

THE TAXATION DISCIPLINARY SCHEME REGULATIONS 2014
(as amended November 2016 and January 2024)

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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 January 2024 and replace all previous versions of these Regulations, but:
- (a) consideration of a Complaint by a Reviewer is to be conducted in accordance with the provisions of the Regulations in force at the time of the Reviewer being notified of the decision to refer;
 - (b) consideration of a Complaint by an Investigation Committee is to be conducted in accordance with the provisions of the Regulations in force at the time of service of the documents relating to that Complaint on the Investigation Committee;
 - (c) consideration of a Reviewer’s decision or consideration of an appeal from the Investigation Committee by an Investigatory Assessor is to be conducted in accordance with the provisions of the Regulations in force at the time that the request is served on the Investigatory Assessor;
 - (d) consideration of any matter referred to the Interim Orders Panel is to be conducted in accordance with the provisions of the Regulations in force at the time of service of the documents relating to that matter on the Interim Orders Panel;
 - (e) the hearing of a Charge by a Disciplinary Tribunal is to be conducted in accordance with the provisions of the Regulations in force at the time of the decision to refer (the Complaint relating to) that Charge to the Disciplinary Tribunal;
 - (f) the preliminary review by an Appeal Assessor of an appeal from the Disciplinary Tribunal is to be conducted in accordance with the provisions of the Regulations in force at the time of receipt by the Clerk of a Notice of Appeal; and
 - (g) the hearing of an appeal from the Disciplinary Tribunal by an Appeal Tribunal is to be conducted in accordance with the provisions of the Regulations in force at the time of the Clerk being informed of the Appeal Assessor’s decision that the appeal meets one or more of the grounds set out at Regulation 21.4.

PART TWO

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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 Assessor” means:
 - (i) a person from the TDB Panel appointed by the TDB Operations Team; or
 - (ii) an external specialist appointed by the TDB Operations Team;to conduct a preliminary review of an appeal from the Disciplinary Tribunal.

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- (b) “Appeal Tribunal” means the Appeal Tribunal established by the Scheme to hear appeals from decisions of the Disciplinary Tribunal.
- (c) “Appellant” means the party who has given Notice of Appeal against a decision of the Disciplinary Tribunal.
- (d) “Association” means the Association of Taxation Technicians.
- (e) “Board” means the Board of Directors of the TDB.
- (f) “Business Day” means Monday to Friday (inclusive) except bank or public holidays in England.
- (g) “Chair” means the person appointed by the Board (or by a person authorised by the Board to make the appointment) from the TDB Panel to chair a committee or hearing.
- (h) “Charge” means a charge or charges framed following the referral of a Complaint by the Investigation Committee to the Disciplinary Tribunal.
- (i) “Clerk” means the Clerk to the Interim Orders Panel, the Disciplinary Tribunal or the Appeal Tribunal.
- (j) “Complainant” means:
 - (i) a person or body who has made a Complaint against a Member or Registered Firm to the TDB; or
 - (ii) the TDB, when the matter is investigated without a Complaint from an external person or body.
- (k) “Complaint” means an allegation of a breach or a series of breaches of:
 - (i) in relation to the Institute, the Charter, the Byelaws and/or the Regulations and/or any other provisions regulating the activities of Members or Registered Firms, or their conduct, including any disciplinary scheme established by the Institute alone or in co-operation with other bodies;
 - (ii) 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 Registered Firms, or their conduct, including any disciplinary scheme established by the Association alone or in co-operation with other bodies;
 - (iii) 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.
- (l) “Consent Order” means an order which has been made under Regulation 8.2.
- (m) “Consent Order Procedure” means the procedure for the making of a Consent Order under Regulation 8.
- (n) “Conduct Unbefitting” means conduct on the part of a Member, including in a personal or private capacity, which tends to bring discredit upon a Member and/or may harm the standing of the profession and/or the Association or the Institute (as the case may be).

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- (o) “Defendant” means a Member or Registered Firm against whom a Complaint has been made.
- (p) “Disciplinary Tribunal” means the Disciplinary Tribunal established by the Scheme to adjudicate on matters referred to it by the Reviewer or the Investigation Committee.
- (q) “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.
- (r) “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.
- (s) “Indicative Sanctions Guidance” means guidance issued by the Board.
- (t) “Institute” means The Chartered Institute of Taxation.
- (u) “Interim Orders Panel” means the panel established by the Scheme to adjudicate on matters referred to it by an Investigation Committee or a Reviewer.
- (v) “Investigation Committee” means an Investigation Committee established by the Scheme to consider whether to refer a Complaint to a Disciplinary Tribunal.
- (w) “Investigatory Assessor” means:
 - (i) a person from the TDB Panel appointed by the TDB Operations Team; or
 - (ii) an external specialist appointed by the TDB Operations Team;

