



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Disciplinary Tribunal application for approval of changes to its appeals procedural rules

The Legal Services Board (“LSB”) has approved in part the application by the Solicitors Disciplinary Tribunal (“SDT”) for changes to its rules in respect of its appeals procedures. This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. Under section 178 of the Legal Services Act 2007 (“the Act”) any alterations to the rules of the SDT require approval by the LSB under Part 3 of Schedule 4 of the Act.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB’s rules.

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of the SDT's application for approval of changes to regulatory arrangements relating to its appeals procedures on 5 August 2011. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

Decision

6. The SDT's application was for approval of:
 - The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011
 - The Solicitors Disciplinary Tribunal (Appeals)(Amendment) Rules 2011

Current arrangements

7. The SDT is constituted as a statutory tribunal under Section 46 of the Solicitors Act 1974. Its jurisdiction covers:
 - Adjudication of alleged breaches by solicitors of rules and/or the Solicitors Code of Conduct 2007
 - The alleged misconduct of recognised bodies, registered foreign lawyers and persons employed by solicitors
 - Applications for restoration to the Roll of Solicitors
8. Under provisions in Schedule 16 of the Act, the jurisdiction of the Tribunal has been extended so that the SDT can hear appeals by solicitors and solicitor's employees against a disciplinary decision by the Solicitors Regulation Authority (SRA) to rebuke and impose financial penalties under section 44D of the Solicitors Act 1974. Schedule 16 also extends the jurisdiction of the SDT to hear appeals by recognised legal services bodies, their managers and employees against a decision by the SRA to rebuke or impose financial penalties under Schedule 2 of the Administration of Justice Act 1985.
9. Section 46 of the Solicitors Tribunal Act enables the tribunal to make rules about its procedures, and the power to make those rules has been extended to apply to its appellate jurisdiction.

Effect of rule changes

10. The SDT presently does not have procedural rules in place to deal specifically with appeals. It exercises its first instance jurisdiction under the Solicitors (Disciplinary Proceedings) Rules 2007. The SDT therefore decided that it needed to make separate and new rules, the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011. These are for the specific purpose of dealing with appeals under the Solicitors Act 1974 and the Administration of Justice Act 1985.

11. In drafting the rules the SDT has ensured that they are consistent with the Solicitors (Disciplinary Proceedings) Rules 2007 and took into account the treatment of appeals on licensing decisions by other authorities (such as those that will be used in appeals to the General Regulatory Chamber of the First Tier Tribunal in respect of licensing decisions of the CLC).
12. In assessing the application we identified no major issues. The SDT consulted the LSB in the development of the Rules to ensure they were compliant with the amendments enacted by the Act to the Solicitors Act 1974 and the Administration of Justice Act 1985.
13. We are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in relation to the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011
14. Copies of the rules agreed with the SDT are attached.

Rules that were not approved at this time

15. On 17 June 2011, the LSB granted an application from the Law Society of England and Wales for a recommendation to the Lord Chancellor that the Law Society be designated (through the SRA which will in practice carry out the Law Society's regulatory functions as a Licensing Authority) as a licensing authority for alternative business structures (ABS). As a licensing authority, the Law Society needs to have in place an appellate body to hear appeals in respect of licensing decisions relating to ABS. The Law Society has decided to use the SDT for that purpose. The Solicitors Disciplinary (Appeals) (Amendment) Rules 2011 will enable the SDT to do this.
16. To give effect to this, an order under section 80 of the Act has been laid before Parliament and that order needs to come into force before the Law Society can be designated as a licensing authority. Under sub-section 25(3)(b) of the Act the Board may refuse an application if granting it would be contrary to any provision made by the Act or any other enactment. On that basis the LSB has decided that it should not approve the Solicitors Disciplinary (Appeals) (Amendment) Rules 2011 until the Law Society is designated as a licensing authority.
17. Therefore the Solicitors Disciplinary (Appeals) (Amendment) Rules 2011 are not approved at this time. However, the LSB is minded to exempt these rules from the full rules approval process after the section 80 order comes into force, subject to the LSB being satisfied at the time that there are no further significant issues or alterations in relation to the rules.

Chronology

- The LSB confirmed receipt of an application from the SDT on 5 August 2011 for changes to the SDT's appeals procedural rules.
- The 28 day initial decision period for considering the application was extended to 26 September 2011 on 25 August 2011.
- This Decision Notice will be issued to the SDT on 16 September 2011.
- This Decision Notice will be published on the LSB's website on 19 September 2011.

