



## Summary of decision

The purpose of this summary sheet is to provide a high level and accessible summary of the LSB's decision. Readers are recommended to read the formal decision notice below for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 ("the Act").**

The LSB's decision is to grant in full the application from the Solicitors Disciplinary Tribunal ("the SDT") to make changes to its regulatory arrangements by revoking the Solicitors (Disciplinary Proceedings) Rules 2007 and replacing it with new Solicitors (Disciplinary Proceedings) Rules 2019.

The most significant change is to replace the criminal standard of proof with the civil standard in first instance proceedings before the SDT.

The new rules also:

- introduce an overriding objective for the SDT
- provide for standard directions to be issued in SDT cases
- confirm when case management hearings can and must be held
- set out rules for adjournments, disclosure and applications related to agreed outcomes
- set out rules and procedure for adverse inferences
- introduce a requirement for a statement of means in relation to representations made on costs.

Following the assessment of the SDT's application, the LSB has concluded that the changes do not meet the refusal criteria in the Act.

## Decision notice

### **The Solicitors Disciplinary Tribunal's application to make changes to its regulatory arrangements in order to replace its Solicitors (Disciplinary Proceedings) Rules 2007 with new Solicitors (Disciplinary Proceedings) Rules 2019**

1. The Legal Services Board ("**LSB**") has granted an application from Solicitors Disciplinary Tribunal ("**SDT**") for approval of changes to its regulatory arrangements in order to revoke the Solicitors (Disciplinary Proceedings) Rules 2007 and replace it with new Solicitors (Disciplinary Proceedings) Rules 2019.
2. This decision notice sets out the decision taken, including a brief description of the changes.
3. The SDT is constituted as a statutory tribunal under Section 46 of the Solicitors Act 1974. Section 46 enables the Tribunal to make rules about its procedures. Under section 178 of the Legal Services Act 2007 ("**the Act**") any alterations to the rules of the SDT do not have effect unless approved by the LSB under Part 3 of Schedule 4 to the Act. The notes at page 11 of this notice explain the statutory basis for the decision.
4. The chronology for the LSB's handling of this application is also set out below.

## Chronology

- The SDT sent an application to the LSB on 7 May 2019.
- The LSB confirmed receipt of an application from the SDT on 7 May 2019.
- The 28-day initial decision period for considering the application ended on 3 June 2019.
- An extension notice was issued on 31 May 2019 extending the initial decision period to 4 August 2019.
- This decision notice is effective from 25 July 2019.
- This decision notice will be published on our website on 29 July 2019.

## Background

5. On 7 May 2019, the SDT submitted an application to the LSB for approval of alterations to its regulatory arrangements in order to revoke its Solicitors (Disciplinary Proceedings) Rules 2007 and replace them with new Solicitors (Disciplinary Proceedings) Rules 2019. The rules regulate procedure for the making, hearing and determination of applications made to the SDT.
6. The most significant change being proposed at this time is an alteration to the standard of proof used in disciplinary proceedings before the SDT. This is an alteration from the criminal standard ('beyond reasonable doubt') to the civil standard ('on the balance of probabilities').

7. In addition the SDT is proposing a series of further amendments that are significant enough so as to require its 2007 rules being replaced.
8. The SDT notes in its application the history of the standard of proof in professional disciplinary proceedings and the fact that the vast majority of professional tribunals have switched from the criminal standard to the civil standard.
9. The SDT also refers to the High Court's observation in The Solicitors Regulation Authority v Solicitors Disciplinary Tribunal [2016] EWCH 2862 (Admin) that the appropriate standard of proof was ripe for reconsideration.
10. The SDT further indicated that its existing rules were made in 2007 and required updating.
11. As a consequence the SDT made the decision to issue a consultation in July 2018 on the making of new procedural rules which would include a clear rule confirming the standard of proof to be applied.
12. The consultation received 28 responses. The majority of respondents were from solicitors and solicitors' representative groups and were in favour of retaining the criminal standard of proof. Those in favour of a change included the SRA, the Legal Services Consumer Panel ("**the Panel**") and other regulatory bodies.
13. Consultees also provided specific comments on the various rule changes being proposed by the SDT.
14. The SDT issued a consultation response paper on 8 April 2019 which was published alongside its application at Annex 4<sup>1</sup>. In the response paper the SDT confirmed its intention to alter the standard of proof to the civil standard as it concluded that it was in the public interest to do so. The SDT also confirmed in its response paper that it would proceed with the proposed wider amendments to its rules.

## **Proposed changes**

### Standard of Proof

15. As set out above, the SDT is proposing to alter the standard of proof applied in disciplinary proceedings. The SDT has specified that the standard of proof to be applied is the standard applicable in civil proceedings. This is set out within rule 5 of the new 2019 rules.

### Practice directions codified in new rules

16. The application seeks to replace the existing Solicitors (Disciplinary Proceedings) Rules 2007 with new 2019 rules. Within the proposed rules are eight new provisions which codify existing practice directions and standard directions. These are set out as follows:

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<sup>1</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2019/Annex\\_4.pdf](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2019/Annex_4.pdf)

- *Overriding objective*: the SDT is proposing to give its current Practice Direction 6 the status of a rule (Rule 4). It is setting out as its overriding objective not only the requirement to deal with cases justly but also at proportionate cost.
- *Standard directions*: the SDT is also proposing to set out a rule (Rule 20) for issuing standard directions. Currently standard directions procedures can be found in part within existing Practice Direction 6 and in part from established practice. The SDT has altered drafting for concision and defined terms to provide clarity on what the relevant procedural documents are.
- *Case management hearings*: the SDT has set out when case management hearings are to be heard (Rule 21). This is another step to bring established practice into the rules.
- *Adjournments*: a 2002 Policy/Practice Note currently deals with adjournments. The proposed rule (Rule 23) sets out what documentary evidence is required to apply for an adjournment and who would deal with such an application.
- *Agreed outcomes*: provision for agreed outcomes are currently set out in the SDT's Standard Directions. The SDT is proposing to set out in the rules (Rule 25) the way in which applications for processing and considering submissions on agreed outcomes will be dealt with.
- *Disclosure*: currently procedure relating to applications for disclosure is dealt with in Practice Direction 2. The SDT is proposing to ensure the parties have clarity by moving this to its rules (Rule 26) and setting out the powers of the SDT in respect of making orders for disclosure.
- *Adverse Inferences*: the SDT's power to draw inferences is currently contained within Practice Direction 5. The SDT proposes to incorporate this into its rules (Rule 33).
- *Costs*: the requirement for circumstances in which a statement of means is to be provided is currently set out in Practice Direction 6. The SDT is proposing to incorporate this into the rules (Rule 43(5)).

#### Other new rules

17. In addition to the proposed alteration to the standard of proof and the eight changes above there are a further 27 proposed new rules or sub-sections of rules. Largely these alterations:

- reflect established practice
- update the rules where there are outdated references
- provide consistency with the SDT's Appeal Rules 2011
- assist with effective case management
- provide greater clarity to parties with additional transparency on the processes and procedures of the SDT.

18. The key new rules are:

- Rule 8(5) relating to the removal of clerks is now only applicable to the Clerk of the Tribunal. The equivalent provision Rule 3(8) of the 2007 rules applied to any clerk. The SDT has set out that matters in relation to a clerk other than

the Clerk to the Tribunal would be dealt with in accordance with employment law and practice.

- Rule 8(6)(i) widens the power of clerks to allow them to consider applications for substituted service. It is intended to improve efficiency. It is further set out at Rule 46.
- Rule 10 provides for functions that single solicitor members are able to perform. It is intended to improve efficiency and provide consistency with the Appeal Rules 2011.
- Rule 18 sets out the procedure to be followed for applications to vary or remove conditions on practice.
- Rule 30 sets out provisions for expert evidence. This is intended to provide clarity and bring the rules into line with the Civil Procedure Rules.
- Rule 31 sets out the procedure to be followed if an interpreter is required.
- Rule 34 provides a procedure for applications to anonymise the cause list<sup>2</sup> published by the SDT. This is intended to provide clarity and transparency.
- Rule 35(6) sets out limited circumstances in which the SDT can exclude someone from a hearing.
- Rule 35(9) provides for the SDT to prohibit the disclosure or publication of anything which is likely to lead to the identification of a person who the SDT considers should not be identified.
- Rule 35(10) provides for the SDT to prohibit disclosure of documents or information in circumstances where such disclosure is likely to cause serious harm and it is in the interests of justice to make such a direction.
- Rule 40(5) provides for a 'slip rule' which allows for clerical errors or omissions to be corrected in a judgment or memorandum.
- Rule 41(2) requires the SDT to ask the SRA whether there are any previous sanctions against respondents that the SDT would not be aware of.