to conduct a review of referrals from the Reviewer or appeals from the Investigation Committee.
- (x) “Lay Member” means a person who is not a Member of the Institute or the Association.
- (y) “Legally Qualified” has the same meaning as “authorised person” in the Legal Services Act 2007.
- (z) “Member” means a member (including International Tax Affiliates), student (being a student registered as such for the time being with the Institute or the Association), associate or any other person subject to the jurisdiction of any one or more of the Participants.
- (aa) “Money laundering register” means any anti-money laundering register kept by any participant in accordance with the Anti-Money Laundering (AML) Compliance Scheme.
- (bb) “Notice of Appeal” means a Notice under Regulation 21.
- (cc) “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.
- (dd) “Presenter” means a person appointed by the Board (or by a person authorised by the Board to make the appointment) to present a case to the Interim Orders Panel, Disciplinary Tribunal or Appeal Tribunal.

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- (ee) “Prima Facie Case” means that on the available evidence (including any evidence in rebuttal of the Complaint) there is a reasonable prospect of the Disciplinary Tribunal making a finding under Regulation 20.5.
- (ff) “Proceedings” means any action taken by the TDB or any person or body established by the Scheme in dealing with a Complaint.
- (gg) “Professional Standards Team” means members of the joint Professional Standards Team of the Institute and the Association, consisting of persons employed by the Institute and the Association and managed by the Head of Professional Standards.
- (hh) “Registered Firm” means a firm which is registered under the Anti-Money Laundering Scheme Rules of the Institute or the Association.
- (ii) “Regulations” mean these Regulations (as amended from time to time) made by the Board pursuant to the Scheme.
- (jj) “Representative” means a solicitor or barrister or other person appointed by any party for the purposes of a hearing.
- (kk) “Respondent” means a party responding to an appeal from the Disciplinary Tribunal.
- (ll) “Reviewer” means:
 - (i) a person within the TDB Operations Team;
 - (ii) a person from the TDB Panel appointed by the TDB Operations Team; or
 - (iii) an external specialist appointed by the TDB Operations Team;who undertakes the initial consideration of a Complaint.
- (mm) “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.
- (nn) “Simplified Procedure” means the procedure followed by the Disciplinary Tribunal when considering a Complaint referred to it by the Reviewer.
- (oo) “TDB” means the Taxation Disciplinary Board Limited.
- (pp) “TDB Operations Team” means the staff within the Professional Standards Team who are designated to carry out the operational duties under these Regulations.
- (qq) “TDB Panel” means the panel of suitably qualified persons appointed by the Board from which members of any Committee or Tribunal, including the Chair, and any Appeal Assessor and Investigatory Assessor, shall be selected; such selection may be made by the Board or by a person authorised by the Board to do so.
- (rr) “Tribunal” means the Disciplinary Tribunal or Appeal Tribunal as the context requires.

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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 Operations Team will consider such Complaint, inquiry or information in accordance with these Regulations.
- 3.2 After initial consideration, the TDB Operations Team may:
- (a) Decide to refer the Complaint or part of the Complaint to a Reviewer to consider under this Regulation 3; and/or
 - (b) Agree with the Professional Standards Team that the Complaint or part of the Complaint is appropriate for the issue of an administrative fine in accordance with guidance published by the TDB, the Institute and/or the Association from time to time. Such an administrative fine must be paid to the Institute and/or the Association within 14 days of the Defendant being notified of such a decision, and the reasons for it, unless an extension of time is granted.
- 3.3 In the event that an administrative fine is issued pursuant to Regulation 3.2(b) but no payment is made within the specified period, the Complaint shall be referred to a Reviewer to consider under this Regulation 3.
- 3.4 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 Professional Standards Team, the TDB Operations Team and/or the Reviewer:
- (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.
- 3.5 If the Complaint is referred to a Reviewer, who considers that a Complaint, inquiry or information does not fall within the jurisdiction of the Scheme or Regulations, they shall take no further action.
- 3.6 If the Complaint is referred to a Reviewer, who considers that the Complaint, inquiry or information is vexatious or of such a minor nature that, in their 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.
- 3.7 If the Complaint is referred to a Reviewer, who determines to take no further action under Regulation 3.4, 3.5 or 3.6, the Reviewer shall give written reasons for their determination to the Complainant and the Defendant. If a Complainant or Defendant is dissatisfied with this determination, they 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 Reviewer's written reasons.
- 3.8 The Investigatory Assessor may uphold the decision of the Reviewer or order the Reviewer to refer the matter to an Investigation Committee. The Investigatory Assessor's decision shall be final.

