

Draft SRA (Disciplinary Procedure) Rules [2011] (Annex G1)

Rules dated [the date of the approval of the Legal Services Board]

commencing **6 October 2011**

made by the Solicitors Regulation Authority Board, after consultation with the Solicitors Disciplinary Tribunal, under sections 31, 44D, 79 and 80 of the Solicitors Act 1974, section 9 of and paragraph 14B of Schedule 2 to the Administration of Justice Act 1985 and section 83 and Schedule 11 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Part 1 – General

Rule 1 - Interpretation

In these rules, unless the context otherwise requires:

- (1) "*adjudicator*" means a person not involved in the investigation or preparation of a case who is authorised by the *SRA* to take *disciplinary decisions*;
- (2) "*disciplinary decision*" means a decision, following an *SRA finding*, to exercise one or more of the powers provided by:
 - (a) section 44D(2) and (3) of the Solicitors Act 1974;
 - (b) paragraph 14B(2) and (3) of Schedule 2 to the Administration of Justice Act 1985; or
 - (c) section 95 or section 99 of the Legal Services Act 2007;

or to otherwise give a *regulated person* a written rebuke or to publish details of a written rebuke or a direction to pay a penalty in accordance with these rules;

- (3) "*discipline investigation*" means an investigation by the *SRA* to determine whether a *person* should be subject to an *SRA finding*, a *disciplinary decision* or an application to *the Tribunal* under rule 10;

- (4) "HOFA" and "HOLP" mean a Head of Finance and Administration and a Head of Legal Practice within the meaning of section 92 and 91 of the Legal Services Act 2007, respectively and may also fall within one or more of the categories of *regulated person* under sub-rule (14);
- (5) "*licensed body*" means a body licensed by the SRA under Part 5 of the Legal Services Act 2007;
- (6) "LLP" means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;
- (7) "*manager*" means:
- (a) a partner in a partnership;
 - (b) a member of an *LLP*;
 - (c) a director of a company; or
 - (d) in relation to any other body, a member of its governing body;
- (8) "*person*" means an individual or a body of persons (corporate or unincorporated);
- (9) "*person who has an interest in a licensed body*" means a *person* who has an interest or an indirect interest in a *licensed body* as defined by sections 72(3) and (5) of the Legal Services Act 2007;
- (10) "*person under investigation*" means a person subject to a *discipline investigation*;
- (11) "recognised body" shall have the meaning given in Chapter 14 of the *SRA Code of Conduct 2011*;
- (12) "*registered European Lawyer*" means an individual registered by the SRA under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119);
- (13) "*registered foreign lawyer*" means an individual registered by the SRA under section 89 of the Courts and Legal Services Act 1990;
- (14) "*regulated person*" means:
- (a) a solicitor;
 - (b) a *registered European lawyer*;

- (c) a *registered foreign lawyer*;
- (d) a *recognised body*;
- (e) a *manager of a recognised body*;
- (f) a *licensed body*;
- (g) a *manager of a licensed body*; or
- (h) an employee of a *recognised body*, a *licensed body*, a solicitor or a *registered European lawyer*;

(15) "SRA" means the Solicitors Regulation Authority, the independent regulatory body of the Law Society of England and Wales;

(16) "SRA finding" is a decision that the SRA is satisfied:

- (a) that a *regulated person* (which for the avoidance of doubt, shall include a solicitor) has failed to comply with a requirement imposed by or made under the Solicitors Act 1974, Administration of Justice Act 1985 or the Legal Services Act 2007;
- (b) in relation to a solicitor, that there has been professional misconduct; or
- (c) that a *HOLP*, *HOFA*, *manager*, employee, *person who has an interest in a licensed body*, or any other *person* has (intentionally or through neglect) caused or substantially contributed to a significant breach of the terms of the *licensed body's* licence, or has failed to comply with duties imposed by section 90, 91, 92 or 176 of the Legal Services Act 2007 as appropriate,

and for the avoidance of doubt does not include:

- (i) investigatory decisions such as to require the production of information or documents;
- (ii) directions as to the provision or obtaining of further information or explanation;
- (iii) decisions to stay or adjourn;
- (iv) authorisation of the making of an application to *the Tribunal*;
- (v) authorisation of an intervention pursuant to the Solicitors Act 1974, the Administration of Justice Act 1985, the Courts and Legal Services

(vi) a letter of advice from the *SRA*.