Chris Kenny, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
16 September 2011**

STATUTORY INSTRUMENTS

2011 No.

LEGAL PROFESSION (ENGLAND AND WALES)

The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

Made - - - - - *[**[th/st] *****] 2011*

Coming into force - - - - - *[**[th/st] *****] 2011*

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SCHEDULE — FORMS

The Solicitors Disciplinary Tribunal in exercise of the powers conferred upon it by section 46 of the Solicitors Act 1974⁽²⁾ as applied by paragraph 14C(2) of Schedule 2 to the Administration of Justice Act 1985⁽³⁾ and section 44E(2) of the Solicitors Act 1974 makes the following Rules:

⁽²⁾ 1974 c. 47.

⁽³⁾ 1985 c.61.

PART 1

Introductory

Citation, commencement and application

1.—o These Rules may be cited as the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 and shall come into force on [**][th/st] [***] 2011.

(1) These Rules (except rule 30) apply in relation to—

- (a) appeals to the Tribunal under paragraph 14C of Schedule 2 to the Administration of Justice Act 1985; and
- (b) appeals to the Tribunal under section 44E of the 1974 Act (appeals against disciplinary action under section 44D).

Interpretation

2. In these Rules—

“the 1974 Act” means the Solicitors Act 1974;

“the 2007 Act” means the Legal Services Act 2007⁽⁴⁾;

“the 2007 rules” means the Solicitors (Disciplinary Proceedings) Rules 2007⁽⁵⁾;

“appeal” means a Schedule 2 appeal or a section 44E appeal;

“appellant” means—

- (a) a person who makes an appeal to the Tribunal; or
- (b) a person added or substituted as an appellant under rule 13o;

“the Board” means the Legal Services Board;

“clerk” has the same meaning as in the 2007 rules;

“direction” means a direction given under rule 9;

“Panel” means a panel appointed under rule 3 for the hearing of an appeal or any matter connected with an appeal;

“party” means the appellant or the respondent;

“practice direction” means a practice direction made under rule 10;

“the President” means the President of the Tribunal, appointed under rule 3 of the 2007 rules;

“respondent” means—

- (a) the person who made the decision in respect of which an appeal is made; or
- (b) a person added or substituted as a respondent under rule 13o;

a “Schedule 2 appeal” means an appeal of the type mentioned in rule 1(1)(a);

a “section 44E appeal” means an appeal of the type mentioned in rule 1(1)(b);

“the Society” means the Law Society and includes any duly constituted committee of the Law Society or any body or person exercising delegated powers of the Law Society;

“solicitor members” and “lay members” have the same meanings as in section 46 of the 1974 Act;

“the Tribunal” means the Solicitors Disciplinary Tribunal and where a Panel has been appointed for the hearing of an appeal or any matter connected with it, includes a Panel.

⁽⁴⁾ 2007 c. 29.

⁽⁵⁾ S.I. 2007 No. 3588.

PART 2

Constitution of appeal panels

Composition of panel

3.—○ A Panel of at least three members of the Tribunal shall be appointed by the Tribunal for the hearing of any appeal.

(1) [Unless the President otherwise directs, the majority of the Panel members shall be solicitor members.]

Appointment of chairman

4. The chairman of each Panel shall be appointed by the Tribunal and (unless the President determines otherwise) shall be a solicitor member.

Delegation

5.—○ The duties to be performed by the clerks shall, in addition to the duties listed in rule 3(11) of the 2007 rules, include—

- (a) appointing panels under rule 3o;
- (b) appointing a chairman of a Panel under rule 4; and
- (c) giving directions under rules 9, 13 and 19o.

(2) Paragraph □o is without prejudice to rule 3(11) of the 2007 rules.

(3) No later than the date on which expires the period of 14 days beginning with the date on which the Tribunal sends notice to a party of a decision made by a clerk in exercise of functions of a judicial nature under paragraph (1), that party may send an application in writing to the Tribunal for that decision to be considered afresh by a Panel or a single solicitor member.

(4) The following powers of the Tribunal may be exercised by a single solicitor member—

- (a) giving directions under rules 9, 13,14(2), (4) and (6), 15 and 19o;
- (b) [taking action under rule 11(1)[(a) and (b)]];
- (c) making a decision under rule 14o;
- (d) giving consent under rule 16(2).