## **Key issues considered in the assessment**

19. The LSB welcomes the SDT's move to the civil standard of proof. This is consistent with the LSB's position, as set out in its 2014 report on regulatory sanctions<sup>3</sup>, that there should be consistent use of the civil standard of proof across the legal services regulators. This change will be the last such change to the civil standard of proof across the regulators and will bring consistency across all of legal services regulation.

20. Having considered the SDT's rule change application and supporting documents, the LSB makes the following key points in relation to the application.

## **Equality Impact Assessment**

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<sup>2</sup> A published schedule of cases to be heard on a specific day

<sup>3</sup>Regulatory sanctions and appeals processes; An assessment of the current arrangements'

[https://www.legalservicesboard.org.uk/projects/thematic\\_review/pdf/20140306\\_LSB\\_Assessment\\_Of\\_Current\\_Arrangements\\_For\\_Sanctions\\_And\\_Appeals.pdf](https://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf)

21. The SDT annexed an equality impact assessment<sup>4</sup> to its application. It concluded that there was no evidence that the proposed changes would affect any one group of respondents disproportionately regardless of whether they had a protected characteristic.
22. The SDT also indicated within the annex that it was aware the SRA was intending to publish a report on its disciplinary track record. The SDT has confirmed it will carefully consider the contents of the report once it has been published.
23. The LSB asked the SDT what action it would take if the SRA report flagged issues that were relevant to the changes being proposed at this time.
24. The SDT explained its view that it was unlikely that the SRA report would flag such issues. However, if the report does flag concerns, such as a disparity in sanctions being imposed on different groups of people, the SDT would consider how to address the disparity in the future.
25. The LSB notes the commitment by the SDT to give careful consideration to the SRA report and expects the SDT to take appropriate action if the SRA report identifies any negative equality outcomes.

#### Overriding Objective

26. The SDT is proposing a new rule which sets out the overriding objective of the rules. The overriding objective proposed is “to enable the Tribunal to deal with cases justly and at proportionate cost”. The current overriding objective is set out in a Practice Direction dated October 2013. The SDT’s application set out that such an objective is commonplace in other professional disciplinary jurisdictions and court rules.
27. The LSB asked the SDT for more detail on the likely impact of the overriding objective being codified in the 2019 rules. The LSB also asked why the overriding objective currently in the Practice Direction was being amended in the proposed new rule to set out a requirement of dealing with cases at “proportionate cost”.
28. The SDT explained its view that the overriding objective protects and promotes the public interest by helping to ensure allegations of professional misconduct are dealt with efficiently and expeditiously. The SDT also expressed a view that the proportionality element of the overriding objective supports the rule of law in that it is intended to ensure that, so far as is practicable, the parties are on equal footing.
29. The SDT confirmed that the requirement for proportionate cost was something supported by respondents to its consultation that commented on it. It considers that the inclusion of proportionality in the overriding objective highlights to all parties the need to ensure that costs incurred are reasonable and properly incurred.

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<sup>4</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2019/Annex\\_3.pdf](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2019/Annex_3.pdf)

30. The SDT explained that its use of the wording “as far as is practicable” within its proposed rules is an important caveat that ensures the SDT continues to have discretion when it comes to dealing with “proportionate cost”.
31. The SDT also highlighted its consideration of mirror overriding objective provision in the Civil Procedure Rules and in other court and tribunal rules.
32. The LSB is satisfied in view of the additional information provided by the SDT, that it has given careful consideration to the inclusion of the overriding objective, with the requirement of proportionality, in the new 2019 rules.

#### Future use of practice directions

33. The SDT’s application proposes to codify all of its current practice directions by making provision for them in the rules. However, it intends to retain the power to issue practice directions under the proposed new rules. The LSB asked how the SDT envisaged using its power to issue practice directions given that the existing practice directions have been determined to require the status of rules.
34. The SDT explained that practice directions are devices to regulate procedural matters. It provided the example of the Civil Procedure Rules and how practice directions give advice on interpretation of the rules. It currently envisages a practice direction to assist with the practical steps required in relation to its proposed Agreed Outcomes<sup>5</sup> procedure. However, the SDT has also confirmed that it will keep under review whether further practice directions are required.
35. We note it is proper to use practice directions to assist with procedural matters and in the interpretation of rules. However, caution should be exercised to ensure that any practice direction is on the existing rules themselves and not making rules. The latter will require the LSB’s approval as regulatory arrangements. In circumstances where the SDT is uncertain, it should seek clarification by providing draft practice directions to the LSB. This will enable the LSB to provide a view on whether or not the SDT should be applying for a full rule change rather than issuing a practice direction.

#### Consideration of representations received during the assessment period

36. During the assessment period, the LSB received correspondence from the Panel raising concerns about the application.
37. While there is no formal public consultation requirement under Part 3 of Schedule 4 to the Act in considering this application, the LSB considered the issues raised in the correspondence it received during the assessment period, to the extent that they were relevant to the decision. In particular, the correspondence was reviewed to establish whether issues had been raised that had not previously been identified through the SDT’s public consultation process, or which were not addressed in the application.

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<sup>5</sup> The process whereby parties to a disciplinary matter can reach agreement on certain facts and a proposed penalty.

38. For the purposes of transparency, the representations from the Panel<sup>6</sup> were published alongside the application on the LSB's website. The correspondence was also sent by the LSB to the SDT. The SDT provided a response to the correspondence which has also been published alongside this decision on the LSB's website.
39. There were three main issues raised in the Panel's correspondence that were included in the LSB's assessment. These are explained below.

*a) Concern over the SDT's decision not to alter the composition of its disciplinary panels*

40. The SDT has not proposed changing the required composition of its disciplinary panels to require a lay majority and therefore has not proposed amending its regulatory arrangements. However, in its consultation response document the SDT did set out how it considered the suggestion arising from its consultation that disciplinary panels should have a lay majority.
41. The SDT has argued that a switch to a lay majority would change the character of the SDT. It considers that such a change in dynamic would risk the SDT's identity as an expert tribunal and would reduce the likely range of experience from practice on the panel. The LSB notes the rationale provided by the SDT for maintaining the status quo on composition, at a time when it is introducing a significant change to the standard of proof. However, this is an important issue that the SDT should keep under review in the coming years, especially in the light of how few other professional disciplinary tribunals maintain non-lay majorities.

*b) Concern over the risk posed to transparency by proposed rule 35(9)*

42. Proposed rule 35(9) allows the SDT to prohibit the disclosure or publication of anything which is likely to lead to the identification of a person who the SDT considers should not be identified.
43. The SDT has explained that presently it is able to deal with situations where disclosure should be prohibited by issuing directions. It has explained that by including a clear provision in its rules it is increasing transparency. It has further set out that rule 35(9) is supplemented by a Judgement Publication Policy and Disclosure Policy. The LSB is assured by the SDT's explanation that the rule is intended to cover situations where full names or information in documents about individuals are referred to in public hearings where they should not be.

*c) Concern that there is not a specific provision in the rules to stop vulnerable witnesses from being cross examined by those that they have accused.*

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[https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2019/2019%20SDT%20rule%20change%20application%20response.pdf](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2019/2019%20SDT%20rule%20change%20application%20response.pdf)



44. The SDT explained in its consultation response document that it reflected upon whether such a provision was appropriate. In its deliberations the SDT considered the need to achieve fairness for both the witness and the respondent. As a result it has decided not to make an amendment to its rules at this time.
45. The SDT has confirmed that it will keep under review whether or not there is any need for a practice direction or further guidance on this point of concern raised by the Panel. The LSB expects the SDT to review the need for further guidance on this point and to provide an explanation when it has reached a conclusion on whether any action is to be taken. It should be mindful of the comments made by the LSB at paragraph 35 above when considering what action to take.
46. Overall, the LSB is satisfied that the SDT has satisfactorily addressed the main concerns raised by the Panel in its correspondence.