(17) "*the Tribunal*" means the Solicitors Disciplinary Tribunal which is an independent statutory tribunal constituted under section 46 of the Solicitors Act 1974;

(18) the singular includes the plural and vice versa.

Rule 2 – Scope

(1) These rules govern the procedure for the *SRA* to:

- (a) give a *regulated person* a written rebuke;
- (b) direct a *regulated person* to pay a penalty;
- (c) publish details of a written rebuke or a direction to pay a penalty;
- (d) disqualify a *person* from acting as a *HOLP* or *HOFA*, or being a *manager* or employee of a *licensed body* or;
- (e) make an application to the Tribunal.

(2) These rules shall not prevent, prohibit or restrict the exercise of any other powers or other action by the *SRA*.

Rule 3 – Disciplinary powers

(1) The circumstances in which the *SRA* may make a *disciplinary decision* to give a *regulated person* a written rebuke or to direct a *regulated person* to pay a penalty are when the following three conditions are met:

- (a) the first condition is that the *SRA* is satisfied that the act or omission by the *regulated person* which gives rise to the *SRA finding* fulfils one or more of the following in that it:
 - (i) was deliberate or reckless;
 - (ii) caused or had the potential to cause loss or significant inconvenience to any other *person*;
 - (iii) was or was related to a failure or refusal to ascertain, recognise or comply with the *regulated person's* professional or regulatory obligations such as, but not limited to, compliance

with requirements imposed by legislation or rules made pursuant to legislation, the SRA, the Law Society, the Legal Complaints Service, the Legal Ombudsman, *the Tribunal* or the court;

- (iv) continued for an unreasonable period taking into account its seriousness;
 - (v) persisted after the *regulated person* realised or should have realised that it was improper;
 - (vi) misled or had the potential to mislead clients, the court or other *persons*, whether or not that was appreciated by the *regulated person*;
 - (vii) affected or had the potential to affect a vulnerable *person* or child;
 - (viii) affected or had the potential to affect a substantial, high-value or high-profile matter; or
 - (ix) formed or forms part of a pattern of misconduct or other regulatory failure by the *regulated person*;
- (b) the second condition is that a proportionate outcome in the public interest is one or both of the following:
- (i) a written rebuke;
 - (ii) a direction to pay a penalty; and
- (c) the third condition is that the act or omission by the *regulated person* which gives rise to the *SRA finding* was neither trivial nor justifiably inadvertent.
- (2) Where the *SRA* has decided to direct a *regulated person* to pay a penalty:
- (a) in considering the level of penalty to direct the *SRA* shall take into account the financial penalty criteria in appendix 1 to these rules; and
 - (b) the penalty shall not exceed the maximum permitted by law.
- (3) The circumstances in which the *SRA* may make a *disciplinary decision* to disqualify a *person* from acting as a *HOLP* or *HOFA*, or being a *manager* or employee of a *licensed body* are when the following two conditions are met:

- (a) the SRA is satisfied that it is undesirable for the person to engage in the relevant activity or activities; and
 - (b) the SRA is satisfied that disqualification is a proportionate outcome in the public interest.

- (4) In considering whether to make a *disciplinary decision* to disqualify a *person* from acting as a *HOLP* or *HOFA*, or being a *manager* or employee of a *licensed body*, the SRA shall take into account:
 - (a) the criteria at appendix 3; and
 - (b) any indicative guidance published by the SRA from time to time.

- (5) The SRA may make a *disciplinary decision* to publish details of a written rebuke or a direction to pay a penalty when it considers it to be in the public interest to do so in accordance with the publication criteria in appendix 2 to these rules.

- (6) Nothing in this rule shall prevent the SRA making an application to *the Tribunal* in accordance with rule 10.