PART 3

Appeal procedure

Preliminary steps

Notice of appeal

6.—○ An appellant must start proceedings for an appeal by sending or delivering a notice of appeal to the Tribunal.

(1) In the case of a Schedule 2 appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision in question under paragraph 14B(4) of Schedule 2 to the Administration of Justice Act 1985.

(2) In the case of a section 44E appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision in question under section 44D(4) of the 1974 Act.

(3) The notice of appeal must set out—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the basis on which the appellant has standing to start proceedings before the Tribunal;
- (e) the name and address of the respondent;
- (f) details of the decision or act to which the proceedings relate;
- (g) the result the appellant is seeking;
- (h) the grounds on which the appellant relies;
- (i) whether the appellant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate; and
- (j) any further information or documents required by a practice direction.

(4) The appellant must send or deliver with the notice of appeal a copy of any written record of the decision in respect of which the appeal is made, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(5) The appellant must send or deliver three additional copies of the notice of appeal and any accompanying documents to the Tribunal at the same time as the appellant sends or delivers the notice of appeal to the Tribunal.

(6) The appellant must send or deliver a copy of the notice of appeal and any accompanying documents to the respondent at the same time as the appellant sends or delivers the notice of appeal to the Tribunal.

Response to notice of appeal

7.—○ The respondent must send or deliver to the Tribunal a response to the notice of appeal so that it is received no later than the date on which expires the period of 28 days beginning with the date on which the respondent received the notice of appeal.

(1) The response must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(2) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document sent or delivered with the response.

(3) The respondent must send or deliver with the response—

- (a) a copy of any written record of the decision, in respect of which the appeal is made, and any statement of reasons for that decision, that the appellant did not send or deliver with the notice of appeal and the respondent has or can reasonably obtain; and
- (b) any documents relied upon by the respondent in making the decision in respect of which the appeal is made and which the respondent considers are relevant to the appeal.

(4) If the respondent sends or delivers the response to the Tribunal later than the time required by paragraph o or by any extension of time under rule 9(1)(a), the response must include a request for an extension of time and the reason why the response was not sent or delivered in time.

(5) The respondent must send or deliver three additional copies of the response and any accompanying documents to the Tribunal at the same time as the respondent sends or delivers the response to the Tribunal.

(6) The respondent must send or deliver a copy of the response and any accompanying documents to the appellant at the same time as it sends or delivers the response to the Tribunal.

Appellant's reply

8.—○ The appellant may send or deliver to the Tribunal—

- (a) a reply to the respondent's response; and
- (b) any additional documents relied upon by the appellant in the reply.

(2) Any reply and additional documents must be sent or delivered to the Tribunal so that they are received no later than the date on which expires the period of 14 days beginning with the date on which the appellant received the notice from the respondent.

(3) If the appellant sends or delivers a reply to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 9(1)(a) the reply must include a request for an extension of time and the reason why the reply was not sent or delivered in time.

(4) The appellant may send or deliver with the reply a list of documents on which the appellant relies in support of the appeal, and which the appellant did not send or deliver with the notice of appeal.

(5) The appellant must send or deliver three additional copies of the reply and any accompanying documents to the Tribunal at the same time as the appellant sends or delivers the reply to the Tribunal.

(6) The appellant must send or deliver a copy of any reply and any accompanying documents to the respondent at the same time as the appellant sends or delivers the reply to the Tribunal.

(7) If the appellant has sent or delivered a list of documents under paragraph (3), the appellant must within 7 days of receiving a request from the respondent or the Tribunal—

- (a) send or deliver to the respondent or Tribunal a copy of any document specified in the list (and in the case of the Tribunal, any additional copies of the document requested by the Tribunal, up to a maximum of four in number); or
- (b) make such document available to the respondent or Tribunal to read or copy.

Administration of appeals

Directions and case management

9.—○ The Tribunal may give a direction in relation to the conduct or disposal of appeal proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(1) In particular, and without restricting the general powers in paragraph o and rule 18, the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment (or of any rule made under another enactment) containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 15 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions which are relevant to the proceedings to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) require a party to provide a skeleton argument;
- (k) decide the place and time of any hearing;

- (l) make requirements about documentation and inspection;
- (m) stay proceedings;
- (n) suspend the effect of its own decision pending the determination by the High Court of an application for permission to appeal against, and any appeal of, that decision.