### **Monitoring and evaluation**

47. In making its decision, the LSB also acknowledges the SDT's intention to monitor the impact by continuing to record the number of cases it receives and the number of hearing days per month in order to compare them to historical data.
48. The SDT has explained that it will be able to take action to ensure sufficient hearing days are available to be certain matters are dealt with in a timely manner. If there is a significant increase in cases the SDT will fund them from its reserves.
49. The SDT has noted that the impact of the change will have to be considered in light of the fact that significant changes to regulatory arrangements being made by the SRA are also intended to take effect on 25 November 2019.

### **SDT changes to the proposed regulatory arrangements made during the course of the application**

50. During the course of the application the SDT made some alterations to the proposed rules. The main alteration was to the definition of registered European lawyers in the interpretations section of the proposed rules. The amendment made by the SDT provides certainty on the rules being proposed and means they will not need to be altered following the LSB's approval.
51. Further minor amendments have been made to the rules and are explained in further correspondence from the SDT which has also been published alongside this decision notice.

### **Decision**

52. The LSB has considered the SDT's application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.

53. **Annex A** to this decision notice contains the regulatory arrangements approved by the LSB.

**Neil Buckley, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**25 July 2019**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. Section 178 of the Act modifies Part 3 of Schedule 4 to the Act so that it applies to alterations of rules made by the Solicitors Disciplinary Tribunal under section 46(9)(b) of the Solicitors Act 1974 ('tribunal rules'). Tribunal Rules do not have effect unless approved by the LSB under the relevant provisions of Schedule 4, for the purposes of the Act.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that (as modified by section 178 of the Act for tribunal rules):
  - (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 this 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
  - ...
  - (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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>7</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved

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<sup>7</sup> LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018  
[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/New%20folder%20\(2\)/FINAL\\_Rules\\_for\\_applications\\_to\\_alter\\_regulatory\\_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

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STATUTORY INSTRUMENTS

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**2019 No.**

**LEGAL PROFESSION, ENGLAND AND WALES**

**The Solicitors (Disciplinary Proceedings) Rules 2019**

*Made* - - - - **\*\*\***

~~*Laid before Parliament* - - - - **\*\*\***~~

*Coming into force* - - **\*\*\*25th November 2019**

The Solicitors Disciplinary Tribunal, in exercise of the powers conferred by section 46 of the Solicitors Act 1974<sup>(8)</sup>, makes the following Rules.

The Legal Services Board has approved the Rules in accordance with section 178 of the Legal Services Act 2007<sup>(9)</sup>

**PART 1**

Introductory

**Citation and commencement**

1. These Rules may be cited as the Solicitors (Disciplinary Proceedings) Rules 2019 and come into force on XX.

**Scope**

2. These Rules apply to—

- (a) any application made to the Tribunal under any enactment, including the following provisions of the 1974 Act—
  - (i) section 43(1) (applications relating to the control of solicitors' employees and consultants);
  - (ii) section 43(3) (applications for review of orders made in respect of applications under section 43(1));
  - (iii) section 43(4) (applications for costs in relation to applications under section 43);
  - (iv) section 47(1)(a) to (f) (applications in relation to solicitors and former solicitors);
- (b) any complaint made to the Tribunal under any enactment, including the following—
  - (i) section 43 of the Administration of Justice Act 1985 (legal aid complaints relating to solicitors);
  - (ii) section 31(2) of the 1974 Act (complaints in respect of failure to comply with rules as to professional practice, conduct and discipline);
  - (iii) section 32(3) of the 1974 Act (complaint in respect of failure to comply with accounts rules and trust accounts rules);

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<sup>(8)</sup> 1974 c. 47.

<sup>(9)</sup> 2007 c.29.

- (iv) section 34(6) of the 1974 Act (complaint in respect of failure by solicitor to comply with rules relating to accountants' reports);
- (v) section 34A(2) of the 1974 Act (complaint in respect of failure by employee of solicitor to comply with rules relating to professional practice, conduct and discipline);
- (vi) section 34A(3) of the 1974 Act (complaint in respect of failure by employee of solicitor to comply with rules relating to accountants' reports);
- (vii) section 37(4) of the 1974 Act (complaint in respect of failure by solicitor to comply with indemnity rules);
- (viii) section 44(2) of the 1974 Act (complaint in respect of contravention of order under section 43(2) in respect of solicitors' employees and consultants).

## Interpretation

### 3.—(1) In these Rules—

“the 1974 Act” means the Solicitors Act 1974;

“the 2007 Act” means the Legal Services Act 2007<sup>(10)</sup>;

“applicant” means a person making an application;

“application” means an application or complaint to which these Rules apply and which is made in accordance with these Rules;

“prescribed form” means the appropriate form published by the Tribunal on its website;

“authorised body” means—

(a) a body which holds a licence in force under Part 5 of the 2007 Act granted by the Solicitors Regulation Authority;

(b) a recognised body under section 9 of the Administration of Justice Act 1985<sup>(11)</sup>;

(c) a sole solicitor's practice recognised under section 9 of the Administration of Justice Act 1985;

“business day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971<sup>(12)</sup>;

“case to answer” means an arguable case;

“clerk” means any clerk appointed under rules 8(1) and (2);

“the Clerk to the Tribunal” means the Clerk to the Tribunal who is in office at the date these Rules come into force, or the Clerk to the Tribunal subsequently appointed under rule 8(1);

“a lay application” means an application other than one—

(d) made by the Society; or

(e) to which Chapter 2 of Part 3 of these Rules applies;

“panel” means a panel appointed under rule 9(1) for the hearing of an application or any matter connected with an application;

“party” means an applicant or respondent;

“practice direction” means a direction made under rule 6(3);

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<sup>(10)</sup> 2007 c.29.

<sup>(11)</sup> 1985 c.61. Section 9 was amended by the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), Schedule 4, paragraph 15(2); the Legal Services Act 2007 (c. 29), Schedule 16(2), paragraph 81(2), (3) and (4) and Schedule 23, paragraph 1 and the Legal Services Act 2007 (The Law Society) (Modification of Functions) Order (S.I. 2015/401), Schedule 1(2) paragraphs 18(3), (4) and (5).

<sup>(12)</sup> 1971 c.80.

“practice notice” means a notice made under rule 6(3);

“the President” means the President of the Tribunal, elected under rule 7(2);

“respondent” means any party to an application other than the applicant;

“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, including the Solicitors Regulation Authority;

“solicitor members” and “lay members” have the same meaning as in section 46 of the 1974 Act<sup>(13)</sup>;

“Statement” means a written statement (including a witness statement) signed by the individual making the statement and containing a declaration of truth in the following form—

“I believe that the facts and matters stated in this statement are true”;

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

“Vice President” means a Vice President of the Tribunal, elected under rule 7(3).

(2) References in these Rules to solicitors include, where appropriate, former solicitors.

(3) References in these Rules to registered foreign lawyers are references to lawyers whose names are entered in the register of foreign lawyers maintained under section 89 of the Courts and Legal Services Act 1990<sup>(14)</sup> and include, where appropriate, those who have ceased to be registered in that register or whose registration has been suspended.