Part 2 – Practice and Procedure

Rule 4 – Investigations

- (1) The parties to a *discipline investigation* are the SRA and the *person* under investigation.

- (2) The SRA may exercise any investigative or other powers at any time including those arising from:
 - (a) sections 44B, 44BA, 44BB of the Solicitors Act 1974;
 - (b) sections 93 and 94 of the Legal Services Act 2007; or
 - (c) rules made by the Law Society or the SRA for the production of documents, information or explanations.

- (3) Subject to sub-rule (4), the SRA may disclose any information or documents (including the outcome) arising from its *discipline investigation*:
 - (a) to an informant;

- (b) to a *person* who is under investigation;
 - (c) to any *person* in order to facilitate its investigation and in particular to identify and obtain evidence, comments or information;
 - (d) to other regulators, law enforcement agencies, or other *persons*, in the public interest.
- (4) The *SRA* may restrict disclosure of information to protect another *person's* right of confidentiality or privilege.

Rule 5 – Seeking explanations

- (1) The *SRA* will give the *person* under investigation the opportunity to provide an explanation of the *person's* conduct.
- (2) When seeking an explanation from the *person* as referred to in sub-rule (1) above, the *SRA* will warn the *person* that:
 - (a) failure to reply to the *SRA* may in itself lead to disciplinary action;
 - (b) the reply and other information may be disclosed to other *persons* pursuant to rule 4(3); and
 - (c) the reply may be used by the *SRA* for regulatory purposes including as evidence in any investigation, decision by the *SRA*, or proceedings brought by or against the *SRA*.
- (3) The *person* must provide the explanation referred to in sub-rule (1) or any other information within a time period specified by the *SRA*, which shall be no less than 14 calendar days from the request for an explanation and where no explanation or information is received within the specified time, the *SRA* may proceed to decision in the absence of an explanation.

Rule 6 – Report stage

- (1) Before making a *disciplinary decision*, the *SRA* will prepare a report for disclosure to the *person* under investigation.
- (2) The report will summarise the allegations against the *person* under investigation, explain the supporting facts and evidence, and attach documentary evidence that the *SRA* considers to be relevant.
- (3) The report may also include evidence of the *person's* propensity to particular behaviour and a summary of the regulatory and disciplinary history of the *person* under investigation and of any other *person* that the *SRA* considers

relevant.

- (4) The report will be provided to the *person* under investigation for the *person* to provide written comments upon it within a time period specified by the *SRA*, which shall be no less than 14 calendar days from the date on which the report has been sent to the *person*.
- (5) The *person* under investigation will also be invited to make submissions on whether any decision which is made by the *SRA*, in respect of the matters in the report, should be published. Any such submissions must be made within a time specified by the *SRA*, which shall be no less than 14 calendar days from the date on which the report has been sent to the *person*.
- (6) The report may be disclosed by the *SRA* to any other *person* with a legitimate interest in the matter to enable that *person* to comment upon it. Any such comments shall be disclosed to the *person* under investigation if they are to be included in the documents referred for adjudication.
- (7) The *SRA* may restrict disclosure of part of the report or all or part of the attached documents in the public interest or in the interests of efficiency and proportionality, such as:

 - (a) by only providing to the *person* under investigation or any other *person* documents that are not already in their possession;
 - (b) by not providing to a *person* other than the *person* under investigation the report or documents if they include information that is or might be subject to another *person's* right of confidentiality or privilege.
- (8) The *SRA* may recommend an outcome or advocate a particular position in the report or otherwise.
- (9) The report and comments received shall be referred for consideration within a reasonable time after receipt of any comments or the expiry of any time period specified for the provision of comments.
- (10) The *SRA* is not required to adopt the procedure in rules 5 and 6 in order to make an *SRA finding* or an application to *the Tribunal* under rule 10 below.
- (11) Where the *SRA* considers that it is just and in the public interest to do so the *SRA* may dispense with or vary the procedure and the time limits set out in rules 5 and 6.
- (12) Where the *SRA* dispenses with or varies the procedure or the time limits in accordance with sub-rule (11), the *SRA* shall, so far as practicable, notify the *person* under investigation that it has done so.

