

**THE TAXATION DISCIPLINARY SCHEME REGULATIONS 2014**  
(as amended November 2016)

The Taxation Disciplinary Board Limited (“the TDB”), in exercise of the powers conferred on it by the Taxation Disciplinary Scheme (“the Scheme”) established by the Chartered Institute of Taxation and The Association of Taxation Technicians and all other powers enabling it, hereby makes the following Regulations:-

**PART ONE**

**1. CITATION, COMMENCEMENT AND APPLICATION**

- 1.1 These Regulations may be cited as the Taxation Disciplinary Scheme Regulations 2014.
- 1.2 These Regulations shall take effect on 1 February 2014 and replace all previous Regulations.

**PART TWO**

2.1 In these Regulations the Interpretation Act 1978 shall apply except where the context otherwise requires. The following words and phrases shall have the meanings respectively ascribed to them:

- (a) “Appeal Tribunal” means the Appeal Tribunal established by the Scheme to hear appeals from decisions of the Disciplinary Tribunal
- (b) “Appellant” means the party who has given Notice of Appeal against a decision of the Disciplinary Tribunal
- (c) “Association” means the Association of Taxation Technicians
- (d) “Board” means the Board of Directors of the TDB
- (e) “Chairman” means the person appointed by the TDB to chair a committee or Tribunal as the case may be
- (f) “Charge” means a charge or charges framed following the referral of a complaint by the Investigation Committee to the Disciplinary Tribunal
- (g) “Clerk” means the Clerk to the Interim Orders Panel, the Disciplinary Tribunal or the Appeal Tribunal
- (h) “Complainant” means a person or body who has made a complaint against a Member to the TDB or the TDB itself when investigating matters of its own volition
- (i) “Complaint” means an allegation of a breach or a series of breaches of:
  - (a) in relation to the Institute, the Charter, the Byelaws and/or the Regulations and/or any other provisions regulating the activities of Members, or their conduct, including any disciplinary scheme established by the Institute alone or in co-operation with other bodies;
  - (b) in relation to the Association, any regulations, rules and bye-laws for the time being in force promulgated by the Council and/or any other provisions regulating the activities of Members, or their conduct, including any disciplinary scheme established by the Association alone or in co-operation with other bodies;

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- (c) in relation to any other participant, the terms of the governing or regulatory instruments or published guidance, professional standards or codes of conduct of that participant
- (j) “Conduct Unbefitting” means conduct on the part of a Member, including in a personal or private capacity, which tends to bring discredit upon the Member and/ or tends to harm the standing of the profession and/ or the Association or the Institute (as the case may be);
- (k) “Defendant” means a Member against whom a complaint has been made
- (l) “Disciplinary Assessor” means the person appointed by the TDB to conduct a preliminary review of an appeal from the Disciplinary Tribunal
- (m) “Disciplinary Panel” means the panel appointed by the Board from which members of the Disciplinary Tribunal or Appeal Tribunal shall be selected
- (n) “Disciplinary Tribunal” means the Disciplinary Tribunal established by the Scheme to adjudicate on matters referred to it by the Investigation Committee or the Reviewer
- (o) “Evidence” includes statements made by a witness before the Disciplinary Tribunal and any document produced for the purpose of any hearing before the Disciplinary Tribunal or the Appeal Tribunal
- (p) “Inadequate Professional Service” means such conduct towards a Complainant or performance of professional services for that Complainant which falls significantly short of that which is to be reasonably expected of a professional tax adviser in all the circumstances
- (q) “Indicative Sanctions Guidance” means guidance issued by the Board to the Disciplinary Tribunal and the Appeal Tribunal
- (r) “Institute” means The Chartered Institute of Taxation
- (s) “Interim Orders Panel” means the panel established by the Scheme to adjudicate on matters referred to it by the Investigation Committee
- (t) “Investigation Committee” means an Investigation Committee established by the Scheme to consider whether to refer a complaint to a Disciplinary Tribunal
- (u) “Investigation Panel” means the panel appointed by the Board from which members of the Investigation Committee shall be selected
- (v) “Investigatory Assessor” means the person appointed by the TDB to conduct a review of referrals from the Reviewer or appeals from the Investigation Committee
- (w) “Lay member” means a person who is not a Member
- (x) “Legally qualified” means a solicitor, barrister, or member of the Institute of Legal Executives (ILEX)
- (y) “Member” means a firm, member, student, associate or any other person or body subject to the jurisdiction of any one or more of the participants
- (z) “Money laundering register” means any anti-money laundering register kept by any participant in accordance with the Anti-Money Laundering (AML) Compliance Scheme

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- (aa) “Notice of Appeal” means a Notice under Regulation 21
- (bb) “Participant” means the Institute or the Association or any other body from time to time paying part of the costs of the TDB and whose members come within the jurisdiction of the Scheme
- (cc) “Presenter” means a person appointed by the TDB to present a case to the Disciplinary Tribunal or Appeal Tribunal
- (dd) “Prima Facie Case” means a factual allegation or series of factual allegations which, if proved, would result in the Defendant’s being guilty of a disciplinary offence
- (ee) “Proceedings” means any action taken by the TDB or any person or body established by the Scheme in dealing with a complaint
- (ff) “Regulations” mean these Regulations (as amended from time to time) made by the Board pursuant to the Scheme
- (gg) “Representative” means a solicitor or barrister or other person appointed by any party for the purposes of a hearing before a Tribunal
- (hh) “Respondent” means a party responding to an appeal from the Disciplinary Tribunal
- (ii) “Reviewer” means the person appointed by the TDB to undertake the initial consideration of a complaint
- (jj) “Scheme” means the Taxation Disciplinary Scheme adopted by the Council of the Institute on 8 January 2008 and by the Council of the Association on 11 December 2007, as amended from time to time
- (kk) “Simplified Procedure” means the procedure followed by the Disciplinary Tribunal when considering a complaint referred to it by the Reviewer
- (ll) “TDB” means the Taxation Disciplinary Board Limited
- (mm) “Tribunal” means the Disciplinary Tribunal or Appeal Tribunal as the context requires.

Words importing the singular may include the plural and vice versa. Words importing the masculine gender include the feminine.

**PART THREE**

**3. COMPLAINT**

- 3.1 On receipt of a Complaint, as a result of its own inquiry or as a result of information received, the TDB will consider such Complaint, inquiry or information in accordance with these Regulations.
- 3.2 The initial consideration of the Complaint shall be undertaken by the Reviewer.
- 3.3 No Complaint, inquiry or information shall be considered where it is lodged in excess of 24 months after the last incident relied on or in excess of 24 months from when that last incident became known to the Complainant, unless in the opinion of the Reviewer:

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- (a) there are issues of such public interest that pursuing the Complaint is appropriate;
  - (b) the Complaint raised is of sufficient importance or gravity that pursuing the Complaint is appropriate; or
  - (c) there is a valid reason for the delay in the Complaint being brought to the attention of the TDB.
- 3.4 If the Reviewer considers that a Complaint, inquiry or information does not fall within the jurisdiction of the Scheme or Regulations, he shall take no further action.
- 3.5 If the Reviewer considers that the Complaint, inquiry or information is vexatious or of such a minor nature that, in his view, it would not if proved merit a sufficiently serious sanction to justify prosecution, the Reviewer may determine that no further action shall be taken.
- 3.6 If the Reviewer determines to take no further action under Regulation 3.3, 3.4 or 3.5, he shall immediately inform the Complainant. If a Complainant is dissatisfied with such decision of the Reviewer, the Complainant may by written notice to the Reviewer request that the Complaint be referred to the Investigatory Assessor. Any such notice must be sent to the Reviewer within 14 days of receipt of the decision of the Reviewer by the Complainant.
- 3.7 The Investigatory Assessor may uphold the decision of the Reviewer or order the Reviewer to refer the matter to an Investigation Committee.
- 3.8 In cases where the Reviewer refers a report of the Complaint to an Investigation Committee to consider, he shall first have provided the Defendant with an opportunity to comment on the Complaint. The Defendant will have 21 days to respond to the Reviewer's request. If the Defendant fails to respond as above the Reviewer may refer the case to an Investigation Committee.
- 3.9 Following determination of any referral the Investigatory Assessor shall give written reasons for his determination to the Reviewer and the Complainant or Defendant within 28 days.
- 3.10 The Investigatory Assessor's decision shall be final.
- 3.11 If the Reviewer considers that the only complaints raised are breaches of a Participant's administrative requirements, rules or procedures, the Reviewer may impose a financial penalty on the Defendant to a maximum of £500 for each breach. Such financial penalty must be paid within 14 days of the Defendant being notified of such decision, and the reasons for it, unless the Reviewer grants an extension of time.
- 3.12 If a Defendant is dissatisfied with the decision of the Reviewer to impose a financial penalty, the Defendant may by written notice to the Reviewer request that the Complaint be considered by the Disciplinary Tribunal.
- 3.13 Any request under Regulation 3.12 above shall be of no effect unless it states the grounds under which the review is to be considered.
- 3.14 The grounds under which a request under Regulation 3.12 may be made are limited to the following:
- (a) that the decision of the Reviewer was unfair or unreasonable;
  - (b) that new evidence pertinent to the Complaint which could not reasonably have been produced at the time the Reviewer made his decision has become available and that evidence would materially have affected the decision of the Reviewer

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- 3.15 Such request must be sent to the Reviewer within 14 days of receipt of the decision of the Reviewer.
- 3.16 If a Member fails to respond within the specified time to the decision to impose a financial penalty, the Reviewer shall refer the matter to a Disciplinary Tribunal under the procedure set out in Regulation 8.4.

**PART FOUR**

**4. INVESTIGATION COMMITTEE**

- 4.1 Where a Complaint is to be considered by an Investigation Committee, the TDB shall select such an Investigation Committee from the members of the Investigation Panel.
- 4.2 The Investigation Committee shall have a quorum of three members. One of these shall be a Member, and a majority shall be lay members. The members of the Investigation Committee shall not include any person who has had any involvement with the Complaint before it was referred to the Investigation Committee.
- 4.3 The Investigation Committee shall consider as soon as practicable the report prepared by the Reviewer.
- 4.4 In considering a Complaint, and at any time before reaching a decision, the Investigation Committee may require the Defendant to provide such further information and documents relating to the complaint as the Committee thinks necessary for the effective, expeditious, fair and economic disposal of the case and to supply such further copies of any document as it considers requisite. The time for compliance with such a request shall be specified, but shall not be less than seven days unless the Defendant agrees or the Investigation Committee otherwise directs. It shall be the duty of the Defendant to provide such information as is requested.
- 4.5 Nothing in these Regulations shall be taken as requiring the Defendant to produce any document or reveal any advice received which is subject to legal professional privilege, nor to waive any such privilege that he has in such a document or such advice, nor to produce a document or reveal advice which is the subject of legal professional privilege belonging to his client save where the client consents to the production of that document or the revealing of that advice.
- 4.6 Before reaching its decision the Investigation Committee must be satisfied that the Defendant has been given a reasonable opportunity to make written representations to it or, if not so satisfied, it shall give the Defendant such reasonable opportunity.
- 4.7 If the Defendant fails to co-operate or reply to correspondence, the Investigation Committee may of its own volition refer that failure to the Disciplinary Tribunal as a separate Complaint.
- 4.8 Any decision of the Investigation Committee shall be unanimous or made by majority. The Investigation Committee shall not reach a decision save when an uneven number of members is present to vote on that decision.

**5. Prima Facie Case**

- 5.1 The Investigation Committee shall consider whether the Complaint discloses a Prima Facie Case.

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- 5.2 A Prima Facie Case can include, but is not limited to a case involving:
- (a) a breach of professional standards and guidelines; or
  - (b) inadequate professional service; or
  - (c) Conduct Unbefitting.
- 5.3 If the Investigation Committee finds that a Prima Facie Case against the Defendant has not been made out it shall so notify the Defendant, the Complainant and the appropriate Participant.
- 5.4 The Investigation Committee may:
- (a) in circumstances where it finds that no Prima Facie Case has been made out, rule that the Complaint be rejected;
  - (b) in circumstances where it finds that a Prima Facie Case has been made out, but the Complaint is of such a minor nature that, in the Investigation Committee's view, it would not if proved merit a sufficiently serious sanction to justify prosecution, rule that the Complaint shall lie on file for the period of three years starting from the date of its decision;
  - (c) before deciding whether to make the direction provided for in Regulation 5.4(b) above, the Committee may take into account any facts or matters which have been considered by an Investigation Committee on previous occasions in relation to the Defendant, in respect of which, although a Prima Facie Case has been made out, either no further action was taken or the Complaint was ordered to lie on file. If it is decided to refer the Complaint to the Disciplinary Tribunal,
    - i) the Investigation Committee shall state in its written reasons for its decision that a material factor in its decision to refer the Complaint to the Disciplinary Tribunal was that there had been a previous Complaint made against the Defendant in respect of which it had been ordered that no further action be taken or that the Complaint had been ordered to lie on file;
    - ii) in respect of any previous Complaint which was ordered to lie on file pursuant to Regulation 5.2(b) above, the Investigation Committee may order that the said earlier Complaint should now go forward to the Disciplinary Tribunal together with the current Complaint;
    - iii) in respect of any other previous Complaint, the Investigation Committee shall make no order;
  - (d) in circumstances where it finds that a Prima Facie Case has been made out, rule that no further action be taken if, in its opinion, the evidence is not of sufficient strength to establish the facts in question before a Disciplinary Tribunal;
  - (e) where it considers that a Prima Facie Case has been made out, refer the whole or appropriate part of the Complaint to the Disciplinary Tribunal.
- 5.5 If, when the Investigation Committee has referred the whole or part of a Complaint to the Disciplinary Tribunal pursuant to Regulation 5.4(e), the Complaint arises from or in connection with any one or more of the following circumstances:
- (a) the Defendant being charged with a criminal offence;

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- (b) the Defendant being convicted of a criminal offence;
- (c) the Defendant being expelled from membership of another professional body;
- (d) the Defendant's professional competence being seriously impaired as the result of physical or mental ill-health,

then the Investigation Committee shall consider whether to refer the Complaint to the Interim Orders Panel.

- 5.6 The Investigation Committee may refer a Complaint to the Interim Orders Panel if it is satisfied that any one or more of the factors listed in Regulation 11.1(a) or (b) are present. In considering whether the said factors are present, the Investigation Committee shall assume that the Prima Facie Case which it has identified against the Defendant has been made out.
- 5.7 The Investigation Committee shall produce written reasons for all of its decisions. If the Investigation Committee decides pursuant to Regulation 5.4(b) or (d) that, even though a Prima Facie Case is made out against the Defendant, the Complaint should be ordered to lie on the file or be subject to no further action, then the written record of the decision must expressly include reference to the duty of the TDB and the relevant Participant or Participants to protect the public and to protect the reputation of the profession.
- 5.8 The Investigation Committee's written reasons for its decision shall not be made available to the Disciplinary Tribunal in any form before that body has made a decision pursuant to Regulation 20.2, save always that the Defendant may refer to the written reasons of the Investigation Committee before the Interim Orders Panel or the Disciplinary Tribunal at any time.

