in which he is briefed or expects to appear or has appeared as an advocate express a personal opinion to the press or other media or in any other public statement upon the facts or issues arising in the proceedings.
- 709.2 Paragraph 709.1 shall not prevent the expression of such an opinion on an issue in an educational or academic context.

Advertising and publicity

- 710.1 Subject to paragraph 710.2 a barrister may engage in any advertising or promotion in connection with his practice which conforms to the British Codes of Advertising and Sales Promotion and such advertising or promotion may include:
- (a) photographs or other illustrations of the barrister;
 - (b) statements of rates and methods of charging;
 - (c) statements about the nature and extent of the barrister's services;
 - (d) information about any case in which the barrister has appeared (including the name of any client for whom the barrister acted) where such information has already become publicly available or, where it has not already become publicly available, with the express prior written consent of the lay client.
- 710.2 Advertising or promotion must not:
- (a) be inaccurate or likely to mislead;

- (b) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- (c) make direct comparisons in terms of quality with or criticisms of other identifiable persons (whether they be barristers or members of any other profession);
- (d) include statements about the barrister's success rate;
- (e) indicate or imply any willingness to accept instructions or any intention to restrict the persons from whom instructions may be accepted otherwise than in accordance with this Code;
- (f) be so frequent or obtrusive as to cause annoyance to those to whom it is directed.

PART VIII - MISCELLANEOUS

Pupils

801 A barrister who is a pupil must:

- (a) comply with Part V of the Consolidated Regulations;
- (b) apply himself full time to his pupillage save that a pupil may with the permission of his pupil master or head of chambers take part time work which does not in their opinion materially interfere with his pupillage;
- (c) preserve the confidentiality of every client's affairs and accordingly paragraph 702 applies to him in the same way as it does to his pupil-master and to every person whom he accompanies to Court or whose papers he sees.

802 A barrister who is a pupil may supply legal services as a barrister and exercise a right of audience which he has by reason of being a barrister provided that:

- (a) he has completed or been exempted from the non-practising six months of pupillage; and
- (b) he has the permission of his pupil-master or head of chambers;

provided that such a barrister may during the non-practising six months of pupillage with the permission of his pupil-master or head of chambers accept a noting brief.

803.1 So long as he is a pupil a barrister in independent practice may not become or hold himself out as a member of chambers or permit his name to appear anywhere as such a member.

803.2 A barrister who is a pupil of an employed barrister or who pursuant to Regulation 46 of the Consolidated Regulations spends any period of external training with an employed barrister or with a solicitor shall be treated for the purpose of the Code as if he were during that period employed by the employed barrister's employer or by the solicitor's firm as the case may be.

Pupil-masters

804 A barrister who is a pupil-master must:

- (a) comply with Part V of the Consolidated Regulations;
- (b) take all reasonable steps to provide his pupil with adequate tuition supervision and experience;
- (c) have regard to the pupillage guidelines issued from time to time by the Bar Council and to the Equality Code for the Bar.

805 Except where a pupil is in receipt of an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work, a barrister must pay any pupil (or in the case of an employed barrister ensure that a pupil is paid) for any work done for him which because of its value to him warrants payment.

Legal Advice Centres

806 A barrister in independent practice may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if he does so, shall in connection with the supply of those services be treated for the purpose of this Code as if he were employed by the Legal Advice Centre.

807 A barrister who is employed by a Legal Advice Centre:

- (a) 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;
- (b) must ensure that any fees in respect of legal services supplied by him to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre;

- (c) must not have any financial interest in the Legal Advice Centre.

Dual qualification

- 808.1 A barrister who is a member of another authorised body and currently entitled to practise as such shall not practise as a barrister.
- 808.2 A barrister who becomes entitled to practise as a member of another authorised body shall forthwith inform the Bar Council and the Inn(s) of Court of which he is a member in writing of that fact.
- 808.3 A barrister who:
- (a) has had his name struck off the roll of solicitors or been excluded from membership of an authorised body; or
 - (b) has at any time been found guilty of any professional misconduct or is the subject of any continuing disciplinary proceedings in relation to his professional conduct as a member of an authorised body; or
 - (c) has at any time been refused a practising certificate as a solicitor or had his practising certificate suspended or made subject to a condition
- shall not practise as a barrister until the PCC has considered his case and, if it decides to refer the case to a Disciplinary Tribunal, until the case is finally determined.

Foreign lawyers

- 809 A barrister called to the Bar under Part IV of the Consolidated Regulations (temporary membership of the Bar) may not practise as a barrister other than to conduct the case or cases specified in the certificate referred to in Regulation 39.

PART_IX - COMPLIANCE

- 901 Any failure by a barrister to comply with this Code shall constitute professional misconduct.
- 902 If the declaration made by a barrister on Call to the Bar is found to have been false in any material respect or if the barrister is found to have 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 him or if any undertaking given by a barrister on Call to the Bar is breached in any material respect that shall constitute professional misconduct.

903

A barrister is subject to:

- (a) the Complaints Rules (reproduced in Annex J);
- (b) the Disciplinary Tribunals Regulations (reproduced in Annex K);
- (c) the Summary Procedure Rules (reproduced in Annex L);
- (d) the Hearings before the Visitors Rules (reproduced in Annex M);
- (e) the Interim Suspension Rules (reproduced at Annex N);
- (f) the Fitness to Practise Rules (reproduced at Annex O);
- (g) the Adjudication Panel and Appeals Rules (reproduced at Annex P) which are concerned with inadequate professional service.

904

A barrister must if he is practising, or the Bar Council has reason to believe may be practising, as a barrister:

- (a) respond promptly to any requirement from the Bar Council for comments on or documents relating to the arrangements made for administering his practice and chambers or office whether or not any complaint has been received or raised arising out of those arrangements;
- (b) permit the Bar Council or any agent appointed by it to inspect forthwith and on request and at any time which is reasonable having regard to the circumstances and the urgency of the matter any premises from which he practises or is believed to practise as a barrister the arrangements made for administering his practice and chambers or office, and any records relating to such practice and to the administration of his chambers or office.
- (c) report promptly to the Bar Council if:
 - (i) he is charged with a serious criminal offence;
 - (ii) he is convicted of any relevant criminal offence; or
 - (iii) he is convicted of a disciplinary offence by another professional body;

- (d) report promptly to the Bar Council if a bankruptcy order or directors disqualification order is made against him or if he enters into an individual voluntary arrangement with his creditors;
- (e) where a complaint has been made, or the Bar Council has reasonable grounds for believing that circumstances have arisen as a consequence of which a breach of this Code may have occurred or is about to occur, respond promptly to any requirement from the Bar Council for comments or information on a complaint or such circumstances whether that complaint relates to him or to another barrister or such circumstances relate to his conduct or that of another barrister;
- (f) respond promptly to any letter of notification sent to him or attend before any tribunal panel body or person when so required pursuant to the rules referred to in paragraph 903;
- (g) comply in due time with any sentence or suspension imposed or direction made or undertaking accepted by a tribunal panel body or person pursuant to the rules referred to in paragraph 903.

provided for the avoidance of doubt that nothing in this paragraph shall require a barrister to disclose or produce any document or information protected by law or in circumstances to which paragraph 702 applies.

PART_X - DEFINITIONS

1001 In this Code except where otherwise indicated:

"the Act" means the Courts and Legal Services Act 1990 and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

"the Act of 1985" means the Administration of Justice Act 1985;

"advocacy services" means advocacy services as defined in Section 119 of the Act;

"authorised body" means any body other than the Bar Council authorised under the Act to grant rights of audience or rights to conduct litigation;

"authorised litigator" means an authorised litigator as defined in Section 119 of the Act;

“bankruptcy order” includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world;

"Bar" means the Bar of England and Wales;

"Bar Council" means The General Council of the Bar as constituted from time to time or a Committee thereof;

“BarDIRECT client” means a person or organisation approved as such by the Bar Council in accordance with the BarDIRECT Recognition Regulations (reproduced in Annex F);

"barrister" means an individual who has been called to the Bar by one of the Inns of Court and who has not ceased to be a member of the Bar; and in Parts III (other than paragraph 301), VI, VII and VIII of this Code means a practising barrister;

"barrister in independent practice" means a practising barrister other than an employed barrister acting in the course of his employment;

"BMIF" means Bar Mutual Indemnity Fund Limited;

"brief" means instructions to a barrister to appear as an advocate before a Court;

“Call” means Call to the Bar in accordance with the Consolidated Regulations;

"chambers" means a place at or from which one or more barristers in independent practice carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) who for the time being carry on their practices at or from that place;

"client" means lay client or intermediary;

"complaint" means an allegation by any person or by the Bar Council of its own motion of professional misconduct or of inadequate professional service and includes a legal aid complaint;

“conditional fee agreement” means a conditional fee agreement as defined in Section 58 of the Act;

“Consolidated Regulations” means the Consolidated Regulations of the Inns of Court;

"Court" includes any court or tribunal or any other person or body whether sitting in public or in private before whom a barrister appears or may appear as an advocate;

“Disciplinary Tribunal” means a disciplinary tribunal constituted under the Disciplinary Tribunals Regulations (reproduced in Annex K);

"employed barrister" means a practising barrister who is employed either under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Communities and who supplies legal services as a barrister in the course of his employment;

"employer" means a person by whom an employed barrister is employed as such and any holding subsidiary or associated company corporate body or firm of that person;

"English law" includes international law and the law of the European Communities;

"European lawyer" means a person who is a national of a Member State and who is authorised in any Member State to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999, but who is not any of the following:

- (a) a solicitor or barrister of England and Wales or Northern Ireland; or
- (b) a solicitor or advocate under the law of Scotland.

"foreign lawyer" means a person (other than a registered European lawyer) who is authorised by a competent professional body to practise in a system of law other than English law;

"home professional body" means the body in a Member State 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 he is authorised in more than one Member States, it shall mean any such body;

"home professional title" means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 under which he is authorised in his home State to pursue professional activities;

"home State" means the Member State in which a European lawyer acquired the authorisation to pursue professional activities under his home professional title and, if he is authorised in more than one Member State, it shall mean any such Member State;

"inadequate professional service" means such conduct towards a lay client or performance of professional services for that client which falls significantly short of that which is to be reasonably expected of a barrister in all the circumstances;

"incorporated solicitors' practice" means a body recognised under section 9 of the Act of 1985;

"instructions" means instructions or directions in whatever form (including a brief) given to a practising barrister to supply legal

services whether in a contentious or in a non-contentious matter and “instructed” shall have a corresponding meaning;

“intermediary” means any person by whom a barrister in independent practice is instructed on behalf of a lay client and includes a professional client who is not also the lay client;

"International work" shall have the meaning set out in the International Practice Rules (reproduced in Annex A);

"lay client" means the person on whose behalf a practising barrister (or where appropriate in the case of an employed barrister his employer) is instructed;

“lay representative” means a lay person appointed by the Bar Council to serve on Disciplinary Tribunals;

"legal aid complaint" shall mean a complaint so described in section 40 of the Act of 1985 as amended by the Access to Justice Act 1999;

"Legal Advice Centre" 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:

- (a) which employs or has the services of one or more solicitors pursuant to paragraph 7(a) of the Employed Solicitors' Code 1990 or for whom the Law Society has granted a waiver, or
- (b) which has been and remains designated by the Bar Council as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Bar Council in relation to insurance or any other matter whatsoever;

"legal services" includes legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:

- (a) sitting as a judge or arbitrator or acting as a mediator;
- (b) lecturing in or teaching law or writing or editing law books articles or reports;
- (c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;
- (d) communicating to or in the press or other media;
- (e) exercising the powers of a commissioner for oaths;
- (f) 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;

- (g) in relation to a barrister 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 his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;

“Legal Services Commission” means a body established by or under Section 1 or Section 2 of the Access to Justice Act 1999 and includes any body established and maintained by such a body;

“litigation services” means litigation services as defined in Section 119 of the Act;

“Member State” means a state which is a member of the European Communities;

"non-practising barrister" means a barrister who is not a practising barrister;

"the PCC" means the Professional Conduct and Complaints Committee of the Bar Council;

"practising barrister" means a barrister who is practising as such within the meaning of paragraph 201;

"professional client" means a solicitor or other professional person by whom a barrister in independent practice is instructed that is to say:

- (a) a solicitor, authorised litigator, Parliamentary agent, patent agent, trade mark agent, Notary or a European lawyer registered with the Law Society of England and Wales;
- (b) a licensed conveyancer in a matter in which the licensed conveyancer is providing conveyancing services;
- (c) an employed barrister or registered European lawyer;
- (d) any practising barrister or registered European lawyer acting on his own behalf;
- (e) a foreign lawyer in a matter which does not involve the barrister supplying advocacy services;
- (f) 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 Bar Council (subject to such conditions as may be imposed by the Bar Council in relation to insurance or any other matter whatsoever) as suitable for the instruction of barristers, and which instructs a barrister to supply legal services without a fee;

“professional misconduct” shall bear the meaning given in paragraphs 901 and 902;

"the PSC" means the Professional Standards Committee of the Bar Council;

"the public" includes any lay client of a practising barrister (or in the case of an employed barrister of the barrister's employer) other than any of the persons referred to in Paragraph 501;

“registered European lawyer” means a European lawyer registered as such by the Bar Council and by an Inn pursuant to a direction of the JRC under Regulation 30 of the Consolidated Regulations;

“relevant criminal offence” means any criminal offence committed in any part of the world except:

- (a) an offence committed in the United Kingdom which is a fixed penalty offence for the purposes of the Road Traffic Offenders Act 1988 or any statutory modification or replacement thereof for the time being in force;
- (b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence; and
- (c) an offence whose main ingredient is the unlawful parking of a motor vehicle;

"right of audience" means a right of audience as defined in Section 119 of the Act;

"right to conduct litigation" means a right to conduct litigation as defined in Section 119 of the Act;

“serious criminal offence” means an offence involving dishonesty or deception or a serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984);

“solicitor” means a solicitor of the Supreme Court of England and Wales;

“Summary Procedure Panel” means a panel constituted under the Summary Procedure Rules (reproduced in Annex L);

“trade association” means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members;

any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural.

PART_XI - TRANSITIONAL PROVISIONS

- 1101 In respect of anything done or omitted to be done or otherwise arising before 31 July 2000:
- (a) this Code shall not apply;
 - (b) the Code of Conduct in force at the relevant time shall notwithstanding paragraph 101 apply as if this Code had not been adopted by the Bar Council.
- 1102 Any barrister called to the Bar before 1 January 2002 but who has not completed or been exempted from 12 months' pupillage in accordance with the Consolidated Regulations in force at the relevant time may practise as a barrister notwithstanding paragraph 202(a) of this Code provided that such a barrister shall not be entitled to exercise a right of audience under paragraph 203.1 unless he:
- (a) has notified the Bar Council in writing of his wish to do so; and
 - (b) either (i) has complied with any conditions as to further training which the Bar Council may require or (ii) has been informed by the Bar Council that he is not required to comply with any such conditions.
- 1103 Any barrister who on 31 July 2000 was entitled to exercise any right of audience which he had by reason of being a barrister shall notwithstanding paragraph 203 of this Code remain entitled to exercise that right of audience.
- 1104 Any barrister who during any period before 31 July 2000 was entitled to exercise a right of audience as an employed barrister may for the purpose of paragraph 203.2(c) of this Code count that period as if he had been entitled during that period to exercise a right of audience before every Court in relation to all proceedings provided that he:
- (a) has notified the Bar Council in writing of his wish to do so; and
 - (b) either (i) has complied with any conditions (including any conditions as to further training) which the Bar Council may require or (ii) has been informed by the Bar Council that he is not required to comply with any such conditions.
- 1105 Any person who was entitled on 31 July 2000 or becomes entitled before 31 July 2002 to exercise a right of audience before every

Court in relation to all proceedings shall be a qualified person without having satisfied paragraph 203.3(b)(ii) of this Code if he:

- (a) has satisfied the other requirements of paragraph 203.3;
- (b) has notified the Bar Council in writing of his wish to act as a qualified person; and
- (c) has been designated by the Bar Council as suitable so to act.

1106

Any barrister who before 31 July 2000 had delivered to the Bar Council the notification and information referred to in paragraph 212(b)(ii) of the Sixth Edition of the Code of Conduct or was exempted by waiver from that requirement shall until 31 July 2005 remain entitled to supply legal services to the public on condition that he complies with those requirements of paragraph 212(b)-(e) of the Sixth Edition of the Code of Conduct which on 31 July 2000 applied to him and provided that he shall not thereby be entitled to exercise any right of audience which he has by reason of being a barrister.

ANNEXES TO THE CODE

Annexe A: The International Practice Rules

Annexe B: Registered European Lawyers Rules

Annexe C: The Continuing Professional Development Regulations

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Annexe G1: Terms of Work on Which Barristers offer Their Services to Solicitors and the Withdrawal of Credit Scheme 1988

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Annexe H: The Foreign Lawyers (Chambers) Rules

Annexe I: The Employed Lawyers (Conduct of Litigation Rules)

Annexe J: The Complaints Rules

Annexe K: The Disciplinary Tribunals Regulations

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Annexe M: The Hearings before the Visitors Rules 2002

Annexe N: The Interim Suspension Rules

Annexe O: The Fitness to Practise Rules

Annexe P: The Adjudication Panel and Appeals Rules

Annexe Q: The Code of Conduct for Lawyers in the European Community

Annexe R: The Pupillage Funding and Advertising Requirements 2003

Annexe A: The International Practice Rules

1. "International work" means practice as a barrister:
 - (a) where the work (i) relates to matters or proceedings essentially arising taking place or contemplated outside England and Wales and (ii) is to be substantially performed outside England and Wales; or
 - (b) where the lay client carries on business or usually resides outside England and Wales provided that:
 - (i) the instructions emanate from outside England and Wales; and
 - (ii) the work does not involve the barrister in providing advocacy services.
2. In connection with any International work, a barrister must comply with any applicable rule of conduct prescribed by the law or by any national or local Bar of (a) the place where the work is or is to be performed (b) 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 Part III of this Code ("Fundamental Principles").
3. Paragraphs 401(a) and (c) and 602 of the Code shall not apply to International work.
4. In relation to International work substantially performed outside England and Wales:
 - (a) a practising barrister may enter into any association (including partnership) with any lawyer other than a member of another authorised body for the purpose of sharing any office, services or fees;
 - (b) paragraphs 401(b) and 402.1 of the Code shall not apply;
 - (c) paragraph 405 of the Code shall apply on the basis that the applicable law is that of the place where the work is performed; and
 - (d) a practising barrister employed by a foreign lawyer or foreign legal practice may supply legal services to any client of his employer.
5. A practising barrister who supplies legal services as a barrister (other than to his employer) outside England and Wales must be covered (and in the case of an employed barrister his employer must be covered) by insurance against claims for professional negligence arising out of the supply of his services in an amount not less than the minimum level of insurance cover required by law or by the rules of the Bar in the place where the services are supplied or, if there is no such minimum, the current minimum sum insured for barristers practising in England and Wales.

6. A barrister who solicits work in any jurisdiction outside England and Wales must not do so in a manner which would be prohibited if the barrister were a member of the local Bar.

Annexe B: Registered European Lawyers Rules

- 1 The Bar Council shall maintain a register of European lawyers.
- 2 The Bar Council shall:
 - (1) enter a European lawyer on the register pursuant to a direction of the Joint Regulations Committee under Regulation 30 of the Consolidated Regulations;
 - (2) remove a European lawyer from the register:
 - (i) pursuant to a sentence of a Disciplinary Tribunal; or
 - (ii) if the registered European lawyer ceases to be a European lawyer;
 - (3) suspend a European lawyer from the register:
 - (i) pursuant to a sentence of either a Disciplinary Tribunal or a Summary Procedure Panel; or
 - (ii) if the European lawyer's authorisation in his home state to pursue professional activities under his home professional title is suspended; and
 - (4) notify the European lawyer's home professional body:
 - (i) of his entry on or removal or suspension from the register; and
 - (ii) of any criminal conviction or bankruptcy order of which it becomes aware against a registered European lawyer.
- 3 A registered European lawyer must not hold himself out to be a barrister.
4. A registered European lawyer must in connection with all professional work undertaken in England and Wales:
 - (1) use his home professional title as determined by the Joint Regulations Committee pursuant to the Consolidated Regulations;
 - (2) indicate the name of his home professional body or the Court before which he is entitled to practise in that Member State; and
 - (3) indicate that he is registered with the Bar Council as a European lawyer.
5. A registered European lawyer may supply legal services, including the exercise of rights of audience, under these Rules provided that:

- (1) he has paid to the Bar Council the subscription currently prescribed by the Bar Council;
 - (2) in the case of a registered European lawyer who supplies legal services to the public, unless exempted by the Joint Regulations Committee he is covered by insurance against claims for professional negligence arising out of the supply of his services in England and Wales in such amount and upon such terms as are currently required by the Bar Council, and has delivered to the Bar Council a copy of the current insurance policy or the current certificate of insurance issued by the insurer;
 - (3) where the professional activities in question may (but for the European Communities (Lawyer's Practice) Order 1999) be lawfully provided only by a solicitor or barrister, he must act in conjunction with a solicitor or barrister who is entitled to practise before the Court, tribunal or public authority concerned and who could lawfully provide those professional activities.
6. A registered European lawyer in connection with all professional work undertaken in England and Wales must comply with all of the provisions of the Code (except paragraphs 201 to 204, 401, 402 and 801 to 804) as if he were a barrister in independent practice or an employed barrister as the case may be and as if references in the Code to barristers included reference to registered European lawyers.
7. A registered European lawyer must inform the Bar Council of:
 - (1) any investigation into his conduct by his home professional body;
 - (2) any findings of professional misconduct made by his professional body; and
 - (3) the withdrawal or suspension of his authorisation in his home state to pursue professional activities under his home professional title.

Annexe C: The Continuing Professional Development Regulations

Application

1. These Regulations apply:
 - (a) to all barristers who have commenced practice on or after 1 October 1997;
 - (b) from 1 October 2002, to all barristers who were called to the Bar in or after 1990;
 - (c) from 1 October 2003, to all barristers who were called to the Bar between 1980 and 1989; and
 - (d) from 1 October 2004, to all barristers who were called to the Bar before 1980.

The Mandatory Continuing Professional Development Requirements

2. For the purpose of these Regulations the “mandatory requirements” are those set out in paragraphs 3 to 5 below.
3. Any barrister to whom these Regulations apply and who as at 1 October 2001 had commenced 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 continuing professional development during that period.
4. Any barrister to whom these Regulations apply who commences practice on or after 1 October 2001 must during the first three calendar years (running from 1 January) in which the barrister holds a practising certificate complete a minimum of 42 hours of continuing professional development.
5. Any barrister to whom these Regulations apply who has completed or is not subject to either of the requirements referred to in paragraphs 3 and 4 above and who holds a practising certificate must comply with the following requirement:
 - (a) If the practising certificate has been issued or renewed for a period of twelve months, the barrister must complete a minimum of 12 hours of continuing professional development during that period; and
 - (b) If the practising certificate has been issued or renewed for a period of between six and twelve months, the barrister must

(c) complete a minimum of 6 hours of continuing professional development during that period.

6. The Bar Council may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or any category of barristers) in order to satisfy the mandatory requirements.
7. The Bar Council may, by resolution and following consultation with the Inns, Circuits and other providers as appropriate, increase the minimum number of hours of continuing professional development which must be completed in order to satisfy any of the mandatory requirements.

Waivers

8. The Bar Council shall have the power in relation to any barrister to waive any or all of the mandatory requirements in whole or in part or to extend the time within which the barrister must complete any of the mandatory requirements.
9. Any application by a barrister to the Bar Council 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 mitigating circumstances relied on and supported by all relevant documentary evidence.

Annexe D: The Practising Certificate Regulations

The Authority to Issue Practising Certificates

1. The Access to Justice Act 1999 (s.46) included provision for the Bar Council to make rules prohibiting barristers from practising unless authorised by a certificate issued by the Bar Council (a 'practising certificate'). The rules may include provision for the payment of different fees by different descriptions of barristers, but the Council may not set fees with a view to raising a total amount in excess of that applied by the Council for the purposes of the regulation, education and training of barristers, and those wishing to become barristers and for any other purpose approved by the Lord Chancellor under sub-section (3)(a) of s.46 of the Access to Justice Act 1999.
2. No provision included in the rules shall have effect unless approved by the Lord Chancellor.
3. Section 46 of the Access to Justice Act 1999, as amended by Order by statutory instrument with effect from 31 January 2001, is at Appendix 1 to these rules.

Application

4. These rules shall apply to all barristers and registered European lawyers holding themselves out as offering legal services as barristers to the public or to their employer. They shall not apply to non-practising barristers.

The Calculation of Income from Practising Certificates

5. The income to be raised by the Bar Council from Practising Certificate Fees shall not exceed the forecast expenditure for the year ahead starting 1 January each year to be applied to the activities and purposes set out below, less any subventions for those purposes received from the Inns of Court.
6. The activities, including education and training, to which practising certificate fees shall be applied shall be as follows:
 - a) The formulation and implementation of rules and regulations;
 - b) The development and dissemination to the profession of guidance, recommendations and other standards (whether binding or advisory) contributing to the control, government and direction of the profession and the way in which it practises: those activities shall include the definition, review and supervision of the standards of professional conduct and work expected of members of the profession;

- c) Participation in the legislative process in relation to proposals relevant to the organisation or conduct of the profession.
- d) Law reform work: that is, participation in the legislative process in relation to proposals falling outside paragraph 5(c);
- e) Support for the administration of provision of legal services to the public *pro bono*;
- f) the furtherance of human rights;
- g) the development of international relations.

7. The maximum sum to be raised from Practising Certificate Fees shall include, as agreed by the Lord Chancellor, the annual forecast full cost of work in the following areas:-

- a. Activities which are entirely regulatory:
 - (i) Professional Standards
 - (ii) Professional Conduct and Complaints
 - (iii) Equal Opportunities
 - (iv) Records
- b. Education and Training
- c. Activities qualifying under the Statutory Instrument laid under s.46 sub-section (3)(a) of the Access to Justice Act 1999:
 - (i) Human Rights and Pro Bono administration
 - (ii) Law Reform

8. The maximum sum to be raised from Practising Certificate Fees shall include, as agreed by the Lord Chancellor, the proportion as shown of the annual forecast full cost of work in the following areas qualifying as regulatory activity or for purposes agreed under the Statutory Instrument laid under s.46 sub-section (3)(a) of the Access to Justice Act 1999:

a.	Legal Services	80%
b.	International Relations	90%
c.	Policy	75%
d.	Remuneration	80%
e.	Public Affairs	30%
f.	Employed Bar	70%
g.	Young Bar	60%
h.	Information Technology	60%

9. For the purpose of calculating the maximum sum to be raised from Practising Certificate Fees, Administration costs shall be added in proportion to the cost of activities set out in paragraphs 8 and 9, to include the following:

Chairman's Office
 Executive Office
 Council and General Management Committee work
 Finance

Library/Registry
Print and Distribution
Reception and Meeting Rooms
Publications
Website
Contingency funds up to 3% of total expenditure
Provision for capital expenditure not covered by depreciation

The Issue of Practising Certificates:

10. The Bar Council shall issue Full Practising Certificates at entry into independent practice in accordance with the rules set out in the Consolidated Regulations of the four Inns of Court and on entry to employment as a barrister. On the introduction of Practising Certificate Fees, the Bar Council shall issue a Practising Certificate to all barristers and registered European lawyers offering a legal service as a barrister to the public or to their employer, on receipt of the Practising Certificate Fee. The Bar Council shall give four weeks' notice of the date by which payment of the Practising Certificate Fee is due.
11. A Practising Certificate shall be valid for one year. A barrister must inform the Bar Council of any change of category or status relating to his practice, whereupon the Bar Council shall if appropriate issue a Practising Certificate, amended as necessary, reflecting such change and subject to confirmation of payment of the appropriate Practising Certificate Fee.
12. A Practising Certificate shall cease to be valid if a barrister is disbarred or (and for such period as he is) suspended from practice as a barrister. A Practising Certificate may be amended to reflect any qualification imposed on the barrister by the Bar Council or as a result of disciplinary proceedings.
13. Unless disbarred or suspended, and subject to any other qualification which the Bar Council or disciplinary proceedings may impose, a barrister may qualify for a Practising Certificate for a barrister of his description provided that:
 - (a) he has complied with any applicable training requirements imposed by the Consolidated Regulations which were in force at the date of Call to the Bar;
 - (b) he has complied with any applicable requirements of the Continuing Professional Development Regulations;
 - (c) he has provided in writing to the Bar Council details of the current address(es) with telephone number(s) of the chambers or office from which he supplies legal services and (if he is an employed barrister) the name, address, telephone number and nature of the business of his employer;
 - (d) unless exempted by the Bar Council, he has paid to the Bar Council the Practising Certificate Fee currently prescribed by the Bar Council for barristers of his/her description.

- (e) with effect from such date as the Bar Council may determine, he has paid the appropriate insurance premium so as to be insured with the Bar Mutual Indemnity Fund against claims for professional negligence, as required by the Code of Conduct.

The Renewal of Practising Certificates

- 14. The Practising Certificate Fee for barristers in independent practice and registered European lawyers shall be due by 1st January each year. The Practising Certificate Fee for employed barristers shall be due by 6th April each year. The Bar Council shall provide four weeks' notice of the date by which payment of the Practising Certificate Fee is due and shall confirm in writing the validity of the Practising Certificate following payment of the Practising Certificate Fee. The Practising Certificate Fee following Call to the Bar shall become due on 1st January or 6th of April of the year following the year of Call, as appropriate to each category of barrister.

Practising Certificate Fees

- 15. The Bar Council shall set different fees for different descriptions of barrister, so that the projected income from these fees shall not exceed the total amount calculated under paragraphs 8 to 10 of these rules. On application of individual barristers, the Bar Council may reduce the Practising Certificate Fee in recognition of certified periods of continuous absence from practice exceeding three months. The Bar Council may reduce the Practising Certificate Fee payable by those whose certified gross fee income or salary for the previous year is less than such annual amount as the Council may decide from time to time.
- 16. Notification to practising barristers of the Practising Certificate Fee shall include a statement of any separate voluntary subscription to the Bar Council, other than for a Practising Certificate.

Non-Payment of the Practising Certificate Fee

- 17. Any practising barrister who has not paid the Practising Certificate Fee by the due date shall receive from the Bar Council notification that if the Fee is not paid within one month, their name will be passed to the Professional Conduct and Complaints Committee for that Committee to investigate and consider whether there has been a breach of paragraph 202 of the Code of Conduct.

Appendix to ANNEX D

ACCESS TO JUSTICE ACT
s.46 Bar Practising Certificates

- (1) If the General Council of the Bar makes rules prohibiting barristers from practising as specified in the rules unless authorised by a certificate issued by the Council (a “practising certificate”), the rules may include provisions requiring the payment of fees to the Council by applicants for practising certificates.
- (2) Rules made by virtue of subsection (1) –
 - (a) may provide for the payment of different fees by different descriptions of applicants, but
 - (b) may not set fees with a view to raising a total amount in excess of that applied by the Council for the purposes of:
 - (i) the regulation, education and training of barristers and those wishing to become barristers;
 - (ii) the participation by the Council in law reform and the legislative process;
 - (iii) the provision by barristers and those wishing to become barristers of free legal services to the public;
 - (iv) the promotion of the protection by law of human rights and fundamental freedoms; and
 - (v) the promotion of relations between the Council and bodies representing the members of legal professions in jurisdictions other than England and Wales.
- (3) The Lord Chancellor may by order made by statutory instrument –
 - (a) amend subsection (2)(b) by adding to the purposes referred to in it such other purposes as the Lord Chancellor considers appropriate, or
 - (b) vary or revoke an order under paragraph (a).
- (4) No order shall be made under subsection (3) unless –
 - (a) the Lord Chancellor has consulted the Council, and
 - (b) a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) No provision included in rules by virtue of subsection (1), and no other provision of rules made by the Council about practising

certificates, shall have effect unless approved by the Lord Chancellor.

- (6) The Council shall provide the Lord Chancellor with such information as he may reasonably require for deciding whether to approve any provision of rules made by the Council about practising certificates.

Annexe E: Guidelines On Opinions Under The Funding Code

Status of these Guidelines

1. These Guidelines are prepared by the Legal Services Commission. They are intended as statements of good practice to be followed when opinions are prepared on the merits of applications or certificates issued under the Funding Code. As statements of good practice these Guidelines should not be too rigidly applied. An opinion will, however, be rejected if it does not contain the information necessary for the Commission to make its decision under the Code.
2. These Guidelines have been agreed by the Bar Council for incorporation in the Code of Conduct of the Bar of England and Wales.

Scope

3. These Guidelines apply to legal opinions sent to the Legal Services Commission for the purpose of decisions made in individual cases under the Funding Code. The Guidelines are most relevant to decisions made under certificates or contracts covering Legal Representation or Support Funding, but also may be relevant to other levels of service.

The Guidelines apply to counsel and to solicitors with higher rights of audience who are instructed to give an independent opinion on the merits of a case. The term "counsel" in the Guidelines therefore includes a solicitor with higher rights of audience.

4. The Guidelines do not apply directly to solicitors giving a report to the regional office in a case which they are conducting or proposing to conduct. Such a report may be shorter and more informal than an opinion on the merits, but these Guidelines should still be borne in mind by solicitors when such reports are prepared.

Preliminary Considerations

5. All opinions must be prepared in accordance with the Funding Code and having regard to the Funding Code guidance prepared by the Commission. This guidance is set out in the Commission's Manual, and on the Commission's website at www.legalservices.gov.uk. Every person preparing an opinion must have access to and consult the guidance as necessary.
6. When counsel is instructed to provide an opinion in writing, counsel should first consider whether it is necessary to have a conference, for example to enable counsel to assess the reliability of the client's evidence in a case where that evidence is likely to be contested. Where counsel considers that a conference is necessary and would be cost effective, the

costs of such a conference may be covered by the certificate provided it is within any overall cost limitation on the certificate and is justified as reasonable on assessment at the end of the case. In the case of a high cost case contract, any conference must be justified within the agreed case plan for the action.

Contents of Opinions Issues to be Covered

7. The primary purpose of an opinion is to provide the Commission with the information and legal opinion necessary to apply all relevant Funding Code criteria, rather than to provide a personal opinion on what the funding decision should be.
8. Each opinion should state at the outset:
 - (a) the level of service under which the opinion is given and if appropriate, the level of service being applied for;
 - (b) the case category into which the proceedings fall, giving reasons if there is likely to be an issue as to which case category is appropriate.
9. In every opinion counsel should identify any potentially excluded work in the case, ie. aspects of the case which may fall within the excluded categories in paragraph 1 of Schedule 2 of the Access to Justice Act 1999. Where excluded work arises counsel should specify any of the Lord Chancellor's directions which may bring the case back into scope.
10. It is not necessary for an opinion to discuss separately every criterion relevant to the decision. For example, it is not usually necessary for counsel to refer to the standard criteria in section 4 of the Code unless, in the particular circumstances of the case, one or more of these criteria is likely to be material to the Commission's decision. Unless otherwise instructed an opinion should always cover the following:
 - (a) Prospects of success (except for special Children Act proceedings or other proceedings which do not have a prospect of success criterion). The opinion should specify what constitutes a successful outcome for the client, having regard to guidance, and must specify with reasons the prospects in one of the six categories provided for in the Code. Where prospects are "borderline", the issues of fact, law or expert evidence which give rise to that assessment must be identified. Where prospects of success are "unclear" the necessary work to clarify prospects of success must be identified.
 - (b) Cost benefit (save for those cases which do not have a cost benefit criterion). The opinion must identify the benefit to the client from the proceedings and, for quantifiable claims, provide a figure for "likely

damages" as defined in the Code. See paragraph 14 below as to estimates of "likely costs".

- (c) Where the application is for Investigative Help to be granted or continued, the opinion must deal with matters relevant to criteria 5.6.2 (the need for investigation) and 5.6.4 (prospects after investigation). The opinion should explain why there are reasonable grounds for believing that when the investigative work has been carried out the claim will be strong enough, in terms of prospects of success and cost benefit, to satisfy the relevant criteria for full representation.
- (d) Where the issue is whether funding should be withdrawn on the merits, the opinion should cover matters relevant to applying criteria 14.2 to 14.4, taking into account the interests of the client, the interests of the Community Legal Service Fund and relevant guidance.

11. An opinion on merits should:

- (a) where factual issues are involved (a) set out in sufficient detail, (although not necessarily at great length), the rival factual versions to enable the Commission to assess their relative strengths, and (b) express a clear opinion as to the likelihood of the applicant's version being accepted by a court and why;
- (b) where legal issues or difficulties of law are involved (a) summarise those issues or difficulties in sufficient detail to enable the Commission to come to a view about them without looking outside the opinion, and (b) express a clear view as to the likelihood of the applicant's case on the law being accepted by a court and why;
- (c) draw attention to (a) any lack or incompleteness of material which might bear on the reliability or otherwise of the applicant's version, and (b) any other factor which could-whether now or in the future-materially affect the assessment of the outcome of the case.

12. Where appropriate an opinion should suggest or formulate for the Commission any limitation or condition, whether as to the scope of work that should be covered, or as to costs, which ought to be imposed on the grant of funding in order to safeguard the Fund. In complex cases, including cases proceeding on the multi-track, the opinion should, specify any future point in the proceedings at which it is likely to be sensible to re-assess the merits.

Information From Other Sources

13. There will often be information relevant to a merits decision which is not readily available to counsel. Where such information is not included in counsel's instructions, the

opinion should specify the information which should be provided by the instructing solicitors, usually in the form of a covering letter to accompany counsel's opinion.

14. The following issues should usually be dealt with by instructing solicitors:
 - (a) estimates of likely costs. This includes estimates of whether costs incurred to date, likely future costs to disposal, or future costs to trial. Assessments of likely costs may be relevant not just to any cost benefit criteria, but also to other criteria such as the thresholds for support funding, or the affordability of a high cost case. Such estimates will sometimes best be made in the light of counsel's opinion as to prospects of success and the future conduct of the case. Alternatively instructing solicitors may provide relevant estimates of costs to counsel with counsel's instructions so that such figures may be incorporated in the body of the opinion;
 - (b) assessments of whether a case is suitable for a Conditional Fee Agreement and whether affordable insurance is available, in cases which are being considered under the General Funding Code.

Specific Issues

15. Where it is suggested that a case has a significant wider public interest counsel's opinion should:
 - (a) identify the nature of the benefits which the case might bring to persons other than the client;
 - (b) identify the group or section of the public who might benefit from the case, if possible giving at least a rough estimate of likely numbers;
 - (c) where people may benefit indirectly from a test case, explain the individual issues which other clients would need to establish in order to succeed with their claims;
 - (d) where the public interest of the case derives from establishing an important point of law, set out that legal issue clearly and explain the likelihood of the court resolving the issue one way or another for the benefit of other cases.
16. Where it is suggested that a judicial review or claim against a public authority raises significant human rights issues, the opinion should identify the specific articles of the Convention which may have been breached by the public body and the importance of those issues to the client and the general public.
17. Where it is suggested that a case has overwhelming importance to the client as this is defined in the Code, the nature of the importance to the client must be identified in the

opinion having regard to the Commission's guidance on this issue.

18. In cases involving more than two parties, counsel should consider carefully whether separate representation for each client is justified (criterion 5.4.5). This is particularly important in many family cases and in appeals where the points at issue in the appeal may not require separate representation from every party to the proceedings at first instance. Counsel should consider whether the arguments on which his or her client relies will be put forward on behalf of another party whose interests in the proceedings are substantially the same. Counsel should report to the Commission with proposals for minimising representation by solicitors and counsel.
19. In high cost cases in which the Commission will be considering whether the action is affordable in the light of available resources (criterion 6.4) counsel's opinion should address those aspects of the case which, in accordance with the Commission's guidance, are relevant to the affordability decision. It will not be possible or appropriate for counsel to consider the question of the resources available to the Commission, or the reasonableness of funding the individual case as against other cases, as these are matters solely for the Commission.

Continuing Duties to the Fund

20. A barrister is under a specific duty to comply with the provisions of the Access to Justice Act 1999 and any regulations or code in effect under that Act (paragraph 304 of the Bar Code of Conduct). Since these duties are directed at ensuring that public funding is granted and continued only in justifiable cases, it follows that counsel acting under a funding certificate is under a duty to bring to the attention of the Commission any matter which might affect the client's entitlement to funding, or the terms of his or her certificate, at whatever stage of the proceedings that might occur.
21. Counsel and any other legal representative acting under a certificate or contract are also subject to the specific obligations set out in Rule C44 of the Code Procedures. This includes a general obligation to inform the Regional Director of new information or a change of circumstances which has come to light which may affect the terms or continuation of a certificate.
22. Where counsel is under an obligation to draw matters to the attention of the Commission, he or she may do so by drawing matters to the attention of his or her instructing solicitors and asking that they be passed on to the Commission, or counsel may contact the Commission directly if that is appropriate in the particular circumstances of the case.

Annexe F: The BarDIRECT Rules and Recognition Regulations

- 1 Subject to these rules and to compliance with the Code of Conduct (and in particular to paragraphs 401 and 403) a barrister in independent practice may accept instructions from a BarDIRECT client in circumstances authorised in relation to that client by the BarDIRECT Recognition Regulations (reproduced in Annex C1) whether that client is acting for himself or another.

- 2 These rules apply to every matter in which a barrister in independent practice is instructed by a BarDIRECT client save that paragraphs 4(b) 6 7 and 9 of these rules do not apply to any matter in which a BarDIRECT Client is deemed to be a BarDIRECT Client by reason only of paragraph 7 or paragraph 8 of the BarDIRECT Recognition Regulations.

- 3 Not used.

- 4 A barrister is only entitled to accept instructions from a BarDIRECT client if at the time of giving instructions the BarDIRECT client
 - (a) is identified; and
 - (b) sends the barrister a copy of the Licence issued by the BarDIRECT Committee.

- 5 A barrister must not accept any instructions from a BarDIRECT client
 - (a) unless the barrister and his Chambers are able to provide the services required of them by that BarDIRECT client;
 - (b) if the barrister considers 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 place of the barrister.

- 6 A barrister who accepts instructions from a BarDIRECT client otherwise than on the terms of the BarDIRECT Terms of Work as approved from time to time by the BarDIRECT Committee
 - (a) must first agree in writing the terms upon which he has

agreed to do the work and the basis upon which he is to be paid;

- (b) must keep a copy of the agreement in writing with the BarDIRECT client setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid.

7

A barrister who accepts instructions from a BarDIRECT client

- (a) must promptly send the BarDIRECT client
 - (i) 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 BarDIRECT Client or (2) on the terms of the BarDIRECT Terms of Work (and thereafter if requested a copy of the BarDIRECT Terms of Work); or
 - (ii) if he has accepted instructions otherwise than on such standard terms or on the terms of the BarDIRECT Terms of Work, a copy of the agreement in writing with the BarDIRECT client setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid;
- (b) unless he has accepted instructions on the terms of the BarDIRECT Terms of Work or on terms which incorporate the following particulars must at the same time advise the BarDIRECT client in writing of:
 - (i) the effect of paragraph 401 of the Code of Conduct as it relevantly applies in the circumstances;
 - (ii) the fact that the barrister 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;
 - (iii) the fact that circumstances may require the client to retain a solicitor or other authorised litigator at short notice and possibly during the case.

8

If at any stage a barrister who is instructed by a BarDIRECT client considers 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 place of the barrister:

- (a) the barrister must forthwith advise the BarDIRECT client in writing to instruct a solicitor or other authorised

litigator or other appropriate intermediary (as the case may be) ; and

- (b) unless a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) is instructed as soon as reasonably practicable thereafter the barrister must cease to act and must return any instructions.

9 If at any stage a barrister who is instructed by a BarDIRECT client considers that there are substantial grounds for believing that the BarDIRECT client has in some significant respect failed to comply either with the terms of the Licence granted by the BarDIRECT Committee or (where applicable) with the terms of the BarDIRECT Terms of Work the barrister must forthwith report the facts to the BarDIRECT Committee.

10 A barrister who accepts instructions from a BarDIRECT client must keep a case record (whether on card or computer) which sets out:

- (a) the date of receipt of the instructions, the name of the BarDIRECT client, the name of the case, and any requirements of the BarDIRECT client as to time limits;
- (b) the date on which the instructions were accepted;
- (c) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations;
- (d) when agreed, the fee.

11 A barrister who accepts instructions from a BarDIRECT client must either himself retain or take reasonable steps to ensure that the BarDIRECT Client will retain for six years after the date of the last item of work done:

- (a) copies of instructions (including supplemental instructions);
- (b) copies of all advices given and documents drafted or approved;
- (c) a list of all documents enclosed with any instructions;
- (d) notes of all conferences and of all advice given on the telephone.

THE BarDIRECT RECOGNITION REGULATIONS

- 1 Authorised BarDIRECT clients are those persons and organisations and/or their members and/or their or their members' employees (as the case may be) who have from time to time been approved as such by the BarDIRECT Committee.

- 2 Any person or organisation wishing to be approved as an authorised BarDIRECT client shall apply in writing to the BarDIRECT Committee by completing an application form in such form and supplying such other information as the BarDIRECT Committee may from time to time or in any particular case require.

- 3 In approving any person or organisation as an authorised BarDIRECT client the BarDIRECT Committee may grant such approval in each case as the BarDIRECT Committee may think appropriate:
 - (a) (i) on a provisional basis or (ii) on a full basis;
 - (b) (i) for a fixed period or (ii) for a fixed period subject to extension or (iii) indefinitely;
 - (c) (i) to the person or organisation and/or (ii) to some or all of the members of the organisation and/or (iii) to some or all of the employees of the person or organisation or its members;
 - (d) in relation to matters concerning (i) the person or organisation and/or its members (as the case may be) and/or (ii) his or its or its members' employees and/or (iii) his or its or its members' clients or customers;
 - (e) subject to such limitations or conditions as the BarDIRECT Committee may think appropriate relating to
 - (i) the matters in relation to which the authorised BarDIRECT client may instruct a barrister and/or
 - (ii) the courts or tribunals before which a barrister so instructed may exercise a right of audience and/or
 - (iii) such other matters (including the means by which the authorised BarDIRECT client shall instruct a barrister) as seem relevant in the circumstances.

- 4 The BarDIRECT Committee shall issue to every person or organisation approved as an authorised BarDIRECT client a

Licence in such form as the BarDIRECT Committee may from time to time or in the particular case think appropriate. Such Licence (which may be a provisional Licence or a full Licence):

- (a) shall specify (i) the name of the person or organisation who has been approved as an authorised BarDIRECT client (ii) the period (if any) for which the Licence has been granted or (as the case may be) that the Licence has been granted indefinitely and (iii) the limitations or conditions (if any) subject to which the Licence has been granted;
- (b) may if the BarDIRECT Committee think appropriate provide that unless otherwise first agreed in writing with an individual barrister or chambers all instructions accepted by any barrister from the authorised BarDIRECT client will be deemed to be given and accepted on the terms of the BarDIRECT Terms of Work as approved from time to time by the BarDIRECT Committee;
- (c) may if the BarDIRECT Committee think appropriate provide that a copy of the Licence shall be sent with every set of instructions to any barrister instructed by the authorised BarDIRECT client;
- (d) shall remain at all times the property of the General Council of The Bar to whom (or to whose duly appointed officer) it shall be surrendered on demand.

5 The BarDIRECT Committee may from time to time:

- (a) approve additional persons or organisations as authorised BarDIRECT clients;
- (b) withdraw approval (either wholly or in part) from any person or organisation as an authorised BarDIRECT client;
- (c) increase reduce or otherwise alter the period for which a person or organisation is approved as an authorised BarDIRECT client;
- (d) alter or revoke the limitations or conditions (if any) attached to any approval of a person or organisation as an authorised BarDIRECT client or impose new or additional limitations or conditions;
- (e) cancel and demand the surrender of any Licence issued under paragraph 4 of these regulations.

6 In exercising their functions under paragraphs 1 2 3 4 and 5 of these regulations the BarDIRECT Committee shall comply with the statutory objectives referred to in section 17(1) of the Courts and Legal Services Act 1990 and section 1(2) of the Access to Justice Act 1999 may consult with such persons organisations or

bodies as they think appropriate and shall to such extent as they may think appropriate in the particular case have regard to the following matters:

- (a) the fact that barristers in independent practice operate as a referral profession of specialist consultants;
- (b) the extent to which the person or organisation or its members (as the case may be) are likely to have a significant requirement to retain the services of a barrister for their own benefit or for the benefit of their employers employees members clients or customers (as the case may be);
- (c) the extent to which whether as a result of professional or other relevant training or by reason of practice and experience the person or organisation or its employees or members (as the case may be) are or may reasonably be expected to be
 - (i) providers of skilled and specialist services
 - (ii) competent in some identifiable area of expertise or experience
 - (iii) familiar with any relevant area of law
 - (iv) possessed of the necessary skills to obtain and prepare information and to organise papers and information sufficiently to enable the barrister to fulfill his duties in a non-contentious matter to the client and in a contentious matter both to the client and to the court
 - (v) possessed of the necessary skills to take charge and have the general conduct of the matters in respect of which they wish to retain the services of a barrister;
- (d) the extent to which the affairs and conduct of the person or organisation or its members (as the case may be) are subject to some appropriate professional disciplinary regulatory or other organisational rules;
- (e) the extent to which the person or organisation or its members (as the case may be)
 - (i) are insured against claims for negligence in relation to their handling of matters in respect of which they wish to retain the services of a barrister
 - (ii) have made and continue to comply with satisfactory arrangements for holding in separate accounts and maintaining as trust monies any monies received from third parties

- (iii) have made and continue to comply with satisfactory arrangements for ensuring that barristers' fees are promptly paid;
- (f) such other facts and matters (if any) as seem to them to be relevant in the circumstances.

7 Notwithstanding paragraphs 2 3 and 4 of these regulations any member of any of the bodies referred to in the First Schedule to these regulations shall be deemed to be an authorised BarDIRECT client (including in relation to matters concerning that member's clients or customers) but

- (a) only in a matter of a kind which falls generally within the professional expertise of the members of the relevant body; and
- (b) not for the purpose of briefing counsel to appear in or exercise any right of audience before the Judicial Committee of the House of Lords the Privy Council the Supreme Court the Crown Court a County Court or the Employment Appeals Tribunal.