~~(4) References in these Rules to registered European lawyers are references to lawyers whose names are entered in the register of European lawyers maintained by the Society under regulation 15 of the European Communities (Lawyer's Practice) Regulations 2000<sup>(15)</sup> and include, where appropriate, those who have ceased to be registered in that register or whose registration has been suspended.~~ **OR**

**{(4) Subject to paragraph (5) R**references in these Rules to registered European lawyers are references to—

(a) those lawyers—

(i) whose names were entered in the register of registered European lawyers maintained by the **Law** Society under regulation 15 of the European Communities (Lawyer's Practice) Regulations 2000~~(c)~~, as it had effect immediately before exit day, at a time before exit day, but

(ii) in relation to whom regulation 5 **or 5A** of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 does not apply;

(b) those lawyers whose names are entered in the register of registered European lawyers maintained by the **Law** Society under regulation 15 of the European Communities (Lawyer's Practice) Regulations 2000, as that regulation has effect by virtue of regulation 5 **or 5A** of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019<sup>(16)</sup> and includes, where appropriate, those who have ceased to be registered in that register or whose registration has been suspended.**}**

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<sup>(13)</sup> Section 46 was amended by the Legal Services Act 2007 (c. 29), Schedule 16(1), paragraph 47(2) and modified by the Solicitors Act 1974 (c. 47), section 44E(2), the Administration of Justice Act 1985 (c. 61), section 43(2)(a) and Schedule 2, paragraph 14C(2), the European Communities (Lawyer's Practice) Regulations 2000 (2000/1119), Schedule 4, paragraph 10 and the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (No.2) Order 2011 (2011/2863), articles 4(3) and (4).

<sup>(14)</sup> Section 89 was amended by the European Communities (Lawyer's Practice) Regulations 2000 (2000/1119), Schedule 4, paragraph 14(2) and the Legal Services Act 2007 (c. 29), Schedule 16(3), paragraph 125.

<sup>(15)</sup> S.I. 2000/1119

<sup>(16)</sup> S.I. 2019/375

(5) During any period when these Rules are in force before exit day, references in these Rules to registered European lawyers are references to lawyers whose names are entered in the register of European lawyers maintained by the Society under regulation 15 of the European Communities (Lawyer's Practice) Regulations 2000 <sup>(17)</sup> and include, where appropriate, those who have ceased to be registered in that register or whose registration has been suspended.

### **The overriding objective**

4.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases justly and at proportionate cost.

(2) The Tribunal will seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(3) Dealing with a case justly and at proportionate cost includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) ensuring that the case is dealt with efficiently and expeditiously;
- (c) saving expense;
- (d) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues.

(4) The parties are required to help the Tribunal to further the overriding objective set out above.

### **Standard of proof**

5. The standard of proof that will be applied to proceedings considered under these Rules is the standard applicable in civil proceedings.

### **Regulation of procedure and practice directions**

6.—(1) Subject to the provisions of the 1974 Act, these Rules and any other enactment, the Tribunal may regulate its own procedure.

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

(3) The Tribunal (or a panel of Tribunal members consisting of no fewer than five members of whom no fewer than two must 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 the panel considers appropriate.

(4) Practice notices and practice directions may be promulgated under the authority of the President.

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<sup>(17)</sup> S.I. 2000/1119

## PART 2

### Constitution

#### **President and Vice Presidents**

7.—(1) The President holding office at the date these Rules come into force may not hold the office of President for a total period exceeding six years and will only be eligible for re-election as President if he or she has not previously been re-elected as President.

(2) The Tribunal, by a simple majority, must elect a solicitor member to be its President to hold office for a term not exceeding three years and the member so elected may be re-elected for a further term not exceeding three years.

(3) The Tribunal, by a simple majority, must elect one solicitor member and one lay member to be its Vice Presidents for a term not exceeding three years and the members so elected may be re-elected for a further term not exceeding three years. The Vice Presidents may exercise any functions as are exercisable under these Rules by the President, as the President may direct.

(4) The Tribunal must meet at least once in each calendar year and must publish an annual report, a copy of which must be sent to the Master of the Rolls, the Society and the Legal Services Board.

#### **The Clerk to the Tribunal and other clerks and staff**

8.—(1) The Tribunal must appoint a Clerk to the Tribunal.

(2) The Tribunal may appoint other clerks to assist the Clerk to the Tribunal.

(3) The Clerk to the Tribunal is responsible to the Tribunal for the administration of the Tribunal in an efficient manner, including the general supervision of the other clerks and other administrative staff; maintaining records and collecting statistics required by the Tribunal.

(4) The Clerk to the Tribunal or any other clerk appointed by the Tribunal under this Rule must be a solicitor or barrister of not less than ten years' standing.

(5) The office of the Clerk to the Tribunal must be vacated if—

- (a) in the Tribunal's opinion, with which the Master of the Rolls agrees, the Clerk to the Tribunal is physically or mentally incapable of performing his or her duties; or
- (b) the Clerk to the Tribunal—
  - (i) resigns; or
  - (ii) retires; or
  - (iii) is removed from office by a resolution of the Tribunal approved by the Master of the Rolls.

(6) The Tribunal may prescribe the duties for which the clerks are to be responsible and those duties must include arrangements for—

- (a) the submission of applications for certification as to whether or not there is a case to answer (see rule 13);
- (b) making pre-listing arrangements;
- (c) variation of directions;
- (d) determining applications for adjournment of procedural or substantive hearings in accordance with rule 23(2);
- (e) considering parties' non-compliance with directions and orders (see rule 20(3));
- (f) securing a record of hearings (by electronic recording or other means) (see rule 39);
- (g) advising the Tribunal on matters of law or procedure;
- (h) preparing draft judgments for the consideration of the panel which heard an application (see rule 40);
- (i) determining applications in respect of substituted service (see rule 46);



- (j) drawing orders and findings and sending them to the Society.

### **Composition of panels**

**9.**—(1) The Tribunal must appoint a panel of three members of the Tribunal for the hearing of any application. Two of the panel members must be solicitor members and one must be a lay member.

(2) The President may appoint a member to be the chair of a panel.

(3) If the President does not appoint a chair of a panel, a solicitor member must act as the chair.

### **Functions exercisable by a single solicitor member**

**10.** A single solicitor member may exercise the functions set out in—

- (a) rule 8(6) (c) (d) and (i) (duties for which clerks are responsible);
- (b) rule 27(3) (directions relating to lodging of bundles);
- (c) rule 22 (4) (f) and (g) (determining procedural applications)

## **PART 3**

### **Applications**

#### **CHAPTER 1**

#### **Applications by the Law Society and lay applications**

### **Application of Rules in Chapter 1**

**11.**—(1) Rules 12, 13 and 14 apply to applications made by the Society and to lay applications.

(2) Rule 15 applies to applications made by the Society.

(3) Rule 16 applies to lay applications.

### **Method and form of application**

**12.**—(1) An application to which this Rule applies must be sent to the Tribunal offices and must be made using the prescribed form.

(2) The application must be supported by a Statement setting out the allegations, the facts and matters supporting the application and each allegation contained within it and exhibiting any documents relied upon by the applicant.

(3) In the case of an application made by the Society, the application must be accompanied by—

- (a) sufficient copies of the application and supporting documents to enable the Tribunal to retain one complete set and to serve one complete set on each respondent;
- (b) a time estimate for the substantive hearing;
- (c) a schedule of the Society's costs incurred up to and including the date on which the application is made.

(4) In the case of a lay application, the application must be accompanied by three copies of the application and supporting documents and one further copy for any second and each further respondent.

### **Certification of case to answer**

**13.**—(1) An application made in accordance with rule 12 must initially be considered by a solicitor member (“the initial solicitor member”) for consideration of the question of whether there is a case to answer in respect of the allegations made in the application.

(2) If the initial solicitor member considers that there is a case to answer in respect of all the allegations made and is not of the opinion that the question is one of doubt or difficulty then the initial solicitor member must certify that there is a case to answer.

(3) If the initial solicitor member is minded not to certify that there is a case to answer in respect of all or some of the allegations made or is of the opinion that the question is one of doubt or difficulty, the question must be considered by a panel of three members of the Tribunal, two of whom must be solicitor members and one of whom must be a lay member. The initial solicitor member may be a member of the panel. If the panel considers that there is a case to answer in respect of any of the allegations made then it must certify that there is a case to answer in respect of those allegations.

(4) If the panel decides that there is no case to answer in respect of any of the allegations made, it may refuse or dismiss the application, or part of it, without requiring the respondent to answer the allegations and without hearing the applicant. The applicant must be provided with written reasons explaining the decision.

(5) If a panel or solicitor member certifies that a case to answer is established in respect of all or any of the allegations made, a clerk must serve a copy of each of the documents referred to in rule 12(3) or (4), as the case may be, on each respondent.

