



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Appointments Protocol

### Citation

This Protocol delegates<sup>1</sup> the powers vested in the President of COIC and COIC itself to select appropriate persons to be appointed to the Disciplinary Tribunals and the Inns' Conduct Committee.

Disciplinary Tribunals, Interim Suspension and Fitness to Practise Panels and are governed by Part 5 (Enforcement Regulations) of the BSB Handbook, the President has the power to nominate<sup>1</sup> or constitute<sup>2</sup> panels and convene<sup>3</sup> Tribunals. The President hereby delegates<sup>4</sup> the power vested in him to nominate appropriate persons to be appointed to the Disciplinary Tribunals to such authorised persons as are set out below.

The Inns' Conduct Committee is governed by the Bar Qualification Rules, Part 4 (Qualification Rules) of the BSB Handbook, the BSB's Guidelines for determining if a person is fit and proper to become a practising barrister, and the Inns' Conduct Committee Rules. The President on behalf of COIC delegates<sup>5</sup> the power to select appropriate persons to the Inns' Conduct Committee to such authorised persons as are set out below.

**Date of Last Revision: February 2022**

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<sup>1</sup> The President may nominate panels under Regulation rE132.3.a Disciplinary Tribunal Regulations, Section B (Enforcement Regulations), BSB Handbook; and rE265 of the Interim Suspension and Disqualification Regulations, Section D (Enforcement Regulations), BSB Handbook;

<sup>2</sup> The President may constitute panels under Regulation rE302 of the Fitness to Practise Regulations, Section E (Enforcement Regulations), BSB Handbook

<sup>3</sup> Regulation rE 132.3.c Disciplinary Tribunal Regulations, Section B (Enforcement Regulations), BSB Handbook;

<sup>4</sup> Regulation rE 253 Disciplinary Tribunal Regulations, Section B (Enforcement Regulations), BSB Handbook

<sup>5</sup> Rule 14, Inns' Conduct Committee Rules

### The Bar Tribunals & Adjudication Service

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## Statement of Purpose

The COIC Tribunals Service shall through the Tribunals Appointments Body (TAB)

(a) appoint and maintain:

- I. a list of silks<sup>6</sup>, practising barristers<sup>7</sup> and lay<sup>8</sup> appropriate persons<sup>9</sup> eligible to act as panel members<sup>10</sup>;
- II. a list of barristers eligible to act as clerks<sup>11</sup> to panels; and,

(b) remove from those lists the name of any person

- I. whose term of appointment has come to an end, unless his/her appointment to the relevant list has been renewed<sup>12</sup>;
- II. who resigns from the relevant list by giving notice in writing to that effect to the President of COIC, copied to the Registrar;
- III. who in the opinion of the President of COIC has ceased to be an appropriate person.

## PART 1: CONSTITUTION OF THE TRIBUNALS APPOINTMENTS BODY

### Terms of Reference

1. The Tribunals Appointments Body (the Body) is the COIC appointed body established to:
  - I. appoint practising barristers (including silks) and lay members to the COIC Disciplinary Pool (the Pool), members of which sit on:
    - a. Disciplinary Tribunals and other panels adjudicating on cases of misconduct and fitness to practise against barristers; and,
    - b. Inns' Conduct Committee panels adjudicating on fitness to practise issues relating to admission to an Inn of Court and student conduct matters<sup>13</sup>;
  - II. appoint barristers as clerks to Disciplinary Tribunals and Inns' Conduct Committee Hearing Panels; and,
  - III. certify that those they select are fit and properly qualified to conduct the business for which they have been selected and remain so for their period of appointment.

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<sup>6</sup> As defined in the *Glossary of Terms*, Schedule A

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Cumulatively known as the COIC Disciplinary Pool.

<sup>11</sup> As defined in the *Glossary of Terms*, Schedule A

<sup>12</sup> As defined in the *Glossary of Terms*, Schedule A.

<sup>13</sup> Pursuant to Inns' of Court Conduct Committee Rules paragraph 14.

- IV. select practising barristers (including silks) and lay persons to serve as the Chair, two Vice-Chairs, and two lay members of the Inns' Conduct Committee (to be recommended for appointment by the President of COIC).
- V. recommend a Chair of the Disciplinary Tribunal Service for appointment (to be recommended by the Chairman of the Body to the President of COIC);
- VI. review appraisal outcome reports to recommend re-appointment of Chairs and members of the Disciplinary Tribunal and Inns' Conduct Committee for a second term of office;
- VII. make recommendations to the President for the removal of a Disciplinary Tribunal or Inns' Conduct Committee Chair or member from office where appropriate.

Sub clauses I – VII will be carried out cyclically as set out below.