**6. Referral to Investigatory Assessor from the Investigation Committee**

- 6.1 Any party objecting to a decision of the Investigation Committee under Regulation 5.4(a), (b) and (d) shall have a right of appeal to an Investigatory Assessor. Notice of any such appeal must be served upon the TDB within 14 days of service of the Investigation Committee's written reasons for its determination. The Investigatory Assessor shall determine the appeal and shall give written reasons for his determination to the TDB and the Complainant within 28 days. The Assessor may uphold the decision of the Investigation Committee or order that the Complaint be referred to a new Investigation Committee ("the Second Investigation Committee").
- 6.2 The TDB shall appoint the Investigatory Assessor for the purposes of Regulation 6.1 above from members of the Investigation Panel who have not previously been involved in the consideration of the Complaint.
- 6.3 No appeal shall be considered if in the opinion of the Investigatory Assessor it is frivolous or vexatious.
- 6.4 The Investigatory Assessor's decision shall be final.
- 6.5 If the Investigatory Assessor rules that the Complaint must be referred to the Second Investigation Committee, such a committee must be convened as soon as reasonably practicable.
- 6.6 Where pursuant to Regulation 6.5 a Complaint is to be considered by the Second Investigation Committee, the TDB shall appoint the Second Investigation Committee from the members of

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the Investigation Panel. The provisions of Regulation 4.2 shall apply mutatis mutandis to the Second Investigation Committee.

6.7 The Second Investigation Committee's decision shall be final.

**7 Referral to the Interim Orders Panel**

7.1 If the Investigation Committee decides that a Complaint which it has decided to refer to the Disciplinary Tribunal pursuant to Regulation 5.4 (e) should also be referred to the Interim Orders Panel pursuant to Regulation 5.6, then:

- (a) Regulation 8.1 shall not apply;
- (b) The Investigation Committee shall within seven days send to the Clerk and to the Defendant notification of its decision together with a copy of its reason for making the decision, a summary of the evidence upon which the decision is based and copies of any relevant documents, and shall notify any Complainant that the Complaint is being referred to the Interim Orders Panel and the Disciplinary Tribunal.

7.2 The Clerk shall convene a meeting of the Interim Orders Panel as soon as reasonably practicable upon receipt of a referral under Regulation 7.1. The Clerk shall send to the members of the Interim Orders Panel so convened copies of the material referred to in Regulation 7.1(b) above.

**8. Referral to the Disciplinary Tribunal**

8.1 If the Investigation Committee decides that a Complaint should be referred to the Disciplinary Tribunal pursuant to Regulations 5.4(e), it shall within 21 days send to the Clerk and to the Defendant notification of its decision together with a copy of its reasons for making the decision, a summary of the evidence on which the decision is based and copies of any relevant documents and shall notify any Complainant that the Complaint has been referred to the Disciplinary Tribunal.

8.2 On receipt of notification of a decision of the Investigation Committee to refer a Complaint to the Disciplinary Tribunal pursuant to Regulation 5.4(e), the Clerk shall as soon as reasonably practicable instruct a Presenter to settle the Charge. The Clerk shall send to the Presenter copies of the material referred to in Regulation 8.1 above.

8.3 If at any time the Presenter advises the Clerk that in his opinion there are legal and/ or evidential difficulties which need to be resolved before the complaint can be fairly presented, the Clerk may refer the Complaint back to the Investigation Committee to reconsider it in the light of the matters raised by the Presenter.

8.4 Where the Reviewer refers a complaint to the Disciplinary Tribunal under Regulation 3.12 or 3.16 above, he shall, within 21 days, forward the following papers to the Clerk:

- (a) a copy of the Complaint;
- (b) a note of the grounds upon which the Defendant has sought a review under Regulation 3.13 above;
- (c) a summary of the evidence on which the Reviewer has based his decision.

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**PART FIVE**

**9 INTERIM ORDERS PANEL**

**9 Appointment**

9.1 The TDB shall select an Interim Orders Panel from the members of the Disciplinary Panel to consider any referral made by the Investigation Committee pursuant to Regulation 5.6.

9.2 The Interim Orders Panel shall have a quorum of three members. One of these shall be a Member, and a majority shall be lay members. The Chairman of the Interim Orders Panel shall be a legally qualified person. No person who has had any previous involvement with the Complaint may sit upon the Interim Orders Panel.

**10 Procedure**

10.1 When the Clerk has convened a meeting of the Interim Orders Panel pursuant to Regulation 7.2, he shall notify the Defendant of the date of that meeting, send him a copy of these Regulations and invite him to make any written submissions and/ or send any evidence to the Interim Orders Panel. Any such submissions or evidence must be sent to the Clerk so as to arrive not later than seven days before the meeting of the Interim Orders Panel.

10.2 The Defendant may make oral submissions to the Interim Orders Panel, by himself or by a representative. Ordinarily, such submissions shall be made by telephone. If a Defendant wishes to appear before the Interim Orders Panel whether in person or by a representative, he shall apply to the Interim Orders Panel by writing to the Clerk as soon as possible after receiving notification of the date of the meeting of the Interim Orders Panel for permission.

10.3 The Interim Orders Panel shall decide whether to permit the Defendant to make submissions otherwise than by telephone. Its decision shall be final, and a written record of the decision shall be made. In making the decision, the Interim Orders Panel shall take into account:

- (a) The circumstances of the Complaint;
- (b) The need to protect the public;
- (c) The need to protect the reputation of the Participant of which the Defendant is a member;
- (d) Any unfairness to the Defendant in taking his representations over the telephone;
- (e) The ease with which the Defendant or his representative might attend the meeting in person;
- (f) The circumstances in which the application by the Defendant was made, paying particular regard to the amount of time that has elapsed between the Defendant being notified of the referral to the Interim Orders Panel and making his application; and
- (g) Any other factor which in the opinion of the Interim Orders Panel is relevant to its decision.

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**11 Powers**

11.1 When the Interim Orders Panel considers that either or both of the following factors are present, Regulation 11.2 shall apply:

- (a) The continuing membership by the Defendant of any Participant presents a real risk of harm to the public; and/ or
- (b) The continuing membership by the Defendant of any Participant presents a real risk of damaging the reputation of the Participant of which the Defendant is a member.

11.2 Where the Interim Orders Panel has jurisdiction pursuant to Regulation 11.1, it may do any one or more of the following:

*Suspension from membership*

- (a) Suspend the Defendant from membership of any Participant until such time as the Disciplinary Tribunal has determined whether any Charge arising from the Complaint has been proved or until the Interim Orders Panel or the Disciplinary Tribunal orders otherwise;
- (b) Subject to Regulation 11.6, declare that any Member in which the Defendant is a partner or director shall not be entitled to take account when holding itself out to the public of the Defendant's membership of any Participant for the period of his suspension;
- (c) Require the Defendant or, subject to Regulation 11.6, any other Member in which the Defendant works to take any step which in the opinion of the Interim Orders Panel ought necessarily to be taken consequential upon the Defendant's being suspended from membership of the Participant of which he is a member;

*Imposition of conditions on membership*

- (d) Require the Defendant to take steps within a reasonable period of time to do or to cease to do anything which in the opinion of the Interim Orders Panel is necessary for the protection of the public or the reputation of the Participant of which the Defendant is a member;
- (e) Order that in the event the Defendant fails to comply with all of the requirements imposed pursuant to Regulation 11.2(d), the Defendant shall be automatically suspended from membership of any Participant until such time as the Disciplinary Tribunal has determined whether any Charge has been proved or until the Interim Orders Panel or the Disciplinary Tribunal orders otherwise.
- (f) Make any consequential declaration or orders that could have been made pursuant to Regulations 11.2(b) and/ or (c), such consequential declarations or orders not to come into effect unless and until the Defendant is automatically suspended from membership upon failing to comply with an order made pursuant to Regulation 11.2(e).