### **Supplementary Statements**

**14.**—(1) An applicant who has made an application to which this Rule applies may, subject to paragraph (4), send supplementary statements to the Tribunal containing additional facts or matters on which the applicant seeks to rely or further allegations in support of the application.

(2) A supplementary statement must be supported by a Statement setting out any new allegations, facts and matters supporting the application and each allegation contained within it and exhibiting any new documents relied upon by the applicant.

(3) In the case of an application made by the Society, when a supplementary statement is sent to the Tribunal, the Society must provide—

- (a) sufficient copies of the supplementary statement and supporting documents to enable the Tribunal to retain one complete set and to serve a complete set on each respondent;
- (b) a revised time estimate for the substantive hearing;
- (c) a revised schedule of the Society's costs incurred up to and including the date on which the supplementary statement is sent;
- (d) any proposed directions for the future progression of the case, including any proposals to vary any existing directions.

(4) In the case of a lay application, when a supplementary statement is sent to the Tribunal, the applicant must provide sufficient copies of the supplementary statement and supporting documents to enable the Tribunal to retain one complete set and to serve a complete set on each respondent.

(5) The applicant will not be permitted to send a supplementary statement without leave of the Tribunal—

- (a) more than 12 months from the date of the application under rule 12;
- (b) less than 30 days before the date fixed for the substantive hearing of the application.

(6) Rule 13 applies in respect of any supplementary statement containing additional facts or matters on which the applicant seeks to rely or further allegations in support of the application as it applies to an application made in accordance with rule 12.

### **Applications in respect of solicitors' employees**

**15.** In a case where an application is made for an order under section 43(2) of the 1974 Act, the solicitor, recognised body, registered European lawyer or registered foreign lawyer by or for whose benefit the respondent is employed or remunerated—

- (a) may also be named or joined as a respondent to the application; and

- (b) must be joined as a respondent to the application if the Tribunal so directs.

### **Adjournment of application pending Law Society investigation**

**16.**—(1) The panel may adjourn the consideration of the question of whether to certify any application to which this Rule applies for an initial period of up to three months to enable the Society to carry out its own investigations and consider whether to—

- (a) initiate its own application; or  
(b) by agreement with the applicant, take over conduct of the application.

(2) After the expiration of the initial adjournment period, the application may be referred to a panel on the first available date for further review and consideration, subject to the provisions of paragraph (3).

(3) If at the expiration of the period specified by the Tribunal under paragraph (1) the Society has not made a decision as to whether to initiate or take over the conduct of an application, the Tribunal may adjourn the matter for a further period of up to three months, after which the application must be referred to a panel on the first available date for further review and consideration.

## **CHAPTER 2**

### **Applications by solicitors, etc.**

### **Applications for restoration and termination of indefinite suspension**

**17.**—(1) This Rule applies to applications made to the Tribunal under section 47 of the Act by—

- (a) a former solicitor seeking restoration to the Roll of Solicitors kept by the Society under section 6 the 1974 Act<sup>(18)</sup>;  
(b) a person seeking restoration to the register of European lawyers or the register of foreign lawyers if his name has been withdrawn or removed from either register by the Tribunal;  
(c) a solicitor, registered European lawyer or registered foreign lawyer seeking the termination of an indefinite period of suspension from practice imposed by the Tribunal.

(2) An application to which this Rule applies must be sent to the Tribunal and must be made using the prescribed form.

(3) The application must be supported by a Statement setting out the facts and matters supporting the application and exhibiting any documents relied upon by the applicant.

(4) The Society must be a respondent to any application to which this Rule applies.

(5) The applicant must serve on the Society-

- (a) a copy of the application; and  
(b) a Statement in support of the application.

(6) Every application to which this Rule applies must be advertised by the applicant in the Law Society's Gazette and in a newspaper circulating in the area of the applicant's former practice (if available) and must also be advertised by the Tribunal on its website.

(7) Any person may, no later than 21 days before the hearing date of an application to which this Rule applies, serve on the Tribunal and the parties to the application notice of that person's intention to oppose the allowing of the application and the Tribunal may allow the person to appear before it at the hearing of the application, call evidence and make representations upon which the Tribunal may allow the person to be cross-examined.

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<sup>(18)</sup> Section 6 was amended by the Constitutional Reform Act 2005 (c. 4), Schedule 11(4), paragraph 21(2) and the Legal Services Act 2007 (c. 29), Schedule 23, paragraph 1.

### **Application to vary or remove conditions on practice**

**18.**—(1) This Rule applies to applications made to the Tribunal to vary or remove conditions on practice imposed by the Tribunal.

(2) An application to which this Rule applies must be sent to the Tribunal and must be made using the prescribed form.

(3) The application must be supported by a Statement setting out the facts and matters supporting the application and exhibiting any documents relied upon by the applicant.

(4) The Society must be a respondent to any application to which this Rule applies.

### **Application for review of order relating to solicitors' employees and consultants**

**19.**—(1) An application for a review of an order made under section 43(3)(a) of the 1974 Act must be sent to the Tribunal and must be made using the prescribed form.

(2) The application must be supported by a Statement setting out the facts and matters supporting the application and exhibiting any documents relied upon by the applicant.

(3) An application under section 43(3)(a) of the 1974 Act must be served on the Society and the Society must, within 28 days of the service of the application, send a Statement to the Tribunal setting out the facts and matters on which it relied in making the order under section 43(2) of the 1974 Act.

## **PART 4**

### **CASE MANAGEMENT**

#### **Standard Directions**

**20.**—(1) Following certification of a case to answer under rule 13, standard directions must be issued by a clerk and sent to the parties.

(2) The standard directions may specify—

- (a) the date fixed for the substantive hearing of the matter;
- (b) the date by which a respondent must send to the Tribunal and serve on every other party an Answer to the allegations contained in the Statement served under rules 12 and 14 and a reply to the application and Statement served under rules 17, 18 and 19;
- (c) the date by which the respondent must send to the Tribunal and serve on every other party all documents on which the respondent intends to rely at the substantive hearing;
- (d) the date by which the parties must send to the Tribunal and serve on every other party a list of witnesses upon whose evidence they intend to rely at the substantive hearing;
- (e) the date by which the parties must notify the Tribunal of any intention to rely on expert evidence;
- (f) the date on which any case management hearing will take place;
- (g) the date by which the parties must send a statement of readiness to the Tribunal;
- (h) the date by which hearing bundles (and the number of copies) must be sent to the Tribunal;
- (i) any other standard direction which the Tribunal considers appropriate to ensure the management of matters in accordance with the overriding objective of these Rules mentioned in rule 4.

(3) If a party fails to comply with the standard directions, any other direction or any of these Rules, the matter may be listed for a non-compliance hearing before a clerk, who will make appropriate directions, which may include listing the matter before the Tribunal which may direct that—

- (a) evidence which has not been sent or served as directed may not be relied upon without permission of the Tribunal;

- (b) an adverse costs order be made in default of compliance, which may be ordered to be paid immediately to any other party;
- (c) adverse inferences that the panel hearing the matter considers appropriate may be drawn at the substantive hearing from the failure to comply.

(4) In this rule—

- (a) an “Answer” is a document which sets out—
  - (i) which allegations in the Statement are admitted and which are denied; and
  - (ii) the reasons for denial;
- (b) a “statement of readiness” is a document—
  - (i) confirming that the parties are ready for the substantive hearing;
  - (ii) setting out what, if any, further directions are required by the parties; and
  - (iii) setting out whether the time estimate for the final hearing is the same as was anticipated when standard directions were issued or at any subsequent case management hearing, or otherwise providing a revised time estimate.

### **Case management hearings**

**21.—**(1) A case management hearing must be arranged by the Tribunal or a clerk in cases where—

- (a) a clerk considers that the holding of a case management hearing is justified by reason of the time estimate or revised time estimate provided by the Society under rule 12(3)(b) or 14(3)(b); or
- (b) the clerk who reviews the application on receipt identifies issues which in the opinion of the clerk justify the holding of a case management hearing.