8 Notwithstanding paragraphs 2 3 and 4 of these regulations any of the following shall be deemed to be an authorised BarDIRECT client:

- (a) an arbitrator (including for these purposes an adjudicator under the Housing Grants Construction and Regeneration Act 1996) but only when instructing counsel for the purpose of advising on any point of law practice or procedure arising in or connected with an arbitration in which he has been or may be appointed;
- (b) any person who has been appointed to one of the offices of Ombudsman referred to in the Second Schedule to these regulations but only when instructing counsel for the purpose of advising on any point of law practice or procedure arising in the course of the performance of his duties.

9 Nothing in paragraphs 7 and 8 of these regulations shall prevent

- (a) any person to whom paragraph 7 or paragraph 8 applies making an application in accordance with paragraph 2 of these regulations (in which event paragraphs 3 4 5 and 6 of these regulations shall apply to such application and to any Licence issued pursuant to such application);
- (b) the BarDIRECT Committee exercising in relation to any person to whom paragraph 7 or paragraph 8 applies the powers conferred by paragraphs 5(b) 5(c) and 5(d) of these regulations (in which event paragraph 6 of these regulations shall apply).

THE FIRST SCHEDULE

Part I - Accountants and taxation advisers

- (1) The Association of Authorised Public Accountants
- (2) Association of Taxation Technicians
- (3) The Chartered Association of Certified Accountants
- (4) The Chartered Institute of Management Accountants
- (5) Institute of Chartered Accountants
- (6) The Institute of Chartered Accountants in Ireland
- (7) Institute of Chartered Accountants in Scotland
- (8) The Chartered Institute of Taxation
- (9) The Institute of Financial Accountants

Part II - Insolvency practitioners

- (1) Insolvency Practitioners Association

Part III - Architects surveyors and town planners

- (1) The Architects Registration Council of the UK
- (2) The Architects and Surveyors Institute
- (3) Association of Consultant Architects
- (4) The Royal Institute of British Architects
- (5) The Royal Institution of Chartered Surveyors
- (6) The Royal Town Planning Institute

Part IV - Engineers

- (1) The Institution of Chemical Engineers
- (2) The Institution of Civil Engineering Surveyors
- (3) The Institution of Civil Engineers
- (4) The Institution of Electrical Engineers
- (5) Institution of Mechanical Engineers
- (6) The Institution of Structural Engineers

Part V - Valuers

- (1) The Incorporated Society of valuers & Auctioneers

Part VI - Actuaries

- (1) The Faculty of Actuaries
- (2) Institute of Actuaries

Part VII - Chartered secretaries and administrators

- (1) The Institute of Chartered Secretaries and Administrators

Part VIII - Insurers

- (1) The Association of Average adjusters
- (2) The Chartered Institute of Loss Adjusters
- (3) The Chartered Insurance Institute

THE SECOND SCHEDULE

- (1) Parliamentary Commissioner for Administration
- (2) Commissioner for Local Administration (England)
- (3) Commissioner for Local Administration (Wales)
 - (4) Health Service Commissioner
 - (5) Banking Ombudsman
 - (6) Building Society Ombudsman
 - (7) Insurance Ombudsman Bureau
- (8) The Personal Investment Authority Ombudsman Bureau Ltd
 - (9) The Legal Services Ombudsman

Annexe G1: Terms of Work on Which Barristers offer Their Services to Solicitors and the Withdrawal of Credit Scheme 1988

(As authorised by the General Council of the Bar on 16 July 1988 and amended by authority of the General Council of the Bar on 10 November 1990, 17 July 1999, 24 March 2001 and 17 November 2001)

WHEREAS:

- (1) These Terms have been authorised by the General Council of the Bar and are intended to apply (save as hereinafter provided) in any case where a barrister is instructed by a solicitor;
- (2) Any solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms;

AND WHEREAS:

- (3) By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
- (4) Except in publicly funded cases a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
- (5) Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
- (6) The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

General

1 A solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct a barrister.

2 In any case where a barrister accepts a brief or instructions from a solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:

- (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;
- (2) the obligations of the solicitor under these Terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

Instructions

3 A barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these Terms will apply only where the barrister has accepted the brief or instructions.

4 Notwithstanding that a brief or instructions have been delivered to a barrister the barrister shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:

- (1) to peruse them;
- (2) in the case of a brief to agree a fee with the solicitor.

5 A barrister accepts a brief or instructions upon the understanding:

- (1) that he must and will comply with the Bar Code of Conduct;
- (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work
- (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.

6 (1) Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent".

- (2) In the case of publicly funded work, the solicitor must at the time when he delivers the brief or instructions (or if any relevant certificate is not then available to him as soon as reasonably practicable thereafter) supply the barrister with copies of any relevant public funding certificates.

Copies of Briefs and Instructions and Records of Advice

7 A barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle a barrister to exercise any lien over any brief instructions or papers.

Fees

8 Save in the case of publicly funded work or in the case of a Notified Solicitor a barrister and solicitor may (subject to any rules regarding contingent fees) make such agreement or arrangement between them as to the time or times whether at the time of delivery of the brief or instructions or subsequently thereto or otherwise at which the barrister's fees shall be paid as they may think fit and the barrister's fees shall be paid by the solicitor accordingly PROVIDED that every such agreement or arrangement shall be in writing.

9 Save in the case of publicly funded work or in the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court a barrister may and in the case of fees payable by a Notified Solicitor a barrister (unless and except as otherwise previously authorised in writing by the Chairman) must require his fees to be agreed and paid before he accepts the brief or instructions to which the fees relate.

- 10** (1) Fees and/or charging rates shall be (i) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (ii) a reasonable professional rate for the barrister instructed
- (2) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.
- (3) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
- (4) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number, the barrister's relevant account number for the purpose of receiving payment in publicly funded cases and (if known to the barrister) any relevant public funding certificate number and date of issue.

- (5) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.

11 In the case of publicly funded work:

- (1) The solicitor and barrister shall respectively take such steps as may be open to each of them to take under the applicable Regulations for the time being in force for the purpose of obtaining payment of the barrister's fees as soon as reasonably practicable;
- (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by (i) notifying the barrister of the date of issue and number and supplying the barrister with copies of any relevant public funding certificates (ii) notifying the barrister of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment (iii) informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
- (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.

12 In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:

- (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;
- (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 12(1) hereof;
- (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman;
- (4) Subject to paragraph 12(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
- (5) In the event of any breach by the solicitor of his obligations under paragraph 12(1) and/or 12(2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment.

13 (1) Subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister's fees if and to the extent that such fees have not been previously paid shall unless challenged by the solicitor as hereinafter provided be paid by the solicitor within one month after the fee note relating thereto has been sent to

the solicitor whether or not the solicitor has been placed in funds by his client and whether or not the case is still continuing.

- (2) In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (1) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment if that letter includes a statement to that effect.

- 14**
- (1) Any challenge by a solicitor to a barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 15(1) hereof has been sent to him whichever is the later.
 - (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
 - (a) the challenge was made in accordance with paragraph 14(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in writing (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal and (ii) to abide by and forthwith give effect to the decision of the Tribunal.
 - (3) If a dispute is referred to a Tribunal in accordance with paragraph 14(2) above:
 - (a) The Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (b) No payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.
 - (c) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 13(2) above shall apply to that sum as if it had become payable when it would have become payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
 - (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 14(1) and (2), the fees will be payable in full, without any set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 13(1) above.

15 Save as aforesaid and subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister if and to the extent that his fees have not been previously paid:

- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof;
- (2) unless an explanation for non-payment satisfactory to the barrister has been received shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and
- (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

Withdrawal of Credit

16 In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) 12(3) or 15(3) hereof or under the equivalent terms of any contract and in any other case in which he is satisfied that it is appropriate to do so, the Chairman may write a letter in the form of one of the letters annexed hereto and marked "C" or some reasonable adaptation thereof.

- 17** (1) This paragraph applies where the following conditions are satisfied namely where:
- (a) such a letter as is referred to in paragraph 16 hereof has been sent and no explanation for non-payment satisfactory to the Chairman has been received; and
 - (b) either (i) any fees referred to in such letter which are in the opinion of the Chairman properly payable remain unpaid or (ii) in the event that all such fees have been paid not more than twelve months have elapsed since payment; and
 - (b) circumstances have arisen in which the Chairman would otherwise have occasion to send to any person liable for the fees or to any connected person a further letter such as is referred to in paragraph 16 hereof.
- (2) In any case in which paragraph 17(1) hereof applies the Chairman shall write to such person or persons (as the case may be) to the effect that unless written representations received by him within 14 days after the date of such letter or within such extended period as he may allow justify an exceptional departure from the following course he will and unless persuaded by such representations not to do so the Chairman whether or not any fees remain unpaid shall:
- (a) issue a direction that no barrister may without the written consent of the Chairman (which consent may be sought urgently in exceptional cases) knowingly accept instructions from any person or firm named in such direction or from

any person who or firm which is or has at any time since the direction was issued been a connected person unless his fees are to be paid directly by the Legal Services Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work; and

- (b) cause the names of the persons or firms named in such direction to be included in a list of persons and firms named in such directions to be circulated by pre-paid first-class post to all such persons and firms to all the Clerks and Heads of Chambers in England and Wales to the Master of the Rolls and to the President of the Law Society notifying them of such direction.

18 Notwithstanding anything to the contrary herein if in any case the Chairman is satisfied that it is appropriate to issue a direction such as is referred to in paragraph 17(2)(a) hereof in respect of any person or firm named in such direction and to circulate a list such as is referred to in paragraph 17(2)(b) hereof including the names of the persons or firms named in such direction he may after giving such persons and firms due notice of why he considers it appropriate to take such course and after considering any written representations and after consultation with the Law Society issue a direction in respect of and cause the list to include the names of such persons and firms as may be appropriate.

18A Upon issuing a direction pursuant to either paragraph 17(2)(a) or paragraph 18 hereof, the Chairman shall report the facts to the OSS and shall request the OSS to commence proceedings before the Solicitors' Disciplinary Tribunal against the persons, the firms, or the partners in the firms named in such direction.

19 The list referred to in paragraphs 17 and 18 hereof shall be circulated monthly unless there have been in the meantime no additions to or deletions from the list.

20 Any Notified Solicitor and any barrister may at any time after the expiration of six months after the name of any person or firm was first included in such a list seek the revocation of any relevant direction and the amendment of the list and the Chairman after considering any written representations and after consultation with the Law Society shall be empowered (but shall not be obliged) to accede to such application upon such terms as he considers appropriate.

Definitions and consequential provisions

21 For the purpose hereof:

- (1) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
- (2) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;

- (3) "solicitor" shall where the context admits include any solicitor liable for the fees;
- (4) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 2(2) hereof for the payment of the fees;
- (5) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
- (6) "connected person" shall mean any person who from time to time is either
 - (a) a partner employee consultant or associate of any firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;
 - (b) the employer of any person liable for the fees or of any Notified Solicitor;
 - (c) an employee of any person liable for the fees or of any Notified Solicitor;
 - (d) a firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;
- (7) "Notified Solicitor" shall mean any person or firm whose name is for the time being included in the list referred to in paragraphs 17 and 18 hereof and any person who or firm which is or has at any time since the direction was issued been a connected person;
- (8) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
- (9) "the Chairman" shall mean the Chairman of the Bar Council and shall include any person including in particular the Vice-Chairman of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;
- (10) "the OSS" shall mean the Office for the Supervision of Solicitors;
- (11) "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.
- (12) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 13(2) hereof.
- (13) The "stipulated rate" shall mean 2% above the Bank of England base rate from time to time

(14) Any letter written by the Chairman to any person pursuant to or which would otherwise have been effective for the purposes of either the Withdrawal of Credit Scheme which came into effect on 2 March 1987 or the Withdrawal of Credit Scheme 1988 as originally enacted or in force from time to time shall in relation to such person be deemed to be such a letter as is referred to in paragraph 16 hereof.

22 (1) Subject to sub-paragraph (2) below, any fee note and any such letter as is referred to in paragraphs 15(1) 15(2) 16 17(2) or 18 hereof may be sent and shall be treated as having been properly and sufficiently sent to each and every person liable for the fees and to each and every connected person (as the case may be) if posted by pre-paid first-class post or sent through any Document Exchange or by facsimile transmission addressed to:

- (a) any person liable for the fees; or
- (b) if any person liable for the fees is either a partner of or consultant to or associate of or employed by another or others to the person liable for the fees or to his employer or to his senior partner (as the case may be); or
- (c) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, to the firm under whose name he practises;

and addressed to any place at which such person or his employer or any partner of his carries on practice.

(2) Where a firm or a sole proprietor is liable for the fees, if any letter under paragraphs 15(2), 16, 17(2) or 18 hereof is addressed to some person other than the senior partner of the firm or the sole proprietor, a copy must also be sent to the senior partner or sole proprietor at the same time.

23 Any such letter as is referred to in paragraphs 17(2) or 18 hereof shall:

- (1) identify any relevant earlier matters of complaint;
- (2) state the Chairman's proposed course of action; and
- (3) enclose a copy of this document provided that any accidental omission or failure to enclose such a copy may be remedied by the sending of a separate copy as soon as the Chairman is made aware of such omission or failure.

24 Any such direction as is referred to in paragraphs 17 or 18 hereof may contain or be amended so as to add or include any or all of the names and addresses:

- (1) of any person liable for the fees;
- (2) of any connected person; and

- (3) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, of the firm under whose name he practises.

Status of these Terms

25 Neither the General Council of the Bar in authorising these Terms nor a barrister in offering his services to a solicitor on these Terms has any intention to create legal relations or to enter into any contract or other obligation binding in law.

26 Neither the sending by a solicitor of a brief or instructions to a barrister nor the acceptance by a barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever or be legally enforceable by or against or be the subject of litigation with either the barrister or the General Council of the Bar.

Exclusion or variation

27 A solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms.

Transitional

28 Unless otherwise agreed in writing:

- (1) Any amendment to these Terms has effect only with regard to briefs and instructions accepted on or after the date the amendment is expressed to take effect; and
- (2) As regards briefs and instructions accepted before that date, these Terms continue to have effect in the form in which they stood before the amendment.

L E T T E R "A"
(To be sent 1 month after fee note)

Privately funded cases

Dear Sir,

Re:

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a privately funded case in which your relationship with [Name of Barrister] is governed by the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended; "the Terms"). Under paragraph 13(1) of the Terms, the fees were due and payable within 1 month of the fee note.

I would be grateful if you could make arrangements for these fees to be paid or let me know when payment may be expected.

[Please note that under paragraph 13(2) of the Terms, any such fees remaining outstanding one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from one month after the date of this letter until payment.]*

Yours faithfully,

Clerk to [name of barrister]

~~*Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.~~

Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a publicly funded case and I would be grateful if you could let me know when payment may be expected.

Yours faithfully,

Clerk to [name of barrister]

L E T T E R "B"
(To be sent 3 months after fee note)

Privately funded cases

Dear Sir,

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]
[Date of issue]

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been received.

My records indicate that this is a publicly funded case. I must therefore ask you to notify me of:

- (a) the date of issue and number of the relevant public funding certificate(s);
- (b) the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) the steps you have taken under the relevant Regulations for the purpose of obtaining payment of [name of barrister]'s fees.

Would you also supply me with copies of the relevant Public Funding Certificate(s).

As you know Counsel is required as a matter of professional conduct to report the matter to the Chairman of the General Council of the Bar unless he receives in response to this letter the information requested above and a satisfactory explanation for the fact that he has not yet been paid. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

L E T T E R "C"
First Chairman's Letter: Private

PRIVATE AND CONFIDENTIAL

RECORDED DELIVERY

The Senior Partner

Dear Sir,

I refer to Counsel's fees particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached. Letters have been written regarding payment of these fees. Payment has not been received. As a result the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

I would remind you of your professional obligation to pay Counsel's fees in non publicly funded matters irrespective of whether you have been placed in funds by your client.

Unless you challenged Counsel's fees in writing within 3 months after the first fee note was sent to you, or you are able to provide a satisfactory explanation for non payment, I would ask you to pay Counsel within 14 days of the date of this letter. In addition, please provide an explanation for the delay in payment, again within 14 days of the date of this letter.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that, unless there is a satisfactory explanation for non-payment or you challenged the fees in time, and the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove necessary to implement the Scheme in your case and that Counsel's fees will be paid promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay Counsel's fees on time.

Yours faithfully,

[Name]
CHAIRMAN OF THE BAR

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of
[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

LETTER "C"
First Chairman's Letter: Publicly funded

PRIVATE AND CONFIDENTIAL

RECORDED DELIVERY

The Senior Partner

Dear Sir,

I refer to Counsel's fees, particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached. Letters have been written regarding payment of these fees. Payment has not been received. As a result, the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

Since this complaint relates to a publicly funded matter, I would be grateful if you would supply the following information within 14 days of the date of this letter:-

- (a) notify me of the date of issue and number and supply me with copies of any relevant publicly funded certificates;
- (b) notify me of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) inform me of what steps you have taken under the relevant Regulations for the purpose of obtaining payment of Counsel's fees.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that if (1) no satisfactory explanation for non-payment of the fees referred to in the Schedule to this letter has been provided and (2) the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove to be necessary to implement the Scheme in your case, and that Counsel's fees will be paid promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay Counsel's fees on time."

Yours faithfully,

[Name]

CHAIRMAN OF THE BAR

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of
[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

LETTER "C"
First Chairman's Letter: Private and Publicly funded

PRIVATE AND CONFIDENTIAL
RECORDED DELIVERY
The Senior Partner

Dear Sir,

I refer to Counsel's fees, particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached. Letters have been written regarding payment of these fees. Payment has not been received. As a result, the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

I would remind you of your professional obligation to pay Counsel's fees in privately funded matters irrespective of whether you have been placed in funds by your client.

Unless you challenged Counsel's fees in writing within 3 months after the first fee note was sent to you, or you are able to provide a satisfactory explanation for non-payment, I would ask you to pay Counsel within 14 days of the date of this letter. In addition, please provide an explanation for the delay in payment, again within 14 days of the date of this letter.

Insofar as this complaint relates to a publicly funded matter, I would be grateful if you would supply the following information within 14 days of the date of this letter:-

- (a) notify me of the date of issue and number and supply me with copies of any relevant publicly funding certificates;
- (b) notify me of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) inform me of what steps you have taken under the relevant Regulations for the purpose of obtaining payment of Counsel's fees.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that, unless there is a satisfactory explanation for non-payment or you challenged the fees in time, and the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove to be necessary to implement the Scheme in your case, and that Counsel's fees will be paid promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay Counsel's fees on time.

Yours faithfully,

[Name]

CHAIRMAN OF THE BAR

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of
[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

**Annexe G2: The Contractual Terms of Work on Which Barristers Offer
Their Services to Solicitors 2001**

*(As Authorised By The General Council Of The Bar On 24 March 2001 and
amended by authority of The General Council of the Bar
on 17 November 2001)*

WHEREAS:

- (1) These terms have been authorised by the General Council of the Bar;
- (2) These terms are intended to apply in any case where a barrister is instructed by a solicitor, and both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding;
- (3) Any such agreement shall operate in accordance with paragraph 27 of the Terms of Work to exclude paragraphs 1-15 and 25-26 thereof as regards the instructions to which it relates;

AND WHEREAS:

- (4) By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
- (5) Except in cases funded by the Legal Services Commission, Community Legal Service or Criminal Defence Service a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
- (6) Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
- (7) The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

Application of these terms

- 1** These terms apply in any case where a barrister is instructed by a solicitor and where both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding subject to the following:-
 - (1)** these terms apply to any particular contract only insofar as they have not been expressly varied or excluded by written agreement between the barrister and the solicitor;
 - (2)** these terms will apply to briefs and instructions only where they have been accepted by the barrister;
 - (3)** these terms do not apply to publicly funded work; and
 - (4)** these terms do not apply to any work undertaken by a barrister on a conditional fee basis.

GENERAL

- 2** The solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct the barrister.
- 3** In any case where the barrister accepts a brief or instructions from the solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:
 - (1)** the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;
 - (2)** the obligations of the solicitor under these terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

INSTRUCTIONS

- 4** The barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these terms will apply only where the barrister has accepted the brief or instructions.
- 5** Notwithstanding that a brief or instructions have been delivered to the barrister he shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:
 - (1)** to peruse them;
 - (2)** in the case of a brief, to agree a fee with the solicitor.

- 6 The barrister accepts a brief or instructions upon the understanding:
- (1) that he must and will comply with the Bar Code of Conduct;
 - (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work;
 - (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.
- 7 Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent."

COPIES OF BRIEFS AND INSTRUCTIONS AND RECORDS OF ADVICE

- 8 The barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle the barrister to exercise any lien over any brief instructions or papers.

FEES AND INTEREST

- 9 Subject to the Bar Code of Conduct, the following provisions shall apply:
- (1) Fees and/or charging rates shall be (a) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (b) a reasonable professional rate for the barrister instructed.
 - (2) Subject to paragraphs 11 and 12 below, the solicitor shall pay the barrister's fees in respect of work to which these terms apply within one month after receipt by the solicitor of the barrister's fee note in respect of such fees.
 - (3) In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (2) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment.
- 10 (1) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.

- (2) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
 - (3) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number.
 - (4) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.
- 11 In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:
 - (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;
 - (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
 - (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.
 - (4) Subject to paragraph 11(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
 - (5) In the event of any breach by the solicitor of his obligations under paragraph 11(1) and/or (2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment if that letter includes a statement to that effect.
- 12
 - (1) Any challenge by the solicitor to the barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 13(1) hereof has been sent to him whichever is the later.
 - (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
 - (a) the challenge was made in accordance with paragraph 12(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in *writing (i)* to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal *(ii)* to abide

by and forthwith give effect to the decision of the Tribunal.

- (3) If a dispute is referred to a Tribunal in accordance with paragraph 12(2) above:
- (a) the Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (b) no payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.
 - (c) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 9(3) above shall apply to that sum as if it had become payable when it would have been payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
- (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 12(1) and (2);
- (a) the fees will be payable in full, without any deductions or set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 9(2) above
 - (b) for the avoidance of doubt, it shall not be open to the solicitor to withhold or delay such payment or any part thereof on the grounds that a claim or complaint has been made or maybe made against the barrister arising out of the brief or instruction to which the fees relate or any other ground

13 Save as aforesaid and if and to the extent that his fees have not been previously paid, and without prejudice to any other remedy open to him in order to recover them, the barrister:

- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof; and
- (2) unless an explanation for non-payment satisfactory to the barrister has been received, shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and
- (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

WITHDRAWAL OF CREDIT

14

- (1)* In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) or 13(3) hereof, paragraphs 16 to 24 (inclusive) of the Terms of Work shall, so far as applicable, apply to the relationship created between the barrister and the solicitor under these terms.
- (2)* Paragraph 22 of the Terms of Work shall also apply to any fee note or letter referred to in paragraphs 9, 10 and 13 above as it does to those referred to in paragraphs 15-18 of the Terms of Work

DEFINITIONS AND CONSEQUENTIAL PROVISIONS

15 For the purpose hereof:

- (i)* "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
- (ii)* "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;
- (iii)* "solicitor" shall where the context admits include any solicitor liable for the fees;
- (iv)* "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 3(2) hereof for the payment of the fees;
- (v)* Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
- (vi)* "Terms of Work" shall mean the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended and in force from time to time)
- (vii)* "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
- (viii)* "the Chairman" shall mean the Chairman of the General Council of the Bar (also referred to as the "Bar Council") and shall include any person including in particular the Vice Chairman of the General Council of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;
- (ix)* "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.

- (x) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 9(3) hereof.
- (xi) The “stipulated rate” shall mean 2% above the Bank of England base rate from time to time.

The General Council of the Bar

- 16** Neither the sending by the solicitor of a brief or instructions to the barrister nor the acceptance by the barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever (except between the solicitor and barrister) or be legally enforceable by or against or be the subject of litigation with the General Council of the Bar.

LETTER "A"

(TO BE SENT 1 MONTH AFTER FEE NOTE)

Dear Sir

Re: _____

I refer to the Fee Note of [*Name of Barrister*] in respect of the above case which was sent to you on the [*Date*].

My records indicate that this is a privately funded case in which your relationship with [*Name of Barrister*] is governed by the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 (the "Contractual Terms"). Under paragraph 9(2) of those terms, the fees were due and payable within 30 days of the Fee Note.

[Please note that under paragraph 9(3) of the The Contractual Terms, any such fees remaining outstanding within one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from 1 month after the date of this letter until payment.]*

I would be grateful if you could now make arrangements for these fees to be paid.

Yours faithfully

Clerk to [*Name of Barrister*]

~~*Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.~~

L E T T E R " B "

(TO BE SENT 3 MONTHS AFTER FEE NOTE)

Dear Sir

Re: _____

I have referred to [*Name of Barrister*] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully

Clerk to [*Name of Barrister*]

Annexe H: The Foreign Lawyers (Chambers) Rules

1. Before permitting a foreign lawyer to practise from chambers the head of chambers or if there is no head of chambers every member of chambers must:
 - (a) obtain the written undertaking of the foreign lawyer to comply with the Code as if he were a barrister in independent practice except in so far as any requirement of the Code conflicts with the rules of his own profession;
 - (b) ensure that the foreign lawyer is covered by insurance against claims for professional negligence in such amount and upon such terms as are currently required by the Bar Council;
 - (c) provide the Bar Council in writing with the name and details of the foreign lawyer and with a copy of the undertaking referred to in (a) above and a copy of the current insurance policy or certificate of insurance covering the foreign lawyer; and
 - (d) obtain the consent in writing of the Bar Council to the foreign lawyer so practising.
2. Thereafter for so long as the foreign lawyer is permitted to practise from chambers the head of chambers or if there is no head of chambers every member of chambers must:
 - (a) satisfy himself that the foreign lawyer complies with and continues to comply with the undertaking referred to in paragraph 1(a) above;
 - (b) ensure that the foreign lawyer remains covered by insurance in accordance with paragraph 1(b) above and that the Bar Council has a copy of the current insurance policy or certificate of insurance covering the foreign lawyer; and
 - (c) inform the Bar Council of any failure by the foreign lawyer to comply with the undertaking referred to in paragraph 1(a) above which may be known to him.
3. No barrister shall permit a foreign lawyer to practise or continue to practise from chambers of which the barrister is a member if the consent of the Bar Council to the foreign lawyer so practising has not been given or is at any time withdrawn.
4. A European lawyer registered with the Law Society of England and Wales may not practise from or be a member of chambers.

Annexe I: The Employed Lawyers (Conduct of Litigation Rules)

1. An employed barrister may exercise any right that he has to conduct litigation provided that:
 - (a) he is entitled to practise as a barrister in accordance with paragraph 202 of the Code;
 - (b) he has spent a period of at least twelve weeks working under the supervision of a qualified person or has been exempted from this requirement by the Bar Council on the grounds of his relevant experience;
 - (c) if he is of less than one year's standing (or three years' standing in the case of a barrister who is supplying litigation services to any person other than a person referred to in paragraph 501 of the Code) his principal place of practice is an office which is also the principal place of practice of a qualified person who is able to provide guidance to the barrister; and
 - (d) if he is of less than three years' standing, he completes at least six hours of continuing professional development on an approved litigation course during any year in which he is required to undertake continuing professional development by the Continuing Professional Development Regulations (reproduced in Annex C).

2. For the purpose of paragraph 1(c) above an employed barrister shall be treated as being of a particular number of years' standing if he:
 - (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body;
 - (b) has made such practice his primary occupation; and
 - (c) has been entitled to exercise a right to conduct litigation in relation to every Court and all proceedings

for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years.

3. A person shall be a qualified person for the purpose of paragraph 1(c) above if he:
 - (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body for a period (which

need not have been as a member of the same authorised body) of at least six years in the previous eight years;

- (b) for the previous two years
 - (i) has made such practice his primary occupation, and
 - (ii) has been entitled to exercise a right to conduct litigation in relation to every Court and all proceedings;
- (c) is not acting as a qualified person in relation to more than two other people; and
- (d) has not been designated by the Bar Council as unsuitable to be a qualified person.

4. If an employed barrister in the conduct of litigation gives an undertaking, any breach of that undertaking shall constitute professional misconduct.

Annexe J: The Complaints Rules

Introduction

- 1 These Rules prescribe the manner in which all complaints about the conduct of or services provided by barristers shall be processed.
- 2 The membership of the Professional Conduct and Complaints Committee ("the Committee") shall be as prescribed by the Standing Orders of the Bar Council as amended from time to time.
- 3 Anything required by these Rules to be done or any discretion required to be exercised by, and any notice required to be given to, the Complaints Commissioner ("the Commissioner") or the Secretary of the Committee ("the Secretary"), may be done or exercised by, or given to, any person authorised by the Complaints Commissioner to act in his stead or by the Chief Executive of the Bar Council to act instead of the Secretary of the Committee (either prospectively or retrospectively and either generally or for a particular purpose).

Procedure for dealing with complaints

- 4 The Secretary shall take such steps as are reasonably practicable to inform the complainant of the progress and result of his complaint.
- 5 Any complaint other than a complaint raised by the Bar Council of its own motion shall be referred to and considered by the Commissioner before any further step is taken in accordance with these rules. The Commissioner's powers in relation to a complaint so considered by him shall be those set out in paragraph 8 *et seq.* below.
6.
 - (a) If a complaint is not dismissed by the Commissioner following consideration as aforesaid, or is a complaint raised by the Bar Council, it shall be investigated by the Secretary of the Committee in the manner set out in paragraph 16 *et seq.* below.
 - (b) Following such investigation, the Secretary shall refer the complaint back to the Commissioner together with the results of such investigation and the Commissioner shall reconsider the complaint and the results and shall exercise the powers given to him by paragraph 21 *et seq.* below in respect of the complaint.
- 7 If the Commissioner does not dismiss the complaint following reconsideration under paragraph 6(b) above, he shall refer the complaint to the Committee for consideration with his observations on it, if any. The Committee's powers in relation to such a complaint shall be those set out in paragraph 26 *et seq.* below.

Commissioner's powers under paragraph 5

- 8 The powers of the Commissioner shall be to consider complaints made by outside persons and to determine whether in his view such a complaint discloses a *prima facie* case of professional misconduct or inadequate professional service and is apt for consideration by the Committee. In the exercise of that power he shall observe the following provisions.
- 9 If it appears to him that the complaint relates to a matter within the domestic jurisdiction of an Inn or a Circuit, he may refer the complaint without further consideration to the Treasurer of the Inn or the Leader of the Circuit concerned and notify the complainant of his decision.
- 10 (a) If it appears to the Commissioner that the complaint arises out of a barrister's actions in a part-time or temporary judicial or quasi-judicial capacity, he shall act as follows:
- (i) If it appears to him that the complaint would otherwise fall to be dismissed under these provisions, he shall so dismiss it.
 - (ii) If it appears to him that the complaint would otherwise not fall to be dismissed, the Commissioner shall refer the complaint without further consideration to the person responsible for the appointment of the barrister to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other person as appropriate), requesting him to notify the Commissioner when the complaint has been dealt with and of any action taken, and the Commissioner shall notify the complainant of his decision so to refer it. Where the Commissioner considers it inappropriate to refer the complaint to a person other than the Lord Chancellor or a Minister of the Crown or where that other person refuses to deal with a complaint, he shall consider the complaint and, subject to (iv) below, direct it to be proceeded with in accordance with paragraph 16 et seq below.
 - (iii) If the Lord Chancellor, Minister of the Crown, or other person responsible for the appointment, having dealt with a complaint, believes that it may be appropriate for further consideration by the Bar Council, he may, subject to (iv) below, refer the matter to the Commissioner who may reconsider the complaint and may, if he sees fit, direct it to be proceeded with in accordance with paragraph 16 et seq below.
 - (iv) No such reference to the Commissioner as is mentioned in (iii) above by the Lord Chancellor, Minister of the Crown, or other person responsible for the appointment shall be acted upon by the Commissioner, nor shall the Commissioner exercise

the powers under the last sentence of paragraph (ii) above in respect of any part of the complaint relating to anything said or done by the barrister in the exercise of his judicial functions or affecting the independence of the barrister in his judicial or quasi-judicial capacity.

- (b) If it appears to the Commissioner that the complaint relates to the conduct of or professional services provided by a barrister 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 Commissioner shall not consider the complaint further and shall inform the complainant that his complaint should be directed to the Lord Chancellor.

11 If he has not disposed of any complaint under paragraph 9 or 10 above, he shall consider whether:

- (a) the complaint fails to disclose a prima facie case of professional misconduct or inadequate professional service;
- (b) the complaint has been made more than six months after the act or omission complained of and the complaint is not of sufficient seriousness nor are there any exceptional circumstances which justify further consideration of the complaint despite the lapse of time since the matters complained of;
- (c) the complaint is trivial;
- (d) the complaint obviously lacks validity; or
- (e) for any other reason the complaint ought to be dismissed summarily.

In order to decide this question, he may seek information or assistance, orally or in writing, as he thinks fit, from the complainant, any potential witness, any member of the Committee, the Secretary or the Equal Opportunities Officers of the Bar Council.

12 If he considers that it should be dismissed on any of the grounds set out in paragraph 11 above, he shall so dismiss it, and shall notify the complainant of his decision and of his reasons for it.

13 If in considering whether a complaint should be dismissed summarily the Commissioner decides that the complaint does not disclose any evidence of professional misconduct, and it appears to him that the complaint might be capable of resolution by agreement, he may invite the complainant and the barrister concerned to attempt to conciliate their differences.

14 The Commissioner may at any time adjourn consideration of a complaint for such period as he thinks fit, whether while the complainant and the barrister attempt conciliation, during the currency of related legal proceedings or for any other reason.

- 15 The Commissioner may reopen or reconsider a complaint which has been disposed of under paragraphs 9 10 or 12 above:
- (a) following a recommendation of the Legal Services Ombudsman that he do so, or
 - (b) where new evidence becomes available to him which leads him to conclude that he should do so, or
 - (c) for some other good reason.

Following such reconsideration he may take such further or different action as he thinks fit, as if the former decision had not been made.

Investigation of complaints by the Secretary

16 The investigation of complaints shall be carried out by the Secretary under the direction of the Commissioner or the Committee in such manner as they or either of them think fit. In directing the carrying out of such investigation, the Committee and the Commissioner shall have regard to the following provisions.

17 The complaint shall be sent to the barrister concerned together with a letter requiring him to comment in writing on the complaint and to make any written representations he sees fit as to his conduct or the services he has provided to the complainant. That letter shall be sent to the address notified by the barrister pursuant to paragraphs 202(d) of the Code of Conduct.

If no response is received within 28 days of the date of posting of such letter, the Secretary may proceed as if the barrister's response had been to deny the allegations made in the complaint in their entirety.

18 The complaint should normally also be sent to any solicitor or solicitor's agent named on the form of complaint as having instructed the barrister, and if the Commissioner directs to any other person whose name and address is provided by the complainant as a person able to assist the Committee together with a letter seeking their comments upon the complaint.

19 Any comments received by the Secretary from the barrister concerned in answer to the complaint should normally be sent to the complainant, under cover of a letter seeking his response to the barrister's comments, but the Commissioner may at his discretion direct that this step be omitted if, for example, issues of privilege or confidentiality make it inappropriate.

20 The Secretary may enter into further correspondence with any of the parties whose comments have been sought, or any other party who the Secretary, the Commissioner or the Committee think capable of affording further assistance.

Commissioners powers under paragraph 6(b)

- 21 When a complaint is referred to the Commissioner following investigation, as set out in paragraph 6(b) above, the Commissioner shall consider whether, on the information now available to him, it discloses a *prima facie* case of professional misconduct or inadequate professional service.
- 22 In order to decide this question, he may direct any further investigations to be made that he sees fit, and may seek further information or assistance from any other person whom he considers may be capable of affording it.
- 23 The Commissioner may at any time adjourn consideration of a complaint for such period as he thinks fit, whether during the currency of related legal proceedings or for any other reason.
- 24 If the Commissioner decides that a *prima facie* case of professional misconduct or inadequate professional service is not shown, he shall dismiss the complaint, and shall notify the complainant and the barrister complained against of his decision and of his reasons for it.
- 25 The Commissioner may reopen or reconsider a complaint which has been disposed of under paragraph 24 above:
- (a) following a recommendation of the Legal Services Ombudsman that he do so, or
 - (b) where new evidence becomes available to him which leads him to conclude that he should do so, or
 - (c) for some other good reason.
- Following such reconsideration he may take such further or different action as he thinks fit, as if the former decision had not been made.

Powers and functions of the Committee

- 26 The powers of the Committee shall be as follows:
- (a) to determine whether any complaint discloses a *prima facie* case of professional misconduct, and if so to deal with it in accordance with these Rules.
 - (b) to determine whether the complaint discloses a *prima facie* case of inadequate professional service by the barrister concerned and if so to deal with it in accordance with these Rules.
 - (c) to prefer charges of professional misconduct before Disciplinary Tribunals (as provided by the Disciplinary Tribunals Regulations at Annex K to the Code of Conduct), to refer to such tribunals any legal aid complaint relating to the conduct of a barrister and to be responsible for prosecuting any such charges or legal aid complaints before such Tribunals.

- (d) to prefer and deal summarily with charges of professional misconduct in accordance with the Summary Procedure Rules forming Annex L to the Code of Conduct
- (e) to take such other actions in relation to complaints as are permitted by these Rules.
- (f) to make recommendations on matters of professional conduct to the Professional Standards Committee, as the Committee may think appropriate.
- (g) to make rulings on matters of professional conduct when the Committee considers it appropriate to do so.
- (h) to exercise the power of the Bar Council under paragraph 109 of the Code of Conduct to grant waivers of the provisions of that Code either generally or in particular cases.
- (i) to exercise the power of the Bar Council to designate Legal Advice Centres for the purposes of Annex H of the Code of Conduct.

27 The Committee shall consider complaints and the results of investigations thereof referred to it by the Commissioner pursuant to paragraph 7 above, together with the Commissioner's comments thereon, in such manner as it shall see fit.

28 Upon considering any complaint and subject to the provisions of paragraph 28A below, the Committee may:

- (a) dismiss the complaint provided that each of the Lay Members present at the meeting consents to such dismissal, whereupon the Secretary shall notify the complainant and the barrister complained against of the dismissal and the reasons for it.
- (b) determine that no further action shall be taken on the complaint.
- (c) at any time postpone consideration of the 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,

- (d) if the complaint does not disclose a *prima facie* case of professional misconduct but the barrister's conduct is nevertheless such as to give cause for concern, draw it to his attention in writing. The Committee may in those circumstances advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the Committee or some other person nominated by the Committee to receive such advice, and may thereafter exercise the powers given to it by paragraph (e) below, or dismiss the complaint. If the Committee considers that the circumstances of the complaint are relevant to the barrister's position as a pupilmaster, it may notify the barrister's Inn of its concern in such manner as it sees fit.

If the complaint is dismissed the Secretary shall notify the complainant of the dismissal and the reasons for it.

- (e) if a *prima facie* case of inadequate professional service, is disclosed and the following conditions are satisfied:
- (i) the complainant is the barrister's lay client or his duly authorised representative or in the case of an employed barrister the person to whom he has supplied the professional service in question, and
 - (ii) if a *prima facie* case of professional misconduct is also disclosed by the complaint, the matter is in the opinion of the Committee not serious enough to warrant treatment under sub-paragraphs (g) or (h) below,

the Committee may direct that the complaint be referred to an Adjudication Panel to be dealt with in accordance with the Adjudication Panel Rules (Annex P to the Code of Conduct).

- (f) if a *prima facie* case of professional misconduct (whether with or without inadequate professional service) is disclosed but in the opinion of the Committee the matter is not serious enough to warrant treatment under sub-paragraphs (g) or (h) below, direct that the complaint be dealt with by informal attendance by the barrister to explain his conduct following the procedure set out in paragraphs 39 *et seq.* below
- (g) if a *prima facie* case of professional misconduct (whether with or without inadequate professional service) is disclosed but in the opinion of the Committee there are no disputes of fact which cannot fairly be resolved by a summary procedure, provided it is satisfied that the powers of a summary procedure are adequate to deal with the gravity of the issues, deal with the matter summarily in accordance with the Summary Procedure Rules (Annex L to the Code of Conduct)
- (h) if a *prima facie* case of professional misconduct (whether with or without inadequate professional service) is disclosed in circumstances where in the opinion of the Committee paragraph (g) above does not apply, direct that the

complaint should form the subject-matter of a charge before a Disciplinary Tribunal.

- 28A If the Committee considers that the Complaint discloses a prima facie case of inadequate professional service or of professional misconduct against a registered European lawyer, the secretary shall
- (i) inform the professional body of which the registered European lawyer is a Member in his home Member State;
 - (ii) offer that professional body the opportunity to make representations to the Adjudication Panel, Informal Hearing, Summary Procedure or Disciplinary Tribunal to which the Complaint has been referred;
and
 - (iii) notwithstanding paragraph 47 of these rules, inform that professional body of findings made by any panel under these rules or under Annexes K, L, M or N of this Code.
- 28B If the subject matter of the complaint involves a conviction for an offence of dishonesty or deception or some other serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984) the Committee shall direct that the complaint should form the subject-matter of a charge before a Disciplinary Tribunal.
- 29 The Committee may reopen or reconsider a complaint which has been disposed of (except where it has been disposed of following a hearing before a Disciplinary Tribunal or the Visitors):
- (a) following a recommendation of the Legal Services Ombudsman that they do so, or
 - (b) where new evidence becomes available to the Committee which leads them to conclude that they should do so, or
 - (c) for some other good reason.
- 30 Following such reopening or reconsideration, the Committee may take any further or different action it thinks fit, as if the former decision had not been made, provided that if a direction under paragraph 28(h) or 28B above has been given, and charges have been forwarded to the Clerk and served on the Defendant, the Committee's actions shall be confined to instructing counsel for the Committee to
- (a) offer no evidence on a charge, or
 - (b) apply to the Directions Judge for the making of additions to or amendments of a charge.
- 30A The Bar Council shall respect the confidentiality of complaints. The Bar Council shall not disclose the fact that a complaint has

been made or details of the complaint or its disposal save in the following circumstances:

- (a) for the purpose of investigating the complaint;
- (b) for the purpose of keeping the complainant and the barrister informed of the progress of the complaint;
- (c) where the complainant and the barrister consent;
- (d) where the publication of a finding is required by the provisions of the Disciplinary Tribunals Regulations 2000 or the Summary Procedure Rules or paragraphs 46 and 47A of these rules;
- (e) in response to a request from the Lord Chancellor or officials of his Department in respect of an application by a barrister for silk or judicial appointment or a request from some other body for a Certificate of Good Standing in respect of a barrister, in which case
 - (i) if any complaint has been made against the barrister concerned which has not been dismissed by the Commissioner, disposed of by the Committee under paragraph 28(a), (d) or (e) of these rules or by any other panel to which it may have been referred by the Committee, the Bar Council shall simply indicate that a complaint has been received which has not been dismissed; and
 - (ii) if a finding of professional misconduct has been recorded against the barrister concerned, the Bar Council shall disclose the finding and the penalty;
- (f) for any other good reason.

Disciplinary charges

31 If the Committee directs under paragraph 28(h) or 28A above that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the following paragraphs shall have effect.

31A If the Committee considers that

- (a) the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction),
- (b) witnesses are unlikely to be called for the hearing, or
- (c) the case needs to be resolved urgently,

the Committee may direct that the prosecution of the charges be expedited.

- 32 The Committee shall nominate one of its members ("the PCC Representative") to be responsible for the conduct of the proceedings on its behalf. If for any reason he is unable to act at any time, the Chairman of the Committee may nominate another member to act in his place. Where no further investigation is required, the PCC representative shall settle the charge having regard to the provisions of paragraph 34 below.
- 33 Save in cases where the charges have been settled by the PCC Representative, the Secretary or investigations officer shall arrange for the appointment of counsel to settle the charge and to present the case before the Tribunal, and may arrange for the appointment of a solicitor or such other person as may be necessary to assist counsel and prepare the case.
- 34 Save in cases where the charges have been settled by the PCC Representative, counsel shall settle such charges as he considers appropriate founded upon the facts or evidence from which the complaint arose and any further or other matters which have been revealed by investigations directed by either counsel, the PCC Representative or the Committee. Such charges may be of professional misconduct and, where appropriate, of inadequate professional service, save that no charges of inadequate professional service shall be settled unless:
- (i) the complainant is the barrister's lay client or his duly authorised representative or in the case of an employed barrister the person to whom he has supplied the professional service in question, and
 - (ii) the subject-matter of the complaint is something in respect of which the barrister would not be entitled to immunity from suit as an advocate in civil law.
- 35 It shall be the responsibility of the investigations officer at the Bar Council, subject to the supervision of the PCC Representative and/or the Committee:
- (a) to forward the charge to the Clerk to the Tribunal, as required by Regulation 5 of the Disciplinary Tribunal Regulations, together with the other documents specified therein, and
 - (b) to make any necessary administrative arrangements for the summoning of witnesses, the production of documents, and generally for the proper presentation of the case on behalf of the PCC Representative before the Tribunal.
- 36 Enquiries shall be made of the Under- or Sub-Treasurer of the barrister's Inn and of the Bar Council concerning any previous findings of misconduct against him, so that this information may be available to be placed before the Tribunal if any charge against him is found to have been proved.

37. If a barrister is a member of more than one Inn, references in these Rules to his Inn shall mean the Inn by which he was called, unless he is a Bencher in which case his Inn shall mean the Inn of which he is a Bencher.
- 38 The Committee may, with the approval of the Finance and the Professional Standards Committees, authorise the Secretary or investigations officer in an appropriate case to arrange that Counsel, or any other person appointed pursuant to paragraph 33 above, be paid reasonable remuneration for work done on the Committee's behalf. The cost of such remuneration shall be borne by the Bar Council.

Informal Hearings

- 39 Where the Committee decides under paragraph 28(f) above that a complaint should be dealt with informally it shall direct that the barrister attend upon a panel consisting of not less than two nor more than three barrister members of the Committee and one lay member, who may be the Commissioner. When the Committee directs such attendance it shall specify
- (a) what, in summary form, are the matters upon which the Committee has found a *prima facie* case of misconduct to be disclosed and on which the barrister's explanation of his conduct is required, and
 - (b) whether, on the information available to them, the Committee also regard a *prima facie* case of inadequate professional service as having been disclosed, and if so what, in summary form, are the matters arising in that regard which the barrister will also be asked to explain.
- 39A The Secretary shall notify both the barrister and the complainant of the matters specified in paragraph 39. As soon as practicable thereafter he shall send them a bundle of the papers to be considered by the panel and shall invite them within 14 days (which period may be extended with the permission of the Chairman of the PCC or the Complaints Commissioner) to comment in writing on any of those matters or to send other document to which they wish the panel to have regard.
- 40 The Secretary shall make such further enquiries as he sees fit, or as are directed by the Commissioner or the Committee to assist the deliberation of the panel, such as whether the complainant claims to have suffered financial loss as a result of the conduct complained of, and if so the exact nature and amount of that claimed loss and the evidence available to support the claim, and from the barrister the nature of the work he carried out for the complainant out of which the complaint arose, the fee rendered for such work, and whether or not such fee has been paid.

- 41 Subject to the direction of the Chairman of the panel:
- (a) the Secretary shall keep the complainant informed of the progress of the complaint and of any further documents and other information to be considered by the panel;
 - (b) the Secretary shall, so far as practicable, require the barrister and afford the complainant an opportunity to comment in advance of the hearing on any such information or documents.
- 42 The barrister shall attend on the panel at the day and time arranged, and shall provide to the panel orally such information as he wishes to put before them in connection with his conduct in relation to the matters specified, and shall answer so far as he is able such further questions as the panel may put to him which may relate to any aspects of the conduct complained of. The panel shall consider whether to adjourn the hearing in order to enable the complainant to comment on any information provided by the barrister at the hearing which had not previously been disclosed by him.
- 43 Following such hearing, the panel may reach the following decisions and shall provide reasons for reaching the decision
- (a) It may conclude that the barrister's explanation of his professional conduct has been satisfactory, whereupon it shall dismiss the complaint.
 - (b) It may conclude that no further action shall be taken on the complaint.
 - (c) It may conclude that the barrister's explanation of his professional conduct has not been satisfactory, whereupon it may either orally or in writing
 - (i) give him advice as to his future conduct,
 - (ii) reprimand him.
 - (d) Regardless of the conclusion reached in relation to the barrister's professional conduct, the panel may conclude that a barrister has provided inadequate professional service in respect of the subject-matter of the complaint, provided the following conditions are satisfied:
 - (i) the complainant is the barrister's lay client or his duly authorised representative or in the case of an employed barrister the person to whom he has supplied the professional service in question, and
 - (ii) the subject-matter of the complaint is not something in respect of which the barrister would be entitled to immunity from suit as an advocate in civil law.
 - (e) Whatever conclusion it may reach, the panel may refer any issue of policy which arises to the relevant Committee of the Bar Council.

- (f) The panel may refer a matter back to the Committee for reconsideration if it considers that its powers are not sufficient to deal with the gravity of the complaint revealed at the hearing or that other issues are raised which require further consideration by the Committee.

44 If the panel is not unanimous on any issue, the finding made shall be that of the majority of them. If the panel is equally divided, the burden of proof being on the complainant the finding made shall be that most favourable to the barrister.

45 If a finding of inadequate professional service is made under paragraph 43(d), the panel shall consider what remedy should be granted to the complainant in respect of such inadequate service. The panel may:

- (a) determine that it is not appropriate to take any action in respect of the complaint,
- (b) adjourn consideration of the remedy to permit investigation or further investigation of the consequences of the inadequate professional service for the complainant and reconvene the panel when the results of such investigations are known,
- (c) direct the barrister to make a formal apology to the complainant for the conduct complained of,
- (d) direct the barrister to repay or remit all or part of any fee rendered in respect of the inadequate service,
- (e) direct the barrister to pay compensation to the complainant in such sum as the panel shall direct not exceeding £5,000.
- (f) direct the barrister to complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this requirement to the Committee.