Part 3 – Decisions

Rule 7 – Decisions: general

- (1) An *SRA finding* may be made by:
 - (a) agreement between the *person* under investigation and the *SRA*;
 - (b) a *person* duly authorised by the *SRA*;
 - (c) a single *adjudicator*, or
 - (d) an adjudication panel.

- (2) A *disciplinary decision* may be made by:
 - (a) agreement between the *person* under investigation and the *SRA*;
 - (b) a single *adjudicator*, or
 - (c) an adjudication panel.

- (3) An *SRA finding* which does not involve a consequential *disciplinary decision* may incorporate or be accompanied by:
 - (a) advice to the *person* as to the *person's* regulatory obligations;
 - (b) a warning to the *person* as to future conduct.

- (4) An adjudication panel shall be properly constituted if at least two members are present.

- (5) Where an adjudication panel is comprised of three or more members, a decision may be made by a majority.

- (6) The strict rules of evidence shall not apply to decisions of the *SRA*.

- (7) The standard of proof shall be the civil standard.

- (8) Subject to subrule (9), decisions will be made on consideration of the report described in rule 6.

- (9) An adjudicator or adjudication panel may give directions for the just, expeditious and effective conduct of proceedings, which may include but are not limited to:

- (a) the provision of further evidence (including formal disclosure of documents and certification that disclosure is full, frank and complete), representations or formal statements of case analogous to pleadings;
 - (b) the admission of oral evidence;
 - (c) where oral evidence is to be admitted, whether the evidence is to be considered in public or in private; and
 - (d) the consequences of failure by a *regulated person* to comply with a direction, which may include that he or she may not take further part in the proceedings.
- (10) The decision shall be made when it is sent to the *person* in writing. The decision will be accompanied with information in writing about any right of appeal within the *SRA* and any external right of appeal.

Rule 8 – Decisions to impose a penalty

- (1) Where the *SRA* is minded to direct a *regulated person* to pay a penalty, it may request from that person a statement as to their financial means, and such statement shall:
- (a) include a statement of truth signed by the person or a person duly authorised to sign on their behalf; and
 - (b) be provided within 14 days from the date of the request or such longer period as the *SRA* may specify.
- (2) Where the *SRA* has decided to direct a *regulated person* to pay a penalty, the *SRA* may direct that the payment of all or part of the penalty be suspended on terms to be specified by the *SRA* in accordance with sub-rule (3).
- (3) Any decision to suspend a penalty shall specify:
- (a) the payment which is being suspended;
 - (b) the period of time for which the payment is suspended; and
 - (c) the circumstances in which the payment is and is not payable, which may include that it shall become payable if the *SRA* makes a further

SRA finding in respect of the person concerned in the period for which the payment has been suspended.

- (4) Where the *SRA* has directed a *regulated person* to pay a penalty, subject to sub-rule (2) above, such penalty shall be paid within a time and in the manner specified by the *SRA* but shall not become payable until:
- (a) the end of the period during which an appeal may be made under rule 12, *section 44E of the Solicitors Act 1974* or *paragraph 14C of Schedule 2 to the Administration of Justice Act 1985* or *section 96 of the Legal Services Act 2007*; or
 - (b) if such an appeal is made, such time as the appeal is determined or withdrawn.

Rule 9 – Decisions to disqualify and to review a disqualification

- (1) Any decision to disqualify a *person* from acting as a *HOLP* or *HOFA* or being a *manager* or *employee* of a *licensed body* shall continue to have effect until such time as it is brought to an end:
- (a) by the *SRA* following a review under sub-rule (4) or an internal appeal or reconsideration under rule 11 or 13; or
 - (b) by the [Appellate Body] following an appeal under rule 12.
- (2) A *person* who has been disqualified from acting as a *HOLP* or *HOFA*, or being a *manager* or *employee* of a *licensed body*, may apply to the *SRA* for a review of the disqualification only:
- (a) after a period of 12 months from the date of the decision to disqualify, or after such other period as may be specified in the decision to disqualify; or
 - (b) where there has been one or more prior unsuccessful applications to review the disqualification, after a period of 12 months from the date of the decision of the most recent application, or after such other period as may be specified in that decision.