(2) A clerk may appoint a time and place for the review of the progress of the matter and shall notify the parties of the date, time and place of any such review.

(3) A clerk may refer to the Tribunal any matter for a decision or directions and the Tribunal may itself or on the application of any party make a decision on such terms as to the Tribunal shall appear just—

- (a) to adjourn any hearing listed for directions or for a substantive hearing;
- (b) to agree to the amendment of any document or the correction of any matter;
- (c) to make any directions which shall appear necessary or appropriate to secure the timely hearing of the appeal.

(4) Any hearing under this rule shall be held in public unless rules 23(1) or (2) apply.

Practice directions

10.—○ The Tribunal[(or a panel of Tribunal members consisting of not less than 5 members of whom no fewer than 2 shall be lay members)] may give such notices or make such directions concerning the practices or procedures of the Tribunal as are consistent with these Rules and as shall seem appropriate.

(1) The Tribunal shall promulgate notices or directions given or made under paragraph o under the authority of the President.

Failure to comply with rules, practice directions or tribunal directions

11.—○ An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the appeal or any step taken in the appeal.

(1) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 12;
- (d) otherwise barring or restricting a party's participation in the appeal.

(2) The Tribunal may not bar or restrict a party's participation in the appeal under paragraph (1)(d) without first giving the party an opportunity to make representations in relation to the proposed action.

Striking out a party's case

12.—○ The Tribunal must strike out the whole or a part of an appeal if the Tribunal does not have jurisdiction in relation to the appeal or that part of it.

(1) The Tribunal may strike out the whole or a part of an appeal if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the appeal or part of it;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the appeal fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(2) The Tribunal may not strike out the whole or a part of the appeal under paragraph o or (1)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(3) If the appeal, or part of it, has been struck out under paragraph (1)(a), the appellant may apply for the appeal, or part of it, to be reinstated.

(4) An application under paragraph (3) must be made in writing and received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent notification of the striking out to the appellant.

(5) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the whole or a part of the appeal is to be read as a reference to the striking out of the whole or a part of the response to the appeal; and
- (b) a reference to an application for the reinstatement of an appeal which has been struck out is to be read as a reference to an application for the reinstatement of a response to an appeal which has been struck out.

Addition, substitution and removal of parties

13.—○ The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(1) If the Tribunal gives a direction under paragraph ○ it may give such consequential directions as it considers appropriate.

(2) A person who is not a party may apply to the Tribunal to be added or substituted as a party.

(3) If a person who is entitled to be a party to an appeal by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

Prevention of disclosure or publication of documents and information

14.—○ The Tribunal may make a decision prohibiting the disclosure or publication of—

- (a) specified documents or information relating to any appeal proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be sent or delivered to the second party; and
- (b) send or deliver to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Tribunal's consent.

(6) The Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

(8) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send notice that a party has made an application for a direction under paragraph (6) to each other party.

(9) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of a decision made under paragraph (6) or a direction given under paragraph (2) or (6).

Lead cases

15.—○ This rule applies if—

- (a) two or more appeals have been started before the Tribunal;
- (b) in each such appeal the Tribunal has not made a decision finally disposing of all issues in the proceedings; and
- (c) the appeals give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more appeals falling under paragraph (1) as a lead case or lead cases; and
- (b) staying the other appeals falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send or deliver a copy of that decision to each party in each of the related appeals; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) No later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent or delivered a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related appeal.

(5) The Tribunal must give directions in respect of appeals which are stayed under paragraph (2)(b), providing for the disposal of or further directions in those appeals.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another appeal or other appeals are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related appeals should be set aside or amended.

Withdrawal

16.—○ Subject to paragraph (2), an appellant may give notice of the withdrawal of its appeal, or any part of it, and the respondent may do likewise in respect of its case against the appeal—

- (a) at any time before a hearing to consider the disposal of the appeal (or, if the Tribunal disposes of the appeal without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal, which may be given subject to such order relating to costs as the Tribunal shall think fit.

(3) A party which has withdrawn its appeal or case against the appeal may apply to the Tribunal for the appeal or case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal no later than the date on which expires the period of 28 days beginning with—

- (a) the date on which the Tribunal received the notice under paragraph o(a); or
 - (b) the date of the hearing at which the appeal or case was withdrawn orally under paragraph o(b).
- (5) The Tribunal must notify each party in writing of a withdrawal under this rule.