In determining whether any sum is to be paid under paragraph (e) hereof, or in fixing the amount of such sum, the panel shall in particular have regard to any loss suffered by the applicant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, to the gravity of the conduct complained of, and to the fee claimed by the barrister for the inadequate service.

46 An appeal shall lie at the instance of the barrister from any decision of a panel that a barrister has provided inadequate professional service, and against any decision as to the remedy to be granted to the complainant for such service in the same manner as an appeal lies from a decision of an Adjudication Panel in respect of the same matters.

46A The Secretary shall notify both the complainant and the barrister of the decision and, if the complaint is dismissed, of the reasons for it.

47 If the panel considers that the circumstances of the complaint are relevant to the barrister's position as a pupilmaster, it may notify the barrister's Inn of its concerns in such manner as it sees fit.

Definitions

48 In these Rules unless the context otherwise requires

(a) Any term defined in the Code of Conduct shall carry the same meaning as it does in the Code of Conduct.

(b) Any reference to a person includes any natural person, legal person and/or firm. Any reference to the masculine gender includes the feminine and the neuter, and any reference to the singular includes the plural, and in each case *vice versa*.

Commencement and Transitional Provisions

49 If a complaint has been raised in the Bar Council's complaints records before 15th May 2000, these Rules shall not apply but the Complaints Rules in force immediately before that date shall apply to that complaint, save that where the PCC has referred a complaint to an informal hearing after 15th May 2000, these rules shall apply. In relation to complaints raised after the Commencement Date, the procedure set out in these Rules shall apply, save that no finding of inadequate professional service may be made against a barrister in respect of any conduct of his which took place before 13th July 1996.

Annexe K: The Disciplinary Tribunals Regulations

Arrangement of Regulations

1	Definitions
2	Composition of Disciplinary Tribunals
3	Sittings of Disciplinary Tribunals
4	Clerks
5	Service of Charges
6	Representation of the complainant's interests
7	Convening Orders
8	Documents to be served
9	Preliminary hearings; Directions Judge; Powers of Chairman, etc.
10	Provision of Documents
11	Procedure at the Hearing
12	Hearing in Private or in Public
13	Decision of a Court or Tribunal
14	Absence of Barrister Charged
15	Recording of Proceedings
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18	The Finding
19	The Sentence
20	Sentence of Suspension
21	Wording of the Sentence
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25	Action by Barrister's Inn
26	Publication of Finding and Sentence
27	Deferment of Sentence pending Appeal
28	Costs
29	Documents - Method of Service
30	Miscellaneous Provisions
31	Exclusion from Legal Aid Work - Application for Termination
32	Citation, Commencement, Revocations & Transitional Provisions

1 Definitions

In these regulations:

- (a) "The relevant procedure" shall mean the procedure adopted by the PCC from time to time for preferring such charges.
- (b) Any reference to the Inns' Council or to the members thereof shall be a reference to the Inns' Council or the members thereof other than the Officers and the Chairman of the Council of Legal Education.
- (c) Other expressions shall have the meanings respectively assigned to them by Paragraph 1 of the Introduction to the Constitutions of the General Council of the Bar, the Council of the Inns of Court and the Council of Legal Education, or by Part X of the Code of Conduct.

2 Composition of Disciplinary Tribunals

- (1) A Disciplinary Tribunal shall consist of the following five persons nominated by the President:
 - (a) a Judge (who may be a retired Circuit Judge or retired judge of the High Court provided that he
 - (i) continues to be permitted to sit as an Additional Judge.
 - (ii) has done so in the last 12 months.
 - (iii) has, within the last 12 months and following consultation with the Chairman of the Bar, been appointed to a panel of such judges by the President);
 - (b) two Lay Representatives
 - (c) two practising Barristers of not less than five years standing and not more than 70 years of age.

Provided that:-

- (i) if the Barrister charged is an Employed or Non-Practising Barrister, at least one of the barristers nominated should normally be Employed or Non-Practising;
- (ii) no Barrister or Lay Representative shall be nominated to serve on a Tribunal which is to consider a charge arising in respect of any matter considered at any meeting of the PCC which he attended;
- (iii) in the case of a registered European lawyer, one of the members of the Tribunal shall be a registered European lawyer rather than a barrister.

- (2) The President shall select another member of the relevant class to fill any vacancy in the Disciplinary Tribunal membership that has arisen prior to the substantive hearing of the charge.
- (3) At any time before the commencement of the substantive hearing of the charge, the President may cancel any or all of the nominations made pursuant to this regulation, and make such alternative nominations as in the exercise of his discretion he deems to be expedient.
- (4) The proceedings of a Disciplinary Tribunal shall be valid notwithstanding that after the convening order has been issued one or more of the members other than the Chairman or one of the Lay Representatives becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing of the charge is not reduced below three and continues to include the Chairman and a Lay Representative
- (5) A member of a Disciplinary Tribunal who has been absent for any time during a sitting shall take no further part in the proceedings.

3 Sitings of Disciplinary Tribunals

The President shall appoint Disciplinary Tribunals to sit at such times as are necessary for the prompt and expeditious determination of charges preferred against barristers in accordance with the provisions of these Regulations.

4 Clerks

The President shall 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 or the Chairman of any Tribunal may direct. No person who has been engaged in the investigation of a complaint against a barrister in accordance with the relevant procedure or otherwise shall act as Clerk in relation to disciplinary proceedings arising out of that complaint.

5 Service of Charges

- (1) Following the formulation of the charge or charges by counsel appointed by the PCC Representative in accordance with the relevant procedure, the PCC Representative shall cause a copy thereof to be served on the barrister concerned ("the defendant"), together with a copy of these Regulations and details of any Directions sought not later than 10 weeks (or 5 weeks if the PCC has directed that the prosecution of the charges be expedited) after the date on which the complaint was referred to a Disciplinary Tribunal by the PCC.
- (2) The PCC Representative shall at the same time cause copies of the charge or charges to be supplied to the President.

6

Representation of complainant's interests

(a) the PCC representative shall keep the complainant informed of the progress of the complaint and of any further documents and other information to be considered by the panel and shall, so far as practicable, afford the complainant an opportunity to comment in advance of the hearing on any such information of documents.

(b) It shall be the responsibility of the PCC Representative and counsel appointed by the PCC Representative to represent the interests of the complainant in relation to any charge of inadequate professional service.

7

Convening Orders

(1) After receipt of the copy charge or charges supplied pursuant to Regulation 5, and in any case not less than 14 days before the substantive hearing, the President shall issue an Order ("the Convening Order") specifying

(a) the date of the sitting of the Disciplinary Tribunal at which it is proposed the charge or charges should be heard

(b) the identities of those persons who it is proposed should constitute the Disciplinary Tribunal to hear his case

(c) the identity of the Clerk.

(2) The President shall arrange for the service of the Convening Order on the defendant, and for copies thereof to be supplied to the nominated members of the Disciplinary Tribunal and the Clerk. In the order the defendant's attention will be drawn to:

(a) his right to represent himself or be represented by counsel, with or without instructing a solicitor, as he shall think fit

(b) his right to inspect and be given copies of documents referred to in the List served pursuant to Regulation 7 below

(c) his right (without prejudice to his right to appear and take part in the proceedings) to deliver a written answer to the charge or charges if he thinks fit.

(3) The defendant shall have the right upon receipt of the Convening Order to give notice to the President objecting to any one or more of the proposed members of the Disciplinary Tribunal. Such notice shall specify the ground of objection.

(4) Upon receipt of such objection, the President shall, if satisfied that it is properly made (but subject to Paragraph (5) of this Regulation) exercise the power conferred on him by Paragraph (3) of Regulation 2 to nominate a substitute Member or Members of the Tribunal, and notify the defendant accordingly. Upon receipt of such notification, the defendant shall have mutatis mutandis in relation to such substitute Member or Members the like right of objection as is conferred by Paragraph (3) of this Regulation.

- (5) No objection to any Member of the Tribunal shall be valid on the ground that he has or may have had knowledge of a previous charge of professional misconduct or breach of proper professional standards or a charge consisting of a legal aid complaint against the defendant or any finding on any such charge, or of any sentence imposed on the defendant in connection therewith.
- (6) The Convening Order shall contain words drawing the attention of the defendant to the rights conferred by Paragraphs (2)-(5) of this Regulation.

8 Documents to be Served

- (1) A barrister who is to be charged before a Disciplinary Tribunal shall, as soon as practicable, be supplied with:
 - (a) a copy of the statement of the evidence of each witness intended to be called in support of the charge or charges
 - (b) a list of the documents intended to be relied on by the PCC Representative.
- (1A) If the documents referred to in paragraph (1) of this Regulation are not supplied to the barrister at least 10 days before the date of the Preliminary Hearing then the PCC representative shall provide to the barrister and the Directions Judge at least 10 days before the date of the Preliminary Hearing:
 - (a) details of the statements of evidence that are still being sought and
 - (b) a statement of when it is believed that it will be practicable to supply those statements to the barrister.
- (2) Nothing in this Regulation shall preclude the reception by a Disciplinary Tribunal of the evidence of a witness a copy of whose statement has not been served on the defendant (within the time specified aforesaid, or at all), or of a document not included in the List of Documents, provided the Tribunal is of opinion that the defendant is not materially prejudiced thereby, or on such terms as are necessary to ensure that no such prejudice arises.

9 Preliminary Hearings; Directions Judge; Powers of Chairman etc

- (1) The President shall designate a judge or judges ("the Directions Judge(s)") to exercise the powers and functions specified in this Regulation.
- (2) The Directions Judge shall (subject to Paragraph (7) of this Regulation) hold a Preliminary Hearing for the purpose of giving directions and of 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.

- (2A) The Preliminary Hearing shall be held not less than 10 days and not more than 4 weeks (or 3 weeks if the PCC has directed that prosecution of charges be expedited) after service of the charge or charges on the barrister. For the purpose of calculating these periods, no account shall be taken of any period outside the law terms.
- (3) The directions to be given and steps taken by the Directions Judge may concern, but shall not be limited to, the following matters:
- (a) whether the hearing should not be held in public
 - (b) applications for separate hearings
 - (c) applications to sever charges
 - (d) applications to strike out charges
 - (e) attendance of witnesses
 - (f) a requirement that the parties provide each other with the names of all witnesses to be called at the hearing within a specified time limit
 - (g) admission of documents, including any documents intended to be relied upon by the PCC Representative in relation to charges of inadequate professional service
 - (h) admission of facts, in accordance with the procedure set out at Paragraph (4) of this Regulation
 - (i) the estimated duration of the substantive hearing
 - (j) such other matters as he deems expedient for the efficient conduct of the hearing
 - (k) consideration of any application under Regulation 21(12)(ii)
 - (l) a requirement that such action as appears to him to be necessary for a fair hearing of the matter be undertaken within such period as he may decide
 - (m) where he is satisfied that the matter is ready for hearing by a Tribunal setting a date for the Tribunal hearing.
- (3A) The defendant may plead guilty to any charge or charges at the Directions Hearing, in which case the Tribunal shall find the defendant guilty of that charge at the Tribunal Hearing.
- (4) (a) The Directions Judge may, if he thinks fit, request the defendant or his representative to state (either forthwith or in writing within such time as may be specified) whether any and if so which of such of the facts relied on in support of the charges as may be specified is disputed, and/or the grounds on which such fact is disputed.
- (b) The Clerk shall cause a record to be made of the making of such a request as aforesaid, and of the defendant's response

thereto, and the same shall be drawn to the attention of the Disciplinary Tribunal at the conclusion of the substantive hearing, if relevant, on the question of costs.

- (5) The powers and functions specified in this Regulation may be exercised by a Judge nominated by the President other than the Directions Judge, including the Judge designated in the Convening Order as Chairman of the Tribunal appointed to hear and determine the charge or charges against the defendant.
- (6) The Clerk shall take a note of the proceedings at a Preliminary Hearing and shall cause a record to be drawn up and served on the parties setting out the directions given or admissions made at the Preliminary Hearing, including, without prejudice to the generality of the directions given, a record of any directions which relate to any of the matters specifically set out under Paragraph (3) of this Regulation.
- (7) A defendant aggrieved by a direction given or other step taken pursuant to this Regulation may, provided that he acts promptly following the service on him of the record of any directions, give notice to the Clerk of his intention to apply for a review of such direction or step; such review will be conducted by the Chairman of the Tribunal sitting with a Lay Representative, who shall, on such application being made, give such directions or take such other steps as they see fit.
- (8) The PCC Representative and the defendant or his representative may, in advance of the date fixed for the Preliminary Hearing, agree upon the directions to be made and/or steps to be taken thereat, or that no such directions or steps are required and shall notify the Clerk in writing of such agreement; following such notification the Directions Judge may, if he thinks fit, make directions in the terms agreed and/or direct that no Preliminary Hearing is required.
- (9) For the avoidance of doubt the Directions Judge, or the Chairman of the Disciplinary Tribunal designated in the Convening Order (or failing the Directions Judge or the Chairman, any other Judge nominated by the President) may
 - (a) 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
 - (b) upon the application of either party, or of his own motion, hold further 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
 - (c) adjourn the 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

- (d) consider applications for adjournment of the Tribunal Hearing prior to that Hearing and grant such adjournments as they consider appropriate.

10 Provision of Documents

There shall be provided to each member of the Disciplinary Tribunal prior to the commencement of the substantive hearing copies of the following documents :

- (a) the Order of the President constituting the Tribunal
- (b) the Charges and any particulars thereof
- (c) any documents proposed to be relied on by the PCC Representative or by the defendant, unless a direction has been made at the Preliminary Hearing or otherwise, that copies of such documents be withheld
- (d) any written answer to the charges submitted by or on behalf of the defendant
- (e) such other documents (which may include copies of witness statements) as at the Preliminary Hearing or otherwise have been directed to be or the PCC Representative and the defendant or his representative have agreed, should be laid before the Tribunal prior to the start of the hearing
- (f) the record of directions given at each preliminary hearing which has been drawn up and served on the parties pursuant to Regulation 9(6).

11 Procedure At The Hearing

The Proceedings of a Disciplinary Tribunal shall be governed by the rules of natural justice, subject to which the tribunal may

- (a) admit any evidence, whether oral or written, whether direct or hearsay, and whether or not the same would be admissible in a court of law
- (b) give such directions with regard to the conduct of and procedure at the hearing, and with regard to the admission of evidence thereat, as it considers appropriate for securing that the defendant has a proper opportunity of answering the charge or otherwise as shall be just
- (c) 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.

The tribunal shall apply the criminal standard of proof when adjudicating upon charges of professional misconduct, and the civil standard of proof when adjudicating upon charges of inadequate professional service, if any.

12 Hearing in Private

The hearing before a Disciplinary Tribunal shall be in public unless at a Preliminary Hearing or otherwise it has been directed that it shall not be held in public, and this direction has not been overruled by the Tribunal.

13 Decision of a Court or Tribunal

- (1) In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal, the following rules of evidence shall apply provided that it is proved in each case that the decision relates to the defendant:
 - (a) the fact that the defendant has been convicted of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence; proof of a conviction in this matter shall constitute prima facie evidence that the defendant was guilty of the offence the subject thereof.
 - (b) the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the finding and sentence.
 - (c) the judgment of any civil court may be proved by producing a certified copy of the judgment.
- (2) In any case set out in Paragraph (1) of this Regulation, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based shall be admissible as prima facie proof of those facts.

14 Absence of Defendant

- (1) If a Disciplinary Tribunal is satisfied that the relevant procedure has been complied with and the defendant has been duly served (in accordance with Regulation 29 of these Regulations) with the documents required by Regulations 5, 7 and 8 and the defendant has not attended at the time and place appointed for the hearing, the tribunal may nevertheless proceed to hear and determine the charge or charges, subject to compliance with Paragraph (12)(i) of Regulation 21 in the event of any charge being found proved.
- (2) If a Disciplinary Tribunal is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal shall hear and determine the charge or charges in the absence of the defendant subject to compliance with Paragraph (12)(ii) of Regulation 21 in the event of any charge being found proved.

15 Recording of Proceedings

The Clerk shall arrange for a record of the proceedings before a Disciplinary Tribunal to be made by the employment of a shorthand writer or the use of a recording machine.

16 Amendment of Charges

A Disciplinary Tribunal may at any time before or during the hearing direct that the charge or charges shall be amended provided always:

- (a) that the Tribunal is satisfied that the defendant will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence,
- (b) that the Tribunal shall, if so requested by the defendant, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges as so amended,
- (c) that the Tribunal shall make such Order as to the costs of or occasioned by the amendment, or of any consequential adjournment of the proceedings, as it considers appropriate.

17 Adjournment

- (1) Subject to the provisions of the following Paragraph, the Disciplinary Tribunal shall sit from day to day until it has arrived at a finding and if any charge has been found proved until sentence is pronounced.
- (2) Notwithstanding the provisions of Paragraph (1) of this Regulation, a Disciplinary Tribunal may, if the Tribunal decides an adjournment is necessary for any reason, adjourn the hearing for such period as it may decide. In particular, if a finding of inadequate professional service is made and the Tribunal considers that an award of compensation to the complainant may be appropriate, it may adjourn to enable further investigation of that question to take place, if it does not already have the necessary material before it.

18 The Finding

At the conclusion of the hearing, the finding of the Disciplinary Tribunal on each charge, together with its reasons, shall be set down in writing and signed by the chairman and all members of the Tribunal. If the members of the Tribunal are not unanimous as to the finding on any charge, the finding to be recorded on that charge shall be that of the majority. If the members of the Tribunal are equally divided as to the finding on any charge, then, the burden of proof being on the PCC Representative, the finding to be recorded on that charge shall be that which is the most favourable to the defendant. The chairman of the Tribunal shall then announce the Tribunal's finding on the charge or charges.

19 The Sentence

- (1) If the Disciplinary Tribunal shall have found the charge or any of the charges proved, evidence may be given of any previous finding of professional misconduct or of breach of proper professional standards or of inadequate professional service or any finding on a charge consisting of a legal aid complaint against the defendant. After hearing any representations by or on behalf of the defendant the Tribunal shall set down in writing its decision as to the sentence. If the members of the tribunal are not unanimous as to the sentence, the sentence to be recorded shall be that decided by the majority. If the members of the Tribunal are equally divided as to the sentence, the sentence to be recorded shall be that which is the most favourable to the defendant. The chairman of the Tribunal shall then announce the Tribunal's decision as to sentence.
- (2) (a) A barrister against whom a charge of professional misconduct has been found proved may be sentenced by the Disciplinary Tribunal to be:
 - (i) disbarred (or in the case of a registered European lawyer, removed from the register of European lawyers);
 - (ii) suspended (or in the case of a registered European lawyer suspended from the register of European lawyers) for a prescribed period (either unconditionally or subject to conditions);
 - (iii) ordered to pay a fine of up to £5,000 to the Bar Council;
 - (iv) ordered to repay or forego fees;
 - (v) ordered to 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 PCC;
 - (vi) reprimanded by the Treasurer of his Inn;
 - (vii) reprimanded by the Tribunal; or
 - (viii) given advice by the Tribunal as to his future conduct; or
 - (ix) ordered by the Tribunal to attend on a nominated person to be reprimanded; or
 - (x) ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.
- (b) A barrister against whom a charge of inadequate professional service has been found proved may be
 - (i) directed to make a formal apology to the complainant for the conduct in relation to which the finding was made;

- (ii) directed to repay or remit all or part of any fee rendered in respect of the inadequate service;
- (iii) directed to pay compensation to the complainant in such sum as the Tribunal shall direct not exceeding £5,000; or
- (iv) directed to complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this requirement to the PCC;

In determining whether any sum is to be paid under paragraph (iii) hereof, or in fixing the amount of such sum, the Tribunal shall in particular have regard to any loss suffered by the applicant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, to the gravity of the conduct complained of and to the fee claimed by the barrister for the inadequate service.

- (c) In any case where a charge of professional misconduct or inadequate professional service has been found proved, the Tribunal may decide that no action should be taken against the defendant.
- (3) Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the Legal Services Commission in connection with services provided as part of the Community Legal Service or Criminal Defence Service and to exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service) on a Disciplinary Tribunal in the cases to which those Sections apply. Accordingly:-
- (a) Any Disciplinary Tribunal which hears a charge consisting of a legal aid complaint relating to the conduct of a barrister may if it thinks fit (and whether or not it sentences the barrister in accordance with paragraph (2) of this Regulation 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.
 - (b) Where a Disciplinary Tribunal hears a charge of professional misconduct against a barrister it may (in addition to or instead of sentencing that barrister in accordance with Paragraph (2) of this Regulation) order that he shall be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service either temporarily or for a specified period if it determines that there is good reason for the exclusion arising out of (i) his conduct in connection with any such services as are

mentioned in Section 40(1) of the Act of 1985; or (ii) his professional conduct generally.

- (4) Whether or not a Disciplinary Tribunal shall have found any charge proved, if the Disciplinary Tribunal considers that the circumstances of the complaint are relevant to the barrister in his capacity as a pupilmaster, it may notify the barrister's Inn of its concerns in such manner as it sees fit.

20 Sentence of Suspension

- (1) Any sentence of suspension may apply to the whole of a barrister's practice or to such part only as the Disciplinary Tribunal may determine.
- (2) The conditions to which a sentence of suspension may be made subject include a requirement that the barrister shall undergo such further pupillage or training or attain such standard of competence as the Tribunal may determine.

21 Wording of the Sentence

The sentence determined by a Disciplinary Tribunal if a charge of professional misconduct has been found proved shall be recorded as follows:

- (1) Disbarment
"That.....be disbarred and expelled from the Honourable Society of....."
- (2) Suspension
"That.....be suspended from practice as a barrister and from enjoyment of all rights and privileges as a member of the Honourable Society of.....and be prohibited from holding himself out as being a barrister without disclosing his suspension for (stating the length of the prescribed period)". (Note: If the Tribunal decides that the sentence of suspension shall apply to part only of the barrister's practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be specified in the wording of the sentence).
- (3) Payment of Fine
"That.....pay a fine of £.....to the Bar Council."
- (4) Repayment or Foregoing of Fees
"That.....shall repay all fees (fees amounting to £.....) received by him (shall forego all fees (fees amounting to £.....) due to be paid to him) in connection with....."
- (5) Continuing Professional Development

"That.....shall by [date] complete a minimum of ... hours of continuing professional development (in addition to the mandatory requirements set out in the Continuing Professional Development Regulations at Annex C to the Code of Conduct) [in the subject of ...] and provide satisfactory proof of compliance with this order to the Professional Conduct and Complaints Committee of the Bar Council."

(6) Reprimand

"That.....be reprimanded by the Treasurer of the Honourable Society of.....", or "That is hereby ordered to attend to be reprimanded".

(7) Advice as to Future Conduct

"That.....has been advised by the Tribunal as to his future conduct in regard to....." or "That.....is hereby ordered to attend on.....to be given advice as to his future conduct in regard to.....".

(8) Order for Reduction of Legal Aid Fees

"That the fees otherwise payable to..... by the Legal Services Commission in connection with his services provided by him as part of the Community Legal Service or Criminal Defence Service or otherwise in relation to the items or matters specified in the first column of the Schedule hereto be reduced to the sum or sums specified in the second column of that Schedule".

The record of the sentence shall then contain a Schedule setting out the matters referred to above.

(9) Order for Cancellation of Legal Aid Fees

"That the fees otherwise payable to..... by the Legal Services Commission in connection with services provided by him as part of the Community Legal Service or Criminal Defence Service in relation to the items or matters specified in the Schedule hereto be cancelled".

The record of the sentence shall then contain a Schedule identifying the items or matters referred to above.

(10) Exclusion from Legal Aid Work

"That.....be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service (as explained in Section 42(4)(b) of the Administration of Justice Act 1985 as substituted by Section 33 of the Legal Aid Act 1988 and amended by Schedule 4 to the Access to Justice Act 1999 (until.....) (for a period of.....beginning on.....)

(11) Membership of More than One Inn

If the barrister is a member of more than one Inn, each Inn of which he is a member shall be mentioned in the sentence.

(12) Absence of the Barrister Charged

If the barrister charged has not been present throughout the proceedings, the sentence shall include one of the following two statements:

- (i) If the relevant procedure under Regulation 14(1) has been complied with, that the finding and sentence were made in the absence of the barrister in accordance with Regulation 14(1).
- (ii) If the procedure under Regulation 14(2) has been complied with, that the finding and the sentence were made in the absence of the barrister 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.

(13) Removal from the Register of European Lawyers

“That ... be removed from the register of European lawyers maintained by the Bar Council.”

(14) Suspension from the Register of European Lawyers

“That ... be suspended from the register of European lawyers maintained by the Bar Council and be prohibited from holding himself out as registered with the Bar Council or an Inn of Court without disclosing his suspension for (state length of prescribed period).” (Note: If the Tribunal decides that the sentence of suspension shall apply to part only of the registered European lawyer's practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be specified in the wording of the sentence).

22 Report of Finding and Sentence

- (1) As soon as practicable after the conclusion of the proceedings of a Disciplinary Tribunal, the chairman of the Tribunal shall prepare a report in writing of the finding on the charges of professional misconduct and the reasons for that finding and, where applicable, the sentence. At the discretion of the chairman of the Tribunal, the report may also refer to matters which, in the light of the evidence given to the Tribunal, appear to require investigation or comment. He shall send copies of the report to the following:
- (2) In all cases
 - (i) The Lord Chancellor
 - (ii) The Lord Chief Justice

- (iii) The Attorney General
 - (iv) The President
 - (v) The Chairman of the Bar Council
 - (vi) The Chairman of the Professional Conduct and Complaints Committee.
 - (vii) The barrister charged.
 - (viii) The Treasurer of the barrister's Inn of Call
 - (ix) The Treasurer of any other Inn of which the barrister is a member.
- (3) In cases where one or more charges of professional misconduct have been found proved and any such charge constitutes or arises out of a legal aid complaint, and/or the sentence includes an order under Regulation 20(8), (9) or (10), the Legal Services Commission.

23 Appeal to the Visitors

- (1) In cases where one or more charges of professional misconduct have been proved, an appeal may be lodged with the Visitors in accordance with the Hearings Before the Visitors Rules:
- (a) against conviction by the defendant; and/or
 - (b) against sentence, by the defendant or (with the Consent of the Chairman of the Bar or the Chairman of the PCC) the Bar Council.
- (2) In cases where no professional misconduct has been proved, but one or more charges of inadequate professional service have been proved, an appeal shall lie at the instance of the barrister from any such finding, and against any decision as to the remedy to be granted to the complainant for such service in the same manner as an appeal lies from a decision of an Adjudication Panel in respect of the same matters.
- (3) Where a defendant lodges an appeal against a sentence of disbarment, he may at the same time lodge with the Visitors an appeal against any requirement imposed pursuant to Regulation 27

24 Appeal: Sum Payable

Where an appeal is lodged with the Visitors by the Defendant, the Notice of Appeal must be accompanied by the sum of £250 payable to the General Council of the Bar 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.

25 Action by the Barrister's Inn

- (1) On receipt of the report prepared in accordance with Regulation 22, the Treasurer of the barrister's Inn of Call shall not less than 21 days after the conclusion of the Tribunal's proceedings pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry the sentence into effect. The Treasurer shall inform the persons specified in Paragraph (2) of Regulation 22 of the date on which the sentence is to take effect.
- (2) Similar action shall be taken by the Treasurer of any other Inn of which the barrister is a member in conjunction with the Treasurer of the barrister's Inn of Call.
- (3) In any case in which the barrister has given notice of appeal to the visitors against the finding and/or sentence of the Tribunal on the charges of professional misconduct, the action set out in paragraphs (1) and (2) of this Regulation shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.

25A Action by the Bar Council

- (1) In the case of a registered European lawyer, on receipt of the report prepared in accordance with Regulation 22, the Bar Council shall not less than 21 days after the conclusion of the Tribunal's proceedings pronounce the sentence decided on by the Tribunal and take such further action as may be required to carry the sentence into effect. The Bar Council shall inform the persons specified in paragraph (2) of Regulation 22 of the date on which the sentence is to take effect.
- (2) In any case in which a registered European lawyer has given notice of appeal to the Visitors against the finding and/or sentence of the Tribunal on the charges of professional misconduct, the actions set out in paragraph (1) of this Regulation shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.
- (3) The Bar Council shall take all such steps as may be necessary or expedient in order to give effect to any requirement made by the Tribunal pursuant to Regulation 27 below.

26 Publication of Finding and Sentence

- (1) The following procedures are to be observed in regard to publication of the finding and sentence of a Disciplinary Tribunal:
 - (i) When the Tribunal has found one or more charges of professional misconduct have been proved the President shall publish the charges found proved and the sentence as soon as he has been informed by the Treasurer(s) of the barrister's Inn(s) of the date from which the sentence is to take effect.

- (ii) When the Tribunal has found that one or more charges of inadequate professional service have been proved, the President shall not publish the charges found proved and the finding unless the barrister charged so requests.
 - (iii) When the Tribunal has found that any charge whether of professional misconduct or of inadequate professional service has not been proved the President shall not publish that charge and the finding unless the barrister charged so requests.
- (2) When publishing any finding, sentence or decision in accordance with sub-paragraph (1) of this Regulation, the President shall communicate the same in writing to:-
- (i) the Lord Chancellor;
 - (ii) the Lord Chief Justice;
 - (iii) the Attorney General;
 - (iv) the Director of Public Prosecutions;
 - (v) the Treasurer of each Inn for screening in the Hall, Benchers' Room and Treasurer's Office of the Inn;
 - (vi) the Leaders of the six circuits;
 - (vii) the barrister concerned;
 - (viii) such one or more press agencies or other publications as the President may decide;
 - (ix) in the case of a registered European lawyer, his home professional body.
- (3) Nothing in this Regulation shall prevent the Bar Council publishing the finding and sentence of the Tribunal in such manner and in such time as it sees fit unless:
- (a) the hearing was held in private; and
 - (b) the Chairman of the Tribunal directs that publication shall be delayed until the President has published the finding under sub-paragraph (1) of this Regulation.

27 Suspension Pending Appeal

- (1) This regulation applies in relation to any barrister who has been sentenced to be disbarred or to be suspended for a period of more than one year.
- (2) Where this regulation applies the Tribunal shall seek representations from the defendant and the PCC Representative as to whether it would be inappropriate to take action under paragraphs (3) or (4) below;

- (3) Having heard any representations under paragraph (2) above, the Tribunal shall:
 - (a) unless in the particular circumstances of the case it appears to the Tribunal to be inappropriate to do so, require the Bar Council to suspend immediately the practising certificate of the barrister in question; or
 - (b) where that barrister does not currently hold a practising certificate, require the Bar Council not to issue any practising certificate to him.
- (4) If pursuant to paragraph (3)(a) above the Tribunal concludes that it would be inappropriate to require immediate suspension it may nonetheless require the Bar Council to suspend the practising certificate of the barrister in question from such date as the Tribunal may specify.
- (5) Where this regulation applies but the barrister in question is permitted to continue to practise for any period the Tribunal may require the Bar Council to impose such terms in respect of the barrister's practice as the Tribunal deems necessary for the protection of the public.
- (6) If a barrister in relation to whom a requirement has been made pursuant to paragraphs (3) to (5) considers that, due to a change in the circumstances, it would be appropriate for that requirement to be varied, he may apply to the President in writing for a variation to be made.
- (7) On receiving an application made pursuant to paragraph (6) above the President shall refer it to the Chairman and one of the lay representatives of the Tribunal which originally imposed the requirement.
- (8) Any application made pursuant to paragraph (6) above shall be sent by the applicant, on the day that it is made, to the PCC and the PCC may make such representations as they think fit on that application to those to whom the application has been referred by the President.
- (9) The persons to whom an application made pursuant to paragraph (6) above is referred may vary or confirm the requirement in relation to which the application has been made.

28

Costs

- (1) A Disciplinary Tribunal shall have power to make such Orders for costs, whether against or in favour of a defendant, as it shall think fit.
- (2) Upon making such an Order a Disciplinary Tribunal shall either itself determine the amount of such costs or appoint a suitably qualified person to do so on its behalf.
- (3) Any costs ordered to be paid by or to a defendant shall be paid to or by the Bar Council.

- (4) Subject as aforesaid, all costs and expenses incurred by a Disciplinary Tribunal or by the PCC in connection with or preparatory to the hearing before the Tribunal shall be borne by the Bar Council.

29 Service of Documents

Any documents required to be served on a barrister arising out of or in connection with disciplinary proceedings shall be deemed to have been validly served:-

- (1) If sent by registered post, or recorded delivery post, or receipted hand delivery to:
- (a) the address notified by such barrister pursuant to Paragraph 202(d) of the Code of Conduct of the Bar of England and Wales (or any provisions amending or replacing the same); or
 - (b) an address to which the barrister may request in writing that such documents be sent; or
 - (c) in the absence of any such request, to his last known address;

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

- (2) If actually served;
- (3) If served in any way which may be directed by the Directions Judge or the Chairman of the Disciplinary Tribunal.

For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the barrister or his clerk.

30 Miscellaneous Provisions

- (1) Any duty or function or step which, pursuant to the provisions of these regulations, is to be discharged or carried out by the President may, if he is unable to act due to absence or any other reason, be discharged or carried out by any other member of the Inns Council, the Treasurer of any Inn or by any other person nominated in writing by the President for any specific purpose.
- (2) When the Treasurer of an Inn is a Royal Benchler, references in these Regulations to such Treasurer shall be read as references to his deputy.

31 Exclusion from Providing Representation Funded by the Legal Services Commission - Application for Termination

- (1) A barrister who has been excluded from legal aid work under Section 42 of the Act of 1985 may apply for an order terminating his exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service in accordance with this Regulation.
- (2) Any such application shall be in writing and shall be addressed to the President.
- (3) On considering any such application the President may dismiss the application or may determine that the barrister's exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service be terminated forthwith or on a specified future date.
- (4) The President shall give notification of his decision in writing to the same persons as received copies of the report of the Disciplinary Tribunal which ordered that the barrister be excluded from providing such representation legal aid work.
- (5) Upon the receipt of any such report the Treasurer of the applicant's Inn of Call and of any other Inn of which he is a member shall take action equivalent to that which it took in respect of the report of the Disciplinary Tribunal which sentenced the barrister to be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.
- (6) The procedures to be observed in regard to the publication of the decision of the President on any such application as is referred to in this Regulation shall be those which were applicable to the publication of the finding and sentence whereby the applicant was excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.
- (7) The President shall have power to make such order for costs as he thinks fit and Regulation 28 shall apply with all necessary modifications.

32 Citation, Commencement, Revocations and Transitional Provisions

- (1) These Regulations may be cited as "The Disciplinary Tribunals Regulations 2000" and shall come into operation on 15th May 2000 save that no finding of inadequate professional service may be made against a barrister in respect of any conduct of his which took place before 13th July 1996.
- (2) Subject to Paragraph (3) below, the Disciplinary Tribunals Regulations of the Council of the Inns of Court and any other rules or regulations relating to Disciplinary Tribunals made prior to the commencement of these Regulations shall cease to have effect on 14th May 2000.
- (3) In relation to any case in which a barrister was served with the charge or charges before 15th May 2000 these Regulations shall

not apply and the matter shall continue to be dealt with pursuant to the Disciplinary Tribunals Regulations 1996, save that Regulation 23 shall apply to any decision made by a Disciplinary Tribunal on or after 15th May 2000.

Annexe L: The Summary Procedure Rules

1 Definitions

In these Rules:

- (a) "The Act of 1985" shall mean the Administration of Justice Act 1985 as amended by the Legal Aid Act 1988 and the Access to Justice Act 1999.
- (b) "Disciplinary Tribunal Regulations" shall mean those Regulations as amended from time to time in Annex K to the Code of Conduct of the Bar of England and Wales.
- (c) "The defendant" shall mean the barrister against whom complaint has been made.
- (d) "Sponsor member" shall mean the member of the PCC to whom the file was originally or subsequently assigned and who reported to the PCC on the complaint.
- (e) "Summary case" shall mean a complaint referred by the PCC for summary determination under these Rules.
- (f) "Summary hearing" shall mean the hearing of a summary case by a panel appointed under these Rules.

2 Composition of Summary Hearing Panels

A panel shall consist of not more than five, and not less than three people nominated by the Chairman of the PCC which number shall include at least:

- (a) One Queen's Counsel as chairman of the panel
- (b) One Junior over five years call
- (c) One lay representative

Provided that:

- (i) No barrister shall be nominated to serve on a panel who has acted as sponsor member in relation to the summary case to be dealt with.
- (ii) The proceedings of a summary hearing shall be valid notwithstanding that one or more of the members other than the chairman or lay representative becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing of the charge(s) is not reduced below three and continues to include the chairman and the lay representative.

3

Timetable

- (a) As soon as possible after referral of a case to summary procedure, the Secretary of the PCC shall write to the defendant notifying him of the PCC's decision and enclosing a copy of the Summary Procedure Rules.
- (b) The defendant shall receive as soon as possible thereafter, the documents to be served upon him together with a letter laying down a fixed time and date (normally 5 pm on a working day within 60 calendar days or less from the date of the letter) for the hearing to take place. One alternative shall be given.
- (c) The defendant shall be invited to accept one or other of the dates proposed or to provide a written representation to the Chairman of the PCC, objecting to both dates with reasons and providing two further alternative dates. The Chairman of the PCC shall consider this representation and either confirm one of the original dates or re-fix the hearing. His decision shall be final.
- (d) Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the PCC.

4

Documents to be Served

On referral of a complaint to summary procedure, the PCC shall prepare and serve the following documents on the defendant and the complainant who shall be invited within 14 days (which period may be extended with the permission of the Chairman of the PCC or the Complaints Commissioner) to comment in writing on any of those matters or to send other document to which they wish the panel to have regard:

- (a) Notification of the PCC's decision to refer the matter to summary procedure.
- (b) Statement of the charges made against the barrister which may include charges of inadequate professional service provided that:
 - (i) the complainant is the barrister's lay client or his duly authorised representative or in the case of an employed barrister the person to whom he has supplied the professional service in question, and
 - (ii) the subject-matter of the complaint is something in respect of which the barrister would not be entitled to immunity from suit as an advocate in civil law.
- (c) Statement of facts upon which the charge(s) is or are founded and upon which the PCC proposes to rely.

- (d) Copies of any documents which will be available to the summary hearing and which have not previously been served on the defendant. Any document shall be deemed to have been validly served in the circumstances laid down in Paragraph 29 of Disciplinary Tribunal Regulations 2000

5 Acceptance of the Statement of Facts and of Summary Procedure

- (a) In the letter of notification:
 - (i) The defendant shall be required to state in writing whether or not he admits the charge(s) and, if he does not, whether or not he challenges any of the facts detailed in the statement of facts.
 - (ii) If he admits the charge(s) or if he does not challenge any of the facts detailed in the statement of facts, he shall also be asked to say whether he is prepared to agree that the charge(s) should be dealt with by summary procedure.
 - (iii) If:
 - (1) the only charges(s) allege(s) breach of paragraph 402 of the Code of Conduct of the Bar of England and Wales;
 - (2) the PCC has so directed when referring the case to summary procedure: and
 - (3) the defendant admits the charge(s) and agrees that the charges(s) should be dealt with by summary procedure.he shall also be asked to say whether he wishes to attend the summary hearing.
- (b) If the defendant admits the charge(s) or does not challenge any significant facts and, in either case, if he agrees that his case should be dealt with by summary procedure, the case shall proceed to a summary hearing, failing which it shall proceed to a Disciplinary Tribunal.
- (c) Failure of the defendant to respond to these questions within 30 days of the date of the Secretary's letter shall be construed as refusal to admit the charge(s), to agree the statement of facts and to accept summary procedure.

6 Submission of Further Documents

- (a) If, following service of and agreement to the statement of facts and of documents relevant to summary procedure, the defendant seeks to submit further proofs of evidence, representations or other material for consideration at the

summary hearing, he must do so not later than 21 days before the date fixed for the hearing.

- (b) If either before or at the summary hearing, it becomes apparent that the material submitted amounts to a denial of any significant fact in the statement of facts, the Chairman of the PCC or the panel shall refer the matter to a Disciplinary Tribunal.

7

Procedure

- (a) Procedure at summary hearings shall be informal, the details being at the discretion of the chairman of the panel.
- (aa) Subject to the direction of the Chairman of the panel, the Bar Council shall keep the complainant informed of the progress of the complaint and of any further documents and other information to be considered by the panel; and shall so far as practicable, require the barrister and afford the complainant an opportunity to comment in advance of the hearing on any such information or documents.
- (b) Subject to sub-paragraph (e), the defendant shall be entitled to be represented by counsel of his choice, by a solicitor or by any other representative he may wish. The PCC should be represented by counsel (normally the sponsor member) only in particularly complex cases and subject to the prior agreement of the chairman of the panel in each case.
- (bb) A summary hearing shall take place in public unless:
 - (i) the panel considers that there are special reasons why the hearing ought to be held in private; and
 - (ii) the defendant consents to the hearing taking place in private.
- (c) No witnesses may be called at a summary hearing without the prior consent of the chairman of the panel and without the submission of a proof of evidence.
- (d) Subject to sub-paragraph (e), the attendance of the defendant shall be required. Should he nevertheless fail to attend, the summary hearing may proceed in his absence, subject to the panel being satisfied that this course is appropriate, that all relevant procedures requiring the defendant's attendance have been complied with and that no acceptable explanation for the defendant's absence has been provided. Should the panel not be so satisfied, they shall have the power to adjourn the matter, to a specific date or sine die, or to refer the matter back to the PCC, as they may think fit.
- (e) If the defendant has stated in response to a request under paragraph 5(a)(iii) of these Rules that he does not wish to attend the hearing, then:

- (i) the defendant shall not be required to attend and if he does not attend, shall not be entitled to be represented at the hearing: but
 - (ii) the panel shall require the defendant to attend an adjourned hearing (and sub-paragraphs (b) and (d) shall apply to the adjourned hearing) if the panel consider that a sentence of suspension may be appropriate.
- (f) A record of each summary hearing shall be taken electronically and the tape retained under the arrangements of the Secretary of the PCC for two years, until the expiry of the period allowed for notification of intention to appeal or until the conclusion of any appeal, whichever period is longest.

8 Finding

At the conclusion of a summary hearing, the finding on each charge shall be set down in writing and signed by the chairman of the panel together with the reasons for that finding. If the members of the panel are not unanimous as to the finding on any charge, the finding to be recorded on that charge shall be of the majority. If the members of the panel are equally divided as to the finding on any charge, then, the burden of proof being on the complainant, the finding to be recorded on that charge shall be that which is most favourable to the defendant. The chairman of the panel shall then announce the panel's decisions as to finding.

9 Sentence

- (a) If the panel shall have found any charge proved, the Secretary of the PCC shall lay before the panel details of any previous finding of professional misconduct, or of breach of proper professional standards or of inadequate professional service or any finding of guilt on a charge consisting of a legal aid complaint against the defendant. After hearing any representations or considering any written submissions by or on behalf of the defendant, the panel's decision as to sentence shall be set down in writing and signed by the chairman. If the members of the panel are not unanimous as to the sentence, the sentence to be recorded shall be of the majority. If the members of the panel are equally divided as to the sentence, the sentence to be recorded shall be that which is most favourable to the defendant. The chairman of the panel shall then announce the panel's decision as to sentence.
- (b) A barrister against whom a charge of professional misconduct has been found proved may be sentenced by the summary hearing to be:
- (i) Suspended from practice for up to three months, either unconditionally or subject to conditions;

- (ii) Ordered to pay a fine of up to £500 to the Bar Council;
 - (iii) Ordered to forego or repay all or part of his fees;
 - (iv) Ordered to 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 PCC;
 - (v) Reprimanded;
 - (vi) Advised as to his future conduct.
- (c) A barrister against whom a charge of inadequate professional service has been found proved may be
- (i) directed to make a formal apology to the complainant for the conduct in relation to which the finding was made;
 - (ii) directed to repay or remit all or part of any fee rendered in respect of the inadequate service;
 - (iii) directed to pay compensation to the complainant in such sum as the Tribunal shall direct not exceeding £5,000; or
 - (iv) directed to complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this requirement to the PCC.

In determining whether any sum is to be paid under paragraph (iii) hereof, or in fixing the amount of such sum, the summary hearing shall have regard in particular to any loss suffered by the applicant as a result of the inadequate professional service the availability to the complainant of other forms of redress, to the gravity of the conduct complained of and to the fee claimed by the barrister for the inadequate service.

- (d) In any case where a charge of professional misconduct or inadequate professional service has been found proved, the summary hearing may decide that no action should be taken against the barrister.
- (e) Under the powers conferred by Sections 41 and 42 of the Act of 1985, any summary hearing which hears a charge consisting of a legal aid complaint relating to the conduct of a barrister may if it thinks fit (and whether or not it sentences the barrister in accordance with paragraph 9(b) or (c) of these Rules in respect of any conduct arising out of the same legal aid complaint) order that any such fees as are referred to in Sections 41(2) of the Act of 1985 shall be reduced or cancelled.

(f) Where a summary hearing deals with a charge of professional misconduct against a barrister it may (in addition to or instead of sentencing that barrister in accordance with paragraph 9(b) of these Rules), if it determines that there is good reason for the exclusion arising out of:

- (i) His conduct in connection with any such services as are maintained in Section 40(c) of the Act of 1985, or:
- (ii) His professional conduct generally:

order that he shall be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service for a period of up to six months.

(g) The sentence determined by a summary hearing if a charge of professional misconduct has been proved shall be recorded as follows:

(i) Suspension

"That be suspended from practice as a barrister and from enjoyment of all rights and privileges as a member of the Honourable Society of ... and be prohibited from holding himself out as being a barrister without disclosing his suspension for (stating the length of the prescribed period)".

(Note: If the panel decides that the sentence of suspension shall apply to part only of the barrister's practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be specified in the wording of the sentence.)

(ii) Payment of Fine

"That pay a fine of £... to the Bar Council."

(iii) Repayment or Foregoing of Fees

"That shall repay all fees (fees amounting to £) received by him (shall forego all fees (fees amounting to £....) due to be paid to him) in connection with"

(iv) Continuing Professional Development

"That.....shall by [date] complete a minimum of ... hours of continuing professional development (in addition to the mandatory requirements set out in the Continuing Professional Development Regulations at Annex C to the Code of Conduct) [in the subject of ...] and provide satisfactory proof of compliance with this order to the Professional Conduct and Complaints Committee of the Bar Council."

(v) Reprimand

"That is hereby reprimanded" or "That is hereby ordered to attend on to be reprimanded".

(vi) Advice as to Future Conduct

"That has been advised by the panel as to his future conduct in regard to" or "That is hereby ordered to attend on to be given advice as to his future conduct in regard to".

(vii) Order for Reduction of Fees Payable by the Legal Services Commission

"That the fees otherwise payable by the Legal Services Commission in connection with Services provided by him as part of the Community Legal Service or Criminal Defence Service to ... in relation to the items or matters specified in the first column of the Schedule hereto be reduced to the sum or sums specified in the second column of that Schedule."

The record of the sentence shall then contain a Schedule setting out the matters referred to above.

(viii) Order for Cancellation of Fees Payable by the Legal Services Commission

"That the fees otherwise payable by the Legal Services Commission in connection with Services provided by him as part of the Community Legal Service or Criminal Defence Service to in relation to the items or matters specified in the Schedule hereto be cancelled".

The record of the sentence shall then contain a Schedule identifying the items or matters referred to above.

(ix) Exclusion from Providing Representation Funded by the Legal Services Commission

"That be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service (as explained in Section 42(4)(b) of the Administration of Justice Act 1985 as substituted by Section 33 of the Legal Aid Act 1988 and amended by Schedule 4 to the Access to Justice Act 1999 (until)) (for a period of beginning on)

(x) Absence of the Defendant

If the defendant has not been present throughout the proceedings, the sentence shall include the statement that the finding and sentence were made in the absence of the barrister in accordance with paragraph 7(d) of these Rules.

(xi) Suspension from the Register of European Lawyers

“That ... be suspended from the register of European lawyers maintained by the Bar Council and be prohibited from holding himself out as registered with the Bar Council or an Inn of Court without disclosing his suspension for (state length of prescribed period).” (Note: If the Tribunal decides that the sentence of suspension shall apply to part only of the registered European lawyer's practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be specified in the wording of the sentence).

- (h) Sentences under paragraphs 9(b)(i), (ii) & (iii), 9(d) and 9(e) shall not be put into effect until expiry of the period allowed for service of Notice of Appeal under Hearings before the Visitors Rules or until the conclusion of any appeal, whichever period is the longer.
- (i) Sentences under paragraphs 9(b)(iv), (v) and (vi) may be put into effect at and by the summary hearing or by directing the defendant to attend on a person or persons to be nominated by the panel, as the panel may think fit. Any sentence of suspension may apply to the whole of the defendant's practice or to such part only as may be determined. The conditions to which a sentence of suspension may be made subject include a requirement that the barrister shall undergo such further pupillage or training or attain such standard of competence as the panel may determine.
- (j) Whether or not the panel shall have found any charge proved, if it considers that the circumstances of the complaint are relevant to the barrister's capacity as a pupilmaster, it may notify the barrister's Inn of its concerns in such manner as it sees fit.
- (k) Whether or not the panel shall have found any charge proved, it may refer any matter of policy which arises to the relevant Committee of the Bar Council.

10 **Costs**

A summary hearing shall have no power to award costs.

11

Report of Finding and Sentence

- (a) As soon as practicable after the conclusion of a summary hearing, the Secretary of the PCC shall confirm the finding and sentence to the defendant in writing.
- (b) In cases where one or more charges of professional misconduct have been found proved and on expiry of the period allowed for service of Notice of Appeal under Hearings Before the Visitors Rules or on the conclusion of any appeal, whichever period is the longer, the Secretary of the PCC shall communicate the finding and sentence (as varied on appeal) and, where the latter includes orders under paragraphs 9(b)(i), (ii), (iii), 9(c) or 9(d), the date on which these were carried into effect, in writing to the following:
 - (i) The Lord Chancellor
 - (ii) The Lord Chief Justice
 - (iii) The Attorney General
 - (iv) The President of the Council of the Inns of Court
 - (v) The Chairman of the Bar Council
 - (vii) The Chairman of the PCC
 - (vii) The defendant
 - (viii) The Treasurers of the defendant's Inn of Call and of any other Inns of which he is a member.