(2) A case management hearing may be arranged by the Tribunal or a clerk at any other time before the hearing of an application.

(3) A case management hearing may be heard by the Tribunal or a clerk and may take place by telephone, in person, or by such electronic means as may be approved by the Tribunal.

(4) If the Tribunal notifies the parties in advance of a case management hearing that a further hearing is to be fixed or is likely to be fixed at the case management hearing, the parties must attend the case management hearing equipped with their dates to avoid and the dates to avoid of any witnesses.

(5) If on receipt of a list of witnesses (see rule 20(2)(d)) or a statement of readiness (see rule 20(2)(g)) a clerk considers that a further case management hearing is required, a further case management hearing date may be fixed so that any further directions can be made.

### **Procedural applications**

**22.—**(1) Any procedural application must be—

- (a) made using the prescribed form; and
- (b) sent to the Tribunal and served on every other party, together with any relevant supporting documentation.

(2) The Tribunal, single solicitor member or clerk must issue written reasons for its decisions on procedural applications.

(3) Any party aggrieved by a decision of a clerk under paragraph 8(6) may request that the application be re-determined by a panel or single solicitor member by notifying the Tribunal of this request within 14 days of receipt of the written reasons for the decision.

(4) In this rule, a “procedural application” means an application for—

- (a) a variation of directions;
- (b) an adjournment of the hearing of an application (see rule 23);
- (c) an amendment or withdrawal of an allegation (see rule 24);

- (d) disclosure and discovery (see rule 26);
- (e) leave to call or adduce expert evidence (see rule 30);
- (f) a direction that special measures may be provided or used to assist vulnerable witnesses or respondents;
- (g) a direction that a witness or respondent may give their evidence or otherwise participate in the proceedings by videolink or other electronic means;
- (h) any other procedural application, including an application for a stay of proceedings for abuse of process, and general applications to exclude or adduce evidence.

### **Adjournments**

**23.**—(1) An application for an adjournment of the hearing of an application must be supported by documentary evidence of the need for the adjournment.

(2) An application for an adjournment made more than 21 days before the hearing date will be considered by a clerk or a single solicitor member on the papers.

(3) An application for an adjournment made 21 days or less before the hearing date will be considered by the panel listed to sit on the substantive hearing on the papers unless it is in the interests of justice for the matter to be dealt with at an oral hearing.

### **Amendment or withdrawal of allegations**

**24.** No allegation made in an application may be amended or withdrawn without leave of the Tribunal.

### **Agreed Outcome Proposals**

**25.**—(1) The parties may up to 28 days before the substantive hearing of an application (unless the Tribunal directs otherwise) submit to the Tribunal an Agreed Outcome Proposal for approval by the Tribunal.

(2) An Agreed Outcome Proposal must—

- (a) contain a statement of the facts that are agreed between the relevant parties;
- (b) set out the agreed proposed penalty and an explanation as to why the penalty would be in accordance with any guidance published by the Tribunal on sanctions imposed by the Tribunal;
- (c) be signed by the relevant parties; and
- (d) comply with any relevant practice direction made by the Tribunal in respect of Agreed Outcome Proposals.

(3) If the Tribunal approves the Agreed Outcome Proposal in the terms proposed it must make an Order in those terms. The case must be called into an open hearing and the Tribunal must announce its decision.

(4) If the Tribunal wishes to hear from the parties before making its decision the Tribunal may direct that there be a case management hearing which the parties to the proposed Agreed Outcome Proposal must attend for the purpose of making submissions before a final decision is reached. The case management hearing must be heard in private.

(5) Where the Tribunal is not satisfied that it is appropriate to make an Order in accordance with paragraph (3) it must provide reasons to the parties who may then submit a revised proposal. If the Tribunal is satisfied with the revised proposal, it must make an Order in accordance with it.

(6) Some or all of the same members of the panel appointed in respect of the application may consider the initial Agreed Outcome Proposal, any submissions made at a case management hearing and any revised proposal but may not subsequently participate in the panel for the substantive hearing (if there is one).

(7) If on considering a submission under this rule the Tribunal decides not to make an Order in accordance with paragraph (3) it must make directions for the substantive disposal of the matter by a panel consisting of members who were not on the panel which considered the submission.

(8) If on considering a submission under this rule the Tribunal decides not to make an Order and the Tribunal does not publish that decision or announce it in an open hearing, no information will be published or announced about the submission save that the Agreed Outcome Proposal was not approved.

### **Disclosure and discovery**

**26.**—(1) If an application is made for the disclosure or discovery of material, the Tribunal may make an order that material be disclosed where it considers that the production of the material is necessary for the proper consideration of an issue in the case, unless the Tribunal considers that there are compelling reasons in the public interest not to order the disclosure.

(2) Any order made by the Tribunal will only apply to material that is in the possession or under the control of a party.

(3) An order made under paragraph (1) will not oblige the parties to produce any material which they would be entitled to refuse to produce in proceedings in any court in England and Wales.

(4) A party to proceedings before the Tribunal is required to disclose only—

- (a) the documents on which the party relies;
- (b) any documents which –
  - (i) adversely affect that party's own case;
  - (ii) adversely affect another party's case; or
  - (iii) support another party's case; and
- (c) any documents which the party is required to disclose by a relevant practice direction.

## **PART 5**

### **EVIDENCE**

### **Evidence generally and service and sending of Evidence and bundles**

**27.**—(1) Without prejudice to the general powers in Parts 2 and 3 of these Rules the Tribunal may give directions in relation to an application relating to any of the following—

- (a) the exchange between parties of lists of documents which are relevant to the application, 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 the Tribunal requires evidence or submissions;
- (d) the nature and manner of the evidence or submissions that the Tribunal requires;
- (e) the time at which any evidence or submissions are to be sent;
- (f) the time to be allowed during the hearing for the presentation of any evidence or submission.

(2) The Tribunal may—

- (a) admit any evidence whether or not it would be admissible in a civil trial in England and Wales;
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not provided within the time allowed by a direction given under these Rules or a practice direction; or

- (ii) the evidence was otherwise provided in a manner that did not comply with a direction given under these Rules or a practice direction; or
- (iii) it would otherwise be unfair, disproportionate or contrary to the interests of justice to admit the evidence.

(3) Unless otherwise directed by the Tribunal, in cases where the Society is the applicant, it must send five copies of a paginated hearing bundle to the Tribunal no later than 14 days before the date listed for the substantive hearing.

### **Written Evidence**

**28.**—(1) If no party requires the attendance of a witness, the Tribunal may accept the Statement of that witness as evidence in respect of the whole case or of any particular fact or facts.

(2) Every Statement upon which any party proposes to rely must be sent to the Tribunal by that party and served on every other party on a date determined by the Tribunal which must be no less than 28 days before the date fixed for the hearing of the application. The Statement must be accompanied by a notice, using the prescribed form.

(3) Any party on whom a notice has been served under paragraph (2) and who requires the attendance of the witness in question at the hearing must, no later than seven days after service of the notice require, in writing, the party on whom the notice was served to produce the witness at the hearing.

(4) Any application for a witness summons must be made to the High Court.

(5) If a Statement has not been served in accordance with paragraph 28(2) in relation to a witness, a party must apply to the Tribunal for permission—

- (a) to produce that Statement; and
- (b) for the witness to give evidence at the hearing.

(6) Any party to an application may, by written notice, not later than 21 days before the date fixed for the hearing, request any other party to agree that any document may be admitted as evidence.

(7) If a party desires to challenge the authenticity of a document which is the subject of paragraph (6), that party must, within seven days of receipt of the notice served under that paragraph, give notice that he or she does not agree to the admission of the document and that he or she requires that its authenticity be proved at the hearing.

(8) If the recipient of a notice given under paragraph (6) does not give a notice in response within the period mentioned in paragraph (7), that recipient is deemed to have admitted the document unless otherwise ordered by the Tribunal.

### **Civil Evidence Act notices**

**29.**—(1) Subject to the following provisions of this Rule, the Civil Evidence Act 1995<sup>(a)</sup> apply in relation to proceedings before the Tribunal in the same manner as they apply in relation to civil proceedings.