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- 3.9 In cases where the Reviewer or the Investigatory Assessor believes it appropriate to refer the Complaint to an Investigation Committee to consider, the Reviewer or the Investigatory Assessor (as the case may be) shall first have provided the Defendant with written reasons for that determination and an opportunity to comment on the Complaint. The Defendant will have 21 days to respond to the request for comments unless the Defendant is granted an extension of time. If the Defendant fails to respond within the specified period, the Reviewer or the Investigatory Assessor (as the case may be) may immediately refer the case to an Investigation Committee.
- 3.10 Where the Reviewer or the Investigatory Assessor has determined that a referral to an Investigation Committee is appropriate for the whole or part of a Complaint and 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;
 - (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 Reviewer or the Investigatory Assessor shall consider whether to refer the Complaint to the Interim Orders Panel.
- 3.11 The Reviewer or the Investigatory Assessor may refer a Complaint to the Interim Orders Panel if they are satisfied that any one or more of the factors listed in Regulation 12.1(a) or (b) are present. In considering whether the said factors are present, the Reviewer shall assume that a Prima Facie Case has been made out.

PART FOUR

4 INVESTIGATION COMMITTEE

- 4.1 Where a Complaint is to be considered by an Investigation Committee, the persons of the Investigation Committee shall be selected from the TDB Panel.
- 4.2 The Investigation Committee shall have a quorum of three persons. One of these shall be a Member, and a majority shall be Lay Members. The Chair of the Investigation Committee shall also be a Legally Qualified person. No person who has had any previous involvement with the Complaint may sit upon the Investigation Committee.
- 4.3 The Investigation Committee shall consider as soon as practicable the referral bundle 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 they have in such a document or such advice, nor to produce a document or

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reveal advice which is the subject of legal professional privilege belonging to their 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.

5 PRIMA FACIE CASE

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

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 further action, rule that the Complaint shall rest on file for the period of three years starting from the date of its decision;
- (c) 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;
- (d) in circumstances where it finds that a Prima Facie Case has been made out, decide that the Consent Order Procedure would be appropriate;
- (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 Before making a finding under Regulation 5.4 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, including where a previous Complaint was ordered to rest on file and the Committee is considering the current Complaint within the relevant three-year period. If it is decided to refer the Complaint to the Disciplinary Tribunal, then:

- (a) if applicable, 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; and

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(b) in respect of any previous Complaint which was ordered to rest on file pursuant to Regulation 5.4(b) above, the Investigation Committee may order that the said earlier Complaint should now be referred to the Disciplinary Tribunal together with the current Complaint.

5.6 If, where the Investigation Committee has referred the whole or part of a Complaint to the Disciplinary Tribunal, 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;
- (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.

5.7 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 12.1(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.

5.8 The Investigation Committee shall produce written reasons for its decisions.

5.9 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 A Complainant objecting to a decision of the Investigation Committee under Regulation 5.4(a), (b) and (c) shall have a right of appeal to an Investigatory Assessor. Notice of any such appeal must be served upon the TDB Operations Team 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 their determination to the TDB Operations Team and the Complainant within 28 days. The Investigatory 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 For the purposes of Regulation 6.1, the Investigatory Assessor shall be a person who has not had any prior involvement with 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.

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6.6 Where, pursuant to Regulation 6.5, a Complaint is to be considered by the Second Investigation Committee, the persons of the Second Investigation Committee shall be selected from the TDB Panel. The provisions of Regulation 4.2 shall apply equally to the Second Investigation Committee.

6.7 The Second Investigation Committee has the same duties and powers as the initial Investigation Committee and its decision shall be final.

7 REFERRAL TO THE INTERIM ORDERS PANEL

7.1 If an Investigation Committee decides that a Complaint, which it has decided is appropriate for the Consent Order Procedure pursuant to Regulation 5.4(d) or 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, or the Reviewer or Investigatory Assessor has similarly decided under the procedure in Regulation 3.10 and 3.11, then:

(a) Regulation 8.1 or Regulation 9.1 (as the case may be) shall not apply;

(b) The Investigation Committee or Reviewer (as the case may be) shall within seven 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 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 in addition to the decision it has made pursuant to Regulation 5.4(d) or Regulation 5.4(e).

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 persons on the Interim Orders Panel so convened copies of the material referred to in Regulation 7.1(b) above.

8 CONSENT ORDER PROCEDURE

8.1 This Regulation applies if the Investigation Committee decides that a Complaint is appropriate for the Consent Order Procedure pursuant to Regulation 5.4(d).

8.2 The Investigation Committee may, with the agreement of the Defendant concerned, make any one or more of the orders which, on finding that a Charge has been proved, the Disciplinary Tribunal would have power to make against the Defendant by virtue of Regulation 20.7(f). In doing so the Investigation Committee shall also take into account the Indicative Sanctions Guidance.

8.3 If the Investigation Committee decides to make an order under Regulation 8.2 for the Defendant to pay a sum by way of costs, it must have regard to any relevant guidance issued by the Board.