Provided that the Lord Chancellor, the Lord Chief Justice, the Attorney General and the President shall be informed only when a charge constituting or arising out of a legal aid complaint has been found proved or the sentence includes an order of suspension for any period.

12

Appeals

- (1) In cases where one or more charges of professional misconduct have been proved, an Appeal may be lodged with the Visitors against finding and/or sentence (including any finding of inadequate professional service) in accordance with the Hearings Before the Visitors Rules in force. Notice of appeal must be accompanied by the sum of £250 payable to the Bar Council to defray expenses, a sum to be refunded in the discretion of the Visitors in the event of an appeal which is successful wholly or in part.
- (2) In cases where no professional misconduct has been proved, but one or more charges of inadequate professional service have been proved, an appeal shall lie at the instance of the barrister from any such finding, and against any decision as

to the remedy to be granted to the complainant for such service in the same manner as an appeal lies from a decision of an Adjudication Panel in respect of the same matters.

13 Action by the Defendant's Inn

In a case where the sentence, where applicable as confirmed on appeal, includes an order under paragraph 9(b)(i) and on expiry of the period allowed for service of Notice of Appeal under Hearings before the Visitors Rules or on the conclusion of any appeal, whichever period is the longer, the Secretary of the PCC shall invite the Treasurers of the defendant's Inn of Call and of any other Inns of which he is a member to pronounce the sentence of suspension as at paragraph 9(g)(i) and to take such further action as may be required to carry it into effect. As seems to them fit, the Treasurer(s) will then pronounce the sentence and inform the Secretary of the PCC of the date on which it is to take effect.

14 Publication of Finding and Sentence

- (a) The finding and sentence of a summary hearing on any charge or charges of professional misconduct shall be published.
- (b) When publishing any finding and sentence in accordance with sub-paragraph (a) above, the Secretary of the PCC shall communicate the same in writing to those listed in paragraph 11(b) of these Rules, together with the following:
 - (i) The Director of Public Prosecutions.
 - (ii) The Treasurers of all four Inns for screening.
 - (iii) The Leaders of the six circuits.
 - (iv) One or more press agencies or other publications, as the Chairman of the PCC may direct.
 - (v) In the case of a registered European lawyer, his home professional body.
- (c) When the summary hearing has found that one or more charges of inadequate professional service have been proved, the charge and finding shall not be published unless the barrister charged so requests.
- (d) When the Tribunal has found that any charge whether of professional misconduct or of inadequate professional service has not been proved the President shall not publish that charge and the finding unless the barrister charged so requests.

Commencement and Transitional Provisions

15

- (a) In relation to any summary hearing arising out of a complaint which had been referred to be Summary Procedure by the Professional Conduct Committee before 15th May 2000, these Rules shall not apply but the Summary Procedure Rules in force immediately before that date shall apply to that summary hearing save that paragraphs 5(a)(iii) and 7(e) of those rules shall apply only to cases referred to summary procedure on or after 17 July 1999.
- (b) No finding of inadequate professional service may be made against a barrister in respect of any conduct of his which took place before 13th July 1996.

Annexe M: The Hearings before the Visitors Rules 2002

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:

Citation and Commencement

- 1 These rules may be cited as the Hearings before the Visitors Rules 2002 and shall come into effect on 4 February 2002.

Interpretation

2. (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) In these Rules, unless the context otherwise requires

“answer” means the answer served pursuant to rule 11;

"appellant" means an appellant from an order of a tribunal;

"appellant student" means a student disciplined by or expelled from an Inn of Court, or a person refused admission to an Inn of Court as a student, who is appealing to the Visitors;

"appellant legal practitioner" means a legal practitioner wishing to appeal to the Visitors from a decision, on review, by the JRC under Part IV of the Consolidated Regulations of the Inns of Court;

"JRC" means the Joint Consolidated Regulations and Transfer Committee of the Inns' Council and the Bar Council;

"Bar Council" means The General Council of the Bar;

“defendant” means the barrister against whom an order of a tribunal was made.

"Directions Judge" means a Judge nominated pursuant to rule 5;

“directions function” means any of the functions and powers conferred on a Directions Judge by rule 5;

"the Inns' Council" means the Council of the Inns of Court;

“lay representative” means one of the lay persons appointed by the Bar Council to serve on Disciplinary Tribunals;

“petition” means the petition of appeal served pursuant to rule 7;

"the tribunal" means a Disciplinary Tribunal of the Council of the Inns of Court and includes a panel appointed to hear a summary case under the Summary Procedure Rules to be found at Annex L to the Code of Conduct of the Bar of England and Wales; and

"the Visitors" means the panel nominated to hear the appeal pursuant to rule 10 or, in the case of an appeal within rule 10(4) or (5), the single judge nominated to hear the appeal.

Service of Documents

- 3**
- (1) Where pursuant to these Rules any document is to be served on any of the persons specified in the first column of the table in the Schedule 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,
 - (b) by hand delivery, if a written confirmation of receipt is obtained, or
 - (c) by facsimile transmission, if a return facsimile confirming receipt is obtained.

Notice of Appeal

- 4**
- (1) Written notice of intention to appeal against the finding or sentence of the tribunal must be served by the appellant on the persons specified in paragraph (2) below within the period of 21 days beginning with the date on which the order of the tribunal was made 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 Lord Chief Justice;
 - (b) the Chairman of the Bar Council (unless the Bar Council is the appellant);
 - (c) the President of the Inns' Council;
 - (d) the Treasurer of the Inn of which the appellant or defendant (as the case may be) is a member; and
 - (e) if the Bar Council is the appellant, the defendant.

- (3) The notice of intention to appeal shall specify the Inn of which the appellant or defendant (as the case may be) is a member.
- (4) When serving a notice of intention to appeal, an appellant other than the Bar Council shall also give notice of an address at which service is to be made on the appellant;

Directions Judge

5. (1) Upon service on him of a notice of appeal under rule 4 above (whether or not served in time) the Lord Chief Justice shall nominate a single judge of the High Court or the Court of Appeal ("the Directions Judge") who is not a Bencher of the appellant's or defendant's (as the case may be) Inn to exercise the powers and functions conferred by this rule.
- (2) The Directions Judge may hold a hearing in order to determine how (if at all) he should exercise the directions functions.
- (3) The Directions Judge shall consider the course of any appeal in relation to which he is appointed and may at any time give such directions and take such steps as appear to him to be necessary or desirable for the purpose of securing the just, expeditious and economical disposal of the appeal.
- (4) 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;
 - (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 him; and
 - (e) the adjournment of the hearing.
- (5) The Directions Judge may, on application made by the appellant (which must be served on the Bar Council at the time of making the application) and after giving the Bar Council the opportunity to respond to the application, vary or set aside an order made against the appellant under regulation 27(2) of (3) of the Disciplinary Tribunal Rules on such terms and subject to such conditions (if any) as he considers appropriate.
- (6) 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 him in exercise of his directions functions (as the case may be), he 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 him 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.
- (7) If, on an application made by the appellant, the Directions Judge concludes that payment of the sum required by the Disciplinary Tribunal Rules or by the Summary Procedure Rules to defray the expenses of the appeal would cause undue hardship to the appellant, the Directions Judge shall direct that such sum shall not be payable and that the petition of appeal may be served notwithstanding rule 7(5) below, and may grant any extension of time necessary for serving the petition of appeal.

No appeal from Directions Judge

6. There shall be no appeal against an order of the Directions Judge

Service of Petition

7. (1) A written petition of appeal containing the information required by rule 8 below must be served by the appellant on the persons specified in paragraph (2) below within the period of 42 days beginning with the date on which the order of the tribunal was made 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 Lord Chief Justice;
 - (b) the Chairman of the Bar Council (unless the Bar Council is the appellant);
 - (c) the President of the Inns' Council;
 - (d) the Treasurer of the Inn of which the appellant or defendant (as the case may be) is a member; and
 - (e) if the Bar Council is the appellant, the defendant.
- (3) If an application for an extension of the period of 42 days specified in paragraph (1) above is made to the Lord Chief Justice or the Directions Judge before the expiry of that period, the Lord Chief Justice or the Directions Judge may, if he sees fit, extend

the period within which the petition must be served.

- (4) Where no petition is served within the period specified in paragraph (1) above or (where that period has been extended pursuant to paragraph (3)) the extended period, no further action may be taken in relation to the appeal unless the Lord Chief Justice directs otherwise.
- (5) A petition of appeal may not be served, subject to any direction of the Directions Judge to the contrary under rule 5(7) above, unless any sum payable under the Disciplinary Tribunals Regulations or under the Summary Procedure Rules to defray the expenses of the appeal has been paid to the Bar Council.

Petition of Appeal

8.
 - (1) The petition shall state whether the appeal is against the findings or sentence of the tribunal, or both.
 - (2) The petition 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 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.
 - (h) if the hearing is estimated to last longer than one day, an estimate of the time required for the hearing .
 - (3) 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) to sentences in other similar cases.

Service of other documents

9.
 - (1) Subject to paragraph (2) below, the appellant shall, at the same time as serving the petition, serve on the Lord Chief Justice the number

of copies specified in paragraph (4) below of the transcript of the proceedings before the tribunal whose decision is being appealed or, where the tribunal in question was a panel appointed to hear a summary matter, the statement of findings and sentence of the tribunal.

- (2) If any transcript to be served pursuant to paragraph (1) above is not available when the petition is served, the copies of that transcript shall be served on the Lord Chief Justice 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 paragraph (4) below shall be served on the Lord Chief Justice.
- (4) The number of copies required to be served on the Lord Chief Justice is
 - (a) if the appeal is of a type falling within rule 10(2) below, five copies; and
 - (b) in any other case, three copies.

Appointment of panel to hear appeal

- 10.** (1) When a petition is served upon him (whether or not served in time), the Lord Chief Justice shall, nominate the persons who are to hear the appeal.
- (2) An appeal against an order for disbarment or a decision of a tribunal presided over by a Judge of the High Court shall be heard by a panel comprised of—
 - (a) three judges of the High Court or the Court of Appeal (one of whom may be a retired judge of the High Court or Court of Appeal, provided that he has not attained the age of 75 on the date set for the hearing of the appeal);
 - (b) a Queen's Counsel ; and
 - (c) a lay representative;
- (3) Subject to paragraph (4) below, an appeal that is not of a type mentioned in paragraph (2) and is an appeal against a decision of a Disciplinary Tribunal shall be heard by panel comprised of—
 - (a) a Judge of the High Court or the Court of Appeal;
 - (b) a barrister; and

- (c) a lay representative.
- (4) An appeal that is not of a type mentioned in paragraph (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 judge or barrister member of the panel shall be a Bencher of the appellant's or defendant's (as the case may be) Inn.

Answer

- 11. (1) The Bar Council or, if the Bar Council is the appellant, the defendant may (or, if so directed by the Directions Judge, shall) serve on the Lord Chief Justice an answer to the petition within the period of 28 days starting with the date on which the petition is served or such further time as may be allowed by the Directions Judge.
- (2) Where an answer is served pursuant to paragraph (1) the person serving it 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) The Bar Council may, in any answer it serves, 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.
- (5) 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.

Date of Hearing

- 12. (1) Unless it has been indicated either in the petition or answer that the time required for the hearing is likely to exceed one day, 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 Lord Chief Justice of the answer (or, where no answer is served, beginning with the last date for service of the answer under rule 11 above)
- (3) A notice of the hearing of the appeal shall be served on the Bar Council and on the appellant or defendant (as the case may be) at

least 14 days before the date fixed for hearing of the appeal.

Procedure at hearing

- 13.** (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 Bar Council.
- (5) No witness may be called at the hearing without the consent of the Visitors.
- (6) Evidence that was not before the tribunal whose decision is being appealed may be given at the hearing only in exceptional circumstances and with the consent of the Visitors.
- (7) 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 tribunal's decision was based in exceptional circumstances and with the consent of the Visitors.
- (8) 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.
- (9) A full shorthand record shall be made of the hearing.
- (10) A transcription of the shorthand record shall be provided upon request to either party to the hearing but at his own expense.

Findings of the Visitors

- 14.** (1) The findings of the Visitors shall be pronounced in a single decision.
- (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) The Visitors may
- (a) allow an appeal in whole or in part;

- (b) confirm or vary an order of the tribunal whose decision is being appealed;
- (c) order a re-hearing on such terms as they may deem appropriate in the circumstances.
- (4) The Visitors shall give reasons for their decision.
- (5) The Visitors may order, in the event of an appeal which is successful wholly or in part, a refund to the appellant of any sum paid to the General Council of the Bar in accordance with the Disciplinary Tribunal Regulations of the Inns' Council.

Barrister's Exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service

15. (1) These Rules shall apply in relation to an appeal against an order of the tribunal that a barrister's exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service 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, paragraphs 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 tribunal that excluded the appellant from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service;
 - (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 tribunal;
 - (e) the findings against which the appeal is brought; and
 - (f) the grounds for appeal.
- (3) An order of the tribunal to terminate a barrister's exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service 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.

Appeals by an appellant student against a decision of an Inn.

- 16.** (1) These Rules shall apply in relation to an appeal by an appellant student against a decision of an Inn subject to the modifications set out in the following paragraphs of this rule.
- (2) In rules 4 and 7 references to the order, finding or sentence of the tribunal shall be construed as references to the decision of the Inn.
- (3) Any documents required by rules 4 or 7 to be served shall, in place of the persons specified in those rules, be served on—
- (a) the Lord Chief Justice;
 - (b) the Chairman of the Bar Council;
 - (c) the President of the Inns' Council;
 - (d) and the Treasurer of the Inn of which the appellant student is a member or the Treasurer of the Inn that has refused to admit the appellant student.
- (4) There shall be substituted for rule 8
- “**8.** The petition shall contain the following particulars:-
- (a) the decision of the Inn against which the appeal is brought;
 - (b) a summary of the facts giving rise to the decision of the Inn;
 - (c) the grounds for appeal; and
 - (d) the relief sought.”
- (5) Paragraphs (1) and (2) of rule 9 shall not apply.
- (6) The appellant student shall serve on the Lord Chief Justice, with the petition, copies of all relevant documents including any complaint in respect of the appellant and the decision of the Inn.
- (7) In paragraph (3) of rule 9, for the persons specified as the persons to be served there shall be substituted the persons specified in paragraph (3) of this rule.
- (8) In paragraph (1) of rule 11 and paragraph (4) of rule 13 references to the Bar Council shall be construed as references to the Inn in question.
- (9) There shall be substituted for paragraph (4) of rule 11:
- “(4) The Inn may, in any answer it serves, refer to any factors that it took into account when making its decision, including the appellant student’s record and the Inn’s practice in similar cases.”
- (10) Paragraphs (3) and (5) of rule 14 shall not apply.

- (11) The panel appointed to hear the appeal may
 - (a) allow an appeal in whole or in part;
 - (b) confirm or vary the decision of the Inn; or
 - (c) order the Inn to reconsider its decision on such terms as the Visitors may determine to be appropriate in the circumstances.
- (12) Rules 15 and 18 shall not apply.

Appeals not permitted under these Rules

- 17. (1) No appeal shall lie under these Rules from a decision of an educational institution (other than an Inn) or any officer or committee of such an institution in respect of any matter relating to a course recognised by the Bar Council as satisfying
 - (a) the requirements of the Academic Stage of Training for the Bar (including Common Professional Examination requirements),
 - (b) the Vocational Stage of Training for the Bar, or
 - (c) the Stage of Continuing Education and Training at the Bar,or any examination or assessment in connection with any such course.
- (2) An appeal from a decision of a type mentioned in paragraph (1) above shall be made through the appropriate appeal procedures of the institution concerned.

Appeals by an appellant legal practitioner

- 18. (1) In an appeal by an appellant legal practitioner, these Rules shall apply subject to the modifications set out in the following paragraphs of this rule.
- (2) In rules 4 and 7 any reference to the order, finding or sentence of the tribunal shall be construed as a reference to the decision, on review, of the JRC.
- (3) Any documents required by rules 4 and 7 to be served shall, in place of the persons specified in those rules, be served on
 - (a) the JRC;
 - (b) the Lord Chief Justice;
 - (c) the Chairman of the Bar Council; and

- (d) the President of the Inns' Council.
- (4) There shall be substituted for rule 8
 - “8. The petition shall contain the following particulars
 - (a) the decision, on review, of the JRC 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.”
- (6) Paragraphs (1) and (2) of rule 9 shall not apply but the appellant legal practitioner shall serve on the Lord Chief Justice with the petition copies of any relevant documents, which shall include the decision of the JRC against which the appeal is brought.
- (7) In paragraph (3) of rule 9, for the persons specified as the persons to be served there shall be substituted the persons specified in paragraph (1) of this rule.
- (8) In paragraph (1) of rule 11 and paragraph (4) of rule 13 the references to the Bar Council shall be construed as references to the JRC.
- (9) There shall be substituted for paragraph (4) of rule 11
 - “(4) The JRC may, in any answer it serves, refer to any factors that it took into account when making its decision, including the appellant legal practitioner’s record and the JRC’s practice in similar cases.”
- (10) Paragraphs (3) and (5) of rule 14 shall not apply.
- (11) The panel appointed to hear the appeal may
 - (a) allow an appeal in whole or in part;
 - (b) confirm or vary the decision of the JRC; or
 - (c) order the JRC to reconsider its decision on such terms as the panel appointed to hear the appeal may determine to be appropriate in the circumstances.
- (12) Rules 15 and 16 shall not apply.

Costs

- 19.** (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.

Transition

- 20.** (1) Subject to paragraph (2) below, where any appeal has been commenced before 4th February 2002 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 2000 shall be regarded as having been taken pursuant to the equivalent provision of these Rules.
- (2) In relation to appeals brought by students registered at the Inns of Court School of Law before 1 September 1997, the procedure provided by Rule 13 of the Hearings before the Visitors Rules 1991 shall continue to apply in place of that provided by these Rules.

Revocation

- 22.** The Hearings before the Visitors Rules 2000 are hereby revoked.

On behalf of the Judges of Her Majesty's
High Court of Justice

Lord Chancellor
Lord Chief Justice
President
Vice-Chancellor

SCHEDULE**Rule 3(1)****ADDRESSEE AND PLACE FOR SERVICE OF DOCUMENTS**

Person to be served	Addressee and place of service
The Lord Chief Justice.	Addressed to the Clerk to the Visitors at the Royal Courts of Justice, Strand, London WC2A 2LL.
The President of the Inns' Council.	Addressed to the Secretary to the Council of the Inns of Court at Treasury Office, Inner Temple, London EC4Y 7HL.
The Chairman of the Bar Council.	Addressed to the Chief Executive of the General Council of the Bar at 3 Bedford Row, London, WC1R 4DB.
The JRC.	Addressed to the Chief Executive of the General Council of the Bar at 3 Bedford Row, London, WC1R 4DB.
The Treasurer of an Inn.	Addressed to the Sub-Treasurer or Under-Treasurer (as the case may be) of that Inn at the treasury office of that Inn.
An appellant, appellant student or appellant legal practitioner.	Addressed to him at the address specified by him pursuant to rule 6(3).
A defendant.	Addressed to him at: (a) the address notified by him pursuant to Paragraphs 304(a)(i) or 402(a) of the Code of Conduct of the Bar of England and Wales (or any provisions amending or replacing those paragraphs); (b) if he has 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 his last known address.

Annexe N: The Interim Suspension Rules

Introduction

1. These Rules are supplemental to:
 - (a) the Complaints Rules;
 - (b) the Disciplinary Tribunals Regulations; and
 - (c) the Summary Procedure Rules;as approved from time to time and annexed to the Code of Conduct of the Bar of England and Wales.

Definitions

2. In these Rules:
 - (a) “the Commissioner” means the Complaints Commissioner;
 - (b) “Suspension Panel” means a Suspension Panel as provided for in rule 3 of these Rules;
 - (c) “Appeal Panel” means an Appeal Panel as provided for in rule 4 of these Rules;
 - (d) “Lay Representative” means a lay person appointed by the Bar Council to serve on Disciplinary Tribunals;
 - (e) “the Defendant” means the barrister who is the subject of a referral to a Suspension Panel pursuant to the procedure prescribed by these Rules;

Composition of Panels

3. A Suspension Panel shall consist of five members nominated by the Chairman of the PCC being:
 - (a) the Chairman of the PCC or, if unable to attend, a Vice-Chairman of the PCC, who shall be Chairman of the Panel;
 - (b) three other barristers of at least ten years Call one of whom shall be a Queen’s Counsel and who are current members of the PCC or the PSC;
 - (c) a Lay RepresentativeProvided that:
 - (1) no barrister (save for the Chairman or a Vice Chairman of the PCC) or Lay Representative

shall be nominated to serve on a Panel which is to consider any matter which has been considered at any meeting of the PCC which he attended; and

- (2) the proceedings of a Suspension Panel shall be valid notwithstanding that one or more of the members other than the Chairman or Lay Representative becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing is not reduced below three and continues to include the Chairman and the Lay Representative.

4. An Appeal Panel shall consist of:

- (a) The Chairman of the Bar or, if unable to attend, the Vice-Chairman, who shall be Chairman of the Panel;
- (b) a representative nominated by the Treasurer of the Defendant's Inn;
- (c) a Lay Representative

Provided that no individual shall sit on both the Suspension Panel and the Appeal Panel considering the same matter.

Referral to a Suspension Panel

5. Upon the Bar Council receiving notification from a barrister that he has been convicted of or charged with a Serious Criminal Offence, the Commissioner and/or the PCC shall consider whether to refer the matter to a Suspension Panel.

6. Either the Commissioner or the PCC may refer a matter to a Suspension Panel if:

- (a) the matter has been referred to the Commissioner or the PCC under rule 5 above; or
- (b) a complaint has been referred to the Commissioner or the PCC during the investigation of which it is disclosed that a barrister has been convicted of or charged with a Serious Criminal Offence; or
- (c) in any other circumstances it is disclosed to the Commissioner or the PCC that a barrister has been convicted of or charged with a Serious Criminal Offence.

No matter shall be referred to a Suspension Panel unless the Commissioner or the PCC considers that the conviction(s) or criminal charge(s) (if such charge(s) were subsequently to lead to conviction(s)) would warrant a charge of professional misconduct and referral to a Disciplinary Tribunal.

7. As soon as practicable after the decision has been made to refer a matter to a Suspension Panel, the Secretary of the PCC shall write to the Defendant notifying him of the decision, together with a copy of these Rules, giving brief details of the conviction(s) or criminal charge(s) that have caused the referral to the Panel. The letter of notification:

- (a) shall 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;
- (b) shall invite the Defendant to accept one or other of the dates proposed or to provide a written representation to the Chairman of the PCC, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the Chairman of the PCC not more than fourteen days from the date of the letter of notification. The Chairman of the PCC shall consider any such representation and either confirm one of the original dates 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 first fixed pursuant to rule 7(a) above. The Chairman's decision, which shall be notified in writing to the Defendant by the Secretary of the PCC, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the PCC;
- (c) shall inform the Defendant that he may by letter to the Chairman of the PCC undertake immediately to be suspended from practice pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal based on the conviction(s) or criminal charge(s) that have caused the referral to the Panel;
- (d) shall inform the Defendant that he is entitled to make representations in writing or orally, by himself or by another member of the Bar on his behalf:
 - (1) where a conviction or convictions have caused the referral to the Panel, as to whether a period of interim suspension should be imposed; or
 - (2) where a criminal charge or charges have caused the referral to the Panel, as to whether and if so in what terms any notification should be given to professional clients and lay clients and the conditions subject to which the Defendant should be permitted to continue to practice;

pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal;

- (e) shall inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal.
8. If a Defendant sends a letter in accordance with rule 7(c) above which is satisfactory to the Chairman of the PCC the Chairman shall accept the undertaking contained in the letter in lieu of imposing a period of interim suspension and so inform the Defendant in writing, whereupon the Defendant shall immediately be suspended from practice until after the disposal by a Disciplinary Tribunal of any charges of professional misconduct based on the conviction(s) or criminal charges(s) that have caused

Powers of Suspension Panels

9. If, prior to the date fixed for a hearing under rules 7(a) or (b) above, a Defendant shall not have produced a letter in accordance with rule 7(c) above satisfactory to the Chairman of the PCC, a Suspension Panel nominated in accordance with rule 3 above shall, at the time and place notified to the Defendant in accordance with rules 7(a) or (b) above, consider:
- (a) where a conviction or convictions have caused the referral to the Panel, whether a period of interim suspension should be imposed on the Defendant;
 - (b) where a criminal charge or charges have caused the referral to the Panel, whether the Defendant should be directed to notify his professional clients and lay clients of the criminal offence(s) with which he has been charged before undertaking any work or (as the case may be) further work for any such client.
10. At any hearing of a Suspension Panel the proceedings shall be governed by the rules of natural justice, subject to which:
- (a) the procedure shall be informal, the details being at the discretion of the Chairman of the Panel;
 - (b) the Defendant shall be entitled to make representations in writing or orally, by himself or by another member of the Bar or a solicitor on his behalf, as to:
 - (1) where a conviction or convictions have caused the referral to the Panel, why a period of interim suspension should not be imposed; or
 - (2) where a criminal charge or charges have caused the referral to the Panel, why the Panel should not direct that the Defendant should notify his professional clients and lay clients of the criminal offence(s) with which he has been charged before undertaking any work or (as the case may be) further work for any such client;

pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal;

- (c) no witnesses may be called without the prior consent of the Chairman of the Panel and without the submission of a proof of evidence;
 - (d) the attendance of the Defendant shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence, subject to the Panel being satisfied that this course is appropriate, that all relevant procedures requiring the Defendant's attendance have been complied with and that no acceptable explanation for the Defendant's absence has been provided. Should the Panel not be so satisfied, it shall have the power to adjourn the hearing;
 - (e) the hearing shall not be in public unless so requested by the Defendant and a record shall be taken electronically. The tape of the hearing shall be retained under the arrangements of the Secretary of the PCC for two years or until any charges of professional misconduct against the Defendant based on the convictions or criminal charges which caused the referral to the Panel have been finally disposed of by a Disciplinary Tribunal and any appeal procedure has been exhausted whichever period is the longer;
 - (f) if it decides an adjournment is necessary for any reason, the Panel may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.
11. If the members of a Suspension Panel are not unanimous as to any decision the decision made shall be that of the majority of them. If the members of the Panel are equally divided the decision shall be that which is the most favourable to the Defendant.
12. Where a conviction or convictions have caused the referral to a Suspension Panel, at the conclusion of the hearing the Panel:
- (a) may decide not to impose any period of interim suspension;
 - (b) may impose a period of interim suspension (either unconditionally or subject to conditions) of up to six months pending the hearing before a Disciplinary Tribunal, provided that no period of interim suspension should be imposed unless the Panel considers that it is likely that a Disciplinary Tribunal would impose a sentence of disbarment or suspension for more than twelve months for a charge or charges of professional misconduct based on the conviction or convictions that have caused the referral to the Panel and it considers that it is in the public interest that the Defendant should be suspended pending the hearing before a Disciplinary Tribunal.

- (c) in lieu of imposing a period of suspension may accept from the Defendant an undertaking in writing in terms satisfactory to the Panel (and subject to such conditions and for such period as the Panel may agree) immediately to be suspended from practice pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal based on the conviction or convictions that have caused the referral to the Panel;
- (d) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any period of interim suspension imposed under rule 12(b) above or undertaking accepted under rule 12(c) above. The imposition of any period of suspension shall be recorded as follows:

“That.....be suspended from practice as a barrister and from enjoyment of all rights and privileges as a member of the Honourable Society of.....and be prohibited from holding himself out as being a barrister without disclosing his interim suspension for a period expiring on the day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges based on the conviction or convictions that have caused the interim suspension or such Disciplinary Tribunal may otherwise direct.” (Note: If the Panel decides that the suspension should apply to part only of the Defendant’s practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded).
- (e) shall, if a period of interim suspension is imposed under rule 12(b) above or a written undertaking is accepted under rule 12(c) above:
 - (1) fix a time and date within the period of suspension imposed, alternatively inform the Defendant that such a time and date will be fixed by the Secretary of the PCC and notified to the Defendant not less than fourteen days prior to such date, when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the conviction or convictions that have caused the referral to the Panel, a Panel shall be convened for the purpose of reviewing the matter;
 - (2) inform the Defendant of his right to request a Panel to review the matter prior to the date fixed in (1) above as provided in rule 14 below;
 - (3) inform the Defendant of his right of appeal as provided in rule 16 below;
 - (4) inform the Defendant that he is entitled to request an expedited hearing of any charges of

professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;

- (f) may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a disciplinary Tribunal.

13. Where a criminal charge or charges have caused the referral to a Suspension Panel, at the conclusion of the hearing the Panel:

- (a) may decide to make no direction as to the conduct of the Defendant's practice;
- (b) may decide to direct the Defendant to notify his professional clients and lay clients of the criminal offence(s) with which he has been charged, in which case the Panel shall set out the terms of the written notification to be given (for such period as the Panel may think fit) to such clients and may include such comments as the Defendant may wish to make and the Panel may approve concerning the criminal charge(s). In addition to directing the notification of professional clients and lay clients, the Panel may direct that the conduct of Defendant's practice shall be subject to such conditions as the Panel may think fit;
- (c) in lieu of making any direction under rule 13(b) above the Panel may accept one or more undertakings in writing in such terms and upon such conditions as the Panel may think fit as to the form of written notification to be given to any professional client or lay client and as to the conduct of the Defendant's practice;
- (d) shall set down in writing signed by the Chairman of the Panel the terms of any direction or undertaking accepted under rules 13(b) or (c) above together with a copy or copies of the letter or letters approved as the form of notification to professional clients and lay clients;
- (e) shall, if any direction is given or undertaking accepted under rules 12(a) or (b) above limited to any specified period:
 - (1) fix a time and date within that period, alternatively inform the Defendant that such a time and date will be fixed by the Secretary of the PCC and notified to the Defendant not less than fourteen days prior to the expiration of such period when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the criminal charge or charges that have caused the referral to the Panel, a Panel shall be

convened for the purpose of reviewing the matter;

(2) inform the Defendant of his right to request a Panel to review the matter prior to the date fixed in (1) above as provided in rule 14 below;

(3) inform the Defendant of his right of appeal as provided in rule 16 below;

(4) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;

(f) may, if not already referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

14. In the event of a significant change in circumstances or other good reason the Defendant may at any time while suspended pursuant to a decision of a Suspension Panel or an undertaking under rules 12(b) or (c) above or subject to a direction or undertaking under rules 12(b) or (c) make a request in writing to the Chairman of the PCC for a Panel to be convened to review the matter. The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the Chairman may in his discretion convene a Panel or refuse the request. In either case the Secretary of the PCC shall notify the Defendant in writing of the Chairman's decision. The Chairman shall not be obliged to give reasons and his decision shall be final. If the Chairman decides to convene a Panel the procedure to be followed for fixing the time and date of the hearing shall be as set out in rules 7(a) and (b) above.

15. Unless in the meantime the hearing before a Disciplinary Tribunal of any charges based on the conviction(s) or criminal charge(s) which had caused the referral to a Suspension Panel has commenced, a hearing by a Suspension Panel convened pursuant to rules 12(e)(1), 13(e)(1) or 14 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the Panel which may reconsider the matter as if there had been no previous hearing. The provisions of rules 10, 11, 12 and 13 above shall apply at the first and any subsequent reconsideration of the matter save that in imposing any further period of interim suspension the Panel shall have regard to the length of any period of suspension already served by the Defendant. If the hearing before a Disciplinary Tribunal of any charges based on the conviction(s) or criminal charge(s) which had caused the referral to a Suspension Panel has commenced before the date fixed for a rehearing by a Suspension Panel, such date shall be vacated and any interim suspension or the terms of any direction made or undertaking accepted by a Suspension Panel shall continue until such charges have been disposed of by the Disciplinary Tribunal.

16. A Defendant may by letter served on the Secretary of the PCC not more than fourteen days after the date of the relevant decision of a Suspension Panel give notice of his wish to appeal against the decision.
17. Unless a Disciplinary Tribunal shall otherwise direct, any period of interim suspension shall cease or the Defendant shall cease to be bound by the terms of any direction made or undertaking accepted by a Suspension Panel or an Appeal Panel immediately upon:
 - (a) all charges of professional misconduct based on the conviction(s) or criminal charge(s) which had caused the referral to a Suspension Panel being disposed of by a Disciplinary Tribunal;
 - (b) any appeal by the Defendant against the conviction or all the conviction(s) which had caused the referral to a Suspension Panel being successful;
 - (c) the acquittal of the Defendant of the criminal charge or all the criminal charges which had caused the referral to a Suspension Panel;
 - (d) the criminal charge or all the criminal charges which had caused the referral to a Suspension Panel being withdrawn.

Appeals

18. As soon as practicable after receipt of a letter in accordance with rule 16 above the Secretary of the PCC shall convene an Appeal Panel and write to the Defendant notifying him 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 Chairman 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 Chairman of the Appeal Panel not more than fourteen days from the date of the letter of notification. The Chairman shall consider any such representation and either confirm the original date 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 originally notified to the Defendant. The Chairman's decision, which shall be notified in writing to the Defendant by the Secretary of the PCC, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the Appeal Panel.
19. The proceedings before an Appeal Panel shall be by way of a rehearing and the provisions of rule 10 above shall apply as if for references therein to the Suspension Panel and the Chairman of the Suspension Panel there were substituted

references respectively to the Appeal Panel and the Chairman of the Appeal Panel.

20. Where the appeal concerns a period of interim suspension, at the conclusion of the hearing the Appeal Panel:
- (a) may remove the period of interim suspension and/or any conditions attached thereto;
 - (b) may confirm the period of interim suspension (subject to any conditions), impose further or alternative conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;
 - (c) in lieu of confirming or imposing a period of interim suspension, may accept from the Defendant in terms satisfactory to the Chairman of the Panel an undertaking in writing to continue to be suspended from practice (subject to such conditions and for such period as the Panel may agree) pending the disposal of any charges of professional misconduct by a Disciplinary Tribunal based on the conviction or convictions that have caused the referral to the Panel;
 - (d) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any interim suspension confirmed or imposed under rule 20(b) above or undertaking accepted under rule 20(c) above. If the members of the Panel are not unanimous as to the decision the decision made shall be that of the majority of them. Any period of suspension which is confirmed or imposed shall be recorded as set out in rule 12(d) above;
 - (e) shall, if a period of interim suspension is confirmed, imposed or the subject of a written undertaking under rule 20(c) above:
 - (1) confirm or fix a time and date within the period of the interim suspension, alternatively inform the Defendant that such a time and date will be confirmed or fixed by the Secretary of the PCC and notified to the Defendant not less than fourteen days prior to such date, when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the conviction or convictions that caused the referral to the Suspension Panel, a Suspension Panel shall be convened for the purpose of reviewing the matter;
 - (2) inform the Defendant of his right to request a Suspension Panel to review the matter prior to the date confirmed or fixed under (1) above as provided in rule 14 above;

- (3) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;
 - (f) may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.
- 21. Where the appeal concerns a direction made or undertaking accepted under rules 13(b) or (c) above, at the conclusion of the hearing the Appeal Panel:
 - (a) may confirm, remove or modify any direction previously given by the Suspension Panel, subject to such conditions as to the Defendant's practice as the Panel may think fit;
 - (b) in lieu of any direction under rule 21(a) above the Panel may accept one or more written undertakings in such terms and upon such conditions as the Panel may think fit as to the form of written notification to be given to any professional client or lay client and as to the conduct of the Defendant's practice;
 - (c) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any direction made or undertaking accepted under rules 21(a) or (b) above together with a copy or copies of the letter or letters approved as the form of notification to professional clients and lay clients;
 - (d) shall, if any direction is confirmed or modified or undertaking accepted under rule 21(b) above limited to any specified period:
 - (1) confirm or fix a time and date within that period, alternatively inform the Defendant that such a time and date will be fixed by the Secretary of the PCC and notified to the Defendant not less than fourteen days prior to the expiration of such period when, unless a Disciplinary Tribunal shall in the meantime have disposed of any charges of professional misconduct based on the criminal charge or charges that caused the referral to the Suspension Panel, a Suspension Panel shall be convened for the purpose of reviewing the matter;
 - (2) inform the Defendant of his right to request a Suspension Panel to review the matter prior to the date fixed in (1) above as provided in rule 14 above;
 - (3) inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal

Tribunal and, if so requested, the Chairman of the Panel may so direct;

- (e) may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

- 22. A pending appeal to an Appeal Panel shall not operate as a stay of any period of interim suspension or the terms of any direction or undertaking which is the subject of the appeal.
- 23. There shall be no right of appeal from the decision of an Appeal Panel.

Costs

- 24. A Suspension Panel and an Appeal Panel shall have no power to award costs.

Report and Publication of Decisions

- 25. As soon as practicable after the conclusion of a Suspension Panel hearing or an Appeal Panel hearing, the Secretary of the PCC shall confirm the decision to the Defendant in writing.
- 26. In any case where a period of interim suspension is imposed or an undertaking from a Defendant is accepted as a consequence of which he is suspended from practice (either unconditionally or subject to conditions) the Secretary of the PCC shall communicate brief details thereof in writing to the following:
 - (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the President of the Council of the Inns of Court;
 - (f) the Chairman of the Bar Council;
 - (g) the Leaders of the six circuits;
 - (h) the Chairman of the PCC;
 - (i) the Defendant;
 - (j) the Defendant's head of chambers;
 - (k) the Treasurers of the Defendant's Inn of Call and of any other Inns of which he is a member;
 - (l) such one or more press agencies or other publications, as the Chairman of the PCC may direct.

Save in cases where interim suspension is followed by a sentence of disbarment or suspension from practice imposed by a Disciplinary Tribunal, if a Defendant ceases for whatever reason to be suspended from practice the Secretary of the PCC shall communicate brief details of the circumstances in which the Defendant has ceased to be suspended from practice to all the persons and agencies to which brief details of the interim suspension had previously been communicated pursuant to this rule.

27. In any case where a direction is made requiring notification of a criminal charge or charges to professional clients and lay clients or any undertaking is accepted under rules 13(c) and 21(b) above the Secretary of the PCC shall communicate brief details thereof in writing to the following:
- (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the President of the Council of the Inns of Court;
 - (f) the Chairman of the Bar Council;
 - (g) the Leaders of the six circuits;
 - (h) the Chairman of the PCC;
 - (i) the Defendant;
 - (j) the Defendant's head of chambers.

Service of documents

28. Regulation 29 of the Disciplinary Tribunals Regulations shall apply for the purposes of the service of any documents in connection with the procedures which are the subject of these Rules save that for the reference in Regulation 29(3) to the "Directions Judge or the Chairman of the Disciplinary Tribunal" there shall be substituted the "Chairman of the PCC".

Transitional Provisions

29. These Rules shall not be applied in respect of any conviction or charge prior to 1 February 2000.

Annexe O: The Fitness to Practise Rules

Introduction

1. These Rules are supplemental to:
 - (a) the Complaints Rules;
 - (b) the Disciplinary Tribunals Regulations;
 - (c) the Summary Procedure Rules; and
 - (d) the Interim Suspension Rules;as approved from time to time and annexed to the Code of Conduct of the Bar of England and Wales.
2. These Rules prescribe the manner in which any question concerning whether a barrister is unfit to practise, as defined in these Rules, shall be processed.

Definitions

3. In these Rules:
 - (a) “the Commissioner” means the Complaints Commissioner
 - (b) “Medical Panel” means a Medical Panel as provided for in rule 4 of these Rules;
 - (c) “Review Panel” means a Review Panel as provided for in rule 5 of these Rules;
 - (d) “the Defendant” means the barrister whose case is referred to a Medical Panel pursuant to the procedure prescribed by these Rules;
 - (e) ‘Medical Expert’ means a medical expert appointed by the Bar Council for the purpose of serving on Medical and Review Panels.
 - (f) “Appointed Medical Advisor” means a medical expert appointed by the Bar Council for the purpose of performing medical (including psychiatric) examinations on barristers and advising Medical and Review panels;
 - (g) “Unfit to practise” when used to describe a barrister means that he is incapacitated by reason of ill health and:
 - (1) the barrister is suffering from serious incapacity due to his physical or mental condition (including any addiction); and

- (2) as a result the barrister's fitness to practise is seriously impaired; and
- (3) his suspension or the imposition of conditions is necessary for the protection of the public.

Composition of Panels

4. A Medical Panel shall consist of five members nominated by the Chairman of the PCC being:
 - (a) a Chairman and two other barristers of at least ten years Call of whom the Chairman and at least one other shall be Queen's Counsel;
 - (b) Medical Expert;
 - (c) Lay Representative.

Provided that:

- (1) no barrister or Lay Representative shall be nominated to serve on a Panel which is to consider any case which may have been considered at any meeting of the PCC which he attended; and
- (2) the proceedings of a Medical Panel shall be valid notwithstanding that one or more of the members other than the Chairman or Medical Expert or Lay Representative becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing is not reduced below three and continues to include the Chairman and the Medical Expert and Lay Representative.

5. A Review Panel shall consist of:
 - (a) a Chairman and one other barrister nominated by the Chairman of the Bar;
 - (b) a representative nominated by the Treasurer of the Defendant's Inn;
 - (c) a Medical Expert;
 - (d) a Lay Representative

Provided that no individual shall sit on both the Medical Panel and the Review Panel considering the same case.

Referral to a Medical Panel

6. Where information in writing or a complaint in writing is received by the Bar Council about any barrister who holds a practising certificate which raises a question whether the barrister is unfit to practise, the Commissioner shall consider whether to refer the case to a Medical Panel.
7. The Commissioner shall refer a case to a Medical Panel if:
 - (a) having been referred to him under rule 6 above the Commissioner considers a barrister may be unfit to practise; or
 - (b) a complaint of professional misconduct or inadequate professional service has been referred to the Commissioner or the PCC during the investigation of which it appears that a barrister may be unfit to practise; or
 - (c) in any other circumstances it appears to the Commissioner, the PCC or any other Disciplinary Panel or Tribunal that a barrister may be unfit to practise; or
 - (d) a barrister requests the Commissioner in writing to refer his case to a Medical Panel.
8. As soon as practicable after the decision has been made to refer a case to a Medical Panel, the Secretary of the PCC shall write to the Defendant notifying him of the decision, together with a copy of these Rules. The letter of notification shall:
 - (a) contain a summary of the reasons why the case has been referred to a Medical Panel;
 - (b) 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 a preliminary hearing of the Panel to take place. One alternative shall be given;
 - (c) invite the Defendant to accept one or other of the dates proposed or to provide a written representation to the Chairman of the PCC, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the Chairman of the PCC not more than fourteen days from the date of the letter of notification. The Chairman of the PCC shall consider any such representation and either confirm one of the original dates 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 first fixed pursuant to rule 8(b) above. The Chairman's decision, which shall be notified in writing to the Defendant by the Secretary of the PCC, shall be final. Once fixed, a

hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the PCC;

- (d) inform the Defendant that he is entitled to make representations in writing or orally, by himself or by another member of the Bar on his behalf, and that he may produce medical evidence, provided (but subject to the discretion of the Chairman of the Panel to consider any form of evidence placed before it) that a proof of such evidence shall have been submitted prior to the hearing;
- (e) inform the Defendant that he may be invited to attend within a period of time upon an Appointed Medical Advisor nominated by the Panel to carry out an examination of the Defendant, and requested to authorise disclosure of his medical records;
- (f) inform the Defendant of his right to appeal as provided in rule 18 below.

Procedure and Powers of Medical Panels

9. At any hearing of a Medical Panel the proceedings shall be governed by the rules of natural justice, subject to which:
- (a) the procedure shall be informal, the details being at the discretion of the Chairman of the Panel;
 - (b) the Defendant shall be entitled to make representations in writing or orally, by himself or by another member of the Bar or a solicitor on his behalf, and may produce medical evidence, provided (but subject to the discretion of the Chairman of the Panel to consider any form of evidence placed before it) that a proof of such evidence shall have been submitted prior to the hearing;
 - (c) the attendance of the Defendant shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence, subject to the Panel being satisfied that this course is appropriate, that all relevant procedures requiring the Defendant's attendance have been complied with and that no acceptable explanation for the Defendant's absence has been provided. Should the Panel not be so satisfied, it shall have the power to adjourn the hearing;
 - (d) the hearing shall not be in public unless so requested by the Defendant and a record shall be taken electronically. The tape of the hearing shall be retained under the arrangements of the Secretary of the PCC for two years or until any charges of professional misconduct against the Defendant arising out of the case have been finally disposed of through the Bar Council's procedure for complaints and any appeal procedure has been exhausted whichever period is the longer;

- (e) if it decides an adjournment is necessary for any reason, the Panel may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.
10. If the members of a Medical Panel are not unanimous as to any decision the decision made shall be that of the majority of them. If the members of the Panel are equally divided the decision shall be that which is the most favourable to the Defendant.
11. At the conclusion of a preliminary hearing of a Medical Panel, the Panel:
- (a) may give directions for a full hearing of the Panel, including:
 - (1) a direction within a specified period of time an Appointed Medical Advisor nominated by the Panel shall carry out an examination of the Defendant; and
 - (2) a request to the Defendant to authorise disclosure of his medical records to such Appointed Medical Advisor;
 - (b) shall warn the Defendant that if he refuses any request made under rule 11(a) above any Panel hearing his case shall be entitled to draw such adverse inferences as it may think fit from such refusal;
 - (c) may direct that the barrister be suspended from practice (either unconditionally or subject to conditions) for a specified period which should not save in exceptional circumstances exceed 3 months pending the full hearing of the Panel, provided that no such period of interim suspension should be imposed unless the Panel is satisfied that it is necessary to protect the public
 - (d) in lieu of imposing a period of suspension under (c) above may accept from the Defendant an undertaking in writing in terms satisfactory to the Panel (and subject to such conditions and for such a period as the Panel may agree) immediately to be suspended from practice pending the conclusion of the full hearing;
 - (e) may accept from the Defendant an undertaking or undertakings in writing in terms satisfactory to the Panel (and subject to such conditions and for such a period as the Panel may agree) as to the conduct of the Defendant's practice pending the conclusion of the full hearing;
 - (f) shall set down in writing signed by the Chairman of the Panel the decision of the Panel including the terms of any directions given under rule 11(a) above and the

period and terms of any interim suspension imposed under rule 11(c) above or undertaking accepted under rule 11(d) or (e) above.

- (g) shall, if a period of interim suspension is imposed under rule 11(c) above or a written undertaking is accepted under rule 11 (d) above:
- (1) fix a time and date within the period of suspension imposed or to which the undertaking relates, alternatively inform the Defendant that such a time and date will be fixed by the Secretary of the PCC and notified to the Defendant not less than fourteen days prior to such date, when, unless a Medical Panel has concluded proceedings, a Panel shall be convened for the purpose of reviewing the matter;
 - (2) inform the Defendant of his right to request a Panel to review the matter prior to the date fixed in (1) above as provided in rule 15 below;
 - (3) inform the Defendant of his right of appeal as provided in rule 18 below;
 - (4) inform the Defendant that he is entitled to request an expedited full hearing of the Medical Panel and, if so requested, the Chairman of the Panel may so direct.

12. If a Medical Panel shall decide to give directions under rule 11(a) above, as soon as practicable after the report of any examination requested has been carried out (or refused) and a summary of the case against the Defendant has been prepared on behalf of the Panel, the Secretary of the PCC shall notify the Defendant. The letter of notification shall:

- (a) contain:
- (1) the summary of the case against the Defendant;
 - (2) a copy of any report produced by the Appointed Medical Advisor nominated to carry out an examination of the Defendant;
- (b) 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 a full hearing of the Panel to take place. One alternative shall be given;
- (c) invite the Defendant to accept one or other of the dates proposed or to provide a written representation to the Chairman of the PCC, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the Chairman of the PCC not more than fourteen days from the date of the letter of notification.

The Chairman of the PCC shall consider this representation and either confirm one of the original dates 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 first fixed pursuant to rule 12(b) above. The Chairman's decision, which shall be notified in writing to the Defendant by the Secretary of the PCC, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the PCC;

- (d) inform the Defendant of his right to appeal as provided in rule 18 below.

13 At any full hearing of a Medical Panel the provisions of rule 9 above shall apply but in addition the Defendant himself or by another member of the Bar shall be entitled to cross-examine any Appointed Medical Advisor whose report is in evidence before the Panel.

14 At the conclusion of a full hearing of a Medical Panel, the Panel:

- (a) may decide to take no action;
- (b) if satisfied that the Defendant is or may become unfit to practise shall have power to impose one or more of the penalties or conditions set out in rules 14(c), (d) and (e) below;
- (c) may impose a period of interim suspension (either unconditionally or subject to conditions) of up to six months, but shall inform the Defendant that such period of interim suspension shall be continued without any further decision of a Panel unless determined at a review of his case as provided in rule 15 below;
- (d) may impose an indefinite period of suspension;
- (e) may make the Defendant's right to continue to practise, or to resume practice after any period of suspension, subject to such conditions as the Panel may think fit, including, without prejudice to the generality of the foregoing:
 - (1) a requirement that the Defendant should attend one or more Appointed Medical Advisors for regular examination whose report(s) should be made available to the Chairman of the PCC and any Medical Panel or Review Panel when considering the case;
 - (2) a requirement that the Defendant should attend one or more clinics or hospitals as the Panel may decide for the purposes of treatment in respect of any physical or mental condition which the Panel may think is or may become a cause of the Defendant's Unfitness to practise;

- (f) in lieu of imposing any penalty or condition under rule 14(b) above the Panel may accept from the Defendant one or more undertakings in writing satisfactory to the Panel referring to such period of suspension and any conditions which the Panel would have imposed or made under rules 14 (c), (d) and (e) above;
- (g) shall inform the Defendant of his right to request a Panel to review his case as provided in rule 15 below;
- (h) shall inform the Defendant of his right of appeal as provided in rule 18 below;
- (i) shall inform the Defendant that to attempt to practise during a period of suspension or, if the Defendant's right to continue to practise is subject to one or more conditions, not to comply with any such condition, would be serious professional misconduct likely to result in a charge of professional misconduct and a hearing before a Disciplinary Tribunal;
- (j) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any suspension imposed, conditions made, or undertakings accepted.