- (3) Where the SRA has received an application under sub-rule (2), rules 4 to 6 shall apply save that explanations shall be sought, and a report prepared, in relation to the matters leading to the decision to disqualify, and any information or evidence relating to the person's conduct or behaviour in the period since that decision was made.
- (4) The SRA shall decide to bring a disqualification to an end if it is satisfied that:
- (a) it is no longer undesirable for the disqualified person to engage in the relevant activity or activities; and
 - (b) it is proportionate and otherwise in the public interest to do so.
- (5) In considering whether to bring a disqualification to an end, the SRA shall take into account all of the circumstances including:
- (a) the criteria at appendix 3; and
 - (b) any indicative guidance published by the SRA from time to time.

Rule 10 – Applications to the Tribunal

- (1) The SRA may make an application to *the Tribunal* in respect of a *regulated person* other than a *licensed body*, or the *manager* or employee of a licensed body, at any time, if the SRA is satisfied that:
- (a) there is sufficient evidence to provide a realistic prospect that the application will be upheld by *the Tribunal*;
 - (b) the allegation to be made against the *person* under investigation either in itself or in the light of other allegations is sufficiently serious that *the Tribunal* is likely to order that the *person*:
 - (i) be struck off;
 - (ii) be suspended;
 - (iii) be subject to an order revoking its recognition;
 - (iv) pay a penalty exceeding the maximum that can be imposed from time to time by the SRA; or
 - (v) be subject to any other order that the SRA is not empowered to make; and

- (c) it is in the public interest to make the application.

- (2) The *SRA* will apply sub-rule (1) in accordance with a code for referral to *the Tribunal* as promulgated by the *SRA* from time to time.

- (3) An application to *the Tribunal* under sub-rule 1 may be authorised by:
 - (a) agreement between the *person* under investigation and the *SRA*;
 - (b) a *person* duly authorised by the *SRA*;
 - (c) a single *adjudicator*, or
 - (d) an adjudication panel.

- (4) There is no right of appeal against authorisation of an application to *the Tribunal*.

- (5) Subject to any contrary order of *the Tribunal*, the *SRA* may exercise any investigative or other powers at any time before a final hearing of an application at *the Tribunal*, including those arising from:
 - (a) sections 44B, 44BA, 44BB of the Solicitors Act 1974;
 - (b) rules made by the Law Society or the *SRA* for the production of documents, information or explanations.

Part 4 – Appeals, Reviews and Reconsideration

Rule 11 – Internal appeals

- (1) A *person* who is subject to an *SRA finding* or a *disciplinary decision* may appeal under this rule against all or any part of such an *SRA finding*, *disciplinary decision* or both.

- (2) There is no appeal under this rule against:
 - (a) any decision other than an *SRA finding* or a *disciplinary decision*;
 - (b) a decision on an appeal; or
 - (c) an *SRA finding* or a *disciplinary decision* which has been made by agreement with the *SRA*.

- (3) An appeal under this rule must be made within 14 calendar days of the date of the letter or electronic communication informing the *person* of the decision appealed against or within a longer time period specified by the *SRA*.
- (4) An appeal shall:
 - (a) be in writing; and
 - (b) provide reasoned arguments in support.
- (5) Appeals will be determined as follows:
 - (a) where the decision was made by a *person* authorised by the *SRA*, the appeal will be decided by a single *adjudicator*,
 - (b) where the decision was made by a single *adjudicator*, the appeal will be decided by an adjudication panel;
 - (c) where the decision was made by an adjudication panel, the appeal will be decided by a differently constituted panel.
- (6) Appeals will be limited to a review of the decision which is being appealed, taking into account the reasoned arguments provided by the *person* bringing the appeal. Failure to provide reasoned arguments either at all or in sufficient or clear terms may result in summary dismissal of the appeal.
- (7) All powers available to the *SRA* on adjudication are exercisable on appeal and for the avoidance of doubt this means that, in relation to an appeal brought under sub-rule (1), an appeal decision may include findings or sanctions more severe than those made or applied in the decision being appealed.
- (8) Nothing in these rules shall affect a *person's* right of appeal to *the Tribunal* under section 44E of the Solicitors Act 1974 or paragraph 14C of Schedule 2 to the Administration of Justice Act 1985 or to **[the Appellate Body]** under section 96 of the Legal Services Act 2007 or rule 12 below.