8.4 In deciding to make any one or more of the orders under Regulation 8.2, the Investigation Committee must take into consideration:

(a) any previous Complaints where an Investigation Committee found a Prima Facie Case against the Defendant but ruled that no action should be taken;

(b) any previous Complaints which rest on file; and

(c) any previous disciplinary findings against the Defendant and any orders made.

8.5 Before making any order under Regulation 8.2, the Investigation Committee shall serve on the Defendant concerned a notice describing the action which it proposes to take if the Defendant agrees, and specifying the order which it would make in that event.

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- 8.6 A notice under Regulation 8.5 must state that, if the Defendant concerned does not agree in writing to the proposed action within 14 days (or such longer period as the Investigation Committee may allow), the Complaint may be referred to the Disciplinary Tribunal which, in the event of its finding that Complaint proved either wholly or in part, would have available to it the complete range of orders under Regulation 20.7(f).
- 8.7 If within the period stated in the notice under Regulation 8.5 the Defendant agrees in writing to the Investigation Committee proceeding as proposed in that notice, the Investigation Committee shall make the order specified in that notice unless, having regard to any further information which it has received, it is of the opinion:
- (a) that a lesser or no penalty is appropriate, in which case it shall impose a lesser or no penalty, as the case may be;
 - (b) that a smaller or no sum is appropriate by way of costs, in which case it shall order a smaller sum to be paid by way of costs or make no order as to costs, as the case may be; or
 - (c) that no Prima Facie Case exists, in which case it shall so find and rule that the Complaint be rejected.
- 8.8 If the Defendant does not within the period stated in the notice under Regulation 8.5 agree in writing to the Investigation Committee proceeding as proposed in that notice, the Investigation Committee shall refer the Complaint to the Disciplinary Tribunal under Regulation 5.4(e) unless, having regard to any further information which it has received, it is of the opinion that no Prima Facie Case exists, in which case it shall so find and rule that the Complaint be rejected.
- 8.9 If the Investigation Committee makes an order under Regulation 8.2, the order shall take effect after seven days following the date of deemed service (pursuant to Regulation 31.3) of a Consent Order on the Defendant and a copy of that Consent Order shall be served on the Complainant.
- 8.10 Regulation 26 shall apply in relation to any fine imposed under Regulation 8.2, save that any Notice of Appeal is not possible under the Consent Order Procedure and the date of service of the order shall be taken to refer to the date of service of the Consent Order on the Defendant.
- 8.11 Regulations 27.1, 27.5 and 27.6 shall apply in relation to any costs payable by virtue of an order under Regulation 8.2, save that the date of service of the order shall be taken to refer to the date of service of the Consent Order on the Defendant.

9 REFERRAL TO THE DISCIPLINARY TRIBUNAL

- 9.1 If the Investigation Committee decides that a Complaint should be referred to the Disciplinary Tribunal pursuant to Regulation 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.
- 9.2 On receipt of notification of a decision of the Investigation Committee to refer a Complaint to the Disciplinary Tribunal, 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 9.1 above.
- 9.3 If at any time the Presenter advises the Clerk that in their opinion there are legal and/or evidential difficulties which need to be resolved before the Complaint can be fairly presented, the Clerk may

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refer the Complaint back to the Investigation Committee to reconsider it in the light of the matters raised by the Presenter.

PART FIVE

INTERIM ORDERS PANEL

10 APPOINTMENT

- 10.1 An Interim Orders Panel shall be selected from the TDB Panel to consider any referral made by an Investigation Committee or a Reviewer.
- 10.2 The Interim Orders Panel shall have a quorum of three persons. One of these shall be a Member, and a majority shall be Lay Members. The Chair of the Interim Orders Panel shall also be a Legally Qualified person. No person who has had any previous involvement with the Complaint may sit upon the Interim Orders Panel.

11 PROCEDURE

- 11.1 When the Clerk has convened a meeting of the Interim Orders Panel pursuant to Regulation 7.2, they shall notify the Defendant of the date of that meeting, send them a copy of these Regulations and invite them 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.
- 11.2 The Defendant may make oral submissions to the Interim Orders Panel themselves or by a representative. Ordinarily, such submissions shall be made by telephone or video call. If a Defendant wishes to appear before the Interim Orders Panel whether in person or by a representative, they 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.
- 11.3 The Interim Orders Panel shall decide whether to permit the Defendant to make submissions otherwise than by telephone or video call. 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 their representations over the telephone or by video call;
 - (e) The ease with which the Defendant or their 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 their application; and
 - (g) Any other factor which in the opinion of the Interim Orders Panel is relevant to its decision.

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12 POWERS

12.1 When the Interim Orders Panel considers that either or both of the following factors are present, Regulation 12.2 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.