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- 11.3 The Interim Orders Panel shall exercise its discretion under Regulation 11.2 only where it is satisfied that:
- (a) There is a real prospect that the Complaint against the Defendant will be made out; and
  - (b) There is a real risk that not to make an interim order will expose the public to harm and/or expose the reputation of the Participant of which the Defendant is a member to harm; and
  - (c) The need to protect the public or the reputation of the Participant of which the Defendant is a member clearly outweighs the effect on the Defendant of the interim order.
  - (d) In determining whether a Defendant's professional competence is seriously impaired as the result of physical or mental ill-health, the Interim Orders Panel may rely on a report by a registered medical practitioner, but the absence of such a report shall not prevent the Interim Orders Panel from so determining on the basis of the Defendant's conduct.
- 11.4 The Interim Orders Panel shall make a written record of its decision and the Clerk shall send copies to the Defendant and the Presenter. If the Interim Orders Panel has made an interim order, it shall:
- (a) Serve on the Defendant and any other Member in respect of which it has made an order pursuant to Regulation 11.2(b), (c), (e) or (f) a copy of the order it has made together with a copy of its written reasons for making the order. The order shall have effect from the date of deemed service pursuant to Regulation 31.3;
  - (b) Order that a record of its order shall be published as soon as practicable in any manner that it thinks fit;
  - (c) Order that its written reasons for making the order shall not be published generally or made available to the Disciplinary Tribunal in any form before that body has made a decision pursuant to Regulation 20.2;
  - (d) Consider whether to order the Defendant, or any other Member in respect of which it has made an order, to pay a sum by way of costs; or whether to refer the question of such costs to the Disciplinary Tribunal.
- 11.5 If the Interim Orders Panel declines to make an interim order, it may:
- (a) Order the TDB to pay to the Defendant such sum by way of costs as, in its absolute discretion, the Interim Orders Panel thinks fit;
  - (b) Refer the question of whether the Defendant should be awarded any sum by way of costs to be determined by the Disciplinary Tribunal following the conclusion of the hearing of the Charge.
- 11.6 Regardless of any order made pursuant to Regulation 11.4(c), the Defendant may refer to the written reasons of the Interim Orders Panel before the Disciplinary Tribunal at any time.

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- 11.7 In the event that the Interim Orders Panel is minded to make an order against a Member pursuant to Regulation 11.2(b), (c) or (f), it shall notify the said Member of its intention and invite the Member to show cause why such order should not be made. If a Member fails within ten days of notification to indicate an intention to show cause why such an order should not be made, then the Interim Orders Panel may proceed forthwith to make the said order.
- 11.8 If a Member within ten days of notification pursuant to Regulation 11.7 indicates to the Clerk that it intends to show cause why such an order should not be made, then the Interim Orders Panel shall give directions for the service of evidence from the Member and for the convening of a hearing to consider the Member's contentions.
- 11.9 If the Interim Orders Panel is reconvened pursuant to Regulation 11.8, the Member who seeks to show cause why the proposed order should not be made has the right to make oral submissions in connection with its application. Regulations 10.2 and 10.3 shall apply, but with references to "the Defendant" to be read as references to "the Member who seeks to show cause pursuant to Regulation 11.7".
- 11.10 A Defendant or Member in respect of whom the Interim Orders Panel has made an order pursuant to Regulation 11.2 on the grounds that the Defendant's professional competence is seriously impaired as the result of physical or mental ill-health may apply to the Interim Orders Panel to reconsider the order made against him or it at any time on the grounds that an interim order is no longer necessary. Any such application must be made to the Clerk and supported by evidence.
- 11.11 Upon receipt of any application pursuant to Regulation 11.10, the Clerk shall convene a further meeting of the Interim Orders Panel to reconsider the order made against the Defendant/ the Member.
- 11.12 If the Interim Orders Panel is reconvened for the purposes of considering an application made pursuant to Regulation 11.10, the Defendant/ the Member has the right to make oral submissions in connection with the application and Regulations 10.2 and 10.3 shall apply.
- 11.13 In considering an application made pursuant to Regulation 11.10, the Interim Orders Panel shall take into account:
- (a) All the reasons that it took into account when it made the order against the Defendant/ the Member;
  - (b) The evidence provided by the Defendant/ the Member;
  - (c) Whether the aims of the order originally made against the Defendant/ the Member can be achieved by any other means, including by means of undertakings given by the Defendant.
- 11.14 In the event that the Disciplinary Tribunal has not determined any Charge arising from the Complaint in relation to which an order has been made by the Interim Orders Panel pursuant to Regulation 11.2 within one calendar year of that order being made:
- (a) Within 21 days of the anniversary of the making of the order, the Clerk shall notify the Defendant and/ or any Member against whom the order is made in writing that one year has passed since the making of the order and invite him and/ or it within 21 days to make any submissions as to why the order should be varied or discharged;

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- (b) The Clerk shall convene a meeting of the Interim Orders Panel to consider whether the order should be varied or discharged;
- (c) The Interim Orders Panel shall reconsider the decision and order that it made taking into account any material provided by the Defendant and/ or any Member against whom the order was made pursuant to Regulation 11.14(a) and the reason that the Disciplinary Tribunal has not determined the Charges against him and/ or it. Having regard to Regulations 11.2 and 11.3, it may confirm, vary or lift the existing order.

**PART SIX**

**12. DISCIPLINARY TRIBUNAL**

**12. Appointment**

- 12.1 The TDB shall select a Disciplinary Tribunal from the members of the Disciplinary Panel to hear the charge and shall appoint a Chairman for that Tribunal.
- 12.2 The Disciplinary Tribunal shall have a quorum of three members. One of these shall be a Member, and a majority shall be lay members. The Chairman of the Disciplinary Tribunal shall be a legally qualified person. No person who has had any previous involvement with the Complaint may sit upon the Disciplinary Tribunal.

**13. Simplified Procedure for cases referred by the Reviewer**

- 13.1 On receipt of a Complaint under Regulation 8.4 above, the Clerk will send a notice to the Defendant setting out the Complaint and notifying him of the date (which shall, unless the Defendant otherwise agrees, be not earlier than 28 days after the date on which the notice is sent to the Defendant) time and place of the hearing.
- 13.2 The Clerk will also send to the Defendant:
  - (a) a copy of the information sent under Regulation 8.4 above
  - (b) a copy of the Scheme and these Regulations
- 13.3 The provisions of Regulation 17, 18 and 19 inclusive shall apply save that any reference made to the Presenter will be understood as a reference to the Reviewer, and any reference to a Charge shall be understood as reference to a Complaint.
- 13.4 The provisions of Regulations 20.3 and 20.4 shall apply.
- 13.5 The Disciplinary Tribunal may uphold, vary or overturn the decision of the Reviewer.
- 13.6 Where the Disciplinary Tribunal overturns the decision of the Reviewer, it may do so only on the grounds referred to in Regulation 3.14 above.
- 13.7 If the Disciplinary Tribunal upholds or varies the decision of the Reviewer, it may impose a financial penalty on the Defendant to a maximum of £5,000 for each breach. Such financial penalty must be paid within 14 days of the Defendant being notified of such decision, and the

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reasons for it, unless the Chairman of the Disciplinary Tribunal which imposed the penalty grants an extension of time.

- 13.8 The provisions of Regulations 20.6(d), 20.7, and 20.8 shall apply.
- 13.9 The decision shall be treated as effective on the date such order as is made pursuant to Regulation 13.5 above is deemed served on the Defendant.
- 13.10 The Clerk shall send a copy of the order to the Defendant as soon as practicable.
- 13.11 Notice of the decision shall be given to the Participant of which the Defendant is a member.
- 13.12 The decision of the Disciplinary Tribunal under the Simplified Procedure will be final.