Consent orders

17.—○ The Tribunal may, at the request of the parties and only if it considers it appropriate, make a consent order disposing of the appeal proceedings and making such other appropriate provision as the parties have agreed.

(1) Despite any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph ○o, or provide reasons for the order.

General powers of Tribunal

18.—○ Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

(1) The Tribunal may dispense with any requirements of these Rules in respect of notices, statements or other documents, witnesses, service or time in any case where it appears to the Tribunal to be just so to do.

Disclosure, evidence and submissions

Disclosure, evidence and submissions

19.—○ Without restriction on the general powers in rule 9 and 18, the Tribunal may give directions in relation to an appeal as to—

- (a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;
- (e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
- (h) the time at which any evidence or submissions are to be sent or delivered.

(2) The Tribunal may—

- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair, disproportionate or unnecessary in the interests of justice to admit the evidence.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Written evidence

20.—○ The Tribunal may in its discretion, in respect of a whole case or of any particular fact or facts, proceed and act upon evidence given by Statement.

(1) Every Statement upon which any party proposes to rely shall be sent or delivered to the clerk and to all other parties no later than 21 days before the date fixed for the hearing of the appeal together with a notice in the form of Form 1 in the Schedule.

(2) Any party on whom a notice has been served under paragraph (1) and who requires the attendance, at the hearing, of the witness in question shall, no later than 9 days before the date of the hearing require, in writing, the other party to produce the witness at the hearing.

(3) If no party requires the attendance of a witness in accordance with the provisions of this rule, the Tribunal may accept the Statement in question in evidence.

(4) If any party intends to call as a witness any person who has not produced a Statement, he must, no later than 10 days before the date fixed for the hearing, notify the clerk and any other party to the proceedings of his intention and forthwith send or deliver a copy of a written proof of evidence to the other party and lodge five copies of the proof with the clerk.

(5) In this rule, “Statement” means a written statement (including a witness statement) containing a statement that the party putting forward or making the Statement believes the facts stated in the Statement are true.

Hearings, decisions and re-hearings

Decision with or without a hearing

21.—○ The Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.

(2) Despite anything to the contrary in these Rules, if the Tribunal holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Tribunal may dispose of the proceedings without holding any further hearing.

Listing of appeal hearing

22.—○ Unless the Tribunal has made directions in respect of the hearing of an appeal, a clerk shall appoint a date for the hearing by the Tribunal and shall give notice of the date to the parties.

(1) The hearing shall not, unless all the parties have agreed or the Tribunal has so ordered, take place sooner than the date on which expires the period of 28 days beginning with the date of service of the notice appointing the date of the hearing.

Public or private hearings

23.—○ Subject to paragraphs (1) and (2) every appeal hearing shall take place in public.

(1) Any party and any person who claims to be affected by an appeal may seek a decision from the Tribunal that the hearing or part of it be conducted in private on the grounds of—

- (a) exceptional hardship; or
- (b) exceptional prejudice,

to a party, a witness or any person affected by the appeal.

(2) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private and make such decision as shall appear to it to be just and proper.

(3) The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private if—

- (a) the Tribunal is satisfied that it would have granted an application under paragraph (1) had one been made; or
- (b) in the Tribunal's view a hearing in public would prejudice the interests of justice.

(4) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to the requirement at rule 14(9); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Decisions

24.—○ The Tribunal may announce a decision orally at a hearing of or relating to an appeal or may reserve its decision for announcement at a later date. In either case the announcement shall be made in public.

(1) Subject to rule 14(9), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings—

- (a) an order stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(2) The Tribunal may provide written reasons for any decision to which paragraph (1) does not apply.

(3) An order under paragraph (1)(a) shall be signed by a member of the Tribunal upon the announcement of the decision and shall, subject to paragraph (4) be filed forthwith with the Society.

(4) The Tribunal may suspend the filing of an order under paragraph (1)(a) if it appears to the Tribunal that there is good reason to do so, in which event the decision shall not take effect until the order is filed with the Society.

(5) Subject to rule 14(9), the Tribunal may publicise a decision in such manner as it thinks fit.

Re-hearing where a party neither appears nor is represented

25.—○ At any time before the date on which expires the period of 14 days beginning with the date on which an order was provided to the party under rule 24(1), a party may apply to the Tribunal for a re-hearing of an appeal if—

- (a) he neither attended in person nor was represented at the hearing of the appeal in question; and
- (b) the Tribunal determined the appeal in his absence.