15 At any time, after a period of suspension imposed or undertaken under rules 14(d) or (f) above has expired, or in the event of a significant change in circumstances or other good reason, the Defendant may make a request in writing to the Chairman of the PCC for a Panel to be convened to review his case. Where a significant change in circumstances or good reason is relied upon the letter must set out the details of any such alleged change in circumstances or good reason. On receipt of such a letter the Chairman may in his discretion convene a Panel or refuse the request. In either case the Chairman shall inform the Defendant in writing of his decision but shall not be obliged to give reasons. The Chairman's decision shall be final.

16 At any time during which a Defendant is subject to a period of suspension or is practising subject to conditions made pursuant to these Rules the Chairman of the PCC may in his discretion convene a Panel to review that Defendant's case.

17 When a case is referred for review to a Medical Panel under rules 15 or 16 above:

- (a) there shall be a rehearing of the case by the Panel and the provisions of rules 9,10 and 13 above shall apply save that copies of the report of any expert or any proof of evidence referred to at any previous hearing of a Medical Panel in respect of the same case may be referred to;
- (b) unless agreed in writing between the Chairman of the Panel and the Defendant that any of the provisions contained in rules 8, 11 and 12 shall not apply, there

shall be a preliminary as well as a full hearing of the Panel and the provisions contained in rules 8, 11, 12 and 14 above shall apply thereto.

18. A Defendant may by letter served on the Secretary of the PCC not more than fourteen days after the date of the relevant decision of a Medical Panel give notice of his wish to appeal against the decision.

Appeals

19. As soon as practicable after receipt of a letter in accordance with rule 18 above the Secretary of the PCC shall convene a Review Panel and write to the Defendant notifying him 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 Chairman of the proposed Review Panel, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chairman of the Review Panel not more than fourteen days from the date of the letter of notification. The Chairman 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 place originally notified to the Defendant. The Chairman's decision, which shall be notified in writing to the Defendant by the Secretary of the PCC, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the Review Panel.
20. The proceedings before a Review Panel shall be by way of a rehearing and the provisions of rules 9 and 13 above shall apply as if for references therein to the Medical Panel and the Chairman of the Medical Panel for the purposes of a full hearing of a Medical Panel there were substituted references respectively to the Review Panel and the Chairman of the Review Panel, save that copies of the report of any expert or any proof of evidence referred to at any hearing of a Medical Panel in respect of the same case may be referred to.
21. At the conclusion of the hearing, the Review Panel:
- (a) may allow the appeal and decide to take no action;
 - (b) confirm the decision that is the subject of the appeal;
 - (c) may exercise any of the powers of a Medical Panel as set out in rules 14(c), (d), (e), and (f) above;
 - (d) shall inform the Defendant of his right to request a Medical Panel to review his case as provided in rule 15 above;
 - (e) shall inform the Defendant that to attempt to practise during a period of suspension or, if the Defendant's

- right to continue to practise is subject to one or more conditions, not to comply with any such condition, would be serious professional misconduct likely to result in a charge of professional misconduct and a hearing before a Disciplinary Tribunal;
- a
- (f) shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any suspension imposed, conditions made, or undertakings accepted. If the members of the Panel are not unanimous as to the decision the decision shall be that of the majority of them.
22. A pending appeal to a Review Panel shall not operate as a stay of any period of suspension or any conditions or the terms of any undertaking which is the subject of the appeal.
23. There shall be no right of appeal from the decision of a Review Panel.

Costs

24. A Medical Panel and a Review Panel shall have no power to award costs.

Confidentiality of medical reports

25. A Defendant's medical records and any report prepared for or submitted to a Medical Panel or a Review Panel shall not be used for any other purpose than is provided for in these Rules and shall not be disclosed to any other person or body without the consent in writing of the Defendant.

Report and Publication of Decisions

26. As soon as practicable after the conclusion of a Medical Panel hearing or a Review Panel hearing, the Secretary of the PCC shall confirm the decision to the Defendant in writing.
27. Unless the decision of a Medical Panel full hearing or a Review Panel hearing is to take no action and the Defendant is permitted to continue to practise without being subject to any conditions, the Secretary of the PCC shall communicate brief details thereof in writing to the following:
- (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the President of the Council of the Inns of Court.

- (f) the Chairman of the Bar Council;
- (g) the Leaders of the six circuits;
- (h) the Chairman of the PCC;
- (i) the Defendant;
- (j) the Defendant's head of chambers;
- (k) the Treasurers of the Defendant's Inn of Call and of any other Inns of which he is a member.

Service of documents

28. Regulation 29 of the Disciplinary Tribunals Regulations shall apply for the purposes of the service of any documents in connection with the procedures which are the subject of these Rules save that for the reference in Regulation 29(3) to the "Directions Judge or the Chairman of the Disciplinary Tribunal" there shall be substituted the "Chairman of the PCC".

Annexe P: The Adjudication Panel and Appeals Rules

Introduction

1. Adjudication Panels ("Panels") shall be appointed by the Professional Conduct and Complaints Committee ("the Committee") to determine complaints considered by the Committee not to raise a *prima facie* case of professional misconduct, but to raise a *prima facie* case that the barrister concerned has provided inadequate professional service to the complainant.
2. Panels shall consist of the Complaints Commissioner ("the Commissioner") as chairman, one lay member of the Committee and two barrister members of the Committee, at least one of whom shall be a Queen's Counsel.
3. Anything required by these Rules to be done or any discretion required to be exercised by, and any notice required to be given to, the Complaints Commissioner ("the Commissioner") or the Secretary of the Committee ("the Secretary"), may be done or exercised by, or given to, any person authorised by the Complaints Commissioner to act in his stead or by the Chief Executive of the Bar Council to act instead of the Secretary of the Committee (either prospectively or retrospectively and either generally or for a particular purpose).

Powers of Panels

4. The powers of a Panel shall be:
 - (a) to consider any complaint referred to it pursuant to paragraph 28(e) of the Complaints Rules and to direct such investigations as they see fit in respect thereof
 - (b) to dismiss any complaint without making a finding as to the existence or otherwise of inadequate professional service if they conclude that due to lapse of time, disputes of fact which cannot fairly be resolved by the Panel, or for any other reason it cannot fairly be determined
 - (c) to determine whether the barrister concerned has provided inadequate professional service in respect of the matter complained of
 - (d) to determine what remedy should be granted to the complainant in respect of such inadequate service

Investigation and Procedure

5. When a complaint is referred to a Panel as set out in paragraph 4(a) above the Commissioner shall consider what, if any, further investigation is required to be made in order for the panel to deal fairly with the matters falling to it for decision, and the Secretary

shall make such investigations as the Commissioner or the Panel direct to assist the deliberations of the panel, such as whether the complainant claims to have suffered financial loss as a result of the conduct complained of, and if so the exact nature and amount of that claimed loss and the evidence available to support the claim, and from the barrister the nature of the work he carried out for the complainant out of which the complaint arose, the fee rendered for such work, and whether or not such fee has been paid.

6. The Secretary shall, whether or not there are to be additional investigations under paragraph 5 above, notify both the barrister and the complainant of the matters that the PCC has directed the panel to consider. As soon as practicable thereafter, he shall prepare a bundle of papers to be considered by the panel and shall copy those to the barrister and the complainant and shall invite their written comments within 14 days (which period may be extended with the permission of the Commissioner).
7. At the expiration of the time limit specified in paragraph 6 or on completion of any enquiries made under paragraph 5, the Secretary shall copy any further papers that are to be considered by the panel to the barrister and the complainant and shall set a date for the panel to meet. Both the barrister and the complainant shall be informed of the date of the hearing and the complainant shall be invited to make any further comments in writing which must arrive not less than seven days before the date of the hearing. Such comments shall be copied to the barrister and the panel.
8. The Panel may consider complaints and the results of any investigations in whatever manner they think fit, and may adjourn consideration of any complaint at any time, and for any reason and, in particular to enable the complainant to comment on any information provided by the barrister at the hearing which had not previously been disclosed by him.
9. Following such consideration, the Panel may decide:
 - (a) that for any reason the complaint cannot fairly be determined by them, whereupon it shall dismiss the complaint and shall give notice in writing of its decision and the reasons for it to the barrister and the complainant
 - (b) that the complainant has not established on the balance of probabilities that the barrister concerned has provided inadequate professional service to the complainant, whereupon it shall dismiss the complaint and shall give notice in writing of its decision and the reasons for it to the barrister and the complainant
 - (c) that the complainant has so established, whereupon it shall consider what remedy should be granted to the complainant in respect of the service which it has found to have been inadequate.

10. Following a finding under paragraph 9(c) above, the Panel may:
- (a) determine that it is not appropriate to take any action in respect of the inadequate service,
 - (b) direct the barrister to make a formal apology to the complainant for the inadequate service provided,
 - (c) direct the barrister to repay or remit all or part of any fee rendered in respect of the inadequate service,
 - (d) direct the barrister to pay compensation to the complainant in such sum as the panel shall direct not exceeding £5,000.

In determining whether any sum is to be paid under paragraph (d) hereof, or in fixing the amount of such sum, the panel shall in particular have regard to any loss suffered by the complainant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, to the gravity of the conduct complained of, and to the fee claimed by the barrister for the inadequate service.

11. Following any such finding as is mentioned in paragraph 9(c) hereof, the Panel shall give notice in writing to the barrister and to the complainant of the respects in which they have found the barrister to have provided inadequate professional service, and the reasons for such finding, and of the remedy to be granted to the complainant under paragraph 10 above.

12. If the panel is not unanimous on any issue, the finding made shall be that of the majority of them. If the panel is equally divided, the burden of proof being on the complainant, the finding shall be that most favourable to the barrister.

13. Not used.

14. Following such reopening or reconsideration, the panel may take any further or different action it thinks fit, as if the former decision had not been made.

15. Whether or not the panel shall have determined that the barrister has provided an inadequate professional service, it may refer any matter of policy which arises to the relevant Committee of the Bar Council.

16. No finding of an Adjudication Panel shall be publishable except:
- (a) by the Commissioner in any annual or other report on his work, in which case the identities of the parties shall so far as possible be concealed, unless the barrister concerned seeks that any finding be published. In that case the manner and extent of publication shall be at the discretion of the Commissioner; or
 - (b) if the Adjudication Panel considers that the circumstances of the complaint are relevant to the barrister's capacity as a

pupilmaster, it may notify the barrister's Inn of its concern in such manner as it sees fit.

Appeals

17. An appeal shall lie at the instance of a barrister against a finding that he has provided inadequate professional service, and against any decision as to the remedy to be granted to the complainant in respect of such inadequate service.
18. Any such appeal shall be heard and determined by a panel ("the Appeal Panel") consisting of not less than three or more than five past or present members of the Committee (or of the Professional Conduct Committee established under the rules in effect immediately before the coming into effect of these Rules) of whom at least one shall be a Queen's Counsel and shall chair the panel, at least one shall be a junior of more than five years' call and at least one shall be a lay representative. None of the members of the Appeal panel shall have been members of the tribunal which made any finding appealed against.
19. An appeal shall be made by the barrister sending to the Secretary within 28 days of the date of letter notifying him of the decision appealed against a notice stating the findings to be appealed against, the decision the barrister contends for, and the grounds of such appeal, accompanied by the sum of £100 payable to the Bar Council to defray expenses.
20. Service of notice of an appeal by a barrister shall operate as a stay of any order made in favour of the complainant.
21. On receipt of such a notice, the Secretary shall notify the Commissioner of the intended appeal, and shall afford him an opportunity to respond to the grounds of appeal stated in the notice. For the purpose of so responding the Commissioner may seek information or assistance from such persons and in such manner as he sees fit.
22. On such an appeal,
 - (a) the procedure shall be informal, the details being at the discretion of the chairman of the Appeal Panel including whether or not there should be an oral hearing in relation to the appeal
 - (b) the barrister, the complainant and the Commissioner may attend or be represented
 - (c) the Appeal Panel may make such order as they think fit in relation to the complaint, including any order which the tribunal appealed from had the power to make, save that they may not make any order in relation to the costs of the appeal
 - (d) the Appeal Panel shall not allow the appeal unless they are satisfied that the tribunal appealed from reached a wrong decision on any question of law, made a finding of fact

which was against the weight of the evidence or exercised any discretion granted to it on a wrong basis

- (e) if the Appeal Panel allows an appeal, in whole or in part, it may in its discretion direct the refund to the barrister of the sum deposited under paragraph 16 above
- (f) whether or not the appeal is allowed, the Appeal Panel may refer any issue of policy which arises to the relevant Committee of the Bar Council.

Definitions

23. In these Rules unless the context otherwise requires
- (a) Any term defined in the Code of Conduct shall carry the same meaning as it does in the Code of Conduct.
 - (b) "The Complaints Rules" shall mean the rules prescribing the manner in which complaints are to be considered set out in Annex J to the Code of Conduct, and any term defined in the Complaints Rules shall carry the same meaning as it does in those Rules.
 - (c) Any reference to a person includes any natural person, legal person and/or firm. Any reference to the masculine gender includes the feminine and the neuter, and any reference to the singular includes the plural, and in each case *vice versa*.

Commencement and Transitional Arrangements

24. In relation to any adjudication panel or appeal arising out of a complaint which had been referred to a panel before 15th May 2000, these Rules shall not apply but the Adjudication Panel and Appeals Rules in force immediately before that date shall apply to that panel or appeal.

Annexe Q: The Code of Conduct for Lawyers in the European Community

1 PREAMBLE

1.1 The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A Lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client's cause but to be his adviser.

A lawyer's function therefore lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:-

the client;

the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;

the legal profession in general and each fellow member of it in particular; and

the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2 The Nature of Rules of Professional Conduct

1.2.1 Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules must in the last resort result in a disciplinary sanction.

1.2.2 The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3 The Purpose of the Code

1.3.1 The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the Community whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology" as set out in Article 4 of the E.C. Directive 77/249 of 22nd March 1977.

1.3.2 The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:-

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to his cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he belongs to the extent that they are consistent with the rules in this Code.

1.4 Field of Application Ratione Personae

The following rules shall apply to lawyers of the European Union and European Economic Area as they are defined by the Directive 77/249 of 22nd March 1977.

1.5 Field of Application Ratione Materiae

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than his own; and

- (b) the professional activities of the lawyer in a Member State other than his own, whether or not the lawyer is physically present in that Member State.

1.6 Definitions

In these rules:-

"Home Member State" means the Member State of the Bar or Law Society to which the lawyer belongs.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

2 GENERAL PRINCIPLES

2.1 Independence

2.1.1 The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.

2.1.2 This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

2.2 Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3 Confidentiality

2.3.1 It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2 A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3 The obligation of confidentiality is not limited in time.

2.3.4 A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

2.4 Respect for the Rules of Other Bars and Law Societies

Under the laws of the European Union and the European Economic Area a lawyer from another Member State may be bound to comply with the rules of the Bar or Law Society of the host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Members of organisations of CCBE are obliged to deposit their Code of Conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the current Code from the Secretariat.

2.5 Incompatible Occupations

2.5.1 In order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice a lawyer is excluded from some occupations.

2.5.2 A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the host Member State.

2.5.3 A lawyer established in a host Member State in which he wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6 Personal Publicity

2.6.1 A lawyer should not advertise or seek personal publicity where this is not permitted.
In other cases a lawyer should only advertise or seek personal publicity to the extent and in the manner permitted by the rules to which he is subject.

2.6.2 Advertising and personal publicity shall be regarded as taking place where it is permitted, if the lawyer concerned shows that it

was placed for the purpose of reaching clients or potential clients located where such advertising or personal publicity is permitted and its communication elsewhere is incidental.

2.7 The Client's Interests

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession.

2.8 Limitation of Lawyer's Liability towards his client

To the extent permitted by the law of the Home member State and the Host member State, the lawyer may limit his liabilities towards his client in accordance with rules of the Code of Conduct to which he is subject.

3 RELATIONS WITH CLIENTS

3.1 Acceptance and Termination of Instructions

3.1.1 A lawyer shall not handle a case for a party except on his instructions. He may, however, act in a case in which he has been instructed by another lawyer who himself acts for the party or where the case has been assigned to him by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him when the specific circumstances show that the identity, competence and authority are uncertain.

3.1.2 A lawyer shall advise and represent his client promptly conscientiously and diligently. He shall undertake personal responsibility for the discharge of the instructions given to him. He shall keep his client informed as to the progress of the matter entrusted to him.

3.1.3 A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work.

3.1.4 A lawyer shall not be entitled to exercise his right to withdraw

from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2 Conflict of Interest

- 3.2.1 A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.
- 3.2.2 A lawyer must cease to act for both clients when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.
- 3.2.3 A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidences entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.
- 3.2.4 Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3 Pactum de Quota Litis

- 3.3.1 A lawyer shall not be entitled to make a pactum de quota litis.
- 3.3.2 By "pactum de quota litis" is meant an agreement between a lawyer and his client entered into prior to the final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.
- 3.3.3 The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the competent authority having jurisdiction over the lawyer.

3.4 Regulation of Fees

- 3.4.1 A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable.
- 3.4.2 Subject to any proper agreement to the contrary between a lawyer and his client fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client.

3.5 Payment on Account

If a lawyer requires a payment on account of his fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6 Fee Sharing with Non-Lawyers

3.6.1 Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.

3.6.2 The provisions of 6.1 above shall not preclude a lawyer 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.

3.7 Cost Effective Resolution and Availability of Legal Aid

3.7.1 The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2 A lawyer shall inform his client of the availability of legal aid where applicable.

3.8 Clients Funds

3.8.1 When lawyers at any time in the course of their practice come into possession of funds on behalf of their clients or third parties (hereinafter called "clients' funds") it shall be obligatory:

3.8.1.1 That clients' funds shall always be held in an account in a bank or similar institution subject to supervision of Public Authority and that all clients' funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.

3.8.1.2 That any account in which the clients' funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the lawyer.

3.8.1.3 That any account or accounts in which clients' funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the clients' funds held by the lawyer.

3.8.1.4 That all funds shall be paid to clients immediately or upon such conditions as the client may authorise.

- 3.8.1.5 That payments made from clients' funds on behalf of a client to any other person including
- (a) payments made to or for one client from funds held for another client and
 - (b) payment of the lawyer's fees,
- be prohibited except to the extent that they are permitted by law or have the express or implied authority of the client for whom the payment is being made.
- 3.8.1.6 That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his clients' funds and distinguishing clients' funds from other funds held by him.
- 3.8.1.7 That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyers' clients' funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.
- 3.8.2 Subject as after-mentioned, and without prejudice to the rules set out in 3.8.1 above, a lawyer who holds clients' funds in the course of carrying on practice in any Member State must comply with the rules relating to holding and accounting for clients' funds which are applied by the competent authorities of the Home Member State.
- 3.8.3 A lawyer who carries on practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with the requirements of the Host Member State to the exclusion of the requirements of the Home Member State. In that event he shall take reasonable steps to inform his clients that he complies with the requirements in force in the Host Member State.

3.9 Professional Indemnity Insurance

- 3.9.1 Lawyers shall be insured at all times against claims based on professional negligence to an extent which is reasonable having regard to the nature and extent of the risks which each lawyer may incur in his practice.
- 3.9.2 When a lawyer provides services or carries out practice in a Host Member State, the following shall apply.
- 3.9.2.1 The lawyer must comply with any Rules relating to his obligation to insure against his professional liability as a lawyer which are in force in his Home Member State.
 - 3.9.2.2 A lawyer who is obliged so to insure in his home Member State and who provides services or carries out practice in any Host

Member State shall use his best endeavours to obtain insurance cover on the basis required in his home Member State extended to services which he provides or practice which he carries out in a Host Member State.

- 3.9.2.3 A lawyer who fails to obtain the extended insurance cover referred to in paragraph 3.9.2.2 above or who is not obliged so to insure in his home Member State and who provides services or carries out practice in a Host Member State shall in so far as possible obtain insurance cover against his professional liability as a lawyer whilst acting for clients in that Host Member State on at least an equivalent basis to that required of lawyers in the Host Member State.
- 3.9.2.4 To the extent that a lawyer is unable to obtain the insurance cover required by the foregoing rules, he shall inform such of his clients as might be affected.
- 3.9.2.5 A lawyer who carries out practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with such insurance requirements as are in force in the Host Member State to the exclusion of the insurance requirements of the Home Member State. In this event he shall take reasonable steps to inform his clients that he is insured according to the requirements in force in the Host Member State.

4 RELATIONS WITH THE COURTS

4.1 Applicable Rules of Conduct in Court

A lawyer who appears, or takes part in a case, before a court or tribunal in a Member State must comply with the rules of conduct applied before that court or tribunal.

4.2 Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyers without the express consent by the other party's lawyer.

4.3 Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interest of his client honourably and fearlessly without regard to his own interests or to any consequences to himself or to any other person.

4.4 False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5 Extension to Arbitrators Etc

The rules governing a lawyer's relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5 RELATIONS BETWEEN LAWYERS

5.1 Corporate Spirit of the Profession

5.1.1 The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2 A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2 Co-operation among Lawyers of Different Member States

5.2.1 It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which he is not competent to undertake. He should in such case be prepared to help his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the service asked for.

5.2.2 Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations competences and obligations of lawyers in the Member States concerned.

5.3 Correspondence Between Lawyers

5.3.1 If a lawyer sending a communication to a lawyer in another Member State wishes it to remain confidential or without prejudice he should clearly express this intention when communicating the document.

5.3.2 If the recipient of the communication is unable to ensure its status as confidential or without prejudice he should return it to the sender without revealing the contents to others.

5.4 Referral Fees

5.4.1 A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or

recommending the lawyer to a client.

- 5.4.2 A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to himself.

5.5 Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6 Change of Lawyer

- 5.6.1 A lawyer who is instructed to represent a client in substitution for another lawyer in relation to a particular matter should inform that other lawyer and, subject to 5.6.2 below, should not begin to act until he has ascertained that arrangements have been made for the settlement of the other lawyer's fees and disbursements. This duty does not, however, make the new lawyer personally responsible for the former lawyer's fees and disbursements.

- 5.6.2 If urgent steps have to be taken in the interests of the client before the conditions in 5.6.1 above can be complied with, the lawyer may take such steps provided he informs the other lawyer immediately.

5.7 Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

5.8 Training Young Lawyers

In order to improve trust and co-operation amongst lawyers of different Member States for the clients' benefit there is a need to encourage a better knowledge of the laws and procedures in different Member States. Therefore when considering the need for the profession to give good training to young lawyers, lawyers should take into account the need to give training to young lawyers from other Member States.

5.9 Disputes Amongst Lawyers in Different Member States

- 5.9.1 If a lawyer considers that a colleague in another Member State has acted in

breach of a rule of professional conduct he shall draw the matter to the attention of his colleague.

5.9.2 If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3 A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

Annexe R: The Pupillage Funding and Advertising Requirements 2003

Funding

1. The members of a set of chambers must pay to each non-practising chambers pupil by the end of each month of the non-practising six months of his pupillage no less than:
 - (a) £833.33; plus
 - (b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:
 - (i) travel for the purposes of his pupillage during that month; and
 - (ii) attendance during that month at courses which he is required to attend as part of his pupillage.

2. The members of a set of chambers must pay to each practising chambers pupil by the end of each month of the practising six months of his pupillage no less than:
 - (a) £833.33; plus
 - (b) such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:
 - (i) travel for the purposes of his pupillage during that month; and
 - (ii) attendance during that month at courses which he is required to attend as part of his pupillage; less
 - (c) such amount, if any, as the pupil may receive during that month from his practice as a barrister; and less
 - (d) such amounts, if any, as the pupil may have received during the preceding months of his practising pupillage from his 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 (a) and (b) above.

3. The members of a set of chambers may not seek or accept repayment from a chambers pupil of any of the sums required to be paid under paragraphs 1 and 2 above, whether before or after he ceases to be a chambers pupil, save in the case of misconduct on his part.

Advertising

4. All vacancies for pupillages must be advertised on a website designated by the Bar Council and the following information must be provided:
 - (a) The name and address of chambers.
 - (b) The number of tenants.

- (c) A brief statement of the work undertaken by chambers eg “predominately criminal”.
- (d) The number of pupillage vacancies.
- (e) The level of award.
- (f) The procedure for application.
- (g) The minimum educational or other qualification required;
- (h) The date of closure for the receipt of applications.
- (i) The date by which the decisions on the filling of vacancies will be made.

Application

5. The requirements set out in paragraphs 1 to 4 above:
 - (a) apply in the case of pupillages commencing on or after 1st January 2003;
 - (b) do not apply in the case of pupils who qualified for call to the Bar pursuant to regulations 35 (solicitors), 36 (other qualified lawyers) or 55 (teachers of the law of England and Wales of experience and distinction) of the Consolidated Regulations;
 - (c) do not apply in the case of pupils who are undertaking a period of pupillage in a set of chambers as part of a pupillage training programme offered by another organisation that is authorised by the Bar Council to take pupils.
 - (d) do not apply in the case of pupils who have completed both the non-practising and the practising six months of pupillage;
 - (e) save as provided in paragraph 3 above, do not apply in respect of any period after a pupil ceases, for whatever reason, to be a chambers pupil; and
 - (f) may be waived in part or in whole by the Pupillage Funding Committee
6. For the purposes of these requirements:
 - (a) “chambers pupil” means, in respect of any set of chambers, a pupil undertaking the non-practising or practising six months of pupillage with a pupil-master or pupil-masters who is or are a member or members of that set of chambers;
 - (b) “non-practising chambers pupil” means a chambers pupil undertaking the non-practising six months of pupillage;
 - (c) “practising chambers pupil” means a chambers pupil undertaking the practising six months of pupillage;
 - (d) “month” means calendar month commencing on the same day of the

month as that on which the pupil commenced the non-practising or practising six months pupillage, as the case may be;

- (e) any payment made to a pupil by a barrister pursuant to paragraph 805 of the Code of Conduct shall constitute an amount received by the pupil from his practice as a barrister; and
- (f) the following travel by a pupil shall not constitute travel for the purposes of his pupillage:
 - (i) travel between his home and chambers; and
 - (ii) travel for the purposes of his practice as a barrister.

MISCELLANEOUS GUIDANCE

- A: Approved List of Direct Professional Access Bodies
- B: BarDIRECT Terms of Engagement
- C: Guidance on Counsel's Fee Notes
- D: Guidance on Holding Out as a Barrister
- E: Guidance on Preparation of Defence Case Statements
- F: Guidance on Preparation of Witness Statements
- G: Guidelines on Chambers Complaints Procedure
- H: Joint Tribunal Standing Orders for Fee Disputes with Solicitors
- I: Legal Aid Guidelines
- J: Pupillage Guidelines
- K: Service Standard on Returned Briefs Agree with the CPS
- L: Summary of the Equality Code for the Bar
- M: Guidance on Age Discrimination
- N: Written Standards for the Conduct of Professional Work

A: Approved List of Direct Professional Access Bodies

Registrar The Architects Registration Council of the UK 73 Hallam Street London W1N 6EE	APPROVED November 1989
Chief Executive The Architects and Surveyors Institute St Mary House 15 St Mary Street Chippenham Wiltshire SN15 3WD	APPROVED September 1995
Executive Secretary The Association of Authorised Public Accountants 10 Cornfield Road Eastbourne East Sussex BN21 4QE	APPROVED September 1989
Joint Secretary The Association of Average Adjusters H.Q.S. "Wellington" Temple Stairs Victoria Embankment London WC2R 2PN	APPROVED June 1989
General Secretary Association of Consultant Architects 7 Park Street Bristol BS1 5NF	APPROVED November 1989
Association of Taxation Technicians 12 Upper Belgrave Street London SW1X 8BB	APPROVED September 1996
Banking Ombudsman 70 Gray's Inn Road London WC1X 8NB	APPROVED March 1990
Building Society Ombudsman Grosvenor Gardens House 35-37 Grosvenor Gardens London SW1	APPROVED March 1990
Secretary The Chartered Association of Certified Accountants 29 Lincoln's Inn Fields London WC2A 3EE	APPROVED April 1989
The Chartered Institute of Loss Adjusters Mansfield House 376 Strand London WC2R 0LR	APPROVED July 1990

Secretary The Chartered Institute of Management Accountants 63 Portland Place London W1N 4AB	APPROVED September 1989
Secretary The Chartered Insurance Institute 20 Aldermanbury London EC2V 7HY	APPROVED May 1990
Commissioner for Local Administration 21 Queen Annes Gate London SW1	APPROVED March 1990
Commissioner for Local Administration Derwen House Bridge End Mid Glamorgan	APPROVED March 1990
Health Service Commissioner Church House Great Smith Street London SW1P 3BW	APPROVED March 1990
Secretary The Faculty of Actuaries 23 St Andrews Square Edinburgh EH2 1AQ	APPROVED November 1989
Chief Executive The Incorporated Society of Valuers & Auctioneers 3 Cadogan Gate London SW1X 0AS	APPROVED July 1989
President Insolvency Practitioners Association Buchlet Phillips & Co 43/44 Albermarie Street Mayfair London W1N 4AB	APPROVED September 1989
Secretary General Institute of Actuaries Staple Inn Hall High Holborn London WC1V 7QJ	APPROVED November 1989
Secretary, Management Committee Institute of Chartered Accountants PO Box 433 Chartered Accountants Hall London EC2P 2BY	APPROVED April 1989
Director The Institute of Chartered Accountants in Ireland Chartered Accountants House 87/89 Pembroke Road Dublin 4 Ireland	APPROVED July 1989

Secretary Institute of Chartered Accountants in Scotland 27 Queen Street Edinburgh EH2 1LA	APPROVED July 1989
Under Secretary The Institute of Chartered Secretaries and Administrators 19 Park Crescent London W1N 4AH	APPROVED July 1989
Secretary The Chartered Institute of Taxation 12 Upper Belgrave Street London SW1X 8BB	APPROVED July 1989
Administration Manager The Institution of Chemical Engineers George E Davis Building 165-171 Railway Terrace Rugby CV21 3HQ	APPROVED July 1989
Executive Director The Institution of Civil Engineering Surveyors 26 Market Street Altrincham Cheshire WA14 1PF	APPROVED November 1997
The Institute of Civil Engineers Great George Street Westminster London SW1P 3AA	APPROVED November 1989
Director, Technical Affairs The Institute of Electrical Engineers Savoy Place London WC2R 0BL	APPROVED November 1991
Chief Executive The Institute of Financial Accountants Burford House 44 London Road Sevenoaks Kent	APPROVED January 1995
Secretary Institution of Mechanical Engineers 1 Birdcage Walk London SW1H 9JJ	APPROVED July 1989
Assistant Director, Administration & Finance The Institution of Structural Engineers 11 Upper Belgrave Street London SW1X 8BH	APPROVED July 1991

Insurance Ombudsman Bureau City Gate One 135 Park Street London SE1	APPROVED July 1990
Parliamentary Commissioner for Administration Church House Great Smith Street London SW1P 3BW Senior Legal Officer	APPROVED March 1990
The Personal Investment Authority Ombudsman Bureau Ltd Hertsmere House Hertsmere Road London E14 4AB Director General	APPROVED January 1998
The Royal Institute of British Architects 66 Portland Place London W1N 4AD President	APPROVED September 1989
The Royal Institution of Chartered Surveyors 12 Great George Street Parliament Square London SW1P 3AD Director, Public Affairs	APPROVED April 1989
The Royal Town Planning Institute 26 Portland Place London W1N 4BE	APPROVED April 1989
The Institute of Indirect Taxation PO Box 96 Oxted Surrey RH8 0FX	APPROVED May 1999

B: BarDIRECT Terms of Engagement

BarDIRECT GUIDANCE HANDBOOKS FOR BARRISTERS AND CHAMBERS AND BarDIRECT CLIENTS

**(INFORMATION PACKS INCLUDING HANDBOOKS AND APPENDICES ARE AVAILABLE FROM
THE GENERAL COUNCIL OF THE BAR)**

INFORMATION PACK FOR BARRISTERS

INTRODUCTION

- 1.1 This handbook comprises the following sections:
- (1) A general introduction which sets out what BarDIRECT is and the nature of the work covered by the scheme.
 - (2) A check list for barristers considering whether to accept instructions under the BarDIRECT scheme.
 - (3) Guidance for individual barristers and chambers who are considering whether to accept instructions under the BarDIRECT scheme. The notes cover matters such as the qualifications for acceptance of instructions and the obligations arising upon receipt of instructions and thereafter. Where appropriate, the notes contain references to the relevant rules of the Bar Direct Rules.
- 1.2 There are also attached to this handbook a number of appendices, as follows:
- (1) The information pack given to existing and prospective BarDIRECT clients comprising the following:
 - (a) An introduction;
 - (b) Guidance for those seeking recognition as BarDIRECT clients.
 - (c) Guidance notes for BarDIRECT clients.
 - (2) An application form for those seeking recognition as BarDIRECT clients (Not printed in this Code).
 - (3) The BarDIRECT terms of work.
 - (4) The BarDIRECT Rules (“the BDR”) (Printed in Annex F in this Code).
 - (5) The BarDIRECT Recognition Rules (“the BDDR”) (Printed in Annex F in this Code).
- 1.3 Any inquiries about the BarDIRECT scheme should be directed in the first instance to Jan Bye/Mark Makinney, The General Council of the

INTRODUCTION TO BarDIRECT

What is BarDIRECT?

- 2.1 BarDIRECT seeks to maximise client access to the legal profession whilst at the same time ensuring that the Bar retains its identity as a referral profession. The legal profession is responsible to the public for the provision of competitive and cost effective legal services of the highest professional standards. In meeting these goals the legal profession must ensure that the interests of the client are prioritised. BarDIRECT has been established to provide those organisations and individuals who possess the necessary skills and knowledge to do so, to have the opportunity to refer to the expertise of a Barrister without the intervention of a solicitor.
- 2.2 BarDIRECT recognises that there are significant areas of work in which the traditional two layered legal system in which the Bar insists that only a solicitor can refer work to it may unnecessarily increase the costs which the client is required to bear. BarDIRECT seeks to highlight the fields of practice in which barristers are positioned to provide specialised advisory and advocacy services on a competitive and cost effective basis without the intervention of a solicitor. It demonstrates the areas of work in which the skills and training of a barrister are compatible with direct access from organisations and individuals whose own training, skills and experience equip them to instruct a barrister directly.
- 2.3 Building upon the experience of Direct Professional Access (DPA), BarDIRECT will allow direct access to the services of a barrister from a far wider range of organisations and individuals than previously permitted. It will mean that under certain conditions, suitable organisations and individuals (from the business community to the voluntary sector) will have direct access to a Barrister.
- 2.4 The Bar Council will carefully regulate BarDIRECT to ensure that the organisation or individual is properly equipped to instruct the Bar. Through a Licensing Scheme known as BarDIRECT, The Bar Council will identify the particular type and scope of work in respect of which organisations and individuals which it licenses will in future have the opportunity to instruct a Barrister directly. BarDIRECT will give those organisations the choice of consulting either a solicitor or a barrister in cases where it is unnecessary and not cost effective to instruct both a solicitor and a barrister.
- 2.5 In short, BarDIRECT is about ensuring that the Bar is a premier provider of competitive and cost effective legal services and that in offering those services to the public it does not impose unnecessary restrictions.

BarDIRECT Work

- 2.6 The Courts and Legal Services Act (“CLSA”) recognises a distinction between advocacy services and litigation services. The Bar believes that this is an important distinction in the provision of legal services and one which should be maintained in the interests of the public. The Bar is not

equipped to and does not have the facilities to conduct litigation or offer litigation services. The principle of a primarily referral based profession remains central to the profession and practice of a Barrister. BarDIRECT does not permit barristers to conduct litigation within the definition set out in the CLSA or to perform “excepted work” as defined in the Code of Conduct.

- 2.7 The BarDIRECT licensing scheme ensures that the referrer has the skills necessary and the facilities available to instruct the Bar direct. BarDIRECT will not lead to referrals ‘off the street’.

Implementation

- 2.8 Pilot schemes began in the summer of 1999. Client access to the scheme is governed by the BDRR a copy of which is at Appendix 5 (Annex F in this Code). The role of counsel under the scheme is governed by the BarDIRECT Rules (‘BDR’) which is at Appendix 4 (Annex F in this Code). Any barrister wishing to accept instructions under BarDIRECT must be familiar with the terms of both the Regulations and the Rules.

BarDIRECT CHECKLIST

The Client

- Is the client an approved organisation permitted to instruct under BarDIRECT
- Does the BarDIRECT client have sufficient authority to instruct you on the type of work that it wishes to - ie does the work fall within the authority shown on the BarDIRECT licence forwarded to you at the time of instruction?
- Is the particular type of work actually suitable for instruction under BarDIRECT or will it require the intervention of an intermediary to provide litigation services?

Counsel

- Have you notified BMIF that you will be accepting instructions under BarDIRECT?
- Are you familiar with the terms of the BarDIRECT Recognition Regulations and the BarDIRECT Rules?
- Are you satisfied that you and your chambers are sufficiently equipped to facilitate the additional administrative requirements necessary to accept BarDIRECT instructions?

GUIDANCE FOR BARRISTERS AND CHAMBERS

Who can accept instructions?

- 3.1 The BDR covers every barrister in independent practice and governs the terms under which they are permitted to accept instructions.

- 3.2 As set out below, BarDIRECT imposes requirements on Counsel to assess the suitability of instructions under the scheme, obligations to advise clients as to the nature of scheme in each particular case and a duty in respect of the organisation of paperwork etc.
- 3.3 To be eligible to accept BarDIRECT instructions a barrister must have completed the first six months of pupillage and be either be a tenant in chambers or a working pupil/squatter.
- 3.4 A barrister is only entitled to accept instructions from a BarDIRECT client where s/he has notified the BMIF that s/he intends to accept instructions under BarDIRECT and has paid the appropriate premium (see BDR Rule 3).

The Obligation Upon Counsel Upon Receipt of Instructions

- 3.5 Accompanying every instruction the client is obliged to send the barrister a copy of its BarDIRECT licence and identify exactly who is providing instructions (See BDR Rule 4). A barrister can only accept instructions if satisfied that the type of work offered is appropriate for the scheme. Whilst the licensing scheme should result in a clear definition of what work should be forwarded to counsel, it remains the responsibility of a barrister in each individual case to satisfy her/himself that s/he has sufficient facilities to support the case without the need of a solicitor or other similar intermediary (see BDR Rule 5). Similarly, if at any time during the course of a case, a barrister feels that the client's best interests and the interests of justice are best served by the introduction of a solicitor, or other such intermediary, then s/he must advise in writing the client of the need to instruct them forthwith (see BDR Rule 8(a)). If a solicitor (or other duly authorised person) is not so instructed then the barrister is under an obligation to return instructions and cease to act (see BDR Rule 8(b)).
- 3.6 Upon receipt of instructions a barrister must write to the client stating that the instructions have been accepted (as the case may be) on the standard terms previously agreed in writing with that BarDIRECT client or on the BarDIRECT Terms of Work or if s/he has accepted instructions otherwise than on such standard terms a copy of the agreement in writing with the BarDIRECT client setting out the terms upon which s/he has agreed to do the work and the basis upon which s/he is to be paid. If requested so to do a barrister should send a copy of the BarDIRECT Terms of Work to the BarDIRECT client. Unless s/he has accepted instructions on the terms of the BarDIRECT Terms of Work or on terms which incorporate the following particulars s/he must advise the BarDIRECT client in writing of the effect of paragraph 210 of the Code of Conduct in the circumstances of the instructions, of the fact that the barrister cannot be expected to perform excepted work and that circumstances may arise in which it will be necessary or appropriate, often at short notice and possibly during the case, to retain the services of a solicitor or authorised litigator (see BDR Rule 7).

Administrative Obligations

- 3.7 A barrister who is instructed by a BarDIRECT client must keep a case record (either on card or computer). Rule 10 sets out what must be included in the record (such as details as to the date of receipt of and acceptance of instructions, time limits, dates of advices and conferences,

- the fee (when agreed) etc).
- 3.8 Instructions (including a list of enclosures), advices, drafts of documents, notes of all conferences (including on the telephone) and all advice given must either be retained by the Barrister or the Barrister must take reasonable steps to ensure that the BarDIRECT client will retain these documents for 6 years after the date of the last item of work done. (see BDR Rule 11).
- 3.9 The barrister is under a duty to ensure that the licence covers the client and the scope and type of work the subject matter of the instructions to the Barrister. A copy of the BarDIRECT Licence must be sent to the barrister with the instructions (see BDR Rule 4). If a barrister believes that a BarDIRECT client has in some significant respect failed to comply with the terms of its licence or with the Terms of Work, then the barrister must report the fact to the BarDIRECT committee (see BDR Rule 9).

APPENDICES

1. The information pack given to existing and prospective BarDIRECT clients comprising:
 - An introduction;
 - Guidance for those seeking recognition as BarDIRECT clients.
 - Guidance notes for BarDIRECT clients.
2. An application form for those seeking recognition as BarDIRECT clients. (Not printed in this Code)
3. The BarDIRECT terms of work.
4. The BarDIRECT Rules (“the BDR”) (Printed in Annex F of this Code).
5. The BarDIRECT Recognition Rules (“the BDDR”) (Printed in Annex F of this Code).

INFORMATION PACK FOR CLIENTS

INTRODUCTION

- 1.1 This handbook, which is provided to existing or potential BarDIRECT clients, comprises the following sections:
- (1) Guidance for those seeking recognition under the BarDIRECT scheme. The purpose of this section is to set out, in general terms, the principles which govern the grant of licences to use the BarDIRECT scheme and the nature of such licences.
 - (2) A check list for BarDIRECT clients who are proposing to instruct a barrister under the terms of their licence.
 - (3) Guidance notes for BarDIRECT clients. This section is designed to be of assistance to clients who are proposing to instruct a barrister under the terms of their licence. It covers matters such as the type of cases in which it is appropriate to instruct a barrister, choice of barrister, the manner in which a barrister should be instructed, the steps following the initial instruction and billing.
- 1.2 There are also attached to this handbook a number of appendices, as follows:
- (1) An application form for those seeking recognition as BarDIRECT clients (Not printed in this Code).
 - (2) The BarDIRECT terms of work.
 - (3) The BarDIRECT Rules (Printed in Annex F of this Code).
 - (4) The BarDIRECT Recognition Rules (Printed in Annex F of this Code).
- 1.3 Any inquiries about the BarDIRECT scheme should be directed in the first instance to Jan Bye/Mark Makinney, The General Council of the Bar, 3 Bedford Row, London WC1R 4DB Tel: 020 7242 0082.

GUIDANCE FOR THOSE SEEKING RECOGNITION UNDER THE BarDIRECT SCHEME

- 2.1 BarDIRECT recognises that Solicitors are not alone in having the skills and knowledge to benefit from the legal services offered by the Bar. BarDIRECT provides the opportunity for the widest diversity of organisations and individuals to be licensed to instruct a barrister directly whether in the commercial, profit, non-profit or voluntary sector and irrespective of size or of type of work. These Guidance Notes use the generic term 'organisation' to describe the full range of bodies from large public limited companies to small charities and advice centres.
- 2.2 A fundamental principle of BarDIRECT is that access under its provisions is *licenced access*. An organisation or individual must be licenced by the Bar Council to use the scheme and the licence will govern who in the organisation may use the scheme and the type and scope of work in respect of which the organisation or individual is

licensed to instruct a barrister directly. Within the Bar Council the licensing functions will be carried out by the BarDIRECT Committee (see BDRR Regulation 1). The organisation or individual seeking a licence must apply to the Bar Council and for this purpose must complete an Application Form and provide such further information as may be required.

- 2.3 Whilst there is no limitation to the type of organisation that can seek authorisation the BarDIRECT Committee will ensure that the body is equipped to provide direct instructions to Counsel. The Committee will examine a wide range of criteria in determining whether a proposed organisation or individual should be granted a licence, including for example the type of work which it wishes to refer directly to a barrister, its expertise or experience, its familiarity with any relevant area of law, its ability to obtain and prepare information and to organise papers and information for the barrister and in a contentious matter for the court, its ability to take charge and have the general conduct of the matter on which it wishes to instruct the barrister directly, the extent to which it has arrangements for holding in separate accounts and maintaining as trust monies any monies received from third parties, the extent to which the affairs and conduct of the person or organisation or its members are subject to professional, disciplinary, regulatory or other organisational rules and have professional indemnity insurance (see BDRR Regulation 6).
- 2.4 The scope and type of work embraced by the licence will depend on the expertise, skills and knowledge of the organisation or individual applying for the licence. For example, whilst some organisations may be licensed simply to use BarDIRECT to obtain written advices on policy matters, others may be permitted to approach counsel for a wide range of services including advocacy (see BDRR Regulation 3).
- 2.5 The terms of a licence specifying the name of the person or organisation, the period for which the licence has been granted, the limitations or conditions on which the licence has been granted are within the complete discretion of the BarDIRECT Committee. Such limitations and conditions may for example define the matters upon which they may instruct counsel through BarDIRECT, set out the tribunals or courts in which a barrister may be instructed to exercise a right of audience and/or provide that unless otherwise first agreed in writing all instructions will be deemed to be given and accepted on the terms of the BarDIRECT Terms of Work as approved by the BarDIRECT Committee (see BDRR Regulation 4(b)). A copy of the Licence must be sent to the Barrister at the time of instruction enabling the barrister to ensure that the licence covers the instructions (see BDR Rule 4(c)).
- 2.6 The status of an organisation can be considered by the BarDIRECT committee. Approval can be given to an organisation or an individual, or to all or some of the members of an organisation or to all or some of the employees of an organisation or its members or of the individual (BDRR Regulation 3(c)). Approval can be on a provisional or full basis and can be limited in time (BDRR Regulation 3(a) (b)).
- 2.7 The BarDIRECT Committee may from time to time, approve additional persons or organisations, withdraw approval either in whole or in part from any person or organisation who has been licensed, increase reduce or otherwise alter the period for which a licence has been granted, alter

or revoke the conditions or limitations which have been imposed under the licence and cancel and demand surrender of any licence which has been issued (see BDRR Regulation 5).

2.8 Instructions under BarDIRECT can only be accepted where the client is properly authorised for the type of work sought to be offered (see BDRR Regulation 3(e) and BDR Rule 1).

2.9 A barrister is not required to accept work from a BarDIRECT client and should not do so if the barrister considers it in the interests of the lay client or the interests of justice that an intermediary be instructed together with or in place of the barrister. Such intermediary may be a solicitor or other authorised litigator or some other appropriate person or organisation (see BDR Rule 5(b)). If a barrister having accepted instructions from a BarDIRECT client considers it in the interests of the lay client or the interests of justice that an intermediary be instructed together with or in place of the barrister the barrister must forthwith advise the BarDIRECT client in writing to instruct such intermediary and unless such intermediary is as soon as reasonably practicable instructed the barrister must cease to act and must return any instructions to the BarDIRECT client (see BDR Rule 8).

CHECK LIST FOR BarDIRECT CLIENTS PROPOSING TO INSTRUCT BARRISTERS

- Is my case an appropriate case for instructing a barrister: see guidance notes in section 3, paragraphs 3.2 to 3.5.
- How do I choose the right barrister for my case: see guidance notes in section 3, paragraphs 3.6 to 3.8.
- How do I go about instructing a barrister: see guidance notes in section 3, paragraphs 3.9 to 3.10.
- How are a barrister's fees calculated and how should they be agreed: see guidance notes in section 3, paragraphs 3.6(4) and 3.10(4).
- What should I send to a barrister: see guidance notes in section 3, paragraphs 3.11 to 3.15.
- What happens after I have instructed a barrister: see guidance notes in section 3, paragraphs 3.16 to 3.20.
- How will I be billed: see guidance notes in section 3, paragraphs 3.21 to 3.22.
- What do I do if I am unhappy about the service which has been provided: see guidance notes in section 3, paragraphs 3.23 to 3.24.

GUIDANCE ON INSTRUCTING BARRISTERS UNDER THE BarDIRECT SCHEME

Introduction

3.1 These guidance notes are intended for use by BarDIRECT clients who

are considering instructing a barrister or barristers direct, whether for the purposes of obtaining their advice or for the purposes of obtaining representation in court under the new arrangements for direct licensed access.

In which cases is it appropriate to instruct a barrister?

- 3.2 The overriding consideration when deciding whether it is appropriate to instruct a barrister alone, or whether to instruct a solicitor (whether that solicitor in turn instructs a barrister or not), is whether to do so would be in the best interests of the client. This means that it is essential to have a proper understanding of what a barrister can and cannot do.
- 3.3 The following is an outline of those things which a barrister is normally expected and entitled to do:
- (1) Advisory work (e.g., giving advice on the law generally and/or on the merits of any particular matter, whether contentious or non-contentious, and/or on the drafting of documents such as contracts, standard terms and conditions, correspondence, letters before actions, reports etc.);
 - (2) Drafting of claim forms, petitions and other applications;
 - (3) Drafting of statements of case;
 - (4) Advice on the factual and expert evidence which will be needed in order to establish the case at the hearing, whether oral or written;
 - (5) Advice on which witness statements, expert reports and documents must or should be disclosed to the other side;
 - (6) Assistance in the preparation of affidavits and witness statements for use at a hearing. There is an important distinction between (i) taking a statement from a witness, which involves interviewing the witness in order to elicit his or her evidence, and (ii) assisting in the preparation of a witness statement². The latter task typically includes identifying the matters the statement should cover, reviewing a draft witness statement, advising on questions of admissibility and weight of particular passages of draft statements, and by settling from drafts a final form of witness statement;
 - (7) Preparation of any documents, such as skeleton arguments, chronologies, etc, used for the purposes of presenting a case in court;

²

Save in exceptional circumstances, it is not appropriate for a barrister who has actually taken (as opposed to having assisted in the preparation of) a witness statement to act as an advocate at the trial. Usually, accordingly, it is not appropriate for the barrister, in the event that he or she is intended to appear as the advocate at trial, to take a witness statement. It is open to the BarDIRECT client, however, to instruct a barrister, either a junior in the case where there is to be a more senior barrister presenting the case in court, or a barrister who is not to be instructed at the trial, specifically to take witness statements. The primary requirement is that the witness statement is in the intended witness' own words.