**14. Initial Procedure for Cases Referred from the Investigation Committee**

- 14.1 On receipt of the Charge the Clerk shall send the following documents to the Defendant, either together or at different times and supplemented as necessary from time to time:
  - (a) A notice setting out the Charge against the Defendant notifying him of the date (which shall, unless the Defendant otherwise agrees, be not earlier than 28 days after the date on which the notice is sent to the defendant), time and place of the hearing
  - (b) A copy of the Scheme and these Regulations
  - (c) A copy of the report prepared by the Reviewer for the Investigation Committee, including the copy evidence appended to that report;
  - (d) A copy of the Investigation Committee's reasons for referring the Complaint to the Disciplinary Tribunal. The Clerk shall expressly draw the Defendant's attention to Regulation 5.8 of these Regulations.
  - (e) A letter requiring the Defendant to indicate in writing:
    - i) whether he accepts all or any of the charges made against him, and if not on what grounds he denies them
    - ii) if he accepts any of the charges made against him whether he has any explanation or mitigation
    - iii) whether or not he intends to attend and/or be represented at the hearing and, if so, by whom and whether that Representative is authorised to accept service of documents on his behalf
- 14.2 Subject to Regulations 14.3 and 14.4, at least 28 days before the day fixed for the hearing, or such other period as may be determined in accordance with Regulation 14.1(a):
  - (a) Each party shall serve on the other:
    - i) a written statement of any witness, each statement to be signed, dated and to include the name and address of the maker; and
    - ii) a list of all witnesses he intends to call at the hearing; and

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- iii) a paginated and indexed bundle of all documents on which that party intends to rely at the hearing
  - (b) Each party shall serve on the clerk four copies of each such statement and bundle of documents for use at the Tribunal
- 14.3 Nothing shall prevent the Chairman of the Disciplinary Tribunal directing such alternative time period for the purposes of Regulation 10.2 as he may specify.
- 14.4 If the Defendant informs the Clerk in writing that he accepts all the charges made against him, then, in respect of those charges only, the procedure provided for in Regulation 15 shall apply.
- 14.5 Nothing shall prevent the TDB from joining other complaints received after the case has been referred by the Investigation Committee to those already before the Disciplinary Tribunal that in its opinion are of importance or gravity or that give rise to issues involving the protection of the public or of the profession.
- 14.6 If the TDB joins other Complaints under Regulation 14.4 the Presenter may bring further charges against the Defendant. If he does so he shall forward to the Clerk a notice setting out the additional charges.
- 14.7 On receipt of the additional charges the Clerk shall serve on the Defendant a notice setting out the additional charges and a letter requiring the Defendant to indicate in writing:
- (a) whether he accepts any or all of the additional charges made against him, and if not on what grounds he denies them
  - (b) if he accepts any or all of the additional charges made against him, whether he has any explanation in mitigation
  - (c) whether or not he intends to attend and/or be represented at the hearing, and if so by whom and whether that representative is authorised to accept service of documents on his behalf
15. **Simplified procedure where Defendant admits all charges**
- 15.1 If the Defendant has admitted all charges in writing, then the provisions of this Regulation 15 shall apply and Regulation 14.2 shall not apply save as provided for in this Regulation 15.
- 15.2 Upon receipt of the Defendant's admission of the charges and any evidence tendered by him in explanation or mitigation, the Clerk shall remit the same to the Presenter.
- 15.3 If the Presenter considers that the explanation or mitigation tendered by the Defendant would, if true, amount to a defence to the charges, or if he considers that the Defendant's version of the facts differs materially from the Presenter's version, such that there ought to be a hearing at which the Defendant's evidence can be tested, he shall so inform the Clerk.
- 15.4 If the Presenter indicates to the Clerk pursuant to Regulation 15.3 that the simplified procedure ought not to apply, this Regulation 15 shall not apply and the Clerk shall proceed to organise a hearing in accordance with the procedure provided in Regulation 14.2.
- 15.5 In all other cases, subject to Regulation 15.6, at least 28 days before the hearing, the Reviewer shall send to the members of the Disciplinary Tribunal constituted to hear the Charge:

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- (a) A copy of his report to the Investigation Committee, including the copy evidence appended to the report;
  - (b) The Charges;
  - (c) A copy of the Defendant's written admission of the Charges.
  - (d) A copy of any explanation or mitigation submitted by the Defendant.
- 15.6 Nothing shall prevent the Chairman of the Disciplinary Tribunal directing such alternative time period for the purposes of Regulation 14.2 as he shall specify.
- 15.7 If the members of the Disciplinary Tribunal consider that they need for whatever reason to hear live evidence from the Defendant, they may so direct, and the Clerk shall inform the Defendant as soon as practicable of the Disciplinary Tribunal's wish to hear evidence from him.
- 16. Powers of Disciplinary Tribunals**
- 16.1 On receipt of the papers, or at any time thereafter, the Chairman of the Disciplinary Tribunal may serve a notice on any party directing that party within the time specified in the notice:
- (a) to deliver to the Disciplinary Tribunal such particulars as the Disciplinary Tribunal may consider are required for the purposes of determining any of the issues in the proceedings; or
  - (b) to make available for inspection by the Disciplinary Tribunal all such documents in the party's possession or power as may be specified or described in the notice, being documents which, in the opinion of the Disciplinary Tribunal contain or may contain information relating to the subject complaint of the proceedings
- 16.2 Subject to the prior agreement of the TDB, the Chairman of the Disciplinary Tribunal may hold a preliminary hearing and/or give directions to ensure the just, fair and expeditious progress of the complaint.
- 16.3 The Disciplinary Tribunal may hear charges against two or more Defendants in the same hearing.
- 16.4 A shorthand or stenographic note may be taken or a tape recording of the proceedings made.
- 17. Hearings**
- 17.1 At a hearing a Defendant may appear before the Disciplinary Tribunal or be represented by such persons as he may wish. The Defendant shall be deemed present when he appears by his Representative. The Disciplinary Tribunal shall give the Defendant or his Representative a fair and reasonable opportunity of being heard before it.
- 17.2 If unable to serve a notice on the Defendant the Presenter may make an application to the Chairman of the Disciplinary Tribunal for an order of substituted service.
- 17.3 If the Defendant does not attend and is not represented at the hearing then, provided the Disciplinary Tribunal is satisfied that the notice required was served on him, or that any order under Regulation 17.2 has been complied with, the Disciplinary Tribunal may proceed with the hearing in his absence.

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- 17.4 Before deciding to hear and determine any proceedings in the absence of the Defendant or his Representative the Disciplinary Tribunal shall consider any representations, in writing or otherwise, submitted by or on behalf of the Defendant in response to the notice of hearing and shall give any party present at the hearing an opportunity to be heard in regard to those representations.
- 17.5 The Disciplinary Tribunal shall not sit with less than three members, and shall not sit other than with an uneven number of members. In the event that it is not possible for any reason for the Disciplinary Tribunal to sit with three or a greater, uneven, number of members, the hearing shall be adjourned.
- 17.6 No objection shall be upheld due to any technical fault in the Charge or in the procedure of the Disciplinary Tribunal, provided that the proceedings are fair to the Defendant.

**18. Conduct of the hearing**

- 18.1 At the beginning of the hearing the Chairman of the Disciplinary Tribunal or any person to whom he shall delegate such task shall read out the Charge and invite the Defendant to state whether he admits or denies the Charge and any part of it.
- 18.2 The Chairman shall, except where he considers it unnecessary to do so, explain the order of the proceedings that the Disciplinary Tribunal proposes to adopt.
- 18.3 The Presenter shall outline the case against the Defendant and, subject to Regulation 10.2, call any witnesses and produce any document.
- 18.4 At the conclusion of the Presenter's case, the Defendant, or his Representative, shall be entitled to address the Tribunal and, subject to Regulation 14.2, to call any witness to give evidence and produce any document. The Defendant may give evidence.
- 18.5 A witness called for one party may be questioned by or on behalf of the other party and by the Disciplinary Tribunal. A witness so questioned may be re-examined by or on behalf of the party calling him.
- 18.6 Subject to the consent of the Disciplinary Tribunal the Presenter may adduce rebuttal evidence after the Defendant's case has been heard and may address the Disciplinary Tribunal.
- 18.7 The Defendant or his Representative may make a closing address to the Disciplinary Tribunal.