Rule 12 - Appeals to the Tribunal and the [Appellate Body]

- (1) Where the *SRA* has:
 - (a) directed a licensed body, or the manager or employee of a licensed body, to pay a penalty;
 - (b) decided to disqualify a person from acting as a HOLP or HOFA or

from being a manager or employee of a licensed body;

- (c) decided not to bring a disqualification to an end following a review held under rule 9(4); the person subject to the direction or decision may appeal to [the Appellate Body] within 21 calendar days of the date of the letter or electronic communication informing them of the direction or decision accordingly, or, if there has been a decision following an internal appeal, within 21 calendar days of the date of the letter or electronic communication informing the person of that decision.

- (2) Subject to any rule made by *the Tribunal* pursuant to section 46(9)(b) of the Solicitors Act 1974, an appeal to *the Tribunal* must be made within 21 calendar days of the date of the letter or electronic communication informing the *person* of the decision appealed against or, if there has been a decision following an internal appeal, within 21 calendar days of the date of the letter or electronic communication informing the *person* of that decision.

Rule 13 – Reconsideration

- (1) The *SRA* may reconsider or rescind any decision including an *SRA finding*, a *disciplinary decision* or authorisation of a referral to *the Tribunal* with the agreement of the *person* in respect of whom the decision was made.
- (2) In its absolute discretion the *SRA* may also reconsider any decision including an *SRA finding*, a *disciplinary decision* or authorisation of a referral to *the Tribunal* when it appears that the *person* or panel who made the decision:
 - (a) was not provided with material evidence that was available to the *SRA*;
 - (b) was materially misled by any *person*;
 - (c) failed to take proper account of material facts or evidence;
 - (d) took into account immaterial facts or evidence;
 - (e) made a material error of law;
 - (f) made a decision which was otherwise irrational or procedurally unfair;
 - (g) made a decision which was ultra vires; or
 - (h) failed to give sufficient reasons.
- (3) The *SRA*, when considering the exercise of its powers under this rule, may

also give directions for:

- (a) further investigations to be undertaken;
 - (b) further information or explanation to be obtained from any *person*;
 - (c) consideration of whether to authorise an application to *the Tribunal*;
 - (d) the reconsideration of the decision to be undertaken by the original decision maker or adjudication panel or by a different decision maker or a differently constituted adjudication panel.
- (4) Nothing in these rules requires the *SRA* to commence or continue with any proceedings or prospective proceedings in *the Tribunal* or any other court or tribunal. A duly authorised person may rescind a decision to take proceedings in *the Tribunal*.

Part 5 – Notification, Publication and Commencement

Rule 14 – Notification of Disqualification decisions

- (1) Where the *SRA* has:
- (a) decided to disqualify a *person* from acting as a *HOLP* or *HOFA*, or being a *manager* or employee of a *licensed body*;
 - (b) reached a decision following an internal appeal or reconsideration of a decision to disqualify a *person* from acting as a *HOLP* or *HOFA*, or being a *manager* or employee of a *licensed body*; or
 - (c) decided that a *person's* disqualification to act as a *HOLP* or *HOFA*, or to be a *manager* or employee of a *licensed body*, should cease to apply,

it shall, as soon as reasonably practicable, notify the Legal Services Board of the decision reached.