## Membership

- 2. The Body shall consist of:
  - I. a Chairman, who will be a bencher of one of the four Inns<sup>14</sup> and a practising barrister or a member of the judiciary;
  - II. a minimum of 2 silks, who shall be practising barristers and have been a Queen's Counsel for at least 5 years;
  - III. a minimum of 2 practising barristers of not less than 7 years standing; and,
  - IV. a minimum of 2 lay representatives.
- 3. When it determines it to be necessary the Body may nominate for appointment by the President of COIC one of its members as Vice-Chair. The Vice-Chair, who must be a bencher of one of the four Inns and a practising barrister or a member of the judiciary, may carry out any of the duties or functions of the Chair.
- 4. The Body will be selected for appointment by the President of COIC, in consultation with the Treasurers of the four Inns. Thereafter the Chairman will be responsible for the appraisal and performance of the other members of the Body.
- 5. Individuals serving as members of the TAB will give an undertaking to:
  - I. abide by the terms of this protocol and uphold the principles of public life;
  - II. make themselves available for service on the TAB;
  - III. ensure that they have a clear understanding of their responsibilities and that they meet the requirements for eligibility to serve;
  - IV. notify the President of COIC or the Registrar if following appointment:
    - (a) they are cautioned for, or charged with any criminal offence (excluding minor motoring offences),

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<sup>14</sup> As defined in the *Glossary of Terms*, Schedule A

- (b) they have been offered a caution,
- (c) disciplinary proceedings appear likely to be or have actually been initiated by a regulatory body;
- V. be committed to the continuing demonstration of the competences required for the effective performance of their role on TAB, including any working groups which may be formed from such membership;
- VI. participate in an appraisal process and actively commit to achieving any personal development objectives identified during the appraisal process;
- VII. complete and maintain annually their entry in the Register of Interests, declaring any professional, business, or personal interests which may, or might be perceived to, conflict with their responsibilities as TAB members;
- VIII. notify immediately the President of COIC or the Registrar of any change to their circumstance that may affect their ability to discharge their role.

### Eligibility Requirements for TAB Members

- 6. Persons will not be eligible for appointment to the Body if they:
  - I. fall outside the category of practising barrister, silk or lay representative as outlined in the *Glossary of Terms* under Schedule A (except for the Chairman who may be a full time member of the judiciary);
  - II. have been convicted of a criminal offence in any jurisdiction (except for minor motoring offences) that is not a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974;
  - III. have been offered and/or have accepted a caution that is not a spent caution for the purposes of the Rehabilitation of Offenders Act 1974
  - IV. have been the subject of an adverse finding by a disciplinary panel of a professional or other statutory regulatory body;
  - V. have been disqualified by the BSB (this includes non-practising barristers *and in the future lay members if working within regulated entities*)
  - VI. have been notified by the BSB or other professional regulatory body that they are being investigated for any matter;
  - VII. acted as a panel member on a Disciplinary Tribunal or Inns' Conduct Committee within the 24 months prior to selection to be a member of the Tribunals Appointments Body;
  - VIII. hold office as a Council Member or Committee Member or are an employee of the Bar Council or the Bar Standards Board or have held office as a Council Member or Committee Member or have been an employee of the Bar Council or the Bar Standards Board within the 24 months prior to selection to be a member of the Tribunals Appointments Body;
  - IX. are a Bar Standards Board prosecutor or have been a Bar Standards Board prosecutor within the 24 months prior to selection to be a member of the Tribunals Appointments Body; are an employee of the Inns of Court or have been an employee of the Inns of Court within the 24 months prior to selection to be a member of the Tribunals Appointments Body.

## Terms of Office

7. Persons appointed to the Body will normally serve for three years and shall normally be eligible for reappointment for one further term of three years. When necessary in the opinion of the Chair of the Body, and with the prior approval of COIC, members of the Body may be reappointed for a third and final term of up to three years.<sup>15</sup>

## Termination of Office

8. Persons will cease to be members of the Body if:
  - I. they resign membership by giving one-month notice in writing to the Chairman of the Body, with a copy to the President of COIC;
  - II. they are no longer eligible to be a member of the Tribunals Appointments Body under paragraph 5 above;
  - III. a barrister member of the Tribunal Appointments Body acts as defence counsel before a Disciplinary Tribunal or Inns Conduct Committee Hearing Panel during their term of office;
  - IV. they complete their term of office under paragraph 6 above;
  - V. they do not attend regularly<sup>16</sup> or their availability becomes a problem, in which case the President shall ask them to step down on recommendation of the Chairman of the Body;
  - VI. the President of COIC decides that they should cease to be a member following a recommendation by the Chairman and/or the Registrar; that they have brought the Body in to disrepute and/or have breached the Standard of Conduct and/or the Nolan principles<sup>17</sup>.

## Standard of Conduct

9. In performing their duties, TAB members must uphold the Nolan principles:
  - I. **Selflessness:** to take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
  - II. **Integrity:** to not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
  - III. **Objectivity:** in making appointments, awarding contracts, or recommending individuals for awards or benefits, choices must be made on merit.

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<sup>15</sup> No individual shall hold a right to be reappointed for a further term. Reappointment shall be based upon appraisal and confirmation that an individual is performing satisfactorily to remain an appropriate person to sit.

<sup>16</sup> Whether someone has attended regularly is to be decided by the President after his consideration of the views of the Chairman.

<sup>17</sup> Seven principles identified by the Nolan Committee in its first report on standards in public life in May 1995 and subject to subsequent revision by the Committee on Standards in Public Life

- IV. **Accountability:** to be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- V. **Openness:** to be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- VI. **Honesty:** to have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- VII. **Leadership:** to promote and support these principles by leadership and example.