**19. Adjournments**

- 19.1 The Chairman of the Disciplinary Tribunal, shall at his absolute discretion decide whether or not to grant an application for an adjournment of any hearing which has not begun. After the hearing has begun any application for an adjournment shall be decided by the members of the Disciplinary Tribunal hearing the case.
- 19.2 If at any time during the hearing the Chairman of the Disciplinary Tribunal is of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be continued or completed by that Disciplinary Tribunal, he shall direct that the charge be re-heard by a newly appointed Disciplinary Tribunal.
- 19.3 A newly appointed Disciplinary Tribunal shall not include any member of the previous Disciplinary Tribunal.

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**20. Disciplinary Tribunal decision**

- 20.1 In determining whether or not a charge has been proved, the Disciplinary Tribunal may have regard to any code of practice, ethical or technical, affecting the Defendant and laid down or approved by any of the Participants of which the Defendant is a member.
- 20.2 Any decision of the Disciplinary Tribunal shall be unanimous or made by majority.
- 20.3 The burden of proof before the Disciplinary Tribunal shall be on the Presenter.
- 20.4 The standard of proof shall be to the Civil Standard.
- 20.5 If the Disciplinary Tribunal is of the opinion that the Charge has been proved wholly or in part it shall make a finding to that effect, otherwise it shall dismiss the Charge. If the Charge is dismissed, the Disciplinary Tribunal may order the TDB to pay to the Defendant such sum by way of costs, including in relation to any costs which the Defendant has been ordered to pay by the Interim Orders Panel as, in its absolute discretion, the Tribunal thinks fit. No award for costs shall be made under this provision unless the Tribunal is of the opinion that the charge was brought maliciously or without justification.
- 20.6 If the Disciplinary Tribunal finds that the Charge has been proved wholly or in part, the following provisions shall apply:
- (a) the Clerk shall inform the Disciplinary Tribunal of any previous cases in which the Investigation Committee found a Prima Facie Case against the Member but ruled that no action should be taken;
  - (b) the Clerk shall inform the Disciplinary Tribunal of any previous disciplinary findings against the Defendant and of any orders made
  - (c) the Clerk shall inform the Disciplinary Tribunal of any interim order made by the Interim Orders Panel in connection with the same Complaint
  - (d) the Defendant or his representative shall be allowed to address the Disciplinary Tribunal in mitigation
  - (e) the Disciplinary Tribunal must take into consideration any previous cases where a Prima Facie Case was found but no action was taken against the Defendant, the past disciplinary record (if any) of the Defendant, the Disciplinary Tribunal's view as to the nature and gravity of the charges (so far as they are proved) and any other circumstances the Disciplinary Tribunal considers to be relevant. The Tribunal shall also take into account the Indicative Sanctions Guidance issued by the Board.
  - (f) The Disciplinary Tribunal may:
    - i) order the Complaint to rest on file for 3 years
    - ii) require the Defendant to apologise to the Complainant or another party
    - iii) warn the Defendant as to his future conduct
    - iv) censure the Defendant

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- v) fine the Defendant a sum not exceeding £20,000 for each proven Charge
  - vi) suspend the Defendant from membership of any Participant. Such suspension may be for a fixed period of no less than one month to a maximum period of two years. Any period of suspension imposed by an Interim Orders Panel in relation to the same Complaint shall be taken into account when determining any further period of suspension
  - vii) expel the Defendant from membership of any Participant
  - viii) order the Defendant to pay a sum or sums as compensation to a limit of £5,000
  - ix) impose conditions on the Defendant
  - x) recommend the suspension or removal of the Defendant from any register maintained by the Participants
  - xi) impose such other sanctions as are appropriate to students, associates or any other persons or bodies subject to the jurisdiction of the Participants
  - xii) order the Defendant to pay a sum by way of costs, including any costs referable to any decision made by the Interim Orders Panel.
- (g) In awarding costs as above under Regulation 20.6(f)(xii), the Disciplinary Tribunal must have regard to any relevant guidance issued by the Board.
- 20.7 If notwithstanding its finding that a Complaint has been proved, the Disciplinary Tribunal is of the opinion that in all the circumstances of the case no sanction is appropriate, it may make an order that no further action be taken.
- 20.8 The decision of the Disciplinary Tribunal shall be given at the end of the hearing, save in exceptional circumstances, when it may be reserved. In either event, the Disciplinary Tribunal shall, as soon as reasonably practicable after the hearing, produce:
- a) A written note of the order that it has made, signed by the Chairman of the Disciplinary Tribunal;
  - b) A written record containing a statement of the facts found, the decision made, and the reasons for that decision. The said record shall be dated and signed by the Chairman of the Disciplinary Tribunal.
- 20.9 The decision shall be treated as effective on the date that the written order and record specified in Regulation 20.8 above are deemed served on the Defendant.
- 20.10 The Clerk shall send a copy of the Disciplinary Tribunal's order and written decision to the Defendant and the Complainant as soon as practicable.
- 20.11 Notice of the order made shall be given to the Participant of which the Defendant is a member.
- 20.12 The copy of the Disciplinary Tribunal's written order and decision sent to the Defendant shall be accompanied by a notification of the provisions of these Regulations relating to appeals from the Disciplinary Tribunal and of the time limit within which, and the manner in which, such appeals may be made.

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**PART SEVEN**

**16. APPEAL TRIBUNAL**

- 21.1 The Board or a Defendant against whom any order has been made by a Disciplinary Tribunal may, within the period of 21 days beginning with the effective date of the order, or such longer period as the Chairman of that Tribunal may allow, give Notice of Appeal in accordance with these Regulations.
- 21.2 Any such Notice of Appeal shall be in writing addressed to the Clerk and shall be of no effect unless it states the grounds of appeal. The grounds so stated shall not thereafter be amended except with the leave of the Appeal Tribunal.
- 21.3 Subject to Regulations 26.2 and 27.2, the filing of a Notice of Appeal shall not operate as a stay of any order made by the Disciplinary Tribunal unless the Disciplinary Tribunal, the Disciplinary Assessor or the Appeal Tribunal orders otherwise.
- 21.4 The grounds of appeal are limited to the following:
- (a) that there was a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal;
  - (b) that:
    - i) the finding of the Disciplinary Tribunal was wrong; and/ or
    - ii) the sanction was unreasonable having regard to all the circumstances made known to the Disciplinary Tribunal;
  - (c) that new evidence pertinent to the charge which could not reasonably have been produced at the time to the Disciplinary Tribunal which heard the charge has been adduced in the appeal and that evidence would materially have affected the findings of the Disciplinary Tribunal.
- 21.5 An appellant may withdraw a Notice of Appeal by serving notice to that effect on the Clerk.
- 21.6 On receipt by the Clerk of a Notice of Appeal, he shall notify the TDB, which shall appoint from the members of the Disciplinary Panel an individual to conduct a preliminary appeal review (“Disciplinary Assessor”). The Disciplinary Assessor shall be a person who has not had any prior involvement with the Complaint.
- 21.7 The Disciplinary Assessor shall consider whether the appeal is vexatious or fails to meet the grounds of appeal set out at Regulation 21.4, and may reject the appeal.
- 21.8 Where the appeal is rejected the Disciplinary Assessor will promptly serve written reasons for his decision on the Appellant, the Complainant, the Respondent and the TDB.
- 21.9 The Disciplinary Assessor’s decision shall be final.
- 21.10 Where the Disciplinary Assessor considers that the appeal meets one or more of the grounds set out at Regulation 21.4, he will inform the Clerk of his decision as soon as possible.