- (8) Representation at any court hearing;
- (9) Representation at a hearing before a tribunal other than a court, for example a disciplinary tribunal;
- (10) Advice on tactics in relation to the litigation generally and its settlement.

3.4 There are some things, on the other hand, which a barrister would not normally be expected or entitled to do. In general barristers do not have the facilities or the office back-up to undertake much of the general preparatory work necessary to get a more complex case to trial. In particular, barristers are not permitted to do the following:

- (1) The management, administration and general conduct of litigation including written or oral communication between the parties or their advisors³;
- (2) Investigating and collecting evidence for use in court;
- (3) The receipt or handling of client money⁴.

3.5 In general, accordingly, unless the BarDIRECT client is equipped and prepared to undertake the type of litigation support function normally undertaken by a solicitor, the typical case in which a barrister might be instructed directly to appear in court will be one:

- (1) of lesser factual complexity; and
- (2) where there is unlikely to be a need for extensive investigation into and gathering of evidence, whether oral or documentary.

Even in the more complex cases, or cases where extensive investigation is required, it may be appropriate to instruct a barrister direct to advise, or to appear in court on a particular application within the litigation.

Choosing a barrister

3.6 The following factors are relevant in determining the appropriate barrister.

- (1) Whether the case merits more than one barrister. It may be appropriate to instruct two (or more) barristers to work as a team, possibly each from a different field of expertise.
- (2) Whether the case merits the use of a Queen's Counsel, or a junior barrister, or both. There is no hard and fast rule as to when it is appropriate to use a Queen's Counsel. In general, it is appropriate where the issues involved in the case are particularly complex, where the result is likely to have significant consequences for the client, and where there is a sufficient amount at stake to warrant the higher cost. Similarly, there is no hard and fast rule as to when it is appropriate to instruct both a junior barrister and a Queen's Counsel. In general, it is

³ Barristers do, however, frequently assist their clients in the drafting of correspondence which is sent to other parties under the client's own name.

⁴ This may have important consequences, particularly in relation to settlement negotiations.

appropriate to do so where the criteria for the use of a Queen's Counsel are satisfied and there is likely to be a significant amount of preparatory, drafting or research work which could be carried out by a junior barrister at a significantly lower cost than if the Queen's Counsel were to do so.

- (3) The seniority of the barrister. A barrister's seniority is denoted in the various published directories and guides (see below) by reference to the year in which he was called to the bar. A barrister is normally called to the bar during the year between completing his final year of studying for the bar (i.e., taking the exams at the end of the bar vocational course) and completion of his pupillage. In practice this means that a barrister called in, say, 1990 will by October 1999 have been in practice since about October 1991, i.e., 8 years. This is not, however, a hard and fast rule. Some barristers might have followed another career path (for example an academic career) between being called to the bar and entering practice. The various directories of barristers denote the seniority of a Queen's Counsel by the year in which he took silk. Queen's Counsel are appointed in the April of each year. The factors which will dictate the appropriate level of seniority for a particular case are similar to those which dictate whether it is appropriate to employ the services of a Queen's Counsel or a junior barrister (see above).
- (4) Expense. Particular regard should be paid to the cost of employing the services of different barristers. In so doing, the following should be taken into consideration:
 - (a) There are three basic methods by which barristers charge for their services:
 - (i) an hourly rate so that the fee varies upon the amount of time taken to complete the work;
 - (ii) a fixed fee agreed in advance for a particular piece of work;
 - (iii) a "brief" fee, which is a fixed fee to cover preparation for a hearing and the first day in court, and a "refresher" or a daily charge for each subsequent day.

Additionally, some barristers may in certain types of case be allowed and prepared to accept instructions pursuant to a conditional fee agreement, in which the payment or the amount of the fee will depend upon the outcome in the case.

Generally, BarDIRECT clients should be prepared to negotiate with the barrister or his clerk in relation to the method of charging for the barrister's services as well as the overall amount to be charged.

- (b) In comparing hourly rates offered in respect of different barristers, it should be borne in mind that a barrister well versed in the relevant field of expertise is likely to spend fewer hours on the matter than one who has a more general

experience.

- 3.7 Each barrister has a professional duty to advise his client whenever he considers either that the client ought to be represented by someone with a different expertise, or by someone at a lower or higher level of seniority. In addition, each barrister owes a duty to consider, and advise, as to whether the case warrants the assistance of (as the case may be) a Queen's Counsel or junior barrister, or alternatively no longer merits the continued use of either the Queen's Counsel or junior barrister. The barrister also has a duty to advise whether the case merits the involvement of a solicitor.
- 3.8 There are a number of ways in which to identify a suitable barrister for the relevant case.
- (1) Recommendation from others;
 - (2) The Bar Council publishes a Bar Directory that lists all barristers currently practising and gives details of the expertise of barristers in particular chambers. The Directory is available on the Internet at www.BarCouncil.org.uk.
 - (3) Directories are published by a number of specialist Bar Associations, for example by the Chancery Bar Association and the Commercial Bar Association, which contains lists of barristers (though not all barristers) practising within those fields and details of the expertise of barristers in particular chambers;
 - (4) There are a number of directories published by private organisations, many of which indicate the views of the editors of the directory of particular barristers operating in particular fields of expertise. These views, being subjective, need to be treated with caution.
 - (5) Having identified a set or sets of chambers whose members are held out as having expertise in the relevant field, it is worth contacting the chambers to discuss with the clerk the member or members who would be most suitable for your purposes, and to discuss the possible charging structure and charge-out rates of the relevant members.

Instructing a barrister

- 3.9 Once the BarDIRECT client has decided upon a barrister to instruct, it is always preferable to contact that barrister's clerk in the first instance in order to ensure that the barrister is available.
- 3.10 In making enquiries of the barrister's clerk, there are four particular points to check:
- (1) Is the barrister available to carry out the specific piece of work in relation to which he or she is to be instructed? Barristers are sole practitioners. This has the advantage that when a barrister is instructed it is the barrister himself or herself who carries out the work. In this respect a barrister differs from a solicitor who will regularly delegate work to an assistant or assistants. It has, however, the disadvantage that any particular barrister will already have commitments to other clients, including

commitments to complete paper work by a certain date, or to appear in court on a certain date or dates, so that his or her availability may be limited.

- (2) If the barrister is to be instructed in a matter that will be ongoing, is he or she likely to be available for any court dates that are to be arranged in the future? Sometimes court hearings are arranged for the convenience of the parties, so that they can ensure that the barrister of their choice represents them. On other occasions, however, court hearings are arranged without regard to the availability of the parties' barristers. Whilst it will not be possible for the barrister to commit to be free for any lengthy period of time within which hearings might occur, it is sensible when initially instructing a barrister to enquire whether he or she has existing commitments such that it is known, or likely, that they will not be free during the period of time when prospective court hearings are likely to occur. It is sometimes sensible to enquire, at the outset, whether there are other members of chambers of a similar level of experience and with similar expertise who would be able to take over in respect of future court hearings in case the barrister of first choice subsequently became unavailable.
- (3) If the barrister is being asked to advise in conference, or to attend a specific court hearing, his or her clerk should be asked at the outset to reserve the date and time in the barrister's diary for that purpose.
- (4) Fees. A barrister's fees are normally negotiated with his or her clerk. The way in which barristers charge for their services is referred to in paragraph 3.6(4) above. Negotiations at the outset should include whether a fixed fee should be paid, and if so for how much, whether payment should be on the basis of an hourly rate, in which case an indication of the number of hours which the matter is likely to take should be asked for and given, or whether a brief fee/refreshers approach is appropriate, in which case the amounts should be agreed in advance. In addition, in any case where a fixed fee is agreed, you should ensure that there is clear agreement with the barrister's clerk as to the extent of the work to be included in the fee (e.g., whether it is to include advising both in conference and in writing, or only one of these).

Identifying the information and materials to send to the Barrister

- 3.10 There is no required form or procedure for informing a barrister of the matters in relation to which he is to advise or represent you. The appropriate quantity of material to provide, and the appropriate form in which to provide it, will depend upon the circumstances of each case and, to an extent, the requirements of the particular barrister. Solicitors have developed a particular format and style of expression in instructions to barristers. Whilst there is no reason why BarDIRECT clients should not adopt a similar format and style, there is also no reason why they should. It is the content of the instructions that is important, not the form. In most cases, it is sufficient that the information is provided to the barrister in the form of a letter or a note.
- 3.12 In an urgent case it is possible to attend a conference with a barrister without any prior written instructions. Similarly, where urgent

applications to court are concerned, it is more important that the barrister is provided with the necessary materials to make the application as soon as possible, than that time is spent on drafting written instructions.

- 3.13 Whenever you are in doubt as to any aspect of the instructions, telephone the barrister direct. A great deal of unnecessary time and expense can be saved by an initial discussion with the barrister as to the materials he will need at the outset to see.
- 3.14 The following guidelines are to be read in the light of the preceding paragraphs and are intended to be of general assistance only.
- 3.15 As a general rule, the following is the information and material which a barrister would normally expect to be sent to him upon his initial instruction:
- (1) A brief description of the circumstances giving rise to the issue in relation to which he is instructed, including a brief history of the matter and a description of the parties involved.
 - (2) An outline of the issue or issues in relation to which he is either instructed to appear in court or to advise.
 - (3) In the case of existing proceedings, copies of any documents already filed with the court, or exchanged between the parties which are relevant to the issue upon which the barrister is instructed;
 - (4) A clear statement of what it is the barrister is being asked to do. For example:
 - (a) where advice is sought, state whether the barrister is asked to advise on a specific issue, or to advise more generally on the issues which he thinks arise out of the circumstances identified to him;
 - (b) where the barrister is requested to draft or settle a document, then state the document or documents which he is required to draft (e.g., a statement of case or application), or settle (e.g., an affidavit or a witness statement);
 - (c) where the barrister is requested to attend a hearing, identify the hearing and state clearly what result from the hearing the barrister is instructed to try to obtain.
 - (5) Photocopies of those documents that you think are relevant to the matters upon which his advice is sought. The following should be noted:
 - (a) It is in relation to this aspect that communication with the barrister is particularly recommended, whether prior to sending any instructions, or having sent instructions with a few "core" documents so as to identify what other documents ought to be sent.
 - (b) It is important not to send original documents, since these should not be marked and should remain in their original

form and should be available for inspection by third parties, whether by reason of disclosure orders which might be made in litigation or otherwise.

- (c) Where correspondence or similar documentation is to be sent, it will save time and expense if it is arranged in chronological order.
 - (d) It is also helpful to include an index of the documents, or of the classes of documents, sent.
- (6) A clear statement of the time within which a response is sought from the barrister.
- (7) Where there is a time limit on commencing proceedings, or taking a step in existing proceedings, or for any other matter, a clear statement of this in the instructions.

Steps following the initial instructions

3.16 Having received the instructions, the barrister should take an initial look through the papers. There are four potential reasons why at this stage the barrister could decline to continue to act:

- (1) It is possible that the barrister will identify a conflict of interest (for example because he is acting or has previously acted for another party in the same case) which was not picked up during your discussions with his or her clerk.
- (2) The barrister (in cases other than where the BarDIRECT client is able to undertake litigation support such as that normally undertaken by a solicitor) may decide that, because the case requires taking detailed statements from witnesses, or extensive office back-up that he or she does not have, it is not an appropriate case for direct access and needs the expertise of a solicitor. In those circumstances the barrister is required to take no action until an appropriate intermediary is instructed.
- (3) The barrister may decide that on closer inspection of the papers the subject matter falls outside his or her area of expertise, or that the case is more complex than he or she is equipped to deal with. He or she is then entitled to decline the instructions.

(4) The barrister may decide, having accepted the instructions on the basis that they were likely to occupy a certain amount of time, which he or she had available, that the instructions will in fact require considerably more of his or her time, which is not available.

3.17 Alternatively, the barrister may decide that whilst the case is within his or her expertise, it is more suitable for a barrister of different seniority. In that case, the barrister is obliged to advise you of his view, but you may choose whether or not to accept that advice.

3.18 Assuming that the barrister is able to continue to work on the case, the course of conduct thereafter will depend upon the circumstances of the individual case.

3.19 It will often be useful to arrange a face to face meeting with the barrister in order either to discuss the advice that the barrister is to give, or to discuss what work needs to be done in preparing the case for court. Such a meeting may take place either at the barrister's chambers, or at the premises of the BarDIRECT client. It is often easier for the barrister to hold the meeting at his or her chambers, where he or she has ready access to the background material needed in order to advise, unless the volume of material, the need to view equipment or a site or the convenience of the client or witnesses suggests otherwise.

3.20 A face to face meeting is particularly useful in order to discuss and agree upon the division of work as between the barrister and the BarDIRECT client in progressing a case towards a court hearing (bearing in mind those matters which the BarDIRECT client can expect, or should not expect, the barrister to do, as set out earlier in these guidelines).

Billing

3.21 The barrister will send a fee note, either at the end of the case, or after each separate item of work done or, in an ongoing matter, at periodic intervals.

3.22 The BarDIRECT client is contractually liable for the fees of the barrister. Any disputes with the barrister over the fee should be taken up with the barrister's chambers as soon as possible. It will often be the case that any dispute over the fee, or other complaint, can be resolved informally with the barrister's chambers.

3.23 The Bar Council is not usually able to involve itself in disputes over fees, except where there is an allegation of professional misconduct⁵. If the fee dispute cannot be resolved informally, accordingly, there is little alternative but for the matter to go to court.

3.24 If you have any concerns about the services provided by your barrister, you should, in the first instance, refer these to the barrister himself to be resolved through the chambers complaints procedure if possible. If you remain dissatisfied, it is open to you to approach the Bar Council and you should write to the Secretary of the Professional Conduct and Complaints Committee at the Bar Council for further information about this.

Practical matters

⁵ See the Bar Code of Conduct published by the General Council of the Bar.

3.25 Appended to these guidance notes is guidance on the preparation of witness statements⁶.

APPENDICES

1. An application form for those seeking recognition as BarDIRECT clients (Not printed in this Code).
2. The BarDIRECT terms of work.
3. The BarDIRECT Rules (Printed in Annex F of this Code).
4. The BarDIRECT Recognition Rules (Printed in Annex F of this Code).

⁶ Taken from section 3 of the Bar Code of Conduct.

BarDIRECT

THE BarDIRECT TERMS OF WORK

- 1 **Application of these terms:** These terms apply to all instructions accepted by barristers where the instructions are given by a BarDIRECT client in accordance with the terms of a licence issued by the Bar Council. They apply save to the extent that they have been varied or excluded by written agreement and subject to the following:
- (1) These Terms will apply to instructions only where the instructions have been accepted by the barrister.
 - (2) These terms do not apply to legal aid work.
- 2 **The Licence:** A copy of the Licence issued to the BarDIRECT client by the BarDIRECT Committee of the Bar Council shall be sent with every set of instructions.
- 3 **Acceptance of instructions:** Notwithstanding that instructions have been delivered to a barrister, he shall not be deemed to have accepted them until he has satisfied himself that the instructions are given in accordance with the licence granted by the Bar Council by a person entitled by that licence to give those instructions and has expressly accepted them orally or in writing.
- 4 **Code of Conduct to prevail:** A barrister accepts instructions upon the understanding that in carrying them out he must and will comply with the Code of Conduct and the general law. In this regard:
- (1) Paragraph 210 of the Code of Conduct provides that a barrister must not:
 - (i) receive or handle client money securities or other assets other than by receiving payment of remuneration;
 - (ii) undertake the management administration or general conduct of a lay client's affairs;
 - (iii) conduct litigation or inter-partes work (for example the conduct of correspondence with an opposite party);
 - (iv) investigate or collect evidence for use in any court;
 - (v) except as permitted in certain limited circumstances, take any proof of evidence in any criminal case;
 - (vi) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews.
 - (2) The BarDIRECT Rules (which form part of the Code of Conduct)

provide:

- (a) by rule 5 that a barrister must not accept any instructions from a BarDIRECT client
 - (i) unless the barrister and his Chambers are able to provide the services required of them by that BarDIRECT client;
 - (ii) if the barrister considers 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 place of the barrister;
- (b) by rule 8 that if at any stage a barrister who is instructed by a BarDIRECT client considers 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 place of the barrister:
 - (i) the barrister the barrister must forthwith advise the BarDIRECT client in writing to instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) ; and
 - (ii) unless a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) is instructed as soon as reasonably practicable thereafter the barrister must cease to act and must return any instructions.

5

Duty to the lay client: Where instructions are given to a barrister by a BarDIRECT client in relation to a matter concerning a lay client the BarDIRECT client warrants that he has or will as soon as practicable

- (1) Send the lay client a copy of the BarDIRECT Terms of Work.
- (2) Advise the lay client in writing of:
 - (a) the effect of paragraph 210 of the Code of Conduct as it relevantly applies in the circumstances;
 - (b) the fact that the barrister 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 lay client to retain a solicitor or other authorised litigator at short notice and possibly during the case.
- (3) Send to the lay client a copy of any advice received by the BarDIRECT client from the barrister to the effect that:
 - (a) a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) is capable of

providing any services to the lay client which the barrister himself is unable to provide; or

- (b) the barrister considers 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 place of the barrister; or
- (c) the BarDIRECT client should instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be).

6. **Liability for the fees:** The BarDIRECT client is liable for a barrister's fee due in respect of work carried out by the barrister under any instructions. In a case where the matter concerns a lay client, the BarDIRECT client is solely and exclusively liable to the barrister for the fees. In this regard:

- (1) The relationship between the barrister and the BarDIRECT client is a contractual one.
- (2) Any individual giving or purporting to give the instructions on behalf of any partnership firm, company, individual or other person warrants to the barrister that he is authorised by the latter to do so.
- (3) If the BarDIRECT client is a partnership or a firm or unincorporated association, the liability of the partners or members and on death that of their estates for the barrister's fees is joint and several.
- (4) Neither the sending by a BarDIRECT client of instructions to a barrister nor the acceptance of those instructions by a barrister nor anything done in connection therewith nor these Terms nor any arrangement or transaction entered into under them shall give rise to any contractual relationship rights duties or consequences whatsoever either (i) between the barrister or the General Council of the Bar and any lay client or (ii) between the General Council of the Bar and the BarDIRECT client.

7 **Time for performance of instructions:** Unless otherwise expressly stipulated by written agreement

- (a) a barrister will carry out the instructions as soon as he reasonably can in the ordinary course of his work, but
- (b) time will not be of the essence.

8 **Duty of care:** A barrister will exercise reasonable care and skill in carrying out instructions. This is however subject to

- (a) any immunity from suit which the barrister may enjoy under the general law in respect of any work done in the course of carrying out instructions and

(b) paragraph 11(1) below.

9 **Copies of Briefs and Instructions and Records of Advice:** A barrister shall be entitled on completion of any work to take and retain a copy of such instructions and papers and of any written work.

10 **Fees:** other cases. Subject to the Code of Conduct, the following provisions apply:

(1) **Fees and/or charging rates:** These shall be as agreed between the barrister and the BarDIRECT client before the barrister commences work under the instructions or, in default of such agreement, shall be a reasonable professional rate for the barrister instructed.

(2) **Submission of fee notes:** The barrister shall (a) as soon as reasonably practicable comply with a written request by the BarDIRECT client for a fee note and (b) in any event submit a fee note not later than 3 months after the work to which the fee note relates has been done.

(3) **Time for payment:** A barrister's fees in respect of instructions to which these Terms apply are payable and must be paid by the BarDIRECT client 30 days after receipt by the BarDIRECT client of the fee note submitted by him to the BarDIRECT client in respect of such fees.

(4) **Default in payment:** In the event that a barrister's fees are not paid in full in accordance with sub-paragraph (3) above, the fees and/or the balance thereof outstanding from time to time will carry simple interest at the stipulated rate from the date they became due until payment in full.

11 **Complaints:** In the event that the BarDIRECT client or the lay client (if any) has any Complaint about the services provided by a barrister under any instructions

(1) The fees shall be paid in accordance with paragraph 10(3) above and no Complaint shall afford a valid ground for non-payment of the fees whether on grounds of set-off or otherwise.

(2) Sub-paragraph (1) above is without prejudice to any rights of the BarDIRECT client and the lay client to institute any proceedings against the barrister and/or a complaint against the barrister under the Complaints Rules in Annexe M to the Code of Conduct.

12 **Definitions:** In these Terms:

(1) 'Instructions' includes a brief and any other instructions to a barrister.

(2) 'BarDIRECT Client' means the individual, firm, company or other person instructing or seeking to instruct a barrister, whether on his, their or its own behalf or on behalf of some other person

under the terms of a licence issued by the Bar Council.

- (3) In a case where the Bar Direct client is instructing or seeking to instruct a barrister not on his, their or its own behalf but on behalf of some other person, 'lay client' means that other person;
- (4) 'Written agreement' means an agreement in writing between (a) one or more barristers (including a set of Chambers) and (b) a BarDIRECT Client;
- (5) 'Written work' includes any draft pleading or other document and any written opinion or advice prepared by a barrister pursuant to any instructions;
- (6) 'Legal aid work' means instructions which are publicly funded under the Legal Aid Act 1988 or Access to Justice Act 1999 as in force from time to time or any legislation which may replace them, and any work carried out pursuant to such instructions;
- (7) 'Stipulated rate' means the rate at which interest is payable from time to time on High Court judgment debts;
- (8) 'Complaint' includes any complaint whatsoever relating to anything done by a barrister pursuant to any instructions or to the time taken or alleged to have been taken by him in carrying them out and whether the same involves issues of competence, quantum or otherwise.
- (9) 'Code of Conduct' means the Code of Conduct of the Bar of England and Wales as promulgated and amended by the General Council of the Bar from time to time.
- (10) In these Terms any reference to the masculine shall be deemed to include the feminine.

C: Guidance on Counsel's Fee Notes

COUNSEL'S FEE NOTES AND RECORDS

Guidance from the Professional Standards and Remuneration Committees

1. Lay clients are entitled to know the basis on which fees are charged, not least so that they can protect their interests in respect of opposed assessments of costs, summary or detailed.
2. In order to assist lay and professional clients, Judges, Costs Judges and, in the event of opposed assessments of costs, lay and professional clients justifying Counsel's fees to opposing parties, Counsel should keep careful records of the time taken on each individual item of work done, such as:
 - (a) Pleadings, indictments, or other procedural documents;
 - (b) Witness statements;
 - (c) Experts' reports;
 - (d) Schedules;
 - (e) Written Advices and Opinions;
 - (f) Letters;
 - (g) Skeleton arguments;
 - (h) Written submissions;
 - (i) Preparation of Briefs;
 - (j) Conferences and telephone conferences and the preparation for such conferences.
3. The following further steps are also advised as a matter of good practice:
 - (i) When Counsel is instructed orally, including by telephone, Counsel should make a note of the nature of the instructions and of the response given.
 - (ii) When Counsel asks orally for further information, Counsel should make a note of the nature of the request, and of the answer if the answer is given orally.
 - (iii) When any particularly novel or complex issue of fact or law arises in the course of the conduct of a case, Counsel should (unless the subject is dealt with in a written advice or opinion) make a note summarising the relevant issue or issues and the research undertaken in like manner as is required by (i) above.
 - (iv) When a Consultation or Conference takes place, unless the professional client makes an attendance note which he sends to Counsel for approval or amendment, Counsel should make a note of the topics covered and the general nature of the advice given.
 - (v) When Counsel is involved in negotiations, either between Counsel or by way of leading, assisting or supporting the professional client in the conduct of negotiations, Counsel should make a note of the general nature of the

involvement.

- (vi) Notes made pursuant to subparagraphs (i) to (v) above should be kept by Counsel unless they are returned to an instructing solicitor.

In cases where there is not an instructing solicitor, it may be advisable to keep more detailed records.

4. When a brief fee has not been agreed and is claimed by Counsel in a sum greater than the product of an hourly rate and the number of hours actually worked in preparation of the brief, this should be recorded in a note to be submitted with the fee note. Details in the supplementary note should include, but are not limited to:
 - (i) The seniority, reputation and relevant expertise of Counsel;
 - (ii) The complexity of the case;
 - (iii) The amount of preparation required in advance of the hearing;
 - (iv) Counsel's commitment to a fixed hearing date, if any;
 - (v) The expected length of the case and, therefore, the time reserved for it in Counsel's diary;
 - (vi) The urgency of the matter when Counsel was briefed;
 - (vii) The amount of work required out of Court and in the preparation of any kind of written submission during the hearing;
 - (viii) The importance of the case to the parties or any of them, or to the public interest.
5. When a brief fee has been agreed Counsel or Counsel's Clerk should keep such records as will enable a note containing the details set out at paragraph 4(i) – (viii) above to be produced on request.
6. Clients in cases where Counsel fail to keep proper records to support claimed fees may find the fees reduced. Counsel may then find that a complaint of inadequate professional service may be upheld, in which circumstance Counsel can be ordered to reduce or waive fees and/or to pay compensation up to £5,000. In addition, the Legal Services Ombudsman has power to require Counsel to pay unlimited compensation.
7. In any case in which Counsel appears properly in a privately paid case at a hearing without a brief fee having been agreed (for example on an interim application) Counsel should make and keep a record of the time spent at Court before the start of the hearing, and of the length of the hearing.

D: Guidance on Holding Out as a Barrister

CODE OF CONDUCT: 7th EDITION

NON-PRACTISING BARRISTERS OFFERING LEGAL SERVICES

The new 7th edition of the Code of Conduct sets out the conditions which barristers must satisfy in order to be entitled to practise. The Code also contains the rules of conduct which practising barristers, be they in independent practice or employment, must observe. This note provides guidance for barristers who have not satisfied the conditions required to practise as a barrister or who for other reasons wish to supply legal services other than as practising barristers.

The Code does not prohibit non-practising barristers from supplying legal services. It merely prevents them, in connection with the supply of such services, from holding themselves out as barristers and from exercising rights which they have as barristers.

Holding Out as a Barrister

The restriction on holding out prevents non-practising barristers who are supplying or offering to supply legal services from using the title "barrister" or otherwise conveying the impression that they are practising as barristers. It is not possible to provide a comprehensive list of the circumstances which might amount to "holding out" but it is hoped that the following examples will give an idea of what is prohibited.

- Describing oneself as a barrister in any printed material used in connection with the provision of legal services: in particular in advertising or publicity, on a card or letterhead, or on premises.
- Describing oneself as a barrister to clients or prospective clients.
- Indicating to opposing parties or their representatives (e.g. in correspondence) that one is a barrister.
- Describing oneself as a barrister or as "counsel", wearing robes, or sitting in a place reserved for counsel, in court.
- Using other descriptions in such contexts which imply that the individual is a barrister (e.g. membership of an Inn of Court).

These examples are not exhaustive.

Exercising Rights as a Barrister

Non-practising barristers may not exercise any rights that they have by reason of being barristers, the most obvious example being rights of audience. This means that such a barrister may not appear as an advocate in any court or tribunal unless it is one in which lay representatives are permitted to appear or unless the barrister has a right of audience by virtue of some other qualification (e.g. as a solicitor).

There are other rights which a practising barrister may exercise but a non-practising barrister may not. For example, section 22 of the Solicitors Act 1974 prohibits an unqualified person from preparing for reward any instrument relating to real or personal estate, or to any legal

proceeding. Section 23 contains a similar prohibition against preparing papers for probate. It would not be permissible for a non-practising barrister to charge for preparing such an instrument or papers.

What Is Not Prohibited

The Code does not prohibit non-practising barristers from describing themselves as barristers when they are not supplying legal services. In particular, the following activities are excluded from the definition of "legal services" in the Code.

- Lecturing or teaching law.
- Writing or editing law books, articles or reports.
- Reading for libel.
- Acting as an arbitrator or mediator.
- Acting as an honorary legal adviser to a charity.

In connection with those activities (and in other circumstances where the barrister is not supplying legal services at all) it is perfectly permissible to use the title "barrister".

There may be occasions on which it is unavoidable for non-practising barristers who are supplying or offering to supply legal services to disclose that they are qualified as barristers. These might include, for example, job applications or enquiries by clients as to the barrister's background. In these cases there is no objection to indicating that you have qualified as a barrister but, particularly if the issue arises in the course of conversation with clients, it should be made clear that you are not practising as a barrister, are not able to exercise any rights as a barrister and are not subject to the rules that practising barristers have to obey.

There is no prohibition on non-practising barristers who are in silk using the title QC.

E: Guidance on Preparation of Defence Case Statements

THE PREPARATION OF DEFENCE CASE STATEMENTS PURSUANT TO THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

GUIDANCE ON THE DUTIES OF COUNSEL (AS approved by the PCCC on 24 September 1997)

- 1 It is becoming increasingly common for solicitors to instruct counsel to draft or settle Defence Case Statements, required under section 5 of the Criminal Procedure and Investigations Act 1996. Often these instructions are given to counsel with no or little previous involvement in the case shortly before the expiry of the time limit.
- 2 The relevant legislation is set out at §12-82 et seq. of the 1997 edition of Archbold. In summary, however:
 - (i) The time limit for compliance is short - 14 days from service of prosecution material or a statement that there is none. The permitted grounds for an extension of time are limited⁷;
 - (ii) The contents of the Defence Case Statement are obviously of great importance to the defendant. An inaccurate or inadequate statement of the defence could have serious repercussions for the defendant, if the trial judge permits “appropriate” comment;
 - (iii) Whilst it will be the natural instinct of most defence counsel to keep the Defence Case Statement short, a short and anodyne statement may be insufficient to trigger any obligation on the prosecution to give secondary disclosure of prosecution material.
- 3 Normally it will be more appropriate for instructing solicitors to draft the Defence Case Statement, since typically counsel will have had little involvement at this stage.
- 4 However, there is nothing unprofessional about counsel drafting or settling a Defence Case Statement, although it must be appreciated that there is no provision in the current regulations for graduated fees allowing for counsel to be paid a separate fee for his work. This most unsatisfactory situation (which has arisen, as a result of the 1996 Act, since the graduated fees regulations were negotiated) is being addressed urgently by the Fees and Legal Aid Committee. A barrister has no obligation to accept work for which he will not be paid. The absence of a fee will justify refusal of the instructions of counsel who are not to be retained for the trial and are simply asked to do no more than draft or settle the Defence Case Statement. Where counsel is retained for the trial, Rule 502(b) of the Code of Conduct deems instructions in a legally aided matter to be at a proper fee and counsel would not be justified in refusing to draft or settle a Defence Case Statement on the sole ground that there is no separate fee payable for this work.

⁷ See the Defence Disclosure Time Limit Regulations 1997 made pursuant to the Act: Archbold Supplement §12-93.

5 Many members of the Bar will nevertheless feel that, in the interests of their lay client and or of good relations with instructing solicitors, they cannot refuse work, even where they would otherwise be entitled to do so. Those who do so need to recognise the crucial importance of:

- (i) Obtaining all prosecution statements and documentary exhibits;
- (ii) Getting instructions from the lay client, from a properly signed proof and preferably a conference. Those instructions need to explain the general nature of the defence, to indicate the matters on which issue is taken with the prosecution and to give an explanation of the reason for taking issue. They must also give details of any alibi defence, sufficient to give the information required by Section 5(7) of the 1996 Act;
- (iii) Getting statements from other material witnesses;
- (ix) Ensuring that the client realises the importance of the Defence Case Statement and the potential adverse consequences of an inaccurate or inadequate statement;
- (v) Getting proper informed approval for the draft from the client. This is particularly important, given the risks of professional embarrassment if the client seeks to disown the statement during the course of the trial, perhaps when the trial is not going well or when under severe pressure in cross-examination. Counsel ought to insist on getting written acknowledgement from the lay client that:
 - (a) he understands the importance of the accuracy and adequacy of the Defence Case Statement for his case;
 - (b) he has had the opportunity of considering the contents of the statement carefully and approves it.

This may often mean having a conference with the lay client to explain the Defence Case Statement and to get informed approval, although in straightforward cases where counsel has confidence in the instructing solicitor, this could be left to the solicitor. Where the latter course is taken, a short written advice (which can be in a standard form) as to the importance of obtaining the written acknowledgement before service of the statement should accompany the draft Defence Case Statement. A careful record should be kept of work done and advice given.

- (vi) If there is inadequate time, counsel should ask the instructing solicitor to apply for an extension of time. This needs to be considered at a very early stage, since the application must be made before the expiry of the time limit.

6 It follows that counsel ought not to accept any instructions to draft or settle a Defence Case Statement unless given the opportunity and adequate time to gain proper familiarity with the case and to comply with the fundamental requirements set out above. In short, there is no halfway house. If instructions are accepted, then the professional obligations on counsel are considerable.

F: Guidance on Preparation of Witness Statements

PREPARING WITNESS STATEMENTS FOR USE IN CIVIL PROCEEDINGS

DEALINGS WITH WITNESSES

GUIDANCE FOR MEMBERS OF THE BAR

Introduction.

- 1 The purpose of this paper, which has the approval of the Professional Standards Committee of the General Council of the Bar, is to offer guidance to members of the Bar instructed to prepare or settle a witness statement and as to dealings with witnesses. Guidance already exists for practice in some Courts, notably Appendix 4 to the Chancery Guide, Part H1 of the Commercial Court Guide and CPR Part 32 and 32PD paragraphs 17 to 25, to which attention is drawn. The intention is that this paper should be consistent with that guidance.
- 2 This guidance is not applicable to criminal proceedings. Attention is drawn to the Guidance Note “Written Standards for the Conduct of Professional Work” in Section 3 of the Code of Conduct

Witness statements

- 3 The cardinal principle that needs to be kept in mind when drafting or settling a witness statement is that, when the maker enters the witness box, he or she will swear or affirm that the evidence to be given will be the truth, the *whole truth* and nothing but the truth. In most civil trials almost the first question in chief (and not infrequently the last) will be to ask the witness to confirm, to the best of his belief, the accuracy of the witness statement. It is therefore critical that the statement is one that accurately reflects, to the best of Counsel's ability, the witness's evidence.
- 4 Witnesses often misunderstand the function of those drafting and settling witness statements. The function of Counsel is to understand the relevant evidence that a witness can give and to assist the witness to express that evidence in the witness's own words. It is important it is made clear to the witness (by reminder to the professional client or the witness, if seen by Counsel) that the statement once approved is *the witness's* statement. Ultimately it is the witness's responsibility to ensure that the evidence he gives is truthful. It is good practice to remind witnesses expressly of this from time to time, especially where Counsel is assisting the witness to formulate in his own words a particular aspect of the evidence or putting forward a particular piece of drafting for the witness' consideration (which is expressly permitted by the proviso to Rule 704 of the Code of Conduct).

5 It is not Counsel's duty to vet the accuracy of a witness's evidence⁸. We all may doubt the veracity of our clients and witnesses occasionally. Counsel is, of course, entitled and it may often be appropriate to draw to the witness's attention to other evidence which appears to conflict with what the witness is saying and is entitled to indicate that a Court may find a particular piece of evidence difficult to accept. But if the witness maintains the evidence, it should be recorded in the witness statement. If it is decided to call the witness, it will be for the Court to judge the correctness of the witness's evidence.

6 It follows that the statement:

- (i) Must accurately reflect the witness's evidence. Rule 704 of the Code of Conduct states:

"A barrister must not devise facts which will assist in advancing the lay client's case and must not draft any ... witness statement [or] affidavit ... containing:

- (d) in the case of a witness statement or affidavit any statement of fact other than the evidence which in substance according to his instructions the barrister reasonably believes the witness would give if the evidence contained in the witness statement or affidavit were being given in oral examination";

provided that nothing in this paragraph shall prevent a barrister drafting a document containing specific factual statements or contentions included by the barrister subject to confirmation of their accuracy by the lay client or witness."

- (ii) Must not contain any statement which Counsel knows the witness does not believe to be true. Nor should the witness be placed under any pressure to provide other than a truthful account of his evidence.
- (iii) Must contain all the evidence which a witness could reasonably be expected to give in answer to those questions which would be asked of him in examination in chief. The witness statement should not be drafted or edited so that it no longer fairly reflects the answers which the witness would be expected to give in response to oral examination-in-chief in accordance with the witness's oath or affirmation. Although it is not the function of a witness statement to answer such questions as might be put in cross-examination, great care should be exercised when excluding any material which is thought to be unhelpful to the party calling the witness and no material should be excluded which might render the statement anything other than the truth, the whole truth and nothing but the truth. While it is permissible to confine the scope of examination-in-chief to part only of the evidence which

⁸ If para 6 of Appendix 4 of the Chancery Guide suggests otherwise, the PSC respectfully disagrees. The position would, of course, be different if to Counsel's knowledge the witness statement contained untruths: see *ZYX Music GmbH v. King* [1995] 3 All ER 1.

⁹ CPR Part 32.4(1).

a witness could give, that is always subject to Counsel's overriding duty to assist the Court in the administration of justice and not to deceive or knowingly or recklessly to mislead the Court (Rule 302 of the Code of Conduct). Consequently, it would be improper to exclude material whose omission would render untrue or misleading anything which remains in the statement. It would also be improper to include fact A while excluding fact B, if evidence-in-chief containing fact A but excluding fact B could not have been given consistently with the witness's promise to tell the truth, the whole truth and nothing but the truth. Whether it is wise and in the client's interest in any given case to exclude unfavourable material which can properly be excluded is a matter of judgment.

- (iv) Save for formal matters and uncontroversial facts, should be expressed if practicable in the witness's own words. This is especially important when the statement is dealing with the critical factual issues in the case - e.g. the accident or the disputed conversation. Thus the statement should reflect the witness's own description of events. It should not be drafted or edited so as to massage or obscure the witness' real evidence.
- (v) Must be confined to admissible evidence that the witness can give, including permissible hearsay¹⁰. Inadmissible hearsay, comment and argument should be excluded.
- (vi) Should be succinct and exclude irrelevant material. Unnecessary elaboration is to be avoided. It is not the function of witness statements to serve as a commentary on the documents in the trial bundles. Nor are they intended to serve as another form of written argument.

7 Sometimes it becomes apparent, after a witness statement has been served, that the witness's recollection has altered. This may happen if the witness sees or hears how another witness puts the facts in a witness statement served by another party. Where Counsel learns that the witness has materially changed his evidence -

- (i) He should consider with, and if necessary advise, his professional or BarDirect client whether, in the circumstances, a correction to the original statement needs to be made in order to avoid another party being unfairly misled.
- (ii) Where a correction to the original statement is appropriate, this should be done by recording the changed evidence in an additional witness statement and serving it on the other parties (and if appropriate filing it at court). If this is impracticable, e.g. because it occurs very shortly before the hearing, the other parties should be informed of the change immediately and the statement should be corrected at an early stage in court.
- (iii) The underlying principle is that it is improper for a litigant to mislead the court or another party to the litigation¹¹.

¹⁰ 32PD, para 18.2 requires the witness to indicate which of the statements are matters of information and belief and the source for any such matters.

- (iv) If a lay or BarDirect client refuses to accept Counsel's advice that disclosure of a correction should be made, Counsel's duty is to withdraw from further acting for the client.

Formalities

8 A witness statement:

- (i) Should be expressed in the first person;
- (ii) Should state the full name of the witness and the witness's place of residence or, if the statement is made in a professional, business or other occupational capacity, the address at which he works, the position he holds and the name of the firm or employer;
- (iii) Should state the witness's occupation or if he has none his description;
- (iv) Should state if the witness is a party to the proceedings or is an employee of such a party;
- (v) Should usually be in chronological sequence divided into consecutively numbered paragraphs each of which should, so far as possible, be confined to a distinct portion of the evidence;
- (vi) Must indicate which of the statements in it are made from the witness's own knowledge and which are matters of information and belief, indicating the source for any matters of information and belief;
- (vii) Must include a statement by the witness that he believes that the facts stated in it are true;
- (viii) Must be signed by the witness or, if the witness cannot read or sign it, must contain a certificate made by an authorised person as to the witness's approval of the statement as being accurate¹²;
- (ix) Must have any alterations initialled by the witness or by the authorised person;
- (x) Should give in the margin the reference to any document or documents mentioned;
- (xi) Must be dated.

There are further formal requirements in 32PD, paras 17-19, relating to intitulement, exhibits, pagination, production and presentation, to which attention is directed.

¹¹ On the duty to make disclosure of material changes of evidence and new documents, see generally *Vernon v. Bosley (No.2)* [1999] Q.B. 18.

¹² See 32PD, para 21.

Dealings with Witnesses

Counsel seeing witnesses¹³.

- 9 The old rules preventing Counsel from seeing a witness, other than the client, have been progressively relaxed over recent years. The current position in civil proceedings can be summarised as follows:
- (i) There is no longer any rule which prevents a barrister from having contact with any witness. Indeed, in taking witness statements and generally, it is the responsibility of a barrister, especially when the witness is nervous, vulnerable or apparently the victim of criminal or similar conduct, to ensure that those facing unfamiliar court procedures are put as much at ease as possible.
 - (ii) Although there is no longer any rule which prevents a barrister from having contact with witnesses, a barrister should exercise his discretion and consider very carefully whether and to what extent such contact is appropriate, bearing in mind in particular that it is not the barrister's function (but that of his professional client) to investigate and collect evidence.
 - (iii) The guiding principle must be the obligation of Counsel to promote and protect his lay client's best interests so far as that is consistent with the law and with Counsel's overriding duty to the Court (Code of Conduct paragraphs 302, 303). Often it will be in the client's best interests that Counsel should meet witnesses whose evidence will be of critical importance in the case, so as to be able to form a view as to the credibility of their evidence and to advise the lay client properly;
 - (iv) A barrister should be alert to the risks that any discussion of the substance of a case with a witness may lead to suspicions of coaching, and thus tend to diminish the value of the witness's evidence in the eyes of the court, or may place a barrister in a position of professional embarrassment, for example, if he thereby becomes himself a witness in the case. These dangers are most likely to occur if such discussion takes place:
 - (a) before the barrister has been supplied with a proof of the witness's evidence; or
 - (b) in the absence of the barrister's professional client or his representative.
 - (v) Rule 705 of the Code of Conduct provides that a barrister must not rehearse practise or coach a witness in relation to his evidence. This does not prevent Counsel giving general advice to a witness about giving evidence e.g. speak up, speak slowly, answer the question, keep answers as short as possible, ask if a question is not understood, say if you cannot remember and do not guess or speculate. Nor is there any objection to testing a

¹³This is largely taken from Guidance Note "Written Standards for the Conduct of Professional Work" in Section 3 of the Code of Conduct approved by the Lord Chancellor's Advisory Committee on Legal Education and Conduct and the designated judges.

witness's recollection robustly to ascertain the quality of his evidence or to discussing the issues that may arise in cross-examination. By contrast, mock cross-examinations or rehearsals of particular lines of questioning that Counsel proposes to follow are not permitted. What should be borne in mind is that there is a distinction, when interviewing a witness, between questioning him closely in order to enable him to present his evidence fully and accurately or in order to test the reliability of his evidence (which is permissible) and questioning him with a view to encouraging the witness to alter, massage or obscure his real recollection (which is not). The distinction was neatly drawn by Judge Francis Finch in *In Re Eldridge*¹⁴ in 1880, where he said:

"While a discreet and prudent attorney may very properly ascertain from witnesses in advance of the trial what they in fact do know and the extent and limitations of their memory, as guide for his own examinations, he has no right legal or moral, to go further. His duty is to extract the facts from the witness, not to pour them into him; to learn what the witness does know, not to teach him what he ought to know."

At the risk of stating the obvious, this is a difficult area calling for the exercise of careful judgment.

- (vi) A barrister should also be alert to the fact that, even in the absence of any wish or intention to do so, authority figures do subconsciously influence lay witnesses. Discussion of the substance of the case may unwittingly contaminate the witness's evidence.
- (vii) There is particular danger where such discussions:
 - (a) take place in the presence of more than one witness of fact; or
 - (b) involve the disclosure to one witness of fact of the factual evidence of another witness.

These practices have been strongly deprecated by the courts as tending inevitably to encourage the rehearsal or coaching of witnesses and to increase the risk of fabrication or contamination of evidence: *R. v. Arif* (1993) May 26; *Smith New Court Securities Ltd v. Scrimgeour Vickers (Asset Management) Ltd* [1994] 1 WLR 1271.

- (viii) That is not to suggest that it is always inappropriate to disclose one witness's evidence to another. If conflicting witness statements have been obtained from different witnesses or served by the other side, it may be appropriate or necessary for a witness to be further questioned about, or have his attention drawn to, discrepancies between statements. Discretion is, however, required, especially where the evidence of independent witnesses is involved.

¹⁴ New York Court of Appeals; 37 NY 161, 171

- (ix) Whilst there is no rule that any longer prevents a barrister from taking a witness statement in civil cases, there is a distinction between the settling of a witness statement and taking a witness statement. Save in exceptional circumstances, it is not appropriate for a barrister who has taken witness statements, as opposed to settling witness statements prepared by others, to act as Counsel in that case because it risks undermining the independence of the barrister as an advocate. Exceptional circumstances would include:
- (a) The witness is a minor one;
 - (b) Counsel has no choice but to take the proof and this is the only practical course in the interests of justice - this would apply, for instance, where a witness appears unexpectedly at Court and there is no one else competent to take the statement;
 - (c) Counsel is a junior member of a team of Counsel and will not be examining the witness.

The Cab Rank rule does not require a barrister to agree to undertake the task of taking witness statements.

- (x) A barrister should be prepared to exchange common courtesies with the other side's witnesses. However, a barrister should only discuss the substance of the case or any evidence with the other side's witnesses in rare and exceptional circumstances and then only with the prior knowledge of his opponent.

16 January, 2001

G: Guidelines on Chambers Complaints Procedure

Chambers Complaints Procedures

1. An amendment to the Code of Conduct is enclosed. It requires a barrister to respond to complaints promptly, courteously and in a manner which addresses the issues raised in accordance with a written procedure, copies of which are to be made available to clients (Annex A). Suggested Chambers Complaints Procedures are also enclosed (Annexes B, C and D).

The amendment to the Code takes effect for complaints received on or after (date). It applies to complaints made by professional or lay clients.

Background

2. In recent years there has been a shift in the public's view of professionals generally and a growing and legitimate expectation by clients, including the Bar's lay clients, that they are entitled to complain about poor service and to receive an effective response. The Bar as a whole needs to respond to this expectation. While the Bar has made changes and is moving towards procedures for handling complaints effectively, there are wide variations in practice, and some uncertainty about an appropriate response, particularly to lay clients.

3. Research published last year by the University of West England examined the systems used in a sample of chambers and identified a number of weaknesses. The Legal Services Ombudsman commented in her Report last year that the researchers "detected" "cultural resistance" at chambers level to the creation of effective complaints handling systems for lay clients. Where systems existed at all they were almost exclusively for the use of instructing solicitors.

The amendment to the Code

4. The requirements that complaints are handled promptly, courteously and in a manner which addresses the issues raised are fundamental to an effective system. Even if a complaint is rejected, a client is entitled to receive a courteous and considered reply. This is far more likely to be acceptable than one which is brusque and does not answer the point.

5. The requirement to have an appropriate written procedure and to make this available to clients on request is intended to ensure that complaints are handled in a systematic way and that both clients and members of chambers know what to expect from the procedures.

6. The requirements apply to all complaints made to barristers whether by professional

or lay clients. We consider that if lay clients approach their barrister direct they are entitled to have their complaints dealt with. Prompt internal handling of a complaint may provide a more satisfactory outcome for the client and the barrister than an insistence that the complaint is either made through the solicitor or to the Bar Council.

7. The requirements also apply to complaints which raise the issue of negligence. The BMIF have asked to be notified immediately of any such complaint. They will need to be consulted on the terms of the reply to the complainant.

8. While it does take time to handle complaints, they do serve a valuable function in disclosing ways in which practice can be improved. Under an effective system there should be a real concern to consider the client's point of view and to learn from complaints.

Chambers Complaints Procedure

9. Annexes B and C provide a model for use if wished, but barristers are free to provide procedures which suit their circumstances, subject to the requirements in the Code. Annex B is a suggested leaflet for giving to clients and Annex C a more detailed note on implementation of the procedure for use in chambers. Annex D is a procedure for use by sole practitioners. The models meet the criteria for an effective system, which are:

- Be easily accessible and well publicised to members of chambers and to clients;
- Be simple to understand and use, with clear criteria laid down and followed in practice;
- Ensure confidentiality is maintained;
- Require prompt replies to complaints, with time limits laid down, kept and made known to the complainant;
- Provide for effective investigation;
- Be fair and offer effective redress;
- Ensure that decision makers in chambers receive information on complaints so that services can be improved.

Annexes B and C will be included in the next edition of the Practice Management Guidelines.

10. It is essential that written procedures are actually adhered to in practice. This calls for a client centred approach and clear lines of responsibility.

ANNEX A

(b) supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its Rules.

Administration and conduct of independent practice

403 A barrister in independent practice:

- (a) must not practise from the office of or in any unincorporated association (including any arrangement which involves sharing the administration of his practice) with any person other than a barrister except as permitted by paragraph 810;
- (b) must take all reasonable steps to ensure that:
 - (i) his practice is efficiently and properly administered having regard to the nature of his practice;
 - (ii) proper records are kept;
 - (iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.
- (c) must have ready access to library facilities which are adequate having regard to the nature of his practice;
- (d) must have regard to any relevant guidance issued by the Bar Council including guidance as to:
 - (i) the administration of chambers;
 - (ii) pupillage and further training; and
 - (iii) good equal opportunities practice in chambers in the form of the Equality Code for the Bar.
- (e) must deal with all complaints against him promptly, courteously and in a manner that addresses the issues raised in accordance with an appropriate written procedure, copies of which are to be made available to a client on request.

Heads of chambers

404.1 The obligations in this paragraph apply to the following members of chambers:

- (a) any barrister who is head of chambers;

- (b) any barrister who is responsible in whole or in part for the administration of chambers;
- (c) if there is no one within (a) and (b) above, all the members of the chambers.