(2) Any notice given under the provisions of the Civil Evidence Act 1995 as so applied must be given no later than the latest date for the service of witness statements under rule 28.

### **Expert evidence**

**30.**—(1) No party may call an expert or adduce in evidence an expert's report at the substantive hearing of an application without leave of the Tribunal.

(2) An application under this rule must be determined by a panel.

(3) The Tribunal may permit expert evidence to be adduced where it considers that such evidence is necessary for the proper consideration of an issue or issues in the case.

(4) If two or more parties wish to submit expert evidence on a particular issue, the Tribunal may direct that the evidence on that issue is to be given by a single joint expert.



(5) The Tribunal may, at any stage, direct that a discussion take place between experts for the purpose of requiring the experts to identify and agree the expert issues in the proceedings and provide a joint schedule setting out the matters that are agreed and not agreed. The Tribunal may specify the issues which the experts must discuss.

(6) Any expert evidence must be in the form of a Statement and must set out—

- (a) the expert's professional qualifications;
- (b) the substance of all material instructions (including a general description of the documents provided), whether written or oral, on the basis of which the Statement was written;
- (c) a declaration that the expert understands and has complied with the expert's duty to assist the Tribunal on matters within the expert's expertise and understands that this duty overrides any obligation to any party from whom the expert has received instructions or by whom they are paid.

### **Interpreters and Translators**

**31.**—(1) If any witness or respondent requires the assistance of an interpreter to participate in a hearing the Tribunal must be notified of this fact by the party requiring the interpreter when sending the list of witnesses.

(2) Where a witness statement has been translated from a language other than English it must be accompanied by a Statement confirming—

- (a) the language in which the original witness statement was made; and
- (b) that the translator has translated the witness statement into English to the best of the translator's skill and understanding.

### **Previous findings of record**

**32.**—(1) A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances.

(2) The judgment of any civil court, or any tribunal exercising a professional or disciplinary jurisdiction, in or outside England and Wales (other than the Tribunal) may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based is admissible as proof but not conclusive proof of those facts.

(3) Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed the Tribunal may, on the application of the Law Society or the respondent to the application in respect of which the finding arose, revoke its finding and make such order as to costs as appear to be just in the circumstances.

### **Adverse inferences**

**33.** Where a respondent fails to—

- (a) send or serve an Answer in accordance with a direction under rule 20(2)(b); or
- (b) give evidence at a substantive hearing or submit themselves to cross-examination;

and regardless of the service by the respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the respondent has chosen to adopt and to draw such adverse inferences from the respondent's failure as the Tribunal considers appropriate.

## PART 6

### HEARINGS AND COSTS

#### **Publication of cause lists**

**34.**—(1) A cause list will be published on the Tribunal’s website before the case is due to be heard.

(2) Any party or other person who claims to be affected by an application may apply to the Tribunal for the cause list to be anonymised on the grounds of—

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

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

(3) Any person making an application under paragraph (2) must serve a copy of that application together with a Statement in support on all parties to the proceedings, and—

- (a) the application must be served no later than 28 days before the hearing in relation to which the application is made; and
- (b) must be made using the prescribed form.

(4) The Tribunal may in its discretion consider the application on the papers or list it for an oral hearing.

(5) If the Tribunal is satisfied that either of the grounds in paragraph (2) are met, the Tribunal must direct that the cause list be anonymised in such a way that appears to it to be just and proper.

#### **Public or private hearings**

**35.**—(1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.

(2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to 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 hearing.

(3) Any person who makes an application under paragraph (2) must serve a copy of that application and a Statement in support on all parties to the proceedings. If there is no objection to the application from any of the parties, the Tribunal will consider the application on the papers unless it considers that it is in the interests of justice for the application to be considered at an oral hearing.

(4) If the Tribunal decides that the application made under paragraph (2) is to be considered at an oral hearing, that hearing will take place in private unless the Tribunal directs otherwise.

(5) The Tribunal may, before or during a hearing, direct without an application from any party 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 (2) had one been made; or
- (b) the Tribunal considers that a hearing in public would prejudice the interests of justice.

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

- (a) whose conduct the Tribunal considers is disrupting or likely to disrupt the hearing;
- (b) whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) whose attendance at the hearing would otherwise prejudice the overriding objective of these Rules.

(7) Other than a party to the proceedings, a factual witness is excluded from the hearing until their evidence has been given, unless the parties agree or the Tribunal directs otherwise.

(8) Save in exceptional circumstances, where the Tribunal disposes of proceedings following a hearing held in private, it must announce its decision in a public session.

(9) The Tribunal may make a direction prohibiting the disclosure or publication of any matter likely to lead to the identification of any person whom the Tribunal considers should not be identified.

(10) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that—

- (a) the disclosure would be likely to cause any person serious harm; and
- (b) it is in the interests of justice to make such a direction.

### **Proceeding in absence**

**36.** If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing.

### **Application for re-hearing**

**37.**—(1) At any time before the Tribunal's Order is sent to the Society under rule 42(1) or within 14 days after it is sent, a party may apply to the Tribunal for a re-hearing of an application if—

- (a) the party neither attended in person nor was represented at the hearing of the application; and
- (b) the Tribunal determined the application in the party's absence.

(2) An application for a re-hearing under this rule must be made using the prescribed form accompanied by a Statement setting out the facts upon which the applicant wishes to rely together with any supporting documentation.

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

### **Evidence and submissions during the hearing**

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

(2) The Tribunal may, at any hearing, dispense with the strict rules of evidence.

(3) Without restriction on the general powers in Parts 2 and 3 of these Rules, the Tribunal may, pursuant to the overriding objective set out in rule 4(1), give directions in relation to—

- (a) the provision by the parties of statements of agreed matters;
- (b) issues on which it requires evidence to be given or submissions to be made and the nature and manner of the evidence or submissions it requires;
- (c) the time at which any evidence or submissions are to be given or made;
- (d) the time allowed during the hearing for the presentation of any evidence or submission;
- (e) the time allowed for cross-examination of a witness.

### **Recording of the hearing**

**39.**—(1) All hearings of the Tribunal will be electronically audio-recorded.

(2) Where hearings of the Tribunal are held in public, a copy of the recording must be disclosed to any person on request, subject to any direction by the Tribunal in relation to the release of the recording.

(3) Where a hearing is held in private, a copy of the electronic recording may only be disclosed to the parties and only on the provision of an undertaking that the recording or any transcript of the hearing or any part of it will not be made public.

### **Decisions**

**40.**—(1) The Tribunal may announce its decision at the conclusion of the hearing or may reserve its decision for announcement at a later date. In either case the announcement must be made in public unless rule 35(8) applies.

(2) As soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings, the Tribunal must provide to each party a judgment containing written reasons for its decision, signed by a member of the Tribunal.

(3) As soon as reasonably practicable following a case management hearing, the Tribunal will provide to each party a memorandum containing written reasons for its decisions, signed by a member of the Tribunal.

(4) Decisions on applications made during the course of a substantive hearing will be announced in a public session and the written reasons will be contained in the judgment issued at the conclusion of the proceedings.

(5) The Tribunal or a clerk may, at any time, correct a clerical error or omission in a judgment or memorandum.

### **Sanction**

**41.**—(1) At the conclusion of the hearing, the Tribunal must make a finding as to whether any or all of the allegations in the application have been substantiated.

(2) If the Tribunal makes a finding that any or all of the allegations in the application have been substantiated, the Tribunal must ask—

(a) the clerk whether any allegations were found to have been substantiated against the respondent in any previous disciplinary proceedings before the Tribunal; and

(b) the Society (in those cases where the Society is the applicant) whether it has imposed any sanction against the respondent in respect of conduct which has not been the subject of any previous disciplinary proceedings before the Tribunal.

(3) The respondent will be entitled to make submissions by way of mitigation, including character references, in respect of the sanction, if any, to be imposed by the Tribunal.

(4) The Tribunal will have regard to its guidance on sanctions in force at the time when determining the appropriate sanction.