12.2 Where the Interim Orders Panel has jurisdiction pursuant to Regulation 12.1, 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 a Consent Order comes into effect or 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) Require the Defendant to ensure that any firm in which they are a partner or director does not hold the Defendant's membership of any Participant out to the public for the period of their suspension;
- (c) Require the Defendant 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 12.2(d), the Defendant shall be automatically suspended from membership of any Participant until such time as a Consent Order comes into effect or 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 12.2(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 12.2(e).

12.3 The Interim Orders Panel shall exercise its discretion under Regulation 12.2 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;

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- (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; and
 - (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.
- 12.4 The Interim Orders Panel shall make a written record of its decision and the Clerk shall send copies to the Defendant, the Participant 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 12.2(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 Investigation Committee or the Disciplinary Tribunal in any form before that body has made an order under Regulation 8.2 or 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.
- 12.5 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.
- 12.6 Regardless of any order made pursuant to Regulation 12.4(c), the Defendant may refer to the written reasons of the Interim Orders Panel before the Disciplinary Tribunal at any time.
- 12.7 In the event that the Interim Orders Panel is minded to make an order against a Defendant pursuant to Regulation 12.2(b), (c) or (f), it shall notify the said Defendant of its intention and invite the Defendant to show cause why such order should not be made. If a Defendant 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.
- 12.8 If a Defendant within ten days of notification pursuant to Regulation 12.7 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 Defendant and for the convening of a hearing to consider the Defendant's contentions.
- 12.9 If the Interim Orders Panel is reconvened pursuant to Regulation 12.8, the Defendant 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 11.2 and 11.3 shall apply in this respect.

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- 12.10 A Defendant in respect of whom the Interim Orders Panel has made an order pursuant to Regulation 12.2 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 them 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.
- 12.11 Upon receipt of any application pursuant to Regulation 12.10, the Clerk shall convene a further meeting of the Interim Orders Panel to reconsider the order made against the Defendant.
- 12.12 If the Interim Orders Panel is reconvened for the purposes of considering an application made pursuant to Regulation 12.10, the Defendant has the right to make oral submissions in connection with the application and Regulations 11.2 and 11.3 shall apply in this respect.
- 12.13 In considering an application made pursuant to Regulation 12.10, 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;
 - (b) The evidence provided by the Defendant; and
 - (c) Whether the aims of the order originally made against the Defendant can be achieved by any other means, including by means of undertakings given by the Defendant.
- 12.14 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 12.2 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 against whom the order is made in writing that one year has passed since the making of the order and invite them and/or it within 21 days to make any submissions as to why the order should be varied or discharged;
 - (b) The Clerk shall convene a meeting of the Interim Orders Panel to consider whether the order should be varied or discharged; and
 - (c) The Interim Orders Panel shall reconsider the decision and order that it made taking into account any material provided by the Defendant against whom the order was made pursuant to Regulation 12.14(a) and the reason that the Disciplinary Tribunal has not determined the Charges against them and/or it. Having regard to Regulations 12.2 and 12.3, it may confirm, vary or lift the existing order.

PART SIX

DISCIPLINARY TRIBUNAL

13 APPOINTMENT

- 13.1 A Disciplinary Tribunal shall be selected from the TDB Panel to hear the Charge.
- 13.2 The Disciplinary Tribunal shall have a quorum of three persons. One of these shall be a Member, and a majority shall be Lay Members. The Chair of the Disciplinary Tribunal shall also be a Legally Qualified person. No person who has had any previous involvement with the Complaint may sit upon the Disciplinary Tribunal.

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14 INITIAL PROCEDURE FOR CASES REFERRED FROM THE INVESTIGATION COMMITTEE

- 14.1 On receipt of the Charge and at least 35 days before the day fixed for the hearing, 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 of the date, time and place of the hearing;
 - (b) a copy of the Scheme, these Regulations and the Indicative Sanctions Guidance;
 - (c) a copy of the report prepared for the Investigation Committee, including the copy evidence appended to that report insofar as it relates to the Charge;
 - (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 5.9 of these Regulations;
 - (e) a paginated and indexed bundle of all documents on which the TDB intends to rely at the hearing, including the Charge, signed and dated witness statements and exhibits; and
 - (f) a form requiring the Defendant to indicate in writing and/or provide the following by a date not less than 21 days after service of the material in Regulation 14.1(e):
 - (i) whether they admit all or part of the Charge against them;
 - (ii) any representations as to why they deny the Charge (or part thereof) and/or any mitigation in relation to any admissions made;
 - (iii) a list of witnesses that they intend to call and/or cross-examine at the hearing;
 - (iv) a paginated and indexed bundle of all documents on which they intend to rely at the hearing, including signed and dated witness statements and exhibits;
 - (v) whether or not they intend 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 their behalf; and
 - (vi) any representations they wish to make in relation to the hearing taking place in-person or virtually.
- 14.2 The TDB may serve any evidence with a view to rebutting the Defendant's evidence at least seven days before the hearing date.
- 14.3 Any of the time periods set out in Regulations 14.1 and 14.2 may be varied by:
- (a) direction of the Chair of the Disciplinary Tribunal; and/or
 - (b) both parties agreeing to vary such time period/s.
- 14.4 If the Defendant informs the Clerk in writing that they accept all the charges made against them, then, in respect of those charges only, the procedure provided for in Regulation 15 shall apply.
- 14.5 If the TDB Operations Team receive any Complaints in addition to those already referred to the Disciplinary Tribunal in relation to the same Defendant, it shall follow the procedure set out in Regulation 3, but:

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- (a) In the event that such additional Complaint/s are referred to an Investigation Committee, the Investigation Committee may take into account the existing Complaint/s referred to the Disciplinary Tribunal in its determination; and
 - (b) In the event that the Investigation Committee refers such additional Complaint/s to the Disciplinary Tribunal, the TDB Operations Team may join such Complaint/s to those already before the Disciplinary Tribunal.
- 14.6 If the TDB Operations Team join other Complaints under Regulation 14.5(b), the Presenter may bring further Charges against the Defendant. If they do so, they 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 they accept any or all of the additional charges made against them, and if not on what grounds they deny them;
 - (b) if they accept any or all of the additional charges made against them, whether they have any explanation in mitigation; and
 - (c) whether or not they intend 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 their 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.
- 15.2 Upon receipt of the Defendant's admission of the charges and any evidence tendered by them in explanation or mitigation, the Clerk shall remit the same to the Presenter.
- 15.3 If the Presenter considers that:
- (a) the explanation or mitigation tendered by the Defendant would, if true, amount to a defence to the charges;
 - (b) 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; or
 - (c) the Defendant's response to the Charges is equivocal;
- then they 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 arrange a hearing in accordance with the procedure provided in Regulation 14.1.
- 15.5 In all other cases, subject to Regulation 15.6, at least 7 days before the hearing, the Clerk shall send to the members of the Disciplinary Tribunal constituted to hear the Charge:
- (a) A copy of their report to the Investigation Committee, including the copy evidence appended to the report;
 - (b) The Charges;

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- (c) A copy of the Defendant's written admission of the Charges; and
 - (d) A copy of any explanation or mitigation submitted by the Defendant.
- 15.6 Nothing shall prevent the Chair of the Disciplinary Tribunal directing such alternative time period for the purposes of Regulation 15 as they 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 them.
- 15.8 At the hearing, the Presenter shall outline the case against the Defendant. The Defendant or their representative shall then be allowed to address the Disciplinary Tribunal in mitigation. The provisions set out in Regulations 20.7 to 20.14 shall then apply.

16 POWERS OF DISCIPLINARY TRIBUNALS

- 16.1 On receipt of the papers, or at any time thereafter, the Chair 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 The TDB Operations Team or the Clerk may request any Chair to give directions or to hold a preliminary meeting of a Disciplinary Tribunal to determine any procedural matter to ensure the just, fair and expeditious progress of a Complaint. Notice of any such request shall be sent to the Defendant not less than 10 Business Days before such matter is determined. The Defendant may present written submissions for consideration by the Chair or at the meeting. The Defendant and the Clerk shall comply with any directions or determination so given. Any failure by a Defendant to comply with any directions or determination so given may be referred to the Tribunal as an additional Charge.
- 16.3 The Disciplinary Tribunal may hear Charges against two or more Defendants in the same hearing.
- 16.4 The Disciplinary Tribunal may arrange for a shorthand or stenographic note and/or an audio or video recording of the proceedings to be taken.

17 HEARINGS

- 17.1 At a hearing a Defendant may appear before the Disciplinary Tribunal or be represented by such persons as they may wish. The Defendant shall be deemed present when they appear by their Representative. The Disciplinary Tribunal shall give the Defendant or their 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 Chair 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 them, or that any order

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under Regulation 17.2 has been complied with, the Disciplinary Tribunal may proceed with the hearing in the absence of the Defendant.

- 17.4 Before deciding to hear and determine any proceedings in the absence of the Defendant or their 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 persons and shall not sit other than with an uneven number of persons. 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 persons, the hearing shall be adjourned.
- 17.6 No objection shall be upheld due to any technical fault in the Charge or in the service of notice or documents on the Defendant or in the procedure of the Disciplinary Tribunal, provided that the Defendant is not unreasonably prejudiced thereby.

18 CONDUCT OF THE HEARING

- 18.1 At the beginning of the hearing the Chair of the Disciplinary Tribunal or any person to whom they shall delegate such task shall read out the Charge and invite the Defendant to state whether they admit or deny the Charge and any part of it.
- 18.2 The Chair shall, except where they consider 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 14.1, call any witnesses and produce any document.
- 18.4 At the conclusion of the Presenter's case, the Defendant, or their Representative, shall be entitled to address the Tribunal and, subject to Regulation 14.1, to call any witness to give evidence and produce any document. The Disciplinary Tribunal may, at its discretion, draw an adverse inference against the Defendant in the event that the Defendant does not 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 them.
- 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 their Representative may make a closing address to the Disciplinary Tribunal.