404.2 Any person referred to in paragraph 404.1 must take all reasonable steps to ensure that:

- (a) his chambers are administered competently and efficiently and are properly staffed;
- (b) the affairs of his chambers are conducted in a manner which is fair and equitable for all barristers and pupils;
- (c) proper arrangements are made in his chambers for dealing with pupils and pupillage;
- (d) all barristers practising from his chambers whether they are members of the chambers or not are entered as members with BMIF and have effected insurance in accordance with paragraph 402 (other than any pupil who is covered under his pupil-master's insurance);
- (e) all barristers practising from his chambers comply with paragraph 403(b)(iii);
- (f) all employees and staff in his chambers (i) are competent to carry out their duties, (ii) carry out their duties in a correct and efficient manner, and (iii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties and (iv) all complaints against them are dealt with in the manner set out in paragraph 403(e) above;
- (g) all registered European lawyers and all foreign lawyers in his chambers comply with this Code to the extent required by the Registered European Lawyers Rules (reproduced in Annex B) and the Foreign Lawyers (Chambers) Rules (reproduced in Annex H);
- (h) fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients and in the event of non-payment within a reasonable time, pursued efficiently.

ANNEX B

Chambers Complaints Procedure

1. Our aim is to give you a good service at all times. However if you have a complaint you are invited to let us know as soon as possible.

Complaints made by Telephone

2. You may wish to make a complaint in writing and, if so, please follow the procedure in paragraph 4 below. However, if you would rather speak on the telephone about your complaint then please telephone the barrister concerned or (if the complaint is about a member of staff) the [senior member of staff - NAME]. If the complaint is about the [senior member of staff] telephone [the head of chambers - NAME or other member of chambers appointed by head]. The person you contact will make a note of the details of your complaint and what you would like done about it. S/he will discuss your concerns with you and aim to resolve them. If the matter is resolved s/he will record the outcome, check that you are satisfied with the outcome and record that you are satisfied. You may also wish to record the outcome of the telephone discussion in writing.

3. If your complaint is not resolved on the telephone you will be invited to write to us about it within the next 14 days so it can be investigated formally.

Complaints made in Writing

4. Please give the following details: your name and address, which member(s) of chambers you are complaining about; the detail of the complaint; and what you would like done about it. Please address your letter to [name of preferred recipient and chambers' address].

5. Our chambers has a panel headed by [name] and made up of experienced members of chambers and a senior member of staff, which considers any written complaint. Within 14 days of your letter being received the head of the panel or her/his deputy in her/his absence will appoint a member of the panel to investigate it. If your complaint is against the head of the panel it will be investigated by the next most senior member of the panel. In any case, the person appointed will be someone other than the person you are complaining about.

6. The person appointed to investigate will write to you as soon as possible to let you know s/he has been appointed and that s/he will reply to your complaint within 14 days. If s/he finds later that s/he is not going to be able to reply within 14 days s/he will set a new date for her/his reply and inform you. Her/his reply will set out:

- The nature and scope of her/his investigation;

- Her/his conclusion on each complaint and the basis for her/his conclusion; and
- If s/he finds that you are justified in your complaint, her/his proposals for resolving the complaint.

Confidentiality

7. All conversations and documents relating to the complaint will be treated as confidential and will be disclosed only to the extent that is necessary. Disclosure will be to the head of chambers, members of our management committee and to anyone involved in the complaint and its investigation. Such people will include the barrister member or staff who you have complained about, the head or relevant senior member of the panel and the person who investigates the complaint.

Our Policy

8. As part of our commitment to client care we make a written record of any complaint. Our management committee inspects the record regularly with a view to improving services.

Complaints to the Bar Council (professional body for barristers)

9. We hope that you will use our procedure. However if you would rather not do so or are unhappy with the outcome you do have the choice of taking up your complaint with the Bar Council. You can write to them at:

Complaints Department
The General Council of the Bar
Northumberland House
High Holborn
London WC1V 7JZ
Tel: 020 7440 4000
Fax: 020 7440 4001
E-mail: Complaints@BarCouncil.org.uk
Website: www.BarCouncil.org.uk

ANNEX C

CHAMBERS COMPLAINTS PROCEDURE

NOTE TO CHAMBERS

1. Whilst all barristers and staff strive to maintain high standards of service there will be occasions when a client is dissatisfied with the service provided by a barrister or by chambers. In that situation we invite the client (professional or lay) to bring the matter to the attention of chambers as soon as possible.

2. The enclosed leaflet (annex B) is a suggested complaints procedure to be handed to clients. This note sets out the detailed mechanics of the procedure. Annex D is a suggested procedure for sole practitioners. Chambers will need to insert names/positions etc into the sections in square brackets.

FIRST STAGE

3. Where a client is dissatisfied with some aspect of the service provided by a barrister or by chambers s/he should be invited to telephone the barrister concerned or (where the complaint is about a member of staff) the senior member of staff. If the complaint is about the senior member of staff the client should telephone the head of chambers or such other person as the head of chambers may appoint to deal with complaints against the senior clerk. The client should also be told that if s/he prefers s/he may make the complaint in writing and the Chambers Complaint leaflet should be sent to her/him unless it has already been provided.

4. Where a complaint is made by telephone, a note of the complaint should be made. It should record

- The name and address of the complainant
- Against whom the complaint is made
- The detail of the complaint
- What the complainant believes should be done about her/his complaint.

5. In many cases the complaint will be resolved over the telephone during the first call. When that occurs the barrister/senior member of staff/head of chambers/head of chambers appointee should record the outcome on the note of complaint. The client should be asked whether s/he is content with the outcome. If s/he is, that fact will be recorded. The complaints leaflet suggests the client may wish to make his own note. If the client is not content s/he should be invited to put the complaint in writing within 14 days so that it may be investigated formally. At that stage s/he should be sent a copy of the chambers complaints leaflet (annexe A), unless it has already been provided. The client should also be informed of the Bar Council's complaints procedure.

SECOND STAGE

6. It is suggested that chambers set up a complaints panel made up of experienced practitioners from different practice areas and a senior member of staff. A head of panel should be appointed. There should be a nominated deputy. All complaints (other than those resolved at stage one) should be put before the head of the panel or, in her/his absence, the deputy.

7. Within 14 days of the receipt of a letter of complaint the head of panel (or her/his deputy) should appoint a member of the panel to investigate the complaint. Where the complaint is against a member of staff the person appointed will normally be the senior staff member. Where the complaint is against the senior staff member the head of the panel should appoint another member of the panel to investigate. Where the complaint is against the head of the panel the head of chambers should investigate or, in her/his discretion, appoint a member of the panel to investigate. Where the head of chambers is the head of the panel the deputy head of the panel should be the appointed person. No barrister should investigate a complaint of which s/he is the subject.

8. The appointed person should write to the client as soon as s/he is appointed. S/he should inform her/him that s/he is to investigate the complaint and that s/he will report back to the client within 14 days. If it becomes plain that a response cannot be sent within 14 days a realistic time frame should be set and the client informed accordingly.

9. The appointed person should investigate the complaint. S/he should speak to the barrister/member of staff complained against, and any other people s/he identifies as having something to contribute. S/he should review all relevant documents. If necessary s/he should revert to the client for further information and clarification.

10. The appointed person should prepare a report to the client (with a copy to the barrister/member of staff complained against). The report should set out all the matters referred to at paragraph 4 above, the nature and scope of the investigations carried out in respect of each complaint, her/his conclusions and the basis for her/his conclusions. Where a complaint is found to be justified, proposals for resolution (eg reduction in fees, apology, compensation). Details of the Bar Council's complaints procedure should also be included.

11. The report should be sent to the client within 14 days of the appointed person's appointment (or such longer period as has been communicated to the client in advance - see paragraph 8). A copy of the report should be provided to the barrister/member of staff complained against.

BMIF

12. Where a complaint raises an allegation of negligence the BMIF should be informed immediately. Further, the BMIF should be consulted before proposals for resolution

are made to the client.

CONFIDENTIALITY

13. All conversations and documents shall be confidential and disclosed only to the extent necessary. They may be disclosed only to the client, the person complained about, the head of chambers, the head of the complaints panel or relevant senior member of the panel, the management committee (for carrying out the task at paragraph 16) and any other individual with whom enquiries need to be made for the purpose of the investigation.

RECORD KEEPING

14. Where the procedure ends after the first stage the person responsible for recording the outcome on the note of complaint should ensure that the note of complaint is placed on the chambers complaints file.

15. Where the procedure ends after the second stage the head of the panel should ensure that the following documents are placed on the chambers complaints file:-

- Note/letter of complaint (see paragraphs 3 and 4)
- Appointed person's report (see paragraph 9)
- All letters to client
- All letters from client

REVIEW OF RECORDS

16. The chambers complaints file should be inspected regularly by the management committee. The management committee should consider matters raised with a view to improving services generally.

ANNEX D

CHAMBERS COMPLAINTS PROCEDURE

SOLE PRACTITIONERS

1. My aim is to give you good service at all times. However if you have a complaint please let me know as soon as possible, by telephone or in writing.

Complaints made by telephone

2. If you wish to make a complaint by telephone I will make a note of the details of your complaint and what you would like done about it. I will endeavour to resolve matters with you on the telephone if you wish; alternatively you may prefer to write about your complaint (see below). If after discussion you are satisfied with the outcome I will make a note of the outcome and the fact that you are satisfied. You may also wish to record the outcome of our discussion.

Complaints made in writing

3. If your complaint is not resolved over the telephone or if you do not want to make a telephone complaint please write to me. Please give the following details:-

- Your name and address
- The detail of your complaint
- What you would like done about it.

4. I will normally reply to your letter within 14 days of receiving it. If that is not possible you will be given a date by which I will reply.

5. I hope that you will use this procedure. If you would rather not do so or are unhappy with the outcome you do have the choice of taking up your complaint with the Bar Council. You can write to them at:

Complaints Department
The General Council of the Bar
Northumberland House
High Holborn
London WC1V 7JZ
Tel: 020 7440 4000
Fax: 020 7440 4001
E-mail: Complaints@BarCouncil.org.uk
Website: www.BarCouncil.org.uk

H: Joint Tribunal Standing Orders for Fee Disputes with Solicitors

Standard Time Scale Proposed

- (1) The Applicant shall within 28 days of submitting written agreement to be bound by the decision of the Joint Tribunal send:
 - (a) direct to the OSS;
 - i) two further copies of the agreement,
 - ii) two copies of the Statement of Case with any supporting documents which must include relevant fee notes and correspondence (one set for the OSS and one for the Joint Tribunal Law Society member) and,
 - (b) (i) direct to the Bar Council two further copies of the Statement of Case and supporting documents; (one set for the Bar Council and one for the Joint Tribunal Bar Council member), and,
 - (c) direct to the Respondent;
 - i) a Statement of Case, together with all documents relied upon, which must include relevant fee notes and correspondence.
- (2) The Respondent shall, within 28 days of receipt of the Applicant's Statement of Case, supply:
 - a) two copies of their Statement of Response direct to the OSS (as in (1) above) and,
 - b) two copies to the Bar Council (as in (1) above), and,
 - c) supply to the Applicant a Statement of Response, together with all documents relied upon.
- (3) All documents which are submitted shall be indexed and paginated consecutively in the top right hand corner.
- (4) If either party relies upon the evidence of another person a statement of such evidence shall be signed and dated by the witness.
- (5) The Joint Tribunal shall be appointed within 14 days of the receipt by the OSS and the Bar Council of the Statement of Case. The members of the Joint Tribunal shall be supplied with copies of the Statements, by the OSS and the Bar Council respectively. Upon receipt of the Statements by the Joint Tribunal, it shall notify the parties of a date for the determination of the dispute which is not later than 56 days after the date provided above for the supply of the Statement of Response.
- (6) If, in exceptional circumstances, the Applicant wishes to submit a Statement of Reply, or either party wishes to submit additional material to the Joint Tribunal, they shall request permission to do so within 14 days of the receipt by the Applicant of the Statement of Response. Such requests shall be accompanied by a draft Statement of Reply and/or any

material sought to be relied upon. The Tribunal shall rule upon the admissibility of such documents and its ruling shall be final.

- (7) Any applications by either party in respect of the conduct of the dispute shall be included within the Statement of Case/Response. The Joint Tribunal shall determine the dispute on the basis of the written submissions of the parties unless in the opinion of the Joint Tribunal an oral hearing is appropriate.
- (8) If an oral hearing has been requested the Joint Tribunal shall, when fixing the date for the determination of the dispute, inform the parties, the OSS and the Bar Council, whether or not a hearing is considered to be appropriate, of the date, time and venue for the hearing.
- (9) The Joint Tribunal shall rule upon any application by either party in respect of the conduct of the dispute, and shall notify the parties, the OSS and the Bar Council, of any consequential directions when giving notice of the date for the determination of the dispute.
- (10) Payment of any sum found to be due shall be made within 14 days of the date of notification of any determination by the Joint Tribunal.
- (11) Non compliance with these directions shall entitle the Joint Tribunal to dismiss any case or response and to determine the dispute as the Tribunal thinks fit.
- (12) The Joint Tribunal shall have power in its absolute discretion to award interest upon unpaid fees for such period and at such rate as it deems appropriate in the circumstances.
- (13) The Joint Tribunal shall have power to direct payment of undisputed sums forthwith and payment shall be made within 14 days of any interim determination.
- (14) In the event of non-payment within the due time of any determination or interim determination the Joint Tribunal shall refer the matter as professional misconduct to the Office for the Supervision of Solicitors or to The General Council of the Bar.

Implemented 1 May 1998

I: Legal Aid Guidelines

1 Introduction

- 1.1 These Guidelines are intended to assist barristers to comply with the provisions of the Legal Aid Act 1988 (and regulations made under the Act) when advising the Legal Aid Board on merits on behalf of an applicant for civil legal aid, or when acting on an assisted person's behalf.
- 1.2 They are derived in part from the Legal Aid Handbook (published annually) which every barrister instructed under the terms of a civil legal aid certificate should consult.
- 1.3 They are essentially statements of good practice and should not be rigidly applied. They may, however, be taken into account when a wasted costs order is being considered against a barrister on the ground of his non-compliance with the Act, or in deciding whether or not a barrister has committed a disciplinary offence. They should be read in conjunction with the Code of Conduct (see especially paragraphs 203(b), 506(c)(d) and 802.1(d).

2 The Statutory test

- 2.1 The statutory test for the grant of civil legal aid to an applicant who is financially eligible is twofold:
 - (1) The applicant must satisfy the Board that he has reasonable grounds for taking, defending or being a party to the proceedings (section 15(2) - the "legal merits" test); and
 - (2) Representation may be refused if it is unreasonable for him to be granted representation in the particular circumstances of the case (section 15(3)(a) - the "reasonableness test").
- 2.2 The test does not apply to certain public law proceedings under the Children Act 1989 (section 15 as amended).

"Legal merits"
- 2.3 Reasonable grounds for taking, defending or being a party to proceedings may be said to exist if (a) assuming the facts alleged are proved, there is a case which has reasonable prospects of success in law; (b) assuming he had the means to pay the likely costs, the applicant would be advised to take or defend the proceedings privately.
- 2.4 When considering merits, it is important to remember that there is almost always an opposing point of view and that litigation is notoriously uncertain. Whilst it is no part of a barrister's duty to be over-cautious, he should not advise that legal aid be granted when the prospects of success are no more than slight.
- 2.5 A barrister should estimate the prospects of a successful outcome by reference to one of the following categories, namely: A. Very

good (80 per cent); B. Good (60-80 per cent); C. Reasonable (50-60 per cent); D. Less than evens; or E. Impossible to say.

- 2.6 The means of the hypothetical private client being considered should be taken as moderate but not excessive. In other words, he would be able to meet the likely costs, albeit with some difficulty or as something of a sacrifice.

Reasonableness

- 2.7 Even if his case has legal merits, an applicant may be refused legal aid if it would not be reasonable for him to be granted it.

- 2.8 A common example of proceedings which it would be unreasonable for the Legal Aid Board to fund are those which are not likely to be cost effective, i.e. any benefit to be achieved does not justify the cost. Another example is where the applicant reveals some illegal motive or conduct on the part of the applicant or abuse of the legal aid.

- 2.9 More specific examples are where:

- (a) the applicant has other rights or facilities (such as trade union or insurance cover) making it unnecessary for him to apply for legal aid;
- (b) the applicant is a victim of a crime of violence who could obtain compensation from the Criminal Injuries Compensation Board;
- (c) the proceedings should be taken in a different court where the costs are likely to be lower; or
- (d) the arguments on which the applicant relies will be put forward on behalf of another party whose interests in the proceedings are substantially the same.

3

Contents of a barrister's opinion on merits

- 3.1 A barrister's written opinion on merits should:

- (i) show that both (a) the legal merits and (b) the reasonableness tests (as outlined above) have been specifically and separately addressed by him before reaching a conclusion - a general statement that legal aid should be granted is not sufficient; it should estimate the prospects of a successful outcome by reference to one of the categories A to E mentioned in paragraph 2.5 above; in a case falling within category D or E, more explanation must be given if the Board are to be satisfied that legal aid should be granted;
- (ii) where factual issues are involved (a) set out in sufficient detail, (although not necessarily at great length) the rival factual versions to enable the Board to assess their relative strengths, and (b) express a clear opinion as to whether the

applicant's version has a reasonable prospect of being accepted by a court and why;

- (iii) in a case where the applicant's own evidence is likely to be contested, and a conference would assist the barrister to form a view of his reliability as a witness, state whether a conference has been held and what emerged from it, or if none was held, indicate briefly why;
- (iv) where legal issues or difficulties of law are involved (a) summarise those issues or difficulties in sufficient detail to enable the Board to come to a view about them without looking outside the opinion, and (b) express a clear view as to whether the applicant's case on the law has a reasonable prospect of being accepted by a court and why;
- (v) draw attention to (a) any lack or incompleteness of material which in his opinion might bear on the reliability or otherwise of the applicant's version, and (b) any other factor which in his opinion could - whether now or in the future - materially affect his assessment of the outcome of the case;
- (vi) in a case where damages are claimed, quantify at least the likely bracket for an award;
- (vii) draw attention to the need for the legal representatives between them to quantify the costs likely to be incurred by the Fund in the light of the barrister's opinion (if favourable) assuming the proceedings are fully contested;
- (viii) suggest or formulate for the Board any limitation or condition (whether as to the scope of the work that should be covered or as to the costs which should be expended) which in his opinion ought to be imposed on the grant of legal aid in order to safeguard the Fund;
- (ix) confirm that the proceedings are in his view cost-effective, i.e. that the estimated costs of the proceedings are likely to be justified by the benefit to the client, have regard in particular to the statutory charge which may be created by virtue of section 16 of the Act.

4 **A Barrister's continuing duty to the Fund**

4.1 A barrister is under a specific duty to comply with the provisions of the Legal Aid Acts 1974 and 1988 or any regulations made for giving effect to or preventing abuses of those Acts: para 802.1(d) of the Code of Conduct. Since these are directed at ensuring that legal aid is granted and continued only in justifiable cases, it follows that a barrister acting under a legal aid certificate is under a duty to bring to the attention of the Legal aid Board any matter which in his view might affect the assisted person's entitlement to legal aid, or the terms of his certificate, at whatever stage of the proceedings that might occur.

4.2 An example of when the duty may arise is whenever proposals for

settlement are made by the other side. He should report to the Board any decisions of the client which may cast doubt on the reasonableness of legal aid being continued contrary to his advice.

4.3

A further example is where a barrister finds that his legally assisted client has an interest in the proceedings which is or may become substantially the same as that of another party (see paragraph 2.9(d) above). A barrister should in those circumstances, after discussing the matter with his client, report it to the Board and advise whether in his opinion it is reasonable for legal aid to be continued.

J: Pupillage Guidelines

PART I - Administration

A Applications for Pupillage

1 General

- (a) All chambers and other training organisations authorised by the Bar Council to take pupils must have selection procedures for pupils in which applicants are recruited through fair and open competition and on the basis of merit.
- (b) All pupils must be recruited in accordance with the Equality Code or an employer's equal opportunities policy and other guidance issued by the Bar Council.

2 Advertisement of Vacancies

- (a) All vacancies for pupillage in chambers must be advertised in accordance with the Pupillage Funding & Advertising Requirements.
- (b) All vacancies for pupillage in organisations other than chambers are expected to be advertised in accordance with the Pupillage Funding & Advertising Requirements.

3 Selection Procedures

- (a) Chambers and other organisations authorised by the Bar Council to take pupils must establish and follow selection procedures that ensure that pupils are selected through fair and open competition and on the basis of merit.
- (b) In particular it is recommended that:
 - (i) selection criteria must be relevant and applied consistently to all applicants;
 - (ii) short listing and other selection decisions must be undertaken by at least two people;
 - (iii) applicants who are selected for interview must be sent a copy of the chambers' pupillage policy document prior to attending for interview;
 - (iv) all selectors should be familiar with the contents of the Equality Code.
- (c) Records of all applicants and documentation relating to selection decisions should be kept for a period of at least one year. They should indicate the manner in which applications are disposed of and, where known, the ethnic origin and sex of each applicant.

4 Registration

- (a) All chambers and other organisations authorised by the Bar Council to take pupils should ensure that each pupil has registered his pupillage with the Bar Council in accordance with Regulation 42 and Schedule 14, part 1 of the Consolidated Regulations before the pupillage commences.
- (b) All pupils must be assigned a named pupil supervisor before the pupillage is registered with the Bar Council.
- (c) Each organisation must ensure that a pupil supervisor to whom a pupil is assigned is entitled to act as a pupil supervisor under CR47.1, that is that he is entered on the register of approved Pupil Supervisors kept by the Bar Council, that his practice is and has been for the previous two years his primary occupation and that his principal place of practice is a chambers or office which is also the principal place of practice of at least one other barrister or member of another authorised body who is of at least three years standing.
- (d) Each organisation must ensure that no more than one pupil is assigned to a pupil supervisor at a time, unless the pupil supervisor has obtained the prior approval of the Joint Regulations Committee.

B Funding of Pupillage

- 1 All pupillages in chambers must be funded in accordance with the Pupillage Funding & Advertising Requirements.

C Documentation and Records

- 1 Pupillage Policy Document

- (a) Every set of chambers or other organisation authorised by the Bar Council to take pupils must prepare a document or documents setting out its policies in relation to:
 - the number and type of pupillages on offer
 - recruitment of pupils
 - the roles and duties of pupils
 - the roles and duties of pupil supervisors
 - the general pattern of pupillage (e.g. whether it is served with one pupil supervisor etc)
 - the check list(s) used during pupillage
 - arrangements for funding, including payment of expenses
 - procedures for providing pupils with an objective assessment of their progress at regular intervals throughout pupillage

- complaints and grievances by pupils and pupil supervisors
- (b) Every set of chambers which takes pupils should also include in its pupillage policy document its policies in relation to:
- chambers policy on payment of devilling and work completed for other members of chambers
 - chambers policy on the payment of clerks fees and rent during the practising period of pupillage
 - the method for fairly distributing briefs and other work amongst working pupils
 - policy and procedure for the recruitment of tenants and when prospective tenants will be notified of tenancy decisions
- (c) All pupils should be given a copy of the pupillage policy document when they are shortlisted for interview and reminded of it at the start of the pupillage.

2 Check lists

- (a) All chambers or organisations authorised by the Bar Council to take pupils must ensure that all pupils use a check list in a form either generally or specially approved by the Education & Training Department of the Bar Council.
- (b) Completed check lists must be signed and dated by the pupil supervisor.

3 Monitoring of Pupillage

- (a) All chambers and organisations authorised by the Bar Council to take pupils must comply with the Bar Council's monitoring of pupillage scheme.
- (b) Chambers and other organisations taking pupils are required to submit a pupillage return every year and to submit a copy of the pupillage policy document or documents and completed check lists when requested to do so by the Bar Council or a review panel.

PART II - Conduct of Pupillage

1 Training

- (a) Chambers and other organisations authorised by the Bar Council to take pupils should ensure that each pupil has a copy of the Pupillage File, Good Practice in Pupillage guide and the appropriate checklist by no later than the end of the first week of pupillage.
- (b) A pupil may only exercise a right of audience as a barrister in his practising six months of pupillage provided that he has

completed or been exempted from the non-practising six months of pupillage and has been given permission from his pupil supervisor or head of chambers/training principal.

- (c) Pupil supervisors must ensure that the pupil has the opportunity to do all such work and gain all such experience as is appropriate for a person commencing practice in the type of work done by the pupil supervisor and in any event so as to enable the pupil to complete the check list, in particular
 - (i) To ensure that the pupil has an understanding and appreciation of the operation in practice of rules of conduct and etiquette at the Bar
 - (ii) To ensure that the pupil has gained sufficient practical experience of advocacy to be able to competently prepare and present a case
 - (iii) To ensure that the pupil has gained sufficient practical experience of conferences and negotiation to be able to conduct the same competently
 - (iv) To ensure that the pupil has gained sufficient practical experience in the undertaking of legal research and the preparation of drafts and opinions to be able to undertake the same competently
- (d) The pupil supervisor must ensure that the pupil is provided with, and retains, the appropriate check list, and completes it conscientiously and accurately. The pupil supervisor must sign and date the check list and should ensure that it is retained by chambers for a minimum of three years.
- (e) The pupil supervisor must give the pupil time off to attend the compulsory advocacy training and Advice to Counsel courses and should ensure that he or she has completed the courses satisfactorily.

2 Distribution of Work in Chambers

- (a) The distribution of briefs among practising pupils should be carried out in a manner fair to all pupils.
- (b) Sets of chambers in which advocacy work by practising pupils is a regular occurrence should establish a system for the purpose of regulating the distribution of briefs or instructions among pupils. The system should be made known to pupils at the commencement of pupillage. Heads of chambers should ensure that the distribution of work to working pupils is reviewed regularly. The distribution to pupils of unnamed work arriving in chambers and of work returned between members of chambers should be monitored.

3 Certification

- (a) Provided that the period of pupillage has been satisfactorily completed, the pupil must provide a pupil with a certificate in

accordance with Consolidated Regulation 52.

- (b) If a pupil supervisor is not satisfied that the pupil has satisfactorily completed pupillage and he will not sign the certificate, he must notify the pupil of his or options i.e. a certificate may be accepted from the pupil supervisor's Head of Chambers, the person designated by the Head of Chambers as the person in charge of pupillage, or another person acceptable to the Masters of the Bench and the Bar Council. If a pupil remains unable to obtain a relevant certificate the pupil may appeal to (a) the Masters of the Bench of the relevant Inn and then (b) the Joint Regulations Committee (Consolidated Regulation 52).
- (c) Pupil supervisors should familiarise themselves with the Equality Code for the Bar, the Pupillage File and the guide to Good Practice in Pupillage.
- (d) If the pupil supervisor leaves chambers he or she should where possible make arrangements for the pupil.

4

Monitoring

- (a) Chambers and other organisations authorised by the Bar Council to take pupils must have complaints and grievance procedures.
- (b) Chambers must have a policy in the event of chambers dissolving in relation to current pupils and students who have been made offers of pupillage.
- (c) All pupillage training organisations should put systems in place to ensure that checklists are adequately completed, signed off and retained until they are requested by the Bar Council.
- (d) At the end of each period of pupillage, a pupil supervisor's certificate of satisfactory completion of pupillage must be signed and submitted to the Bar Council.
- (e) At the end of each year, the head of chambers or training principal must submit to the Bar Council an annual return in the form prescribed by the Bar Council.
- (f) The pupillage policy document, annual pupillage return and completed checklists must be made available to the Bar Council on request, for the purposes of monitoring of pupillage.
- (g) Any pupil taken on as a tenant or employed barrister at the end of pupillage must have been issued with a full qualification certificate by the Bar Council.

K: Service Standard on Returned Briefs Agree with the CPS

1. PRINCIPLE

- 1.1 This Standard applies to all advocates instructed to prosecute on behalf of the CPS.
- 1.2 The fundamental principle upon which the Standard is based is that the advocate initially instructed should conduct the case.
- 1.3 This applies to all cases irrespective of whether or not they are contested.
- 1.4 For the purpose of this Standard a return means a brief which is passed to another advocate because the advocate instructed is unable to appear to represent the prosecution at any hearing, subject to the exceptions for interlocutory hearings referred to in paragraphs 1.13 - 1.15 below.
- 1.5 There is a need for positive action to be taken by all advocates, acting in conjunction with the CPS, to minimise the level of returns in order to ensure that the best possible service is provided. Such action will include ensuring that the advocate's availability is considered when cases are being fixed and that efforts are made to take this into account.
- 1.6 Whatever positive action is taken to reduce the level of returns, it is recognised that there will always be some briefs which are returned.
- 1.7 The impact of a return is dependent upon the nature of the case and the timing of its return.
- 1.8 There will be some degree of flexibility in uncontested cases in that the acceptability of the return will be influenced by the nature, complexity and seriousness of the case and the degree of involvement of the advocate before committal or transfer.
- 1.9 Where a return is unavoidable, the advocate will be responsible for ensuring that immediate notice is given to enable the CPS to choose and instruct another advocate and for that advocate fully to prepare the case.
- 1.10 Special attention must be paid to retrials, sensitive cases or those involving vulnerable witnesses, especially children, and those cases in which the advocate has settled the indictment, provided a substantive advice, attended a conference or been present at an ex parte hearing.
- 1.11 The advocate prosecuting a case in which the brief has been returned should not, without good reason and prior consultation with the CPS, reverse a decision previously taken by the advocate originally instructed. This is especially important in cases involving child witnesses and video evidence.
- 1.12 Whenever a brief is returned, the choice of an alternative advocate will always be a matter for the CPS. Where counsel has been instructed, the availability of alternative counsel in the chambers holding the brief will not be the determining factor in selecting a new advocate. Counsel's clerk will be expected to make realistic proposals as to an alternative advocate, whether or not within the same chambers, and consideration will be given to them.

- 1.13 When the CPS instructs an advocate to appear at an interlocutory hearing, including plea and directions hearings (PDH), bail applications, applications to make or break fixtures and mentions, the advocate instructed in the case will, wherever practicable, be expected to attend. If the advocate instructed is not available, an alternative advocate may be instructed provided that advocate is acceptable to the CPS and following consultation with the CPS.
- 1.14 If an advocate is unable to attend a PDH as a result of work commitments elsewhere, a returned brief will not be treated as a return for the purpose of monitoring compliance with this Standard, unless the advocate's clerk was consulted about, and had confirmed, the advocate's availability for the PDH before the brief was delivered.
- 1.15 In the case of other interlocutory hearings, which may be potentially difficult or sensitive, the CPS will, whenever possible, consult the advocate's clerk about the advocate's availability before the date of hearing is arranged. Unless such consultation has taken place, a returned brief will not be counted as a return for the purpose of monitoring compliance with this Standard.
- 1.16 Following any interlocutory hearing, the brief will revert to the advocate originally instructed, subject to the CPS exercising its discretion to depart from this practice in any particular case.
- 1.17 In any case in which a brief is returned, and whatever the nature of the hearing, it will be the responsibility of the advocate holding the brief to ensure that the advocate to whom the brief is returned is fully informed of all matters relating to that hearing and, where practicable, to endorse the brief accordingly.
- 1.18 Notwithstanding the responsibility resting with the advocate returning the brief, the advocate accepting the brief also has a duty to be fully prepared to deal with any matter likely to arise at the hearing.
- 1.19 Subject to any other agreement negotiated with the CPS on the transfer of papers between advocates, whenever a brief is returned it will be the responsibility of the advocate or the advocate's clerk holding the brief to make arrangements to transfer the brief promptly to the agreed alternative advocate.
- 1.20 Neither the advocate nor the advocate's clerk should permit the number of briefs held by a single advocate to reach a point where returns are inevitable. The CPS must be informed if it appears that this situation might arise.
- 1.21 The CPS will make arrangements for the distribution of work to individual advocates so as to minimise the possibility of this happening.

2. GUIDANCE

- 2.1 Recommendations and guidance on counsel's responsibilities in relation to returned briefs have been given in the following reports:

Seabrook Report on the Efficient Disposal of Business in the Crown

Court - June 1992.

- Counsel should ensure that the CPS is notified as soon as he or his clerk knows he might have to return a brief due to other professional commitments.
- Counsel should ensure that immediate steps are taken to return a brief to another barrister acceptable to the CPS as soon as he or his clerk becomes aware that he will not be able to conduct the case.

Bar Standards Review Body Report - Blueprint for the Bar - September 1994.

- Counsel should provide written reasons upon request as to why a brief is returned.
- Counsel returning a brief should do so with as little disruption to the conduct of the case as practicable. This involves the provision of information to counsel taking on the case.

2.2 It is against this background that the procedures which follow have been developed.

3. PROCEDURE

Categorisation of cases

3.1 For the purpose of setting standards aimed at reducing the level of returns cases will fall within 3 categories.

3.2 **Category A** will comprise the following:

- cases in which the fees will be assessed ex post facto;
- pre-marked cases in which a Grade 4 Advocate or Special List Advocate (London and South Eastern Circuit) is instructed;
- cases in which Leading Counsel (including a Leading Junior) has been instructed by the CPS;
- cases falling within classes 1 and 2 of the Lord Chief Justice's Practice Direction classifying business within the Crown Court.

3.3 In category A cases no return of the brief is acceptable save where the following applies:

- the advocate is unable to attend court because of illness, accident, childbirth or unexpected incapacity;
- attending court would cause the advocate grave personal hardship as, for example, following a bereavement;
- subject to paragraph 3.8 below, circumstances have arisen outside the advocate's, or the advocate's clerk's, control which are such as to make a return inevitable;

- the case has been fixed for trial by the court in the knowledge that the advocate instructed will not be available.
- 3.4 Where a case has been so fixed, the CPS will decide whether to apply to the court to change the fixed date or to instruct a different advocate.
 - 3.5 **Category B** will comprise cases in which the brief has been pre-marked and which do not fall within category A, and standard fee cases in which a fixed trial date has been allocated.
 - 3.6 If a trial date has been fixed, no return of the trial brief is acceptable except as in 3.3 above.
 - 3.7 If a trial date has been fixed before the brief is delivered, or has been fixed regardless of the advocate's availability, immediate steps will be taken by the CPS in liaison with the advocate or the advocate's clerk, to identify an appropriate advocate who will be available on the fixed date. Once the brief has been delivered or reallocated, no return is acceptable.
 - 3.8 The advocate's involvement in a part-heard trial will not in itself justify a return in a category A or B case, unless the part-heard trial has been prolonged by unforeseeable circumstances. Where the advocate is involved in a part-heard trial, the position must be kept under constant review, and the CPS kept fully informed, so that an early decision can be made by the CPS as to whether to require a brief to be returned.
 - 3.9 If a brief in a category A or B case is returned, the advocate will, upon CPS request, provide a written explanation as to why the return was unavoidable.
 - 3.10 **Category C** will comprise standard fee cases which have not been given fixed trial dates.
 - 3.11 It is recognised that, for cases which attract standard fees, a higher return rate is more difficult to avoid.
 - 3.12 Subject to the requirements of Bar/CPS Standard 2 on pre-trial preparation having been carried out, if the advocate originally instructed in a category C case is not available, the CPS will agree to the brief being returned to another advocate of appropriate experience, who has adequate time to prepare for the hearing.

General procedural matters

- 3.13 If a case appears in a warned list or firm date list and the advocate instructed will not be available, the advocate or the advocate's clerk must notify the CPS immediately.
- 3.14 The CPS will then decide whether to make representations to the court to take the case out of the list, or to allow the brief to be returned to another advocate.
- 3.15 Where a case has appeared in a reserve list, or where a system of overnight listing operates within the warned list, it is accepted that some returns will be inevitable.

- 3.16 The advocate or the advocate's clerk should give as much notice as possible of returns in these instances and should aim to give the CPS **two working days notice**. This situation could apply, for example, when an advocate becomes committed part way through the week to a case expected to last several days.
- 3.17 Where a system of firm dates operates within the warned list period, the CPS must be notified if it appears likely that the advocate may be unavailable, so that an early decision can be made on whether to instruct another advocate or whether to defer the decision.
- 3.18 The timing of the decision whether to instruct another advocate will always be a matter for the CPS and will be influenced by the nature of the case as well as the information provided by the advocate or the advocate's clerk.

August 1996

L: Summary of the Equality Code for the Bar

Explanatory Note:

Mandatory requirements in the Equality Code are those which are direct requirements of legislation or the Code of Conduct of the Bar. These are indicated by use of underlined bold in the summary. The remaining bold text indicates those recommendations which are considered essential in order that chambers/barristers avoid direct, indirect and unintentional discrimination and monitor their performance. 'Should' in the text indicates best advice on the steps chambers should take to avoid discriminating either unlawfully or contrary to the Code of Conduct of the Bar. The remaining advice is recommendations for the development of good equal opportunity practice by chambers. The Equality Code for the Bar includes explanation of the legislation and case law and refers to findings of relevant research conducted for the Bar.

CHAPTER 1 — Regulatory and Legislative Framework

1. Para.204 of the Code of Conduct of the Bar of England and Wales prohibits a practising barrister from discriminating directly or indirectly against or victimising anyone on the grounds of their race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion. A barrister who is able to prove, on the balance of probabilities, that indirect discrimination was unintentional, will not be found guilty of professional misconduct.
2. Under Para.303 of the Code of Conduct barristers in independent practice must have regard to the Equality Code for the Bar.
3. The Sex Discrimination Act 1975 and the Race Relations Act 1976, as amended by section 64 of the Courts of Legal Services Act 1990, place a duty on barristers (and barristers' clerks) not to discriminate on the grounds of race or sex. Individuals may bring complaints that they have suffered discrimination to a county court within six months of the alleged act of discrimination.
4. The Disability (Discrimination) Bill is currently before Parliament and information will be provided to chambers when it becomes law.

CHAPTER 2 — Unlawful and Prohibited Discrimination¹⁵

1. Unlawful direct discrimination consists of treating a person on grounds of race, colour, ethnic or national origin, nationality or citizenship, sex or marital status less favourably than others are or would be treated in the same or similar circumstances. Less favourable treatment is regarded as being on grounds of sex, race, etc if but for that person's race or sex he or she would not have been subjected to the less favourable treatment.
2. Indirect discrimination occurs where:

¹⁵ All references to 'discrimination' unless specifically qualified in the text include both unlawful discrimination and discrimination prohibited by the Code of Conduct.

- (a) a requirement or condition is applied equally to everyone but a considerably smaller proportion of one sex or racial group than of the other persons to whom it applies can comply with it;
 - (b) the particular individual cannot comply with the requirement;
 - (c) it results in a detriment to them; and
 - (d) the requirement cannot be shown to be objectively justifiable in spite of its discriminatory effect.
3. It is unlawful to victimise persons by treating them less favourably because they have brought proceedings under the Race Relations or Sex Discrimination Act, have given evidence or information relating to proceedings or have alleged that discrimination has occurred. Such treatment will also breach Para.204 of the Code of Conduct.
 4. It is unlawful for a person to instruct, induce or attempt to induce another person to discriminate on grounds of race, colour, ethnic or national origin, nationality, citizenship, sex or marital status. Equally, it is unlawful to act on such instructions or inducement.
 5. Employers or principals are vicariously liable for any unlawfully discriminatory act of their employees or agents in the course of their work, unless they can demonstrate that they have taken all reasonable steps to prevent such acts. This is relevant to barristers' responsibility for their clerks and other staff in chambers.
 6. Positive action is the term used for lawful measures taken under the provisions of the Race Relations or Sex Discrimination Acts where one sex or particular racial or ethnic group is under-represented in particular areas of work, or to meet the special needs of particular ethnic groups.
 7. The above guidance on unlawful direct or indirect discrimination applies *mutatis mutandis* to discrimination on other grounds prohibited under Para.204 of the Code of Conduct (including disability and sexual orientation).
 8. Sexual orientation — a Bar Lesbian and Gay Group was formed in 1994 and is represented on the Bar Council's Sex Discrimination Committee. Chambers should adopt an equal opportunity policy making it clear that chambers will not discriminate on the grounds of sexual orientation and will offer equal opportunity to potential and actual members of chambers, whatever their sexual orientation. They should also ensure that all members, staff and applicants of chambers are aware of this policy.
 9. Discrimination on the grounds of disability—the Bar Council has a Disability Panel whose members will advise on disability issues. Chambers are advised to ensure, as far as is reasonably possible, that the working environment is both safe and accessible. At interviews with people who have disabilities questions should focus on the interviewee's ability, experience and job-related qualifications. Interview panels should not make assumptions about candidates' ability to perform certain tasks but, where relevant, candidates should be asked to state how they would perform certain tasks.

CHAPTER 3 — Guidance on Harassment

1. Harassment which would not have occurred but for the race or sex of the recipient may constitute unlawful direct discrimination. Both formal and informal grievance procedures should be available and be operated sensitively by chambers. Harassment is unwelcome conduct which is offensive to the recipient, whatever the motive or intention of the perpetrator.
2. The European Commission's Code of Practice on sexual harassment, which may be taken into account by courts and tribunals in deciding what amounts to sexual harassment, defines it as 'unwanted contact of a sexual nature or other conduct based on sex affecting the dignity of women and men at work'. It also notes that 'harassment on grounds of sexual orientation undermines the dignity at work of those affected and it is impossible to regard such harassment as appropriate workplace behaviour.'
3. Avenues of redress for individuals suffering harassment include chambers grievance procedures, complaint to the relevant Students' Officer about a sponsor or pupil master/mistress, complaints to the PCC where the harasser is a barrister, complaint to a county court or industrial tribunal alleging harassment as a form of direct discrimination, referral to the police when an act of harassment is a criminal offence. A recipient may also raise the matter informally with Inns Students Officers, the Bar's equal opportunities officers, CLE welfare staff, members of chambers, and sympathetic organisations such as the Association of Women Barristers.
4. The Bar Council's procedures on sexual harassment include a separate confidential telephone line to the equal opportunities officer, encouragement to chambers to adopt formal and informal procedures for handling complaints of harassment, a panel of mediators to advise the complainant and, with his or her permission, to seek to mediate between the complainant and the alleged harasser, and 'safe haven' chambers who, on the recommendation of the Chairman of the Bar or the Secretary of the PCC or the equal opportunities officers, will provide pupillage or an opportunity to squat to pupils or junior tenants who are unable to remain in their chambers as a result of harassment. A streamlined PCC procedure for handling complaints of harassment including measures to protect the anonymity of complainants, is under consideration.

CHAPTER 4 — Fair Selection of Pupils and Tenants

1. Chambers must have selection procedures for pupils and tenants in which all applications are considered on an equal and non-discriminatory footing. Here good practice may be evidence of what is lawful.
2. The Code of Conduct requires sets of chambers to ensure that proper arrangements are made in chambers for dealing with pupils and pupillage. The guidelines to the Code of Conduct Annex C require that each set of chambers should have a document which sets out its policies in relation to the selection of pupils. There should also be a written policy for the selection of tenants.
3. No pupils should be accepted in chambers who have not come through the chambers selection procedure.
4. Before any consideration of applications for pupillage or for tenancy takes place, a decision should be made about the number and type of vacancies to be filled.
5. No decision about an applicant's suitability at any stage of the process should

be taken by an individual member of chambers. Selection decisions should be taken by a committee which should include as diverse a group of members of chambers as possible. All selectors should be familiar with the content of The Equality Code and with chambers procedures and selection criteria.

6. The timetable for processing applications should be well publicised and chambers should adhere to it. Chambers are recommended to join the Bar Council's pupillage admissions and clearing house scheme (PACH).
7. All applicants should be assessed in competition with each other against objective and explicit selection criteria which relate to the demands of the work. The criteria should identify the knowledge, skills and other abilities required of a barrister doing such work. They should not be changed during the selection process. Criteria should be checked for potentially discriminatory assumptions about the mobility, lifestyle, social background, financial resources, race or sex of applicants.
8. Many people come to the Bar later in life, having pursued a different career, or for other reasons. Traditionally, seniority in chambers has reflected age. There is a perception that young junior tenants may fear competition from older pupils and junior tenants. They may also fear that older pupils and junior tenants might be reluctant to conform to chambers' expectations of junior members. These assumptions should not feature in selection decisions concerning the skills and experience of mature applicants for pupillage and tenancy. Such skills and experience should be assessed according to the agreed selection criteria.
9. Chambers should publicise all vacancies including administrative vacancies as widely as possible, unless a tenancy vacancy is only to be filled from current or former pupils. Pupillage vacancies should be advertised in the Bar Council's Chambers Pupillage and Awards Handbook. Advertisements should contain clear and accurate information about the areas of work undertaken by chambers, the selection procedures and timetables to be followed, guidance on the selection criteria to be applied and information about any awards or financial arrangements made for pupils.
10. It is recommended that chambers use an application form in preference to a CV. The questions on the application form should invite applicants to demonstrate how their knowledge, skills and abilities meet the selection criteria. Where application forms are used it is recommended that CVs are not accepted. Chambers should not request photographs of applicants.
11. Chambers should either include separate forms for monitoring ethnic origin and the sex of applicants, or include a monitoring question on their application form. Monitoring data should not be passed on to shortlisters or members of selection panels until the selection process has been completed.
12. Chambers should acknowledge all applications in writing and notify applicants of any decision taken upon their applications as soon as reasonably practicable.
13. In shortlisting for interview, members of the selection committee should assess each candidate's application against the selection criteria and make their judgments independently on the basis of the information provided in the application form. An agreed rating scale should be used and assessments should be recorded using an agreed format.

14. Interviews should be structured to ensure that similar areas related to the selection criteria are covered in questions to all candidates in order to ensure comparability between interviews. The interview schedule and the guidelines for scoring and decision-making should be discussed and agreed between the committee members before the round of interviews begins.
15. Questions to all applicants should cover similar areas, should give applicants similar opportunities to demonstrate the skills required by chambers and should be closely related to the selection criteria. Interview questions should be formulated so as to ensure that they elicit relevant and reliable information for the assessment of applicants with diverse backgrounds and abilities.

Interviewers should take care to ensure that any differences between applicants in the quality of their answers are not merely a reflection of differences in the way questions are asked. Key questions should be planned in advance and written down, be clear and unambiguous and reviewed for potential bias and hence unlawful discrimination. Any follow up questions should be relevant to the selection criteria. Interviewers should avoid questions about personal relationships and family composition which are irrelevant to the applicants' professional performance. Interviewers should avoid asking any question which carries the implication that disabled applicants have not thought through the practical consequences of their particular disability and of the ways in which this is likely to affect their working and social lives.

16. Case studies or test exercises can be used in selection procedures and provide applicants with the opportunity to demonstrate their ability in an area of work in chambers. Questions used in case studies, should be related to the type of work which the barrister in that set of chambers will be expected to do. Applicants should be advised in advance that this will form part of the interview.
17. When references are requested the referee should be asked to supply information that relates strictly to the selection criteria. There is considerable variation in the quality of the references that candidates can obtain, particularly in the case of students, and it is recommended that references should be used only in the final check on the selected candidates and should not be introduced into the selection process.
18. The terms of the offer should be set out in writing to pupils and tenants; they must not be directly or indirectly discriminatory; nor should they differ without good cause between one pupil or tenant and another. Chambers should only take the final decision on pupillages or tenancies after the round of interviews has been completed.
19. All documentation relating to selection decisions should be retained for 12 months. Chambers should respond positively to requests for feedback from candidates.
20. Where chambers have vacancies for experienced tenants, these should be advertised as widely as possible and notices should indicate the area of practice and number of years' call sought. Selection should be made in accordance with the principles set out above. There are two situations which may be dealt with outside the recommended section procedures. These are:
 - (i) the approach by a set of chambers to a particular barrister or barristers whom the chambers want to recruit because of their skills or area of practice and
 - (ii) the approach by a particular barrister or barristers to a set of

chambers who are not looking to recruit but who may be prepared to make an offer because of the barrister(s) skills or area of practice.

Chambers should take care that such recruitment can be justified both in terms of the needs of chambers and the skills of the barrister(s) being recruited. Chambers should check where barristers recruited in this way are invariably of the same sex or racial group that discrimination is not occurring.

21. When selecting tenants from pupils, chambers should take care to avoid subjective judgments in the assessment of the performance of pupils. An explicit framework for the assessment of pupils' work should be agreed by the selection committee. The decision about the offer of a tenancy to a former pupil should be made by more than one member of chambers. The pupil master/mistress and at least one other member of chambers with whom the pupil has worked should independently assess the pupil against the pre-determined criteria and record their assessments in writing before they are discussed. Chambers should record all opinions on the suitability of a pupil. The right of an unexplained veto should not be granted to any member of chambers.
22. Chambers should recognise the value of mini-pupillages both to potential applicants and to chambers themselves and should try to ensure fairness in the grant of mini pupillages each year.

CHAPTER 5 — Equality of Opportunity in Chambers

1. Every set of chambers should be in a position to state its commitment to equality of opportunity by reference to the Equality Code. Reference should be made to the statement in all material sent out to prospective applicants for mini-pupillages, pupillages, tenancy or employment in chambers.
2. In accordance with Annex C of the Bar's Code of Conduct, Chambers should specify in writing the role and duties of pupils in chambers, the role and duties of pupil masters/mistresses, the pattern of pupillage, the method for fairly distributing briefs and other work amongst working pupils, the checklists which apply, procedures for providing pupils with an objective assessment of their progress at regular intervals during pupillage, policy and procedures for the recruitment of tenants, policy and procedures in relation to pupils not taken on as tenants (including third-six months pupillages and squatting) and chambers complaints and grievance procedures.
3. Barristers should be encouraged by their heads of chambers to discuss their career development individually with the clerk. They should tell the clerk their views of their past allocation of work in relation to the development of their practices. Heads of chambers should provide the opportunity for consultation on practice development and should ensure that clerks know and observe the advice in this Code.
4. Heads of chambers are required by the Code of Conduct's Pupillage Guidelines to ensure that the distribution of work to all members of chambers, working pupils and squatters is carried out in a manner that is fair to all and without discrimination. All pupils in chambers are entitled to experience the range of training that a pupillage in that set of chambers offers.
5. Heads of chambers should ensure that the distribution of work to working pupils is reviewed every two months and to junior tenants at least every six months.