### **The Order**

**42.**—(1) The making of the Order that contains the Tribunal's decision must be announced by the Tribunal pursuant to Rule 40(1) and a copy of the Order signed by a member of the Tribunal must be sent by the Tribunal to the Society as soon as reasonably practicable following the hearing.

(2) An Order takes effect once it has been announced by the Tribunal in public session or in private where rule 35(8) applies.

### **Costs**

**43.**—(1) At any stage of the proceedings, the Tribunal may make such order as to costs as it thinks fit, which may include an order for wasted costs.

(2) The amount of costs to be paid may either be decided and fixed by the Tribunal following summary assessment or directed by the Tribunal to be subject to detailed assessment by a taxing Master of the Senior Courts.

(3) Without prejudice to the generality of paragraph (1), the Tribunal may make an order as to costs in circumstances where—

- (a) any application, allegation or appeal is withdrawn or amended;
- (b) some or all of the allegations are not proved against a respondent;
- (c) an appeal or interim application is unsuccessful.

(4) The Tribunal will first decide whether to make an order for costs and will identify the paying party. When deciding whether to make an order for costs, against which party, and for what amount, the Tribunal will consider all relevant matters including the following—

- (a) the conduct of the parties and whether any or all of the allegations were pursued or defended reasonably;
- (b) whether the Tribunal's directions and time limits imposed were complied with;
- (c) whether the amount of time spent on the matter was proportionate and reasonable;
- (d) whether any hourly rate and the amount of disbursements claimed is proportionate and reasonable;
- (e) the paying party's means.

(5) If the respondent makes representations about the respondent's means, the representations must be supported by a Statement which includes details of the respondent's assets, income and expenditure (including but not limited to property, savings, income and outgoings) which must be supported by documentary evidence.

## PART 7

### MISCELLANEOUS

#### **Sending and service of documents**

**44.**—(1) Any document to be sent to the Tribunal or any other person or served on a party or any other person under these Rules, a practice direction or a direction given under these Rules must be—

- (a) sent by pre-paid first class post or by document exchange, or delivered by hand, to the Tribunal's or other person's office or as the case may be the address specified for the proceedings by the party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or
- (b) sent by email to the email address specified by the Tribunal or other person or specified for the proceedings by a party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or
- (c) sent or delivered by such other method as the Tribunal may direct.

(2) Subject to paragraph (3), if a party specifies an email address for the electronic delivery of documents the Tribunal and other parties will be entitled to serve (and service will be deemed to be effective) documents by electronic means to that email address, unless the party states in writing that service should not be effected by those means.

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

(4) Any recipient of a document sent by electronic means may request that the sender send 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 will proceed on the basis that the address, including an email 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 by that party or representative.

(6) If a document submitted to the Tribunal is not written in English, it must be accompanied by an English translation and a Statement from the translator confirming that the translator carried out the translation and setting out the translator’s qualifications.

### Deemed Service

**45.** A document sent or served within the United Kingdom in accordance with these Rules or any relevant practice direction is deemed to be served on the day shown in the following table—

<i>Method of service</i>	<i>Deemed date of service</i>
1. First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
2. Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
3. Delivering the document by hand to or leaving it at an address	If it is delivered to or left at the address on a business day before 4.30p.m., on that day; or in any other case, on the next business day after that day.
4. E-mail or other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent.
5. Fax	If the transmission of the fax is completed on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was transmitted.
6. Personal service	If the document is served personally before 4.30p.m. on a business day, on that day; or in any other case, on the next business day after that day.

### Substituted service by the applicant

**46.**—(1) If the applicant believes that there is no reasonable prospect of being able to effect service on a respondent using the methods set out in rule 44 it may apply to the Tribunal for a direction for substituted service. This application must be made in writing and set out—

- (a) the steps that have been taken to establish the address, place of business or email address of the respondent; and
- (b) the proposed alternative method of service.

(2) The application may be determined by the Tribunal, a panel, a single solicitor member or a clerk, who may make a direction for substituted service if it is in the interests of justice to do so.

### Calculating time

**47.**—(1) Subject to rule 45 an act required by these Rules, a practice direction or a direction given under these Rules to be done on or by a particular day must be done by 4:30 p.m. on that day unless otherwise directed.

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

### **Representatives**

**48.**—(1) Any party may appoint a legal representative to represent that party in the proceedings.

(2) If a party appoints a legal representative, that party must send to the Tribunal and every other party written notice of the representative's name and address, together with a copy of the notice.

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

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

- (a) must send to the legal representative any document which, at any time after the appointment, is required to be sent to the represented party, and need not send that document to the represented party; and
- (b) may proceed on the basis that the representative is and remains authorised as such until they receive written notification to the contrary 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 (2) but who, with the permission of the Tribunal, may assist the party in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

(7) In this rule "legal representative" means—

- (a) a solicitor;
- (b) a barrister;
- (c) 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 meanings given by Schedule 2 to that Act.

### **Amendments to the 2011 Appeals Rules**

**49.** The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011<sup>(19)</sup> are amended as follows—

- (a) In rule 2 (interpretation)—
  - (i) for the definition of "the 2007 rules" substitute the following definition—  
"the 2019 rules" means the Solicitors (Disciplinary Proceedings) Rules 2019";
  - (ii) In the definition of "clerk", for "the 2007 rules" substitute "the 2019 rules";
- (b) In rule 5(1) for the words "listed in rule 3(11) of the 2007 Rules" substitute "listed in rule 8(6) of the Solicitors (Disciplinary Proceedings) Rules 2019".
- (c) In rule 5(2) for the words "rule 3(11) of the 2007 Rules" substitute "rule 8(6) of the Solicitors (Disciplinary Proceedings) Rules 2019"
- (d) In rule 27(1) for "5pm" substitute "4.30p.m."

### **Revocation**

**50.** The Solicitors (Disciplinary Proceedings) Rules 2007 are revoked.

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<sup>(19)</sup> S.I. 2011/2345.

**Transitional provisions**

**51.** These Rules do not apply to proceedings in respect of which an Application is made before the date on which these Rules come into force and those proceedings will be subject to the Solicitors (Disciplinary Proceedings) Rules 2007 as if they had not been revoked.

Signed by authority of the Solicitors Disciplinary Tribunal

Gate House, 1 Farringdon Street, London EC4M 7LG  
[Date] 2019

*Edward Nally*  
President  
Solicitors Disciplinary Tribunal



## EXPLANATORY NOTE

*(This note is not part of the ~~Rules Order~~)*

These Rules regulate procedure for the making, hearing and determination of applications made to the Solicitors Disciplinary Tribunal constituted under the Solicitors Act 1974 (as amended). They replace the previous 2007 Rules.

(2) Part 1 contains introductory provisions. Rule 4 sets out (for the first time) the overriding objective of the rules, which is to enable the Tribunal to deal with cases justly and at proportionate cost. Rule 5 sets out the standard of proof to be applied at the Tribunal's proceedings. It was formerly the standard applicable in criminal proceedings but is now the standard applicable in civil proceedings. Rule 6 makes general provision about the regulation of procedure.

(3) Part 2 makes provision about the constitution of the Tribunal, and sets out the duties of the Tribunal's clerks.

(4) Part 3 sets out the procedure to be followed when making applications to the Tribunal.

(5) Part 4 contains provisions about case management, including provisions about standard directions, case management hearings, agreed outcome proposals, disclosure and discovery.

(6) Part 5 makes provision about evidence, including the service of evidence, written evidence, expert evidence, and admissibility of evidence about convictions and character evidence.

(7) Part 6 makes provision about hearing procedures, including about whether hearings should be held in public or private, proceedings in absence of a party, recording of hearings and the decision making procedure.

(8) Part 7 contains miscellaneous provisions, including about awards of costs, sending and serving of documents, calculating time and legal representation.

The Rules revoke the Solicitors (Disciplinary Proceedings) Rules 2007.

The Rules make reference throughout to the types of forms that must be used in relation to Tribunal proceedings. **Copies of the Rules and the ~~These~~** forms can be obtained from the Tribunal at its offices at 5th Floor, Gate House, 1 Farringdon Street, London EC4M 7LG or found on the Tribunal's website at the following address: [www.solicitortribunal.org.uk](http://www.solicitortribunal.org.uk)