(2) An application for a re-hearing under this rule shall be made in the form of Form 2 in the Schedule and shall be supported by a statement setting out the facts upon which the applicant wishes to rely.

(3) If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing shall be held before a Panel comprised of different members from those who heard the original appeal.

PART 4

Miscellaneous

Sending and delivery of documents

26.—○ Any document to be sent or delivered to the Tribunal or to a party under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid first class post or by document exchange, or delivered by hand, to the address specified for the proceedings;
- (b) sent by fax (in the case of documents to be sent or delivered to the Tribunal, to the number specified for the proceedings); or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to send or deliver documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender send or deliver a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

(6) If a document submitted to the Tribunal is not written in English, it must be accompanied by an English translation.

Calculating time

27.—○ An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(1) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(2) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971⁽⁶⁾.

Representatives

28.—○ A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(1) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal written notice of the representative's name and address, together with a copy of the notice.

(2) A party who sends or delivers a notice under paragraph (1) must, at the same time, send or deliver a copy of the notice to the other party.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

⁽⁶⁾ 1971 c. 80.

- (a) must send or deliver to the representative any document which, at any time after the appointment, is required to be sent or delivered to the represented party, and need not send or deliver that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (1) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (1) to (4) do not apply to a person who accompanies a party under paragraph (5).

(7) In this rule “legal representative” means a person who, for the purposes of the 2007 Act, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act, an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.

Costs

29.—○ The Tribunal may, at any stage of an appeal, make such order as to costs as the Tribunal shall think fit, including an order—

- (a) disallowing costs incurred unnecessarily; or
- (b) that costs be paid by any party judged to be responsible for wasted or unnecessary costs, whether arising through failure to comply with time limits or otherwise.

(2) The Tribunal may order that any party bear the whole or a part or a proportion of the costs.

(3) The amount of costs to be paid may either be fixed by the Tribunal or be subject to detailed assessment by a Costs Judge.

(4) The Tribunal may also make an order as to costs under this rule where any appeal is withdrawn or amended.

Amendment of 2007 rules

30.—○ The 2007 rules are amended as follows.

- (1) In Form 6 in the Schedule, for “21 days” substitute “9 days”.

Signed by authority of the Solicitors Disciplinary Tribunal

Jeremy Barnecutt
President

[*][th][st] [Month] 2011

**SCHEDULE
FORMS**

Form 1

Rule 20(1)

FORM of NOTICE to accompany Statement of Evidence

Number.....

IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

AND IN THE MATTER OF

.....

TAKE NOTICE that the [appellant][respondent] proposes to rely upon the statement(s) listed below, copies of which are served herewith.

If you wish any person who has made one of these statements to be required to attend the hearing as a witness you must, not less than 9 days before the date set down for the hearing of the appeal, notify me and the Clerk to the Tribunal to that effect. In the event of your failure to do so the Tribunal may accept the statement in question in evidence.

LIST

- | | Date of Statement | Name of Person who made the Statement |
|----|-------------------|---------------------------------------|
| 1. | | |
| 2. | | |
| 3. | | |

Date:

Signed:

Address:

Form 2

Rule 25

FORM of APPLICATION for a Rehearing

Number:.....

IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

AND IN THE MATTER OF

.....

Number of Tribunal case in respect of which a rehearing is requested

I APPLY under Rule 25o of the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 that the above-mentioned case be reheard by the Tribunal. The facts upon which I rely in support of this application are set out below:

(set out here full details of the facts on which the applicant for a rehearing relies and include the reasons why the person applying for the rehearing did not appear or was not represented before the Tribunal at the earlier hearing and set out all matters which he wishes to place before the Tribunal in mitigation or otherwise).

Dated:
Signature:
Address:

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules regulate procedure for the making, hearing and determination of appeals made to the Solicitors Disciplinary Tribunal in relation to decisions made by the Law Society under section 44D of the Solicitors Act 1974 and paragraph 14C of Schedule 2 to the Administration of Justice Act 1985. They also make a minor amendment to one of the forms in the Schedule to the Solicitors (Disciplinary Proceedings) Rules 2007.

In particular, the rules make provision about the following—

- (1) the constitution of appeals panels,
- (2) procedure and rules of evidence,
- (3) other miscellaneous matters.