6. The distribution of unnamed work¹⁶ received by chambers and the re-distribution of work between members of chambers to pupils and junior tenants should be systematically monitored.
7. Heads of chambers should make clear to chambers' clerks that they must not accede to discriminatory instructions from professional clients, whether solicitors or other instructing agents. Counsel may be selected only on the basis of the skills and experience required for a particular case.
8. If a solicitor or instructing agent refuses to withdraw a discriminatory instruction the Code of Conduct (Annex C) requires that it should be reported at once to the head of chambers who must report it forthwith to the relevant Bar Council committee chairman. It should be noted that solicitors are bound by their practice rule and their statutory obligations not to practise discrimination.
9. The Bar Council's maternity leave guidelines recommend that a woman tenant's seat in chambers should remain open for up to one year while she takes maternity leave. Chambers should offer a period of 3 months maternity leave free of rent and chambers expenses.
10. Heads of chambers should ensure that there is open and objective recruitment for all chambers' staff vacancies. Recruitment and selection procedures for clerks and other staff employed by chambers should follow the approach set out in chapter 4 for the selection of pupils and tenants. Chambers should have a written staff grievance policy and a maternity leave and pay policy for female staff.

CHAPTER 6—Monitoring

The purpose of monitoring is to check on the effectiveness of equal opportunities policies and procedures.

1. Chambers should monitor all selection decisions and the distribution of work to junior tenants and pupils by race and sex. Selection monitoring data should be analysed after each major recruitment exercise or at least annually. A senior member of chambers should have specific responsibility for monitoring procedures.
2. Chambers should collect monitoring data by race and sex from a question on the application form or a separate monitoring form. Categories consistent with the census ethnic classifications are recommended. These are: white, Black—African, Black—Caribbean, Black—other (please specify), Indian, Pakistani, Bangladeshi, Chinese, and other (please specify).
3. The following stages of the selection process should be monitored: applications received, candidates shortlisted, candidates successful at interviews, terms and amounts of pupillage awards offered.
4. Where under-representation of a particular group is identified in the applicant monitoring data, chambers should consider the use of the positive action provisions of the Race Relations and Sex Discrimination Acts to increase the rate of applications from under-represented groups.

¹⁶ Unnamed work—work that comes into a chambers with no name or work that comes into chambers for a named barrister selected by a solicitor on the advice of the clerk, or returned work reallocated by the clerk.

5. Where equality targets are used they should be based on the existing situation in chambers and need to take into account available information on the representation of particular groups in the relevant populations (such as students seeking pupillage). Quotas should not be used and are unlawful.
6. Where work for second six months pupils or junior tenants is allocated by the clerk, or on the clerk's suggestion, this allocation should be systematically monitored. The ACE fees program, if available to chambers, can assist in this. Reasons for any differences in the quantity or type of work done or fees earned, or in the potential of the work for career development, between men, women, or different minority ethnic groups within chambers should be investigated and corrective action taken if necessary. The same principles apply to the allocation of work to pupils and barristers in chambers who are known to have a disability or who are openly gay, lesbian or bisexual.
7. Chambers which are measuring the effectiveness of their equal opportunities policy may wish to monitor the number of disabled applicants for pupillage, tenancy or employment. Questions about registration will not be appropriate as the majority of disabled people do not register.
8. The collection of data on sexual orientation is impractical because many lesbians, gay men and bisexuals conceal their sexual orientation.
9. Chambers should check at regular intervals that the advice in this Code has been observed by staff and members of chambers.

CHAPTER 7 — Complaints

1. Chambers should have written grievance procedures as part of general chambers management which should include procedures for handling complaints of discrimination and harassment. They should be brought to the attention of every new pupil, tenant and chambers' employee.
2. There should be procedures to deal with complaints that concern selection of pupils, tenants and staff from external and internal applicants (including pupils not offered tenancies), conduct of pupillage, distribution of work in chambers, pressure or instructions to discriminate, the distribution of work, and harassment or other discrimination originating within or outside chambers.
3. Chambers should nominate one or two senior members of chambers to act as informal advisors to potential complainants and to assist in the informal resolution of grievances.
4. When a complaint is made confidentiality should be maintained throughout any investigatory process as far as possible and appropriate in the circumstances. Names of complainants should not be released (save to those conducting the investigation and to the person complained against) without their consent.
5. The written procedure should indicate the allocation of responsibility for investigating complaints to at least two members of chambers, names of chambers' informal advisors, an undertaking that complainants will not be victimised nor will suffer detriment because of a complaint made in good faith, an undertaking regarding confidentiality, a requirement for the complaint to be made in writing, a time limit within which a written response should be

delivered, the range of remedial actions where complaints are substantiated, identification of the relevant Bar Council committees to which the complaints may be addressed and an indication of opportunities for supportive counselling provided by the associations and groups of women lawyers, members of minority ethnic groups, disabled people and lesbians or gay men. Confidential assistance may also be sought from the equal opportunities officers.

6. Complainants of unlawful racial or sex discrimination should be informed of their legal right to apply within six months of the incident to the county court (or within three months to an industrial tribunal for chambers' employees) and their right to consult the Commission for Racial Equality or the Equal Opportunities Commission.
7. Where actual or potential discrimination has been identified, remedial action should be taken by chambers.
8. A report on all complaints and findings should be made to the head of chambers. Chambers should maintain confidential records of all complaints and records of meetings. These should be reviewed annually to ensure that procedures are working effectively.

M: Guidance on Age Discrimination

AMENDMENT TO PARA.305 OF THE CODE OF CONDUCT Guidance on Interpretation

The Lord Chancellor has approved an amendment to the Code of Conduct which makes it professional misconduct to discriminate against an applicant for pupillage or tenancy on the ground of age *except* where such discrimination can be shown to be reasonably justifiable. The revised Para.305 has been circulated in the usual manner for Code of Conduct amendments but is attached here as **Appendix 1** to the guidelines.

The amendment prohibits discrimination on grounds of age except in the limited circumstances when it may be objectively justified. It does not demand any form of positive discrimination in favour of older applicants nor any reduction of the usual appropriate criteria in assessing their applications. Good practice guidelines for chambers are attached at **Appendix 2** for information.

This guidance document has been circulated to all sets of chambers and will be incorporated into the revised version of the *Equality Code for the Bar*.

Background to the Amendment

For some years the Bar Council has been aware of problems being experienced by mature students in obtaining pupillage. This has been one of the major focuses of comment on the Bar Council website's General Forum.

The analyses of the PACH and OLPAS statistics produced annually since 1998 for the Bar Council by Dr Twigg of Portsmouth University have shown that each year younger applicants have more success than older applicants. The latest analysis of the 1998-2001 statistics (ie four years of data) shows that, using the technique of logistic regression to assess the influence of age while controlling for other variables such as ethnicity, gender, degree class and university attended the effect of age is significant for all age groups with a general decrease in the chances of being offered a pupillage occurring with an increase in age apart from the oldest age group (see tables at **Appendix 3**).

This issue was first discussed by the Bar Council in February 2001 when it was agreed to undertake a consultation exercise with chambers, Circuits and Specialist Bar Associations.

The amendment has been drafted to take account of the responses, in particular the view that the Bar Council's age prohibition should be in the same terms as the EC Directive 2000/78/EC which establishes a framework for equal treatment in employment and provides for differences of treatment on grounds of age where such differences of treatment are "objectively and reasonably justified by a legitimate aim

..... and if the means of achieving that aim are appropriate and necessary.”.

The new provision in Para.305 applies to all pupillage and tenancy recruitment taking place after 10th July 2002. The new requirements should be drawn to the attention of members of chambers with responsibility for recruitment and selection (note this does not apply to staff recruitment).

For further guidance please contact the Equal Opportunities Officers at the Bar Council.

APPENDIX 1

- Para. 305.1 -** “A barrister must not in relation to any other person (including a client or another barrister or a pupil or a student member of an Inn of Court) discriminate directly or indirectly or victimise because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion.”
- Para.305.2** A barrister must not in relation to any offer of a pupillage or tenancy discriminate directly or indirectly against a person on grounds of age, save where such discrimination can be shown to be objectively and reasonably justifiable.
- Para. 305.3 -** “In respect of indirect discrimination, there is no breach of paragraphs 305.1 and 305.2 if the barrister against whom the complaint is brought proves that the act of indirect discrimination was committed without any intention of treating the claimant unfavourably on any ground in that paragraph to which the complaint relates.”

APPENDIX 2

AGE DISCRIMINATION IN PUPILLAGE AND TENANCY SELECTION

Guidance for Chambers

The Bar Council has agreed that “A barrister must not in relation to any offer of a pupillage or tenancy discriminate against a person on grounds of age, save where such discrimination can be shown to be objectively and reasonably justifiable.”.

Chambers should have regard to this guidance under Para.403(d) of the Code.

The amendment prohibits discrimination on the ground of age only. It does not demand any form of positive discrimination in favour of older applicants nor any reduction of the selection criteria chosen for the assessment of applications. It relates only to the selection of pupils and tenants and therefore has no application in other areas such as retirement or staff recruitment.

The *Equality Code for the Bar* sets out in detail recommendations for fair selection. These apply equally to the avoidance of age discrimination. Selection criteria should not explicitly or implicitly refer to age but should focus on the skills, abilities and potential of applicants when shortlisting. Where experience is required this should be stated by reference to years in practice rather than age or years of call.

In particular:

- Chambers may still set criteria with regard to levels and types of experience;
- Chambers may still consider the record and suitability of an individual who has, for example, pursued a number of careers without success and assess that individual's suitability for a career at the Bar in the light of that career history;
- Chambers may still take account of poor health (subject to the Disability legislation) as a factor against an applicant;
- Chambers should not screen applications by age nor set upper or lower age limits for pupillage and tenancy recruitment (except in the limited circumstances set out below);
- Chambers recruitment criteria should take account of the increased career mobility of barristers and others wishing to join the profession.

Objective Justification for Age Discrimination

The EC Directive 2000/78/EC establishes a framework for equal treatment in employment and occupation. The rule change in the Code of Conduct has been drafted to take account of the Directive's provisions.

Article 6 of the Directive provides for differences of treatment on grounds of age. In interpreting Para.1 of Article 6 "differences of treatment ... which are objectively and reasonably justified" still prohibit the application of a blanket exclusion of all candidates by reference to any age cut off point. A decision to refuse a candidate on grounds of age can be justified only where the individual circumstances including the professional experience of a particular candidate and the likely length of his or her professional life (a difficult prediction for the Bar) have been fully considered and the chambers has nevertheless concluded for legitimate business reasons that the application should be refused on the grounds of age.

In particular:

- Blanket exclusion of candidates by reference to any upper or lower age limit or age range would not be justifiable;
- each candidate must be considered individually in relation to the business needs of chambers;
- chambers are entitled to recover their investment in recruiting and training new pupils and tenants. A period of 5 – 10 years before retirement would be regarded as reasonable and in the absence of any specific retirement age a notional retirement age of 65 could be assumed. BUT it would still be necessary to consider each applicant individually to assess the likely period of practice before retirement or the extent to which an applicant's previous experience may contribute towards value to chambers or earnings potential over a shorter period, given that some members of chambers take up full-time judicial appointments at an increasingly early stage in their careers and that many barristers in independent practice leave within the first 10 years, it is impossible to make accurate assumptions about how long any individual will stay in chambers;
- some sets of chambers have indicated that they recruit only pupils or tenants with a reasonable chance of applying for Silk or a Judicial Appointment. This is unlikely to be regarded as reasonable because the age/experience bands for appointments are very wide. Even where candidates in the upper age range have no reasonable prospect of advancement nevertheless they may well make a valuable contribution to chambers as successful juniors;
- where a set of chambers, for whatever reason, finds it has an imbalance in the age range of members of chambers it may be justifiable to discriminate in pupillage or tenancy selection in order to secure a balance of ages;
- it is improbable that chambers would be able to justify imposing an upper/lower age limit on the grounds that its clients preferred younger/older barristers;

- assumptions about the reluctance of older applicants to undertake the more mundane tasks of pupillage or accept pupillage supervisors who are younger than them would not amount to justifiable reasons for rejection on the grounds of age.

APPENDIX 3

Extracts from: the Twigg Analysis of the latest PACH data

Table 4: Pupillage versus Age by Gender 1998-2001

		Age Category					
Pupillage		20-24	25-29	30-34	35-39	40-44	45+
Men	No	1243 73%	933 82%	461 84%	321 91%	154 95%	156 92%
	Yes	468 27%	203 18%	88 16%	31 9%	8 5%	14 8%
Women	No	1479 78%	661 78%	280 82%	242 91%	150 91%	114 96%
	Yes	429 23%	186 22%	61 18%	24 9%	15 9%	5 4%

Table 7: The percentage chance of being offered a pupillage by age group, university and degree classification for white males without a CPE/Diploma, 1998-2001

Age of applicant	University	Degree Classification		
		First	2:1	2:2
20-24	Oxbridge	87	64	37
	Old Civic	58	27	11
	New Civic	52	22	9
	Ex-Poly	32	12	4
25-34	Oxbridge	82 (87)	55 (65)	30 (39)
	Old Civic	50 (60)	21 (29)	8 (12)
	New Civic	43 (53)	17 (24)	17 (9)
	Ex-Poly	26 (34)	9 (12)	3 (4)
35-39	Oxbridge	69	37	17
	Old Civic	32	11	4
	New Civic	27	9	3
	Ex-Poly	14	4	1
40-44	Oxbridge	56 (76)	26 (47)	10 (23)
	Old Civic	22 (41)	7 (16)	2 (6)
	New Civic	17 (35)	5 (13)	2 (5)
	Ex-Poly	9 (20)	3 (6)	1 (2)
45+	Oxbridge	68	38	17
	Old Civic	33	12	4
	New Civic	27	9	3
	Ex-Poly	14	4	2

N: Written Standards for the Conduct of Professional Work

GENERAL STANDARDS

- 1 Introduction
- 1.1 These Standards are intended as a guide to the way in which a barrister should carry out his work. They consist in part of matters which are dealt with expressly in the Code of Conduct and in part of statements of good practice. They must therefore be read in conjunction with the Code of Conduct, and are to be taken into account in determining whether or not a barrister has committed a disciplinary offence. They apply to employed barristers as well as to barristers in independent practice, except where this would be inappropriate. In addition to these General Standards, there are Standards which apply specifically to the conduct of criminal cases.
- 2 General
- 2.1 The work which is within the ordinary scope of a barrister's practice consists of advocacy, drafting pleadings and other legal documents and advising on questions of law. A barrister acts only on the instructions of a professional client, and does not carry out any work by way of the management, administration or general conduct of a lay client's affairs, nor the management, administration or general conduct of litigation nor the receipt or handling of clients' money.
- 2.2 It is a fundamental principle which applies to all work undertaken by a barrister that a barrister is under a duty to act for any client (whether legally aided or not) in cases within his field of practice. The rules which embody this principle and the exceptions to it are set out in paragraphs 303, 601, 602, 603, 604 and 605 of the Code of Conduct.
- 3 Acceptance of Work
- 3.1 As soon as practicable after receipt of any brief or instructions a barrister should satisfy himself that there is no reason why he ought to decline to accept it.
- 3.2 A barrister is not considered to have accepted a brief or instructions unless he has had an opportunity to consider it and has expressly accepted it.
- 3.3 A barrister should always be alert to the possibility of a conflict of interests. If the conflict is between the interests of his lay client and his professional client, the conflict must be resolved in favour of the lay client. Where there is a conflict between the lay client and the Legal Aid Fund, the conflict must be resolved in favour of the lay client, subject only to compliance with the provisions of the Legal Aid Regulations.

- 3.4 If after a barrister has accepted a brief or instructions on behalf of more than one lay client, there is or appears to be a conflict or a significant risk of a conflict between the interests of any one or more of such clients, he must not continue to act for any client unless all such clients give their consent to his so acting.
- 3.5 Even if there is no conflict of interest, when a barrister has accepted a brief or instructions for any party in any proceedings, he should not accept a brief or instructions in respect of an appeal or further stage of the proceedings for any other party without obtaining the prior consent of the original client.
- 3.6 A barrister must not accept any brief or instructions if the matter is one in which he has reason to believe that he is likely to be a witness. If, however, having accepted a brief or instructions, it later appears that he is likely to be a witness in the case on a material question of fact, he may retire or withdraw only if he can do so without jeopardising his client's interests.
- 3.7 A barrister should not appear as a barrister:
- (a) in any matter in which he is a party or has a significant pecuniary interest;
 - (b) either for or against any local authority, firm or organisation of which he is a member or in which he has directly or indirectly a significant pecuniary interest;
 - (c) either for or against any company of which he is a director, secretary or officer or in which he has directly or indirectly a significant pecuniary interest.
- 3.8 Apart from cases in which there is a conflict of interests, a barrister must not accept any brief or instructions if to do so would cause him to be otherwise professionally embarrassed: paragraph 603 of the Code of Conduct sets out the general principles applicable to such situations.
- 4 Withdrawal from a Case and Return of Brief or Instructions
- 4.1 When a barrister has accepted a brief for the defence of a person charged with a serious criminal offence, he should so far as reasonably practicable ensure that the risk of a conflicting professional engagement does not arise.
- 4.2 The circumstances in which a barrister must withdraw from a case or return his brief or instructions are set out in paragraph 608 of the Code of Conduct; the circumstances in which he is permitted to do so are set out in paragraph 609 the circumstances in which he must not do so are set out in paragraph 610.
- 5 Conduct of Work
- 5.1 A barrister must at all times promote and protect fearlessly and by all proper and lawful means his lay client's best interests.

- 5.2 A barrister must assist the Court in the administration of justice and, as part of this obligation and the obligation to use only proper and lawful means to promote and protect the interests of his client, must not deceive or knowingly or recklessly mislead the Court.
- 5.3 A barrister is at all times individually and personally responsible for his own conduct and for his professional work both in Court and out of Court.
- 5.4 A barrister must in all his professional activities act promptly, conscientiously, diligently and with reasonable competence and must take all reasonable and practicable steps to ensure that professional engagements are fulfilled. He must not undertake any task which:
- (a) he knows or ought to know he is not competent to handle;
 - (b) he does not have adequate time and opportunity to prepare for or perform; or
 - (c) he cannot discharge within a reasonable time having regard to the pressure of other work.
- 5.5 A barrister must at all times be courteous to the Court and to all those with whom he has professional dealings.
- 5.6 In relation to instructions to advise or draft documents, a barrister should ensure that the advice or document is provided within such time as has been agreed with the professional client, or otherwise within a reasonable time after receipt of the relevant instructions. If it becomes apparent to the barrister that he will not be able to do the work within that time, he must inform his professional client forthwith.
- 5.7 Generally, a barrister should ensure that advice which he gives is practical, appropriate to the needs and circumstances of the particular client, and clearly and comprehensibly expressed.
- 5.8 A barrister must exercise his own personal judgment upon the substance and purpose of any advice he gives or any document he drafts. He must not devise facts which will assist in advancing his lay client's case and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:
- (a) any statement of fact or contention (as the case may be) which is not supported by his lay client or by his brief or instructions;
 - (b) any contention which he does not consider to be properly arguable;
 - (c) any allegation of fraud unless he has clear instructions to make such an allegation and has before him reasonably credible material which as it stands establishes a prima facie case of fraud; or

- (d) in the case of an affidavit or witness statement, any statement of fact other than the evidence which in substance according to his instructions, the barrister reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given viva voce.

5.9 A barrister should be available on reasonable notice for a conference prior to the day of hearing of any case in which he is briefed; and if no such conference takes place then the barrister should be available for a conference on the day of the hearing. The venue of a conference is a matter for agreement between the barrister and his professional clients.

5.10 A barrister when conducting proceedings at Court:

- (a) is personally responsible for the conduct and presentation of his case and must exercise personal judgment upon the substance and purpose of statements made and questions asked;
- (b) must not, unless asked to do so by the Court or when appearing before a tribunal where it is his duty to do so, assert a personal opinion of the facts or the law;
- (c) must ensure that the Court is informed of all relevant decisions and legislative provisions of which he is aware, whether the effect is favourable or unfavourable towards the contention for which he argues, and must bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;
- (d) must not adduce evidence obtained otherwise than from or through his professional client or devise facts which will assist in advancing his lay client's case;
- (e) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person;
- (f) must if possible avoid the naming in open Court of third parties whose character would thereby be impugned;
- (g) must not by assertion in a speech impugn a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation;
- (h) must not suggest that a victim, witness or other person is guilty of crime, fraud or misconduct or make any defamatory aspersion on the conduct of any other person or attribute to another person the crime or conduct of which his lay client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to his lay client's case, and which appear to him to be supported by reasonable grounds.

- 5.11 A barrister must take all reasonable and practicable steps to avoid unnecessary expense or waste of the Court's time. He should, when asked, inform the Court of the probable length of his case; and he should also inform the Court of any developments which affect information already provided.
- 5.12 In Court a barrister's personal appearance should be decorous, and his dress, when robes are worn, should be compatible with them.
- 6.1 Witnesses
- 6.1.1 The rules which define and regulate the barrister's functions in relation to the preparation of evidence and contact with witnesses are set out in paragraphs 704, 705, 706, 707 and 708 of the Code of Conduct.
- 6.1.2 There is no longer any rule which prevents a barrister from having contact with any witness.
- 6.1.3 In particular, there is no longer any rule in any case (including contested cases in the Crown Court) which prevents a barrister from having contact with a witness whom he may expect to call and examine in chief, with a view to introducing himself to the witness, explaining the court's procedure (and in particular the procedure for giving evidence), and answering any questions on procedure which the witness may have.
- 6.1.4 It is a responsibility of a barrister, especially when the witness is nervous, vulnerable or apparently the victim of criminal or similar conduct, to ensure that those facing unfamiliar court procedures are put as much at ease as possible.
- 6.1.5 Unless otherwise directed by the Court or with the consent of the representative for the opposing side or of the Court, a barrister should not communicate directly or indirectly about the case with any witness, whether or not the witness is his lay client, once that witness has begun to give evidence until it has been concluded.
- 6.2 Discussing the Evidence with Witnesses
- 6.2.1 Different considerations apply in relation to contact with witnesses for the purpose of interviewing them or discussing with them (either individually or together) the substance of their evidence or the evidence of other witnesses.
- 6.2.2 Although there is no longer any rule which prevents a barrister from having contact with witnesses for such purposes a barrister should exercise his discretion and consider very carefully whether and to what extent such contact is appropriate, bearing in mind in particular that it is not the barrister's function (but that of his professional client) to investigate and collect evidence.
- 6.2.3 The guiding principle must be the obligation of counsel to promote and protect his lay client's best interests so far as that is consistent with the law and with counsel's overriding duty to the court (Code of Conduct paragraphs 302, 303)

6.2.4 A barrister should be alert to the risks that any discussion of the substance of a case with a witness may lead to suspicions of coaching, and thus tend to diminish the value of the witness's evidence in the eyes of the court, or may place the barrister in a position of professional embarrassment, for example if he thereby becomes himself a witness in the case. These dangers are most likely to occur if such discussion takes place:

- (a) before the barrister has been supplied with a proof of the witness's evidence; or
- (b) in the absence of the barrister's professional client or his representative.

A barrister should also be alert to the fact that, even in the absence of any wish or intention to do so, authority figures do subconsciously influence lay witnesses. Discussion of the substance of the case may unwittingly contaminate the witness's evidence.

6.2.5 There is particular danger where such discussions:

- (a) take place in the presence of more than one witness of fact; or
- (b) involve the disclosure to one witness of fact of the factual evidence of another witness.

These practices have been strongly deprecated by the courts as tending inevitably to encourage the rehearsal or coaching of witnesses and to increase the risk of fabrication or contamination of evidence: R v Arif (1993) May 26; Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd [1992] BCLC 1104, [1994] 1 WLR 1271.

That is not to suggest that it is always inappropriate to disclose one witness' evidence to another. If the witness is one to be called by the other party, it is almost inevitable that a witness' attention must be drawn to discrepancies between the two statements. Discretion is, however, required, especially where the evidence of independent witnesses is involved.

6.2.6 Whilst there is no rule that any longer prevents a barrister from taking a witness statement in civil cases (for cases in the Crown Court see below), there is a distinction between the settling of a witness statement and taking a witness statement. Save in exceptional circumstances, it is not appropriate for a barrister who has taken witness statements, as opposed to settling witness statements prepared by others, to act as counsel in that case because it risks undermining the independence of the barrister as an advocate. The Cab-rank Rule does not require a barrister to agree to undertake the task of taking witness statements.

6.2.7 There is no rule which prevents a barrister from exchanging common courtesies with the other side's witnesses. However, a barrister should not discuss the substance of the case or any evidence with the other side's witnesses except in rare and

exceptional circumstances and then only with the prior knowledge of his opponent.

6.3 Criminal Cases in the Crown Court

6.3.1 Contested criminal cases in the Crown Court present peculiar difficulties and may expose both barristers and witnesses to special pressures. As a general principle, therefore, with the exception of the lay client, character and expert witnesses, it is wholly inappropriate for a barrister in such a case to interview any potential witness. Interviewing includes discussing with any such witness the substance of his evidence or the evidence of other such witnesses.

6.3.2 As a general principle, prosecuting counsel should not confer with an investigator witness unless he has also discharged some supervisory responsibility in the investigation and should not confer with investigators or receive factual instructions directly from them on matters about which there is or may be a dispute.

6.3.3 There may be extraordinary circumstances in which a departure from the general principles set out in paragraphs 6.3.1 and 6.3.2 is unavoidable. An example of such circumstances is afforded by the decision in Fergus (1994) 98 Crim. App R. 313.

6.3.4 Where any barrister has interviewed any potential witness or any such witness has been interviewed by another barrister, that fact shall be disclosed to all other parties in the case before the witness is called. A written record must also be made of the substance of the interview and the reason for it.

7 Documents

7.1 A barrister should not obtain or seek to obtain a document, or knowledge of the contents of a document, belonging to another party other than by means of the normal and proper channels for obtaining such documents or such knowledge.

7.2 If a barrister comes into possession of a document belonging to another party by some means other than the normal and proper channels (for example, if the document has come into his possession in consequence of a mistake or inadvertence by another person or if the document appears to belong to another party, or to be a copy of such a document, and to be privileged from discovery or otherwise to be one which ought not to be in the possession of his professional or lay client) he should:

- (a) where appropriate make enquiries of his professional client in order to ascertain the circumstances in which the document was obtained by his professional or lay client; and
- (b) unless satisfied that the document has been properly obtained in the ordinary course of events at once return the document unread to the person entitled to possession of it.

- 7.3.1 If having come into possession of such a document the barrister reads it before he realises that he ought not to, and would be embarrassed in the discharge of his duties by his knowledge of the contents of the document, then provided he can do so without prejudice to his lay client he must return his brief or instructions and explain to his professional client why he has done so.
- 7.3.2 If, however, to return his brief or instructions would prejudice his lay client (for example, by reason of the proximity of the trial) he should not return his brief or instructions and should, unless the Court otherwise orders, make such use of the document as will be in his client's interests. He should inform his opponent of his knowledge of the document and of the circumstances, so far as known to him, in which the document was obtained and of his intention to use it. In the event of objection to the use of such document it is for the Court to determine what use, if any, may be made of it.
- 7.4 If during the course of a case a barrister becomes aware of the existence of a document which should have been but has not been disclosed on discovery he should advise his professional client to disclose it forthwith; and if it is not then disclosed, he must withdraw from the case.
- 8 Administration of Practice
- 8.1 A barrister must ensure that his practice is properly and efficiently administered in accordance with the provisions of paragraph 304 of the Code of Conduct.
- 8.2 A barrister should ensure that he is able to provide his professional client with full and proper details of and appropriate justification for fees which have been incurred, and a proper assessment of any work to be done, so that both the lay client and the professional client are able to determine the level of any financial commitment which has been incurred or may be incurred.
- 9 Not used.

STANDARDS APPLICABLE TO CRIMINAL CASES

- 10 Introduction
- 10.1 These standards are to be read together with the General Standards and the Code of Conduct. They are intended as a guide to those matters which specifically relate to practice in the criminal Courts. They are not an alternative to the General Standards, which apply to all work carried out by a barrister. Particular reference is made to those paragraphs in the General Standards relating to the general conduct of a case (5.8), conduct in Court (5.10), discussion with witnesses (6.1, 6.2) and the use of documents belonging to other parties (7.1, 7.2, 7.3), which are not repeated in these standards.
- 11 Responsibilities of Prosecuting Counsel
- 11A The Standards and principles contained in this paragraph apply as appropriate to all practising barristers, whether in independent practice or employed and whether appearing as counsel in any given case or exercising any other professional capacity in connection with it.
- 11.1 Prosecuting counsel should not attempt to obtain a conviction by all means at his command. He should not regard himself as appearing for a party. He should lay before the Court fairly and impartially the whole of the facts which comprise the case for the prosecution and should assist the Court on all matters of law applicable to the case.
- 11.2 Prosecuting counsel should bear in mind at all times whilst he is instructed:
- (i) that he is responsible for the presentation and general conduct of the case;
 - (ii) that he should use his best endeavours to ensure that all evidence or material that ought properly to be made available is either presented by the prosecution or disclosed to the defence.
- 11.3 Prosecuting counsel should, when instructions are delivered to him, read them expeditiously and, where instructed to do so, advise or confer on all aspects of the case well before its commencement.
- 11.4 In relation to cases tried in the Crown Court, prosecuting counsel:
- (a) should ensure, if he is instructed to settle an indictment, that he does so promptly and within due time, and should bear in mind the desirability of not overloading an indictment with either too many defendants or too many counts, in order to present the prosecution case as simply and as concisely as possible;
 - (b) should ask, if the indictment is being settled by some other person, to see a copy of the indictment and should then check it;
 - (c) should decide whether any additional evidence is required and, if it is, should advise in writing and set out precisely what additional evidence is required with a view to serving it on the defence as soon as possible;

- (d) should consider whether all witness statements in the possession of the prosecution have been properly served on the defendant in accordance with the Attorney-General's Guidelines;
 - (e) should eliminate all unnecessary material in the case so as to ensure an efficient and fair trial, and in particular should consider the need for particular witnesses and exhibits and draft appropriate admissions for service on the defence;
 - (f) should in all Class 1 and Class 2 cases and in other cases of complexity draft a case summary for transmission to the Court.
- 11.5 Paragraphs 6 to 6.3.4 of the Written Standards for the Conduct of Professional Work refer.
- 11.6 Prosecuting counsel should at all times have regard to the report of Mr Justice Farquharson's Committee on the role of Prosecuting Counsel which is set out in Archbold. In particular, he should have regard to the following recommendations of the Farquharson Committee:
- (a) Where counsel has taken a decision on a matter of policy with which his professional client has not agreed, it would be appropriate for him to submit to the Attorney-General a written report of all the circumstances, including his reasons for disagreeing with those who instructed him;
 - (b) When counsel has had an opportunity to prepare his brief and to confer with those instructing him, but at the last moment before trial unexpectedly advises that the case should not proceed or that pleas to lesser offences should be accepted, and his professional client does not accept such advice, counsel should apply for an adjournment if instructed to do so;
 - (c) Subject to the above, it is for prosecuting counsel to decide whether to offer no evidence on a particular count or on the indictment as a whole and whether to accept pleas to a lesser count or counts.
- 11.7 It is the duty of prosecuting counsel to assist the Court at the conclusion of the summing-up by drawing attention to any apparent errors or omissions of fact or law.
- 11.8 In relation to sentence, prosecuting counsel:
- (a) should not attempt by advocacy to influence the Court with regard to sentence: if, however, a defendant is unrepresented it is proper to inform the Court of any mitigating circumstances about which counsel is instructed;
 - (b) should be in a position to assist the Court if requested as to any statutory provisions relevant to the offence or the offender and as to any relevant guidelines as to sentence laid down by the Court of Appeal;
 - (c) should bring any such matters as are referred to in (b) above to the attention of the Court if in the opinion of prosecuting counsel the Court has erred;

- (d) should bring to the attention of the Court any appropriate compensation, forfeiture and restitution matters which may arise on conviction, for example pursuant to sections 35-42 of the Powers of Criminal Courts Act 1973 and the Drug Trafficking Offences Act 1986;
- (e) should draw the attention of the defence to any assertion of material fact made in mitigation which the prosecution believes to be untrue: if the defence persist in that assertion, prosecuting counsel should invite the Court to consider requiring the issue to be determined by the calling of evidence in accordance with the decision of the Court of Appeal in *R v Newton* (1983) 77 Crim App R 13.

12 Responsibilities of Defence Counsel

12.1 When defending a client on a criminal charge, a barrister must endeavour to protect his client from conviction except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence charged.

12.2 A barrister acting for the defence:

- (a) should satisfy himself, if he is briefed to represent more than one defendant, that no conflict of interest is likely to arise;
- (b) should arrange a conference and if necessary a series of conferences with his professional and lay clients;
- (c) should consider whether any enquiries or further enquiries are necessary and, if so, should advise in writing as soon as possible;
- (d) should consider whether any witnesses for the defence are required and, if so, which;
- (e) should consider whether a Notice of Alibi is required and, if so, should draft an appropriate notice;
- (f) should consider whether it would be appropriate to call expert evidence for the defence and, if so, have regard to the rules of the Crown Court in relation to notifying the prosecution of the contents of the evidence to be given;
- (g) should ensure that he has sufficient instructions for the purpose of deciding which prosecution witnesses should be cross-examined, and should then ensure that no other witnesses remain fully bound at the request of the defendant and request his professional client to inform the Crown Prosecution Service of those who can be conditionally bound;
- (h) should consider whether any admissions can be made with a view to saving time and expense at trial, with the aim of admitting as much evidence as can properly be admitted in accordance with the barrister's duty to his client;
- (i) should consider what admissions can properly be requested from the prosecution;

- (j) should decide what exhibits, if any, which have not been or cannot be copied he wishes to examine, and should ensure that appropriate arrangements are made to examine them as promptly as possible so that there is no undue delay in the trial.
 - (k) should as to anything which he is instructed to submit in mitigation which casts aspersions on the conduct or character of a victim or witness in the case, notify the prosecution in advance so as to give prosecuting Counsel sufficient opportunity to consider his position under paragraph 11.8(e).
- 12.3 A barrister acting for a defendant should advise his lay client generally about his plea. In doing so he may, if necessary, express his advice in strong terms. He must, however, make it clear that the client has complete freedom of choice and that the responsibility for the plea is the client's.
- 12.4 A barrister acting for a defendant should advise his client as to whether or not to give evidence in his own defence but the decision must be taken by the client himself.
- 12.5.1 Where a defendant tells his counsel that he did not commit the offence with which he is charged but nevertheless insists on pleading guilty to it for reasons of his own, counsel should:
- (a) advise the defendant that, if he is not guilty, he should plead not guilty but that the decision is one for the defendant; counsel must continue to represent him but only after he has advised what the consequences will be and that what can be submitted in mitigation can only be on the basis that the client is guilty.
 - (b) explore with the defendant why he wishes to plead guilty to a charge which he says he did not commit and whether any steps could be taken which would enable him to enter a plea of not guilty in accordance with his profession of innocence.
- 12.5.2 If the client maintains his wish to plead guilty, he should be further advised:
- (a) what the consequences will be, in particular in gaining or adding to a criminal record and that it is unlikely that a conviction based on such a plea would be overturned on appeal;
 - (b) that what can be submitted on his behalf in mitigation can only be on the basis that he is guilty and will otherwise be strictly limited so that, for instance, counsel will not be able to assert that the defendant has shown remorse through his guilty plea.
- 12.5.3 If, following all of the above advice, the defendant persists in his decision to plead guilty
- (a) counsel may continue to represent him if he is satisfied that it is proper to do so;
 - (b) before a plea of guilty is entered counsel or a representative of his professional client who is present should record in writing the reasons for the plea;

- (c) the defendant should be invited to endorse a declaration that he has given unequivocal instructions of his own free will that he intends to plead guilty even though he maintains that he did not commit the offence(s) and that he understands the advice given by counsel and in particular the restrictions placed on counsel in mitigating and the consequences to himself; the defendant should also be advised that he is under no obligation to sign; and
- (d) if no such declaration is signed, counsel should make a contemporaneous note of his advice.

13 Confessions of Guilt

- 13.1 In considering the duty of counsel retained to defend a person charged with an offence who confesses to his counsel that he did commit the offence charged, it is essential to bear the following points clearly in mind:
- (a) that every punishable crime is a breach of common or statute law committed by a person of sound mind and understanding;
 - (b) that the issue in a criminal trial is always whether the defendant is guilty of the offence charged, never whether he is innocent;
 - (c) that the burden of proof rests on the prosecution.
- 13.2 It follows that the mere fact that a person charged with a crime has confessed to his counsel that he did commit the offence charged is no bar to that barrister appearing or continuing to appear in his defence, nor indeed does such a confession release the barrister from his imperative duty to do all that he honourably can for his client.
- 13.3 Such a confession, however, imposes very strict limitations on the conduct of the defence. a barrister must not assert as true that which he knows to be false. He must not connive at, much less attempt to substantiate, a fraud.
- 13.4 While, therefore, it would be right to take any objections to the competency of the Court, to the form of the indictment, to the admissibility of any evidence or to the evidence admitted, it would be wrong to suggest that some other person had committed the offence charged, or to call any evidence which the barrister must know to be false having regard to the confession, such, for instance, as evidence in support of an alibi. In other words, a barrister must not (whether by calling the defendant or otherwise) set up an affirmative case inconsistent with the confession made to him.
- 13.5 A more difficult question is within what limits may counsel attack the evidence for the prosecution either by cross-examination or in his speech to the tribunal charged with the decision of the facts. No clearer rule can be laid down than this, that he is entitled to test the evidence given by each individual witness and to argue that the evidence taken as a whole is insufficient to amount to proof that the defendant is guilty of the offence charged. Further than this he ought not to go.
- 13.6 The foregoing is based on the assumption that the defendant has made a clear confession that he did commit the offence charged, and does not profess to deal with the very difficult questions which may present themselves to a barrister when a series of inconsistent statements are made to him by the defendant before or during the proceedings; nor does it deal

with the questions which may arise where statements are made by the defendant which point almost irresistibly to the conclusion that the defendant is guilty but do not amount to a clear confession. Statements of this kind may inhibit the defence, but questions arising on them can only be answered after careful consideration of the actual circumstances of the particular case.

14 General

14.1 Both prosecuting and defence counsel:

- (a) should ensure that the listing officer receives in good time their best estimate of the likely length of the trial (including whether or not there is to be a plea of guilty) and should ensure that the listing officer is given early notice of any change of such estimate or possible adjournment;
- (b) should take all reasonable and practicable steps to ensure that the case is properly prepared and ready for trial by the time that it is first listed;
- (c) should ensure that arrangements have been made in adequate time for witnesses to attend Court as and when required and should plan, so far as possible, for sufficient witnesses to be available to occupy the full Court day;
- (d) should, if a witness (for example a doctor) can only attend Court at a certain time during the trial without great inconvenience to himself, try to arrange for that witness to be accommodated by raising the matter with the trial Judge and with his opponent;
- (e) should take all necessary steps to comply with the Practice Direction (Crime: Tape Recording of Police Interviews) [1989] 1 WLR 631.

14.2 If properly remunerated (paragraph 502 of the Code), the barrister originally briefed in a case should attend all plea and directions hearings. If this is not possible, he must take all reasonable steps to ensure that the barrister who does appear is conversant with the case and is prepared to make informed decisions affecting the trial.

15. Video Recordings

15.1 When a barrister instructed and acting for the prosecution or the defence of an accused has in his possession a copy of a video recording of a child witness which has been identified as having been prepared to be admitted in evidence at a criminal trial in accordance with Section 54 of the Criminal Justice Act 1991, he must have regard to the following duties and obligations:

- (a) Upon receipt of the recording, a written record of the date and time and from whom the recording was received must be made and a receipt must be given.
- (b) The recording and its contents must be used only for the proper preparation of the prosecution or defence case or of an appeal against conviction and/or sentence, as the case may be, and the

barrister must not make or permit any disclosure of the recording or its contents to any person except when, in his opinion, it is in the interests of his proper preparation of that case.

- (c) The barrister must not make or permit any other person to make a copy of the recording, nor release the recording to the accused, and must ensure that:
 - (i) when not in transit or in use, the recording is always kept in a locked or secure place, and:
 - (ii) when in transit, the recording is kept safe and secure at all times and is not left unattended, especially in vehicles or otherwise.
- (d) Proper preparation of the case may involve viewing the recording in the presence of the accused. If this is the case, viewing should be done:
 - (i) if the accused is in custody, only in the prison or other custodial institution where he is being held, in the presence of the barrister and/or his instructing solicitor.
 - (ii) if the accused is on bail, at the solicitor's office or in counsel's chambers or elsewhere in the presence of the barrister and/or his instructing solicitor.
- (e) The recording must be returned to the solicitor as soon as practicable after the conclusion of the barrister's role in the case. A written record of the date and time despatched and to whom the recording was delivered for despatch must be made.

16 Attendance of Counsel at Court

- 16.1 Prosecuting counsel should be present throughout the trial, including the summing-up and the return of the jury. He may not absent himself without leave of the Court; but, if two or more barristers appear for the prosecution, the attendance of one is sufficient.
- 16.2.1 Defence counsel should ensure that the defendant is never left unrepresented at any stage of his trial.
- 16.2.2 Where a defendant is represented by one barrister, that barrister should normally be present throughout the trial and should only absent himself in exceptional circumstances which he could not reasonably be expected to foresee and provided that:
 - (a) he has obtained the consent of the professional client (or his representative) and the lay client; and
 - (b) a competent deputy takes his place.
- 16.2.3 Where a defendant is represented by two barristers, neither may absent himself except for good reason and then only when the consent of the professional client (or his representative) and of the lay client has been obtained, or when the case is legally aided and the barrister thinks it necessary to do so in order to avoid unnecessary public expense.

- 16.2.4 These rules are subject to modification in respect of lengthy trials involving numerous defendants. In such trials, where after the conclusion of the opening speech by the prosecution defending counsel is satisfied that during a specific part of the trial there is no serious possibility that events will occur which will relate to his client, he may with the consent of the professional client (or his representative) and of the lay client absent himself for that part of the trial. He should also inform the judge. In this event it is his duty:
- (a) to arrange for other defending counsel to guard the interests of his client;
 - (b) to keep himself informed throughout of the progress of the trial and in particular of any development which could affect his client; and
 - (c) not to accept any other commitment which would render it impracticable for him to make himself available at reasonable notice if the interests of his client so require.
- 16.3.1 If during the course of a criminal trial and prior to final sentence the defendant voluntarily absconds and the barrister's professional client, in accordance with the ruling of the Law Society, withdraws from the case, then the barrister too should withdraw. If the trial judge requests the barrister to remain to assist the Court, the barrister has an absolute discretion whether to do so or not. If he does remain, he should act on the basis that his instructions are withdrawn and he will not be entitled to use any material contained in his brief save for such part as has already been established in evidence before the Court. He should request the trial judge to instruct the jury that this is the basis on which he is prepared to assist the Court.
- 16.3.2 If for any reason the barrister's professional client does not withdraw from the case, the barrister retains an absolute discretion whether to continue to act. If he does continue, he should conduct the case as if his client were still present in Court but had decided not to give evidence and on the basis of any instruction he has received. He will be free to use any material contained in his brief and may cross-examine witnesses called for the prosecution and call witnesses for the defence.
- 17 Appeals
- 17.1.1 Attention is drawn to the Guide to Proceedings in the Court of Appeal Criminal Division ("the Guide") which is set out in full its original form at (1983) 77 Crim App R 138 and is summarised in a version amended in April 1990 Volume 1 of Archbold at 7-173 to 7-184.
- 17.1.2 In particular when advising after a client pleads guilty or is convicted, defence counsel is encouraged to follow the procedures set out at paragraphs 1.2 and 1.4 of the Guide.
- 17.2 If his client pleads guilty or is convicted, defence counsel should see his client after he has been sentenced in the presence of his professional client or his representative. He should then proceed as follows:
- (a) if he is satisfied that there are no reasonable grounds of appeal he should so advise orally and certify in writing. Counsel is encouraged to certify using the form set out in Appendix 1 to the

Guide. No further advice is necessary unless it is reasonable for a written advice to be given because the client reasonably requires it or because it is necessary e.g. in the light of the circumstances of the conviction, any particular difficulties at trial, the length and nature of the sentence passed, the effect thereof on the defendant or the lack of impact which oral advice given immediately after the trial may have on the particular defendant's mind.

- (b) if he is satisfied that there are more reasonable grounds of appeal or if his view is a provisional one or if he requires more time to consider the prospects of a successful appeal he should so advise orally and certify in writing. Counsel is encouraged to certify using the form set out in Appendix 1 to the Guide. Counsel should then furnish written advice to the professional client as soon as he can and in any event within 14 days.

- 17.3 Counsel should not settle grounds of appeal unless he considers that such grounds are properly arguable, and in that event he should provide a reasoned written opinion in support of such grounds.
- 17.4 In certain cases counsel may not be able to perfect grounds of appeal without a transcript or other further information. In this event the grounds of appeal should be accompanied by a note to the Registrar setting out the matters on which assistance is required. Once such transcript or other information is available, counsel should ensure that the grounds of appeal are perfected by the inclusion of all necessary references.
- 17.5 Grounds of Appeal must be settled with sufficient particularity to enable the Registrar and subsequently the Court to identify clearly the matters relied upon.
- 17.6 If at any stage counsel is of the view that the appeal should be abandoned, he should at once set out his reasons in writing and send them to his professional client.

CODE OF CONDUCT AMENDMENTS

Amendment has been made to Paragraph [305](#) of the Code prohibiting discrimination in relation to pupillage or tenancy on grounds of age.

Amendment has been made to Paragraphs [403](#), [809 and 810](#) of the Code to clarify the rules concerning door tenancies and associate members of chambers.

Amendment has been made to Paragraphs [504](#), [1001](#) and [Annex I](#) of the Code to enable employed barristers to obtain rights to conduct litigation.

Amendment has been made to Paragraph [29](#) of the Complaints Rules to clarify the power of the PCCC to reconsider cases referred to it by the Legal Services Ombudsman. A subsequent amendment to Paragraph 13 of [Annex P](#) - The Adjudication Panels and Appeals Rules has also been made.

Regulation 2 of the [Disciplinary Tribunals Regulations](#) has been amended to allow retired judges to chair the tribunals.

The Rules on Right to Conduct Litigation for the Employed Bar have been approved by the Lord Chancellor ([Para 504, Annexe I](#)).

The following amendments were approved by the Bar Council of **20 March 2002**:

- (i) Abolition of the admonishment, (amendments to [Annexe J](#), [Annexe K](#) and [Annexe L](#)).
- (ii) Pupillage funding and advertising requirements (amendment to [Paragraph 404](#) and additional [Annex R](#)).
- (iii) [Pupillage Guidelines](#), (section 3 of the Code, first item).
- (iv) Guidelines on opinions under the Funding Code, (new [Annex E](#)).
- (v) Rules on advertising (amendment to [Paragraph 710](#) of the Code).

Amendments to Annexes J, K and L have been made to remove the power to admonish. This arose after confusion between the sanction of admonishment and reprimand. Having consulted the Inns, the Legal Services Ombudsman and lay representatives, it has been agreed that there is no need for two separate penalties of this sort and the power to admonish has, therefore, been removed. These amendments take effect from **9 April 2002**.

In relation to pupillage funding and advertising, amendment has been made to make it mandatory for chambers to advertise all pupillage vacancies and to make necessary arrangements for funding. Full guidelines are found in the new Annex R. The new

pupillage funding and advertising rules will apply to pupillages commencing on or after **1 January 2003**.

The Pupillage Guidelines in section 3 of the Code have been updated in line with amendments to pupillage funding and advertising requirements and take immediate effect.

Annex E to the Code of Conduct; the revised Funding Code Guidelines, are the equivalent of the Legal Aid guidelines that appeared in the Legal Aid Handbook and the Code of Conduct (and are still part of the miscellaneous guidance section being relevant to the work done under legal aid certificates issued before April 2000). They provide general guidance to barristers as to what must be contained in an advice to the Legal Services Commission as to the merits of funding or continuing to fund a case under the Funding Code. The revised Guidelines differ only in detail from the Guidelines that already appear in the Legal Services Commission manual at S.23 of Part C of Volume 3. This amendment takes effect from **23 March 2002**.

The amendment to Paragraph 710 concerns comparative advertising and was adopted following the Kentridge report in response to the Office of Fair Trading's report on competition in the professions. This amendment takes effect from **23 March 2002**.

The following provisions were approved on **23 March 2002**. They apply to any pupillage commencing on or after 1 January 2003:

New [Annex R](#) on Pupillage Funding and Advertising Requirements.

The following amendments were approved by the Lord Chancellor on **26 February 2002**:

Amendments to [Paragraph 404.2\(c\)](#) of the Code concerning proper arrangements for pupils and pupillage (including advertising of pupillage vacancies) and a new [Paragraph 404.3](#) relating to guidance issued by the Bar Council for the administration of chambers, pupillage and further training, and equal opportunities.

The following amendments were approved on 17 November 2001, to take effect from **1 February 2002**:

Amendments to [Paragraphs 403\(e\)](#) and [404.2\(f\)](#) of the Code concerning new complaints handling procedures for chambers. These require a barrister to respond to complaints promptly, courteously and in a manner which addresses the issues raised in accordance with a written procedure.

The following amendments were approved with effect from **17 November 2001**:

Minor changes to [Paragraph 603](#) and Annexes [G1](#) and [G2](#) designed to clarify precisely the circumstances in which barristers may not accept instructions from solicitors against whom a Direction has been made under The Withdrawal of Credit Scheme.

[401\(b\)](#) - an amendment to Paragraph 401(b) of the Code of Conduct to prevent barristers in independent practice acting as supervisors for the purpose of s.84(2) of the Immigration and Asylum Act 1999.

RULES AWAITING APPROVAL

Part II - Practising Requirements

General

Paragraph 202 (f)

(f) a barrister who practises as a barrister in independent practice or as an employed barrister may not ~~also practise as an employed barrister~~ supply legal services for reward other than in the course of his practice except as permitted by paragraph 806.

Paper copy amendments (with the exception of those awaiting approval by the Lord Chancellor) will be sent to chambers in due course. Any queries on the amendments should be addressed to the Professional Standards Department at 3 Bedford Row, 0207 242 0082.