19 ADJOURNMENTS

- 19.1 The Chair of the Disciplinary Tribunal, shall at their 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 Disciplinary Tribunal hearing the case.
- 19.2 If at any time during the hearing the Chair 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, they shall direct that the charge be re-heard by a newly appointed Disciplinary Tribunal.

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19.3 A newly appointed Disciplinary Tribunal shall not include any person sitting on the previous Disciplinary Tribunal.

20 DISCIPLINARY TRIBUNAL DECISION

20.1 In determining whether or not a Charge has been proved, the Disciplinary Tribunal may have regard to any ethical or technical code of practice 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 the balance of probabilities, in that a fact shall be considered proved if the Disciplinary Tribunal finds that it is more likely than not to have happened.

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.

20.6 If the Disciplinary Tribunal is of the opinion that the Charge has not been proved, 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.

20.7 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 Defendant 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 their 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, subject to the limits set out in the Indicative Sanctions Guidance:
 - (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 their future conduct;

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- (iv) censure the Defendant;
 - (v) fine the Defendant 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;
 - (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 20.7(f)(xii), the Disciplinary Tribunal must have regard to any relevant guidance issued by the Board.
- 20.8 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.
- 20.9 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 Chair 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 Chair of the Disciplinary Tribunal.
- 20.10 The decision shall be treated as effective on the date that the written order and record specified in Regulation 20.9 above are deemed served on the Defendant.
- 20.11 In the event that the Disciplinary Tribunal has imposed a sanction of expulsion or suspension, that will take effect from the date the decision is announced unless the Disciplinary Tribunal decides otherwise, for example to allow for an Appeal to be considered. In such cases, the Disciplinary Tribunal should consider whether it is appropriate to impose an interim order to take effect until the conclusion of the Appeal process.
- 20.12 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.
- 20.13 Notice of the order made shall be given to the Participant of which the Defendant is a member.

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- 20.14 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.

PART SEVEN

21 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 Chair 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 Appeal 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; and/or
 - (b) that:
 - (i) the finding of the Disciplinary Tribunal was wrong by virtue of its being so unreasonable that no reasonable Tribunal acting reasonably could have made it; and/or
 - (ii) the sanction was similarly unreasonable having regard to all the circumstances made known to the Disciplinary Tribunal; and/or
 - (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, they shall notify the TDB Operations Team, which shall appoint an Appeal Assessor to conduct a preliminary appeal review. The Appeal Assessor shall be a person who has not had any prior involvement with the Complaint.
- 21.7 The Appeal 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 by the Appeal Assessor, they will promptly send written reasons for their decision to the TDB Operations Team, who will in turn serve these written reasons on the Appellant, the Complainant and the Respondent.
- 21.9 Where the decision of the Disciplinary Tribunal included an order for the payment of costs and/or fines, then a rejection of the appeal by the Appeal Assessor shall include an order to the effect that

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the costs and/or fine are to be paid within a specified period. The Appeal Assessor may further order that their own costs in considering the appeal shall be added to the original costs order.

- 21.10 The Appeal Assessor's decision shall be final.
- 21.11 Where the Appeal Assessor considers that the appeal meets one or more of the grounds set out at Regulation 21.4, they will inform the Clerk of their decision as soon as possible.
- 21.12 On receipt by the Clerk of the Appeal Assessor's decision in Regulation 21.11 above, an Appeal Tribunal shall be selected from the TDB Panel.
- 21.13 The Appeal Tribunal shall have a quorum of three persons. One of these shall be a Member, and a majority shall be Lay Members. The Chair of the Appeal Tribunal shall also be a Legally Qualified person. No person who has had any previous involvement with the Complaint may sit upon the Appeal Tribunal.
- 21.14 As soon as practicable after receipt of the Appeal Assessor's decision in Regulation 21.11 above, 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 the time fixed for the hearing of the appeal. The Clerk shall also inform the Participant of which the Appellant/Respondent is a member that an appeal is being heard.
- 21.15 The Chair of the Appeal Tribunal may, on application from the Appellant or of their own volition, stay the order of the Disciplinary Tribunal on such terms as the Chair sees fit.
- 21.16 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 Chair 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 persons and shall not sit other than with an uneven number of persons. 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 persons, the hearing shall be adjourned.