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- 21.11 On receipt by the Clerk of the Disciplinary Assessor's decision in Regulation 21.10 above, the TDB shall select from the members of the Disciplinary Panel an Appeal Tribunal and Chairman for the Appeal Tribunal.
- 21.12 The Appeal Tribunal shall have a quorum of three members. One of these shall be a Member, and a majority shall be lay members. The Chairman of the Appeal Tribunal shall be a legally qualified person. No person who has had any previous involvement with the Complaint may sit upon the Appeal Tribunal.
- 21.13 As soon as practicable after receipt of the decision from the Disciplinary Assessor, the Clerk shall send notice in writing to the Appellant, the Complainant and the Respondent of the date (which shall, unless the parties agree otherwise, be not earlier than 28 days after the date on which the said notice is sent to the parties) the place and time fixed for the hearing of the appeal. The Clerk shall also inform the Participant of which the Defendant is a member that an appeal is being heard.
- 21.14 The Chairman of the Appeal Tribunal may, on application from the Appellant or of his own volition, stay the order of the Disciplinary Tribunal on such terms as the Chairman sees fit.
- 21.15 In complaints where the order of the Disciplinary Tribunal has been stayed, if before the appeal has been determined, the Appellant by notice to the Board withdraws the Notice of Appeal, the Disciplinary Tribunal's order shall take effect on the date on which the notice of withdrawal is served on the Board.

**22. New Evidence**

- 22.1 The Appeal Tribunal may, on the application of either party, hear any witness or allow the production of any material which was not before the Disciplinary Tribunal which heard the Charge.
- 22.2 Any such application must be made to the Chairman of the Appeal Tribunal not less than 14 days before the date fixed for the hearing of the appeal and give reasons for the application and specify the relevance to the grounds of appeal.
- 22.3 If an application to submit new evidence is granted, the successful party must immediately provide a copy to the other party and make available for the Appeal Tribunal four copies of any new material and of any statement of any witness to be called at the hearing.
- 22.4 If one party is given leave to introduce new evidence for the appeal hearing, the other party may introduce evidence in rebuttal, provided that they give the first party copies of any such material or statements and make four copies available for the Appeal Tribunal, not less than seven days before the date fixed for hearing.

**23. Appeal hearing**

- 23.1 The Appeal Tribunal shall not sit with less than three members, and shall not sit other than with an uneven number of members. In the event that it is not possible for any reason for the Appeal Tribunal to sit with three or a greater, uneven, number of members, the hearing shall be adjourned.
- 23.2 An Appellant may make written representations to or appear before the Appeal Tribunal in person or be represented by such person as he may wish. An Appellant shall be deemed present when he appears by his Representative. The Appeal Tribunal shall give the Appellant's case a fair and reasonable opportunity of being considered or heard before it.

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- 23.3 If unable to serve on the Appellant or the Respondent the notice described in Regulation 21.13, the Clerk may make an application to the Chairman of the Appeal Tribunal for an order of substituted service.
- 23.4 If a party does not attend and is not represented at the hearing, then provided the Appeal Tribunal is satisfied that the requisite notice was served on that party, or any order under Regulation 23.3 has been complied with, the Appeal Tribunal may hear the appeal in that party's absence.
- 23.5 Either party may instruct a representative to appear on his behalf at the hearing of the appeal.
- 23.6 On any appeal the Appeal Tribunal shall take into consideration the evidence given and the documents produced to the Disciplinary Tribunal but may re-hear any witness permitted to give evidence before that Disciplinary Tribunal.
- 23.7 The Chairman of the Appeal Tribunal shall in his absolute discretion decide whether or not to grant an application for an adjournment of any hearing which has not begun. After the hearing has begun any application for an adjournment shall be decided by the members of the Appeal Tribunal hearing the case.
- 23.8 Subject to the prior agreement of the TDB, the Chairman of the Appeal Tribunal may hold a preliminary hearing and/or give directions to ensure the just, fair and expeditious progress of the complaint.
- 23.9 The Appeal Tribunal may hear two or more appeals from an appellant at the same time.
- 23.10 The Appeal Tribunal may hear the appeals of two or more appellants at the same time.
- 23.11 The decision of the Appeal Tribunal shall be given at the end of the hearing, save in exceptional circumstances, when it may be reserved. In either event, the Appeal Tribunal shall, as soon as reasonably practicable after the hearing, produce
- a) A written note of the order that it has made, signed by the Chairman of the Appeal Tribunal;
  - b) A written record containing a statement of the decision made (including any finding of fact made or substituted for a finding made by the Disciplinary Tribunal) and the reasons for that decision. The said record shall be dated and signed by the Chairman of the Appeal Tribunal.
24. **Appeal Tribunal Orders**
- 24.1 If the Appeal Tribunal decides that the appeal should be dismissed it shall make an order to that effect.
- 24.2 The Appeal Tribunal may uphold an appeal only on the grounds referred to in Regulation 21.4 above.
- 24.3 If the Appeal Tribunal upholds the appeal on ground (a) or (b) of Regulation 21.4, the Appeal Tribunal may by order:
- (a) overturn the findings of the Disciplinary Tribunal
  - (b) affirm, vary or rescind the sanction applied or the decision made; or

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- (c) substitute for any order of the Disciplinary Tribunal any other order or orders that the Disciplinary Tribunal could have made as it thinks appropriate; and/or
  - (d) direct that the record of the decision of the Appeal Tribunal to be published shall not include the name of the Defendant
- 24.4 In implementing Regulation 24.3 (b) or (c) above, the Appeal Tribunal must apply any Indicative Sanctions Guidance and take account of the provisions of Regulations 25-28 below.
- 24.5 Any decision of the Appeal Tribunal shall be unanimous or made by majority.
- 24.6 If the Appeal Tribunal upholds the appeal on ground (c) of Regulation 21.4, the Appeal Tribunal may by order remit the case to the Disciplinary Tribunal to be re-heard in accordance with these Regulations, but only where no order can reasonably and fairly be made by the Appeal Tribunal in all the circumstances.
- 24.7 An order made by the Appeal Tribunal shall take effect on the date of the order unless it directs that it shall take effect from some later date specified in the order.
- 24.8 Notice of any order of the Appeal Tribunal, accompanied by its written record of its decision, shall as soon as practicable be:
- (a) served on the parties
  - (b) given to each Participant of which the Defendant is a member
  - (c) given to the Complainant
- 24.9 On any appeal the Appeal Tribunal may:
- (a) affirm, vary or rescind any order for costs made by the Disciplinary Tribunal
  - (b) order any party to pay such sum by way of costs as, in its absolute discretion, it thinks fit
- 24.10 No order for costs shall be made against the TDB unless the Appeal Tribunal is of the opinion that the Charge was brought maliciously or without reasonable justification
- 24.11 In awarding costs as above under Regulation 24.9, the Appeal Tribunal must have regard to any relevant guidance issued by the Board.
- 24.12 On any appeal, the Appeal Tribunal may:
- (a) affirm, vary or rescind any order for compensation made by the Disciplinary Tribunal
  - (b) order the Defendant to pay such sum by way of compensation as the Appeal Tribunal thinks fit, subject to the same limit as provided in Regulation 20.6(f)(viii) above.

**PART EIGHT**

**25. Compensation**

- 25.1 If a finding of Inadequate Professional Service is made by the Disciplinary Tribunal or the Appeal Tribunal, the Tribunal may consider compensation as a remedy in respect of such inadequate

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service. The Tribunal may direct the Defendant to pay compensation in such sum as was the result of the Inadequate Professional Service rendered by the defendant.

- 25.2 In determining whether any sum is to be paid, or in fixing the amount of such sum, the Tribunal shall in particular have regard to any loss suffered as a result of the Inadequate Professional Service, the availability of other forms of redress, the gravity of the conduct complained of and the amount of any fee claimed by or paid to the Defendant for that Inadequate Professional Service.
- 25.3 Any sums awarded under Regulations 25.1 and 25.2 above shall be subject to the limit specified in Regulation 20.6(f)(viii) above.