Rule 15 – Publication of decisions

- (1) This rule governs the publication of details of a written rebuke or a direction to pay a penalty.
- (2) Subject to sub-rule (4), publication in accordance with this rule:
- (a) will include a short statement of the *disciplinary decision* including brief details of its factual basis and the reasons for the decision;

- (b) will identify the *person* who has been subject to a relevant *disciplinary decision*;
 - (c) will take reasonable steps to avoid the publication of information relating to other identifiable *persons*;
 - (d) will provide the practising details of the *person* who has been subject to a relevant *disciplinary decision* at the time of the matters giving rise to the decision and at the time of decision if different;
 - (e) will be in such form as the *SRA* may from time to time decide;
 - (f) may include provision of a copy of the publishable information upon request by any *person*;
 - (g) will be made promptly after the decision has been made, provided that the *SRA* may delay or withhold publication in the public interest.
- (3) The *SRA* may vary or dispense with any of the requirements in sub-rule (2) in the public interest.
- (4) The *SRA* may not publish details of a written rebuke or a direction to pay a penalty:
- (a) during the period in which an appeal may be made under rule 12 above, section 44E of the Solicitors Act 1974, paragraph 14C of Schedule 2 to the Administration of Justice Act 1985 or section 96 of the Legal Services Act 2007; or
 - (b) if such an appeal has been made, until such time as it is determined or withdrawn.
- (5) For the avoidance of doubt, the *SRA* may also publish information about other decisions or investigations.

Rule 16 – Commencement

These rules shall come into force on 6 October 2011, and shall repeal the *SRA* (Disciplinary Procedure) Rules 2010 save that the *SRA* (Disciplinary Rules) 2010 shall continue to apply to matters in which an explanation has been sought or a report issued in accordance with rule 5 or 6 of those rules, or in which an *SRA* finding or application to the Tribunal has been made without an explanation having been sought or a report issued in accordance with rule 6(11) of those rules.

APPENDIX 1

Financial Penalty Criteria (Rule 3(2))

1. In this appendix, the term "misconduct" shall mean conduct or behaviour resulting in an SRA finding.

2. In deciding the amount of a financial penalty, the SRA will take into account all relevant circumstances, including that any financial penalty should, so far as practicable:
 - (a) be proportionate to the misconduct;

 - (b) be proportionate to any harm done;

 - (c) be of an amount that is likely to deter repetition of the misconduct by the person directed to pay the penalty and to deter misconduct by others;

 - (d) eliminate any financial gain or other benefit obtained as a direct or indirect consequence of the misconduct;

 - (e) be proportionate to the means of the person directed to pay it;

 - (f) take into account the intent, recklessness or neglect that led to the misconduct;

 - (g) take into account any mitigating or aggravating circumstances; and

 - (h) take into account indicative guidance published by the SRA from time to time.

3. Aggravating circumstances include:
 - (a) failure to correct, or delay in correcting, any harm caused as a result of the misconduct;
 - (b) failure to co-operate with the SRA investigation or the investigation of any other regulator or ombudsman;
 - (c) failure to admit, or delay in admitting, any misconduct;
 - (d) that the regulated person has been the subject of other findings by the SRA, the Tribunal, or any other approved regulator or the Appellate Body.

4. Mitigating circumstances include:
 - (a) prompt correction of any harm caused as a result of the misconduct;
 - (b) prompt admission of any misconduct;
 - (c) taking steps to prevent future misconduct.

5.
 - (1) When considering a *regulated person's* means the SRA shall take into account:
 - (a) all relevant information of which the SRA is aware; and
 - (b) any statement of means, verified by a statement of truth, which has been provided by the *regulated person*.

 - (2) The SRA may take into account in considering a *regulated person's* means any failure to provide a statement of means following a reasonable request by the SRA to do so under rule 8(1).

APPENDIX 2

Publication Criteria (Rule3(5))

1. In deciding whether or not to publish a decision to give a *person* a written rebuke or direct that *person* to pay a penalty, the SRA will take into account all relevant circumstances including the following factors when relevant.