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- 23.2 An Appellant may make written representations to or appear before the Appeal Tribunal in person or be represented by such person as they may wish. An Appellant shall be deemed present when they appear by their Representative. The Appeal Tribunal shall give the Appellant's case a fair and reasonable opportunity of being considered or heard before it.
- 23.3 If unable to serve on the Appellant or the Respondent the notice described in Regulation 21.14, the Clerk may make an application to the Chair 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 their 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 Chair of the Appeal Tribunal shall in their 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 Appeal Tribunal hearing the case.
- 23.8 The TDB Operations Team or the Clerk may request any Chair to give directions or to hold a preliminary meeting of an Appeal Tribunal to determine any procedural matter to ensure the just, fair and expeditious progress of a Complaint. Notice of any such request shall be sent to the Appellant not less than 10 Business Days before such matter is determined. The Appellant may present written submissions for consideration by the Chair or at the meeting. The Appellant and the Clerk shall comply with any directions or determination so given. Any failure by an Appellant to comply with any directions or determination so given may be considered and determined by the Appeal Tribunal as an additional Charge.
- 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 Chair 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 Chair 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.

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- 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;
 - (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 to 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 Appellant to pay such sum by way of compensation as the Appeal Tribunal thinks fit, subject to the same limit as provided in Regulation 20.7(f) above.

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PART EIGHT

25 COMPENSATION

- 25.1 If a finding of Inadequate Professional Service, or a finding of any breach of professional standards and guidelines which has caused the Complainant financial loss, is made by the Disciplinary Tribunal or the Appeal Tribunal, the Tribunal may consider compensation as a remedy. The Tribunal may direct the Defendant / Appellant to pay compensation in such sum as was the result of the Inadequate Professional Service rendered (or other breach committed) by the Defendant / Appellant.
- 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 (or other breach), 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 / Appellant for Inadequate Professional Service.
- 25.3 The maximum sums able to be awarded under Regulations 25.1 and 25.2 above shall be set out in the Indicative Sanctions Guidance.

26 FINES

- 26.1 The maximum fine per proven charge shall be set out in the Indicative Sanctions Guidance.
- 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 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 Operations Team.

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- 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.
- 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 at the rate determined 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 20.6 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 an Interim Orders panel, Disciplinary Tribunal or Appeal Tribunal makes an order under these Regulations, or where an Investigation Committee makes an order under Regulation 8.2 (the Consent Order Procedure), 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 / Appellant:
- (a) where the Disciplinary Tribunal has dismissed the charge, ordered that no further action be taken or ordered that the Complaint shall rest on file; or
 - (b) where the Appeal Tribunal has upheld in full an appeal by the Defendant.
- 28.3 Unless the Investigation Committee, Interim Orders panel, 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 Regulations 28.4 and 28.5 do not apply where an order is made by an Investigation Committee under Regulation 8.2.
- 28.7 The TDB may publish information about forthcoming Tribunal hearings, including the names of Defendants and brief details of the Charge or grounds of appeal.

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PART NINE

29 PUBLIC HEARINGS

- 29.1 All hearings by a Tribunal shall be held in public, but the Chair 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 them 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.
- 29.3 All hearings by a Tribunal and proceedings before the Investigations Committee and the Interim Orders Panel may be held by video conference instead of in person. The Clerk shall indicate the method of hearing to all parties when sending out the relevant notices.
- 29.4 The Defendant / Appellant may, by written notice to the Clerk no later than 28 days before the hearing, require that the Tribunal be held in person, without having to provide a reason for so requiring.
- 29.5 If the Defendant considers that they would be prejudiced by the Interim Orders Panel not being held in person, they must state their reasons to the Clerk within seven days of receipt of the notice convening the Panel. The Clerk must place this request before the person appointed to Chair the Panel who may decide to continue with the hearing by video conference or direct that the hearing will be held in person.

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 any 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 their own volition, the Chair 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 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 copy of the finding and penalty;

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(c) the judgment of any civil court may be proved by providing a 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 Any notice or document may be served by the Defendant / Appellant 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 Operations Team, at an address to be notified to the Defendant when the Complaint / Charge is served.

31.2 Any notice or document required to be served on the Defendant / Appellant may be served upon them either personally, by sending it by first class registered or recorded delivery post addressed to the Defendant / Appellant at either their business address or their personal address, or by email, in each case as their addresses appear in the register of Members held by a Participant of which the Defendant is a Member, or to any other address or by any other method where it appears reasonably likely to come to their attention.

31.3 Where documents are served by post, service shall be deemed to have been effected on the second Business Day after the letter was dispatched. Where documents are sent by email they shall be deemed to be served on the day of sending if sent before 17:00 on a Business Day, otherwise it shall be deemed served on the following Business Day. A notice or document shall not be deemed served by email if a notification is received that the message is undelivered.

32 INTEREST

32.1 Interest payable under these Regulations shall be paid at the prevailing Bank of England base rate plus 3%.

33 POWER TO DISPENSE WITH THE REQUIREMENTS OF THE REGULATIONS

33.1 The Investigation Committee, Interim Orders Panel, Disciplinary Tribunal and Appeal Tribunal may 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 fair and/or reasonable to do so.