**26. Fines**

- 26.1 The maximum fine per proven charge is £20,000.
- 26.2 A fine imposed by a Disciplinary Tribunal shall, unless some other date is imposed in the order of that Tribunal (whether by instalments or not), be paid within 28 days of the service of such order on the Defendant, save that if Notice of Appeal is given such fine shall not be payable until the determination of the appeal and then subject to any order made in consequence of such appeal.
- 26.3 Where a fine ordered by a Disciplinary Tribunal is affirmed or varied in amount by the Appeal Tribunal it shall be paid within 28 days of the date of the order of the Appeal Tribunal unless a longer period is allowed in that order.
- 26.4 A fine or any unpaid balance of a fine not paid by the due date shall bear interest at the rate determined by the TDB under Regulation 32.1.
- 26.5 Where any fine imposed under these Regulations is payable by instalments and an instalment is not paid by the due date, the whole of that fine or so much of it as then remains unpaid shall become due for payment immediately, together with interest on that fine or unpaid balance from the date of first default in payment until payment in full.

**27. Costs**

- 27.1 Any costs which the Interim Orders Panel, Disciplinary Tribunal or Appeal Tribunal orders to be paid shall, unless a longer period for payment (whether by instalments or not) is allowed by the order, be paid within 28 days of service of the order upon the person ordered to pay the costs.
- 27.2 If within the period allowed, a party serves Notice of Appeal against an order made by a Disciplinary Tribunal, then a costs order shall not become payable until the appeal has been determined under these Regulations, it shall then be payable, if at all, in accordance with the following provisions of these Regulations.
- 27.3 If, before the appeal has been determined, the Appellant by notice withdraws the Notice of Appeal, the Disciplinary Tribunal's order for payment of costs shall take effect at the end of the period of 14 days beginning with the date on which the notice of withdrawal is served on the TDB.
- 27.4 Any costs ordered by the Appeal Tribunal, together with any unpaid costs ordered by the Disciplinary Tribunal, or so much, if any, of those unpaid costs as remain payable after any reduction or cancellation shall, unless a longer period for payment (whether by instalment or not) is allowed by order of the Appeal Tribunal, be paid within 28 days.

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- 27.5 Where any costs ordered under these Regulations are payable by instalments and any instalment is not received by the due date, the whole of those costs or, as the case may be, so much of them as then remain unpaid, shall become due for payment.
- 27.6 Any costs or any unpaid balance of such costs not paid by the due date shall bear interest from that date until payment in full, such interest to be at the rate determined by the TDB under Regulation 32.1.
- 27.7 Where the Disciplinary Tribunal or Appeal Tribunal considers that the conduct of any person has resulted in wasted costs being incurred by any party to the proceedings, it may order the person who has caused the costs to be wasted personally to compensate the party responsible for paying the said costs, such compensation to be in full or in part at the Tribunal's discretion, subject to the provisions of Regulations 20.5 and 24.10.
- 27.8 Any such application for a wasted costs order must be made with a schedule of all costs applied for; and the person against whom the order is sought must be given reasonable opportunity to reply.
28. **Publication of findings and orders**
- 28.1 Where a Disciplinary Tribunal or Appeal Tribunal makes an order under these Regulations, it shall order the publication of its order and its written reasons for making that order as soon as practicable and in such manner as it thinks fit.
- 28.2 The order and the written reasons for making that order shall normally be published without naming the Defendant:
- (a) where the Disciplinary Tribunal has dismissed the charge or ordered that no further action be taken on the Complaint; or
  - (b) where the Appeal Tribunal has upheld in full an appeal by the Defendant.
- 28.3 Unless the Disciplinary Tribunal or the Appeal Tribunal otherwise directs, the order and the written reasons for making that order shall ordinarily be published without redaction of the name of the Defendant.
- 28.4 Unless the Disciplinary Tribunal otherwise directs, no publication shall be made until after the expiry of the relevant appeal period referred to. If a valid Notice of Appeal under the Regulations is served then, unless the appeal is abandoned, no publication of the Disciplinary Tribunal's order shall be made until disposal of that appeal and then subject to the decision of the Appeal Tribunal.
- 28.5 If the Disciplinary Tribunal makes any direction limiting publication the TDB shall have a limited right of appeal in respect of that direction; such appeal shall lie directly to the Appeal Tribunal. The Appeal Tribunal shall have power to uphold, vary or overturn the original direction made.
- 28.6 The TDB may publish information about forthcoming Tribunal hearings, including the names of Defendants and brief details of the Charge or grounds of appeal.

**PART NINE**

29. **Public Hearings**

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- 29.1 All hearings by a Tribunal shall be held in public, but the chairman of a Tribunal may exclude the press and public (but not the Complainant) from all or any part of the proceedings if it appears to him desirable to do so in the interests of justice or for any other reason.
- 29.2 Proceedings before the Investigation Committee and the Interim Orders Panel shall be held in private.
30. **Procedure and Evidence**
- 30.1 Proceedings before the Investigation Committee, the Interim Orders Panel and any Tribunal shall be conducted in a manner consistent with the principles of natural justice.
- 30.2 Subject to these Regulations, the Interim Orders Panel or Tribunal may adopt any method of procedure which it may consider fair and which gives each party an opportunity to have their case presented.
- 30.3 The hearing of any preliminary issue shall be in private unless, either on the application of one of the parties or of his own volition, the Chairman of the Tribunal directs otherwise.
- 30.4 The strict rules of evidence shall not apply to the proceedings of the Investigation Committee, the Interim Orders Panel, the Disciplinary Tribunal and the Appeal Tribunal. Any oral evidence received shall not be given on oath. Accordingly, the Investigation Committee, the Interim Orders Panel and the Tribunal may admit any evidence, whether oral or written, whether direct or hearsay, and whether or not that evidence would be admissible in a court of law.
- 30.5 In proceedings before the Investigation Committee, the Interim Orders Panel, the Disciplinary Tribunal or the Appeal Tribunal which involve the decision of another court or tribunal, the following rules of evidence shall apply provided that it is proved in each complaint that the decision relates to the relevant party to the application:
- (a) conviction of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence. Proof of a conviction in this manner shall constitute conclusive evidence that the relevant party was guilty of the offence the subject thereof
  - (b) the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the finding and penalty.
  - (c) the judgment of any civil court may be proved by providing a certified copy of the judgment
- 30.6 In respect of any complaint to which Regulation 30.5 is relevant, the findings of fact by the court or tribunal upon which the conviction, finding, penalty or judgment is based shall be admitted as prima facie evidence of those facts.
31. **General**
- 31.1 For the avoidance of doubt it is hereby declared that all charges shall be dealt with under these Regulations unless:
- (a) the Complaint had already been considered by the TDB before the commencement of the Scheme 2008; and

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- (b) it would in the opinion of the relevant Tribunal be unfair or unjust to the Defendant to have the complaint determined in accordance with the Taxation Disciplinary Scheme 2008 and these Regulations

31.2 Any notice or document may be served by the Defendant by leaving the notice or document at, or sending it by first class registered or recorded delivery post addressed to the clerk to the relevant Tribunal or to the TDB, at an address to be notified to the Defendant when the complaint is served.

31.3 Any notice or document required to be served on the Defendant may be served upon him personally or by sending it by first class registered or recorded delivery post addressed to the Defendant at his last known place of business or his last place of abode appearing in the register of Members held by a Participant of which the Defendant is a Member. Where documents are served by post, service shall be deemed to have been effected on the second business day after the letter was despatched.

**32. Interest**

32.1 Interest payable under these Regulations shall be paid at such rate as the TDB shall from time to time determine.

**33. Power to dispense with the requirements of the Regulations**

33.1 The Investigation Committee, Interim Orders Panel, Disciplinary Tribunal and Appeal Tribunal may in exceptional circumstances dispense with any requirement of these Regulations in respect to notices, witnesses, evidence, service of documents or time limits in any case where it appears to the relevant Committee or Tribunal to be just so to do. Such a decision must be justified by the Investigation Committee, Interim Orders Panel, Disciplinary Tribunal or Appeal Tribunal as the case may be and must be reasonable in all the circumstances.