2. Each case will be decided on its own merits.
3. The following support a decision to publish:
 - (a) the circumstances leading to the rebuke or penalty, or the rebuke or penalty itself, are matters of legitimate public concern or interest;
 - (b) the importance of transparency in the regulatory and disciplinary process;
 - (c) the existence or details of the rebuke or penalty will or might be relevant to a client or prospective client of a *person* who has been subject to a relevant *disciplinary decision* in deciding whether to instruct or continue to instruct that *person*, or as to the instructions to be given;
 - (d) the existence or details of the rebuke or penalty will or might be relevant as to how any other *person* will deal with a *person* who has been subject to a relevant *disciplinary decision*;
 - (e) the seriousness of the finding against the *person*;
 - (f) the rebuke or penalty has been given to a *person* who has previously been the subject of disciplinary or regulatory decisions whether private or published;
 - (g) the rebuke or penalty arises from facts that affected or may affect or have affected a number of clients or other *persons*;
 - (h) the rebuke or penalty arises from facts that relate to the administration of justice.
4. The following support a decision not to publish:
 - (a) publication would disclose a *person's* confidential or legally privileged information;
 - (b) publication would disclose a *person's* confidential medical condition or treatment;
 - (c) publication may prejudice legal proceedings or legal, regulatory or disciplinary investigations;
 - (d) publication would involve a significant risk of breaching a *person's* rights under Article 8 of the European Convention on Human Rights;
 - (e) in all the circumstances the impact of publication on the individual or

the firm would be disproportionate.

5. In deciding whether to publish, the *SRA* may also take into account:
 - (a) the overall disciplinary and regulatory history of another *person* when relevant;
 - (b) whether any disciplinary or regulatory action by another body is being or has been taken against the *person* who has been subject to a relevant *disciplinary decision*.
6. The factors set out above are not exhaustive and do not prevent the *SRA* from taking into account other factors that it considers to be relevant.
7. The *SRA* will from time to time publish indicative guidance about the application of these criteria.

APPENDIX 3

Disqualification and Disqualification Review Criteria (Rules 3(4) and 9(5))

1. In this appendix, the term "misconduct" shall mean conduct or behaviour resulting in an *SRA* finding.
2. This criteria is to be used in conjunction with the tests set out at rules 3(3) and 9(4).
3. In deciding whether to disqualify a *person* or to bring a disqualification to an end, the *SRA* will take into account all relevant circumstances, including that the aim of any disqualification should be:
 - (a) for the disqualification to act as a credible deterrent; or
 - (b) to remove those *regulated persons* (in the short or the long term) who represent a risk to the public.
4. Where there has been misconduct, the following support a decision to disqualify:
 - (a) the conduct of the *regulated person* has caused significant loss or harm;
 - (b) the *regulated person* abused a position of trust;
 - (c) the conduct of the *regulated person* caused harm to or to the interests

of a vulnerable person;

- (d) the conduct of the *regulated person* was motivated by any form of discrimination;
- (e) the conduct was deliberate, pre-meditated, repeated or unjustifiably reckless; or
- (f) the conduct brings disrepute on the regulatory system or on the administration of justice.

5. Where there has been misconduct, the following support a decision not to disqualify:

- (a) the conduct was committed as a result of a genuine mistake or misunderstanding;
- (b) the *regulated person* has cooperated fully with the SRA, in particular by providing prompt redress;
- (c) the conduct was trivial or had a low impact;
- (d) there is a low likelihood of repetition of the conduct; or
- (e) in all the circumstances, disqualification is not a proportionate outcome in the public interest.

6. In deciding the appropriate duration of a disqualification without review in accordance with rule 9(2), the SRA shall take account of the factors set out at paragraphs 4 and 5 above.

7. The following, collectively, support a decision to bring a disqualification to an end:

- (a) the disqualification has achieved any intended deterrent effect;
- (b) to do so would not present a risk to the public, which could include consideration of any complete and demonstrable rehabilitation on the part of the *regulated person*; and
- (c) to do so would not have an adverse impact upon the public confidence in the regulation of the profession.

8. An absence of any one of the factors set out at paragraph 7(a)-(c) would support a decision not to bring a disqualification to an end.

9. The factors set out above are not exhaustive and do not prevent the SRA from taking into account other factors that it considers to be relevant.