## PART 2: DUTIES OF THE BODY

### Proceedings of the Body

- 10. The Body will be responsible for ensuring the cyclical renewal of panel and committee members, whilst following fair and transparent competency based recruitment procedures.
- 11. The Body will be responsible for the supervision and adherence to the recruitment procedures as set out in *The Bar Tribunals & Adjudication Service Recruitment and Selection Policy* and its associated guidance.
- 12. The Body will be responsible for ensuring that fair selection methods<sup>18</sup> are carried as set out in *The Bar Tribunals & Adjudication Service Equality and Diversity Policy*.
- 13. The Registrar will communicate the recruitment need to the Body, as and when such need arises, to ensure the effective and efficient delivery of its operational services in respect of both the Disciplinary Tribunals and the Inns' Conduct Committee.
- 14. The President reserves the right to appoint individuals temporarily to the following positions within the Disciplinary Pool on an ad hoc basis, as and when they are required:
  - I. Medical experts in Fitness to Practise Hearings;
  - II. Registered European Lawyer in Disciplinary Hearings;
  - III. Any other persons required by the Disciplinary Tribunal Regulations Section B, Part 5 (Enforcement Regulations) of the BSB Handbook.

The Bar Tribunals & Adjudication Service Administrator shall confirm this information to the temporarily appointed member for the specific hearing in writing.

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<sup>18</sup> The COIC Tribunals Service is committed to Equality, Diversity and Inclusion and will comply with all obligations under the Equality Act 2010.

15. Members of the Judiciary may sit as Chair on Disciplinary Tribunals and related proceedings as of right, following appointment.
16. The Body will meet as necessary and at least once per year, as directed by the Chairman. All meetings of the Body will be closed to the public. Minutes of the Body will be produced and retained indefinitely.
17. In the discharge of its accountability the Body will produce an annual report, as part of The Bar Tribunals & Adjudication Service annual report made to COIC.
18. The Registrar will review the lists of members of the Disciplinary Pool and clerks, at least once per calendar quarter, to ensure (i) continued eligibility of members/clerks and (ii) that re-appointments are made as necessary in a timely manner. This information will then be communicated by the Registrar to the Body.

### Procedure for Appointments<sup>19</sup>

19. Following the recruitment process, the Registrar will make recommendations to the Body for appointments. If the Body approves the recommendations, a pre-appointment letter will be sent by the Chairman on behalf of the Body.
20. The Body will send to the President a list of appointable candidates, subject to full completion of any defined training requirements.
21. An appointment letter will be sent by the President to successful candidates on completion of such defined training.
22. The Chairman of the Body will similarly make recommendations to the President for appointments to the roles of Chair of the Disciplinary Tribunal Service and Chair, Vice-Chairs and Lay Members of the Inns' Conduct Committee.
23. The Registrar will make recommendations to the Body for the reappointment of Pool members subject to appraisal, training and continued eligibility.
24. The Body will send the President a shortlist of Pool members for reappointment. The President will send a reappointment letter to those Pool members who have met all the requirements to serve a second term.

### Eligibility Requirements for Appointments

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<sup>19</sup> For complaints about the procedure for appointments please see *The Bar Tribunals & Adjudication Service Recruitment and Selection Policy*, which is available on the BTAS website at <http://www.tbta.org.uk/policies-guidance-and-publications/policies/recruitment-and-selection-policy/>

25. Persons will not be eligible for appointment to the Pool if they:
- I. fall outside the category of practising barrister, silk or lay representative as outlined in the *Glossary of Terms* under Schedule A;
  - II. have been convicted of a criminal offence in any jurisdiction (except for minor motoring offences) that is not a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974;
  - III. have been offered and/or have accepted a caution that is not a spent caution for the purposes of the Rehabilitation of Offenders Act 1974
  - IV. have been the subject of an adverse finding by a disciplinary panel of a professional or other statutory regulatory body;
  - V. have been disqualified by the BSB (this includes non-practising barristers *and in the future lay members if working within entities*)
  - VI. have been notified by the Bar Standards Board or other professional regulatory body that they are being investigated for any matter;
  - VII. are a member of the Tribunals Appointments Body; or,
  - VIII. have been a member of the Tribunals Appointment Body within the 24 months prior to application to the Bar Tribunals & Adjudication Service;
  - IX. hold office as a Council Member or Committee Member or are an employee of the Bar Council or the Bar Standards Board or have held office as a Council Member or Committee Member or have been an employee of the Bar Council or the Bar Standards Board within the 24 months prior to application to the Council of the Inns of Court;
  - X. are a Bar Standards Board prosecutor or have been a Bar Standards Board prosecutor within the 24 months prior to application to the Council of the Inns of Court;
  - XI. are an employee of the Inns' of Court or have been an employee of the Inns' of Court within the 24 months prior to application to the Council of the Inns of Court.
26. Barristers wishing to be appointed as clerks to Disciplinary Tribunals will not be eligible if they cannot comply with paragraph 24 (II)–(XI) above.

## PART 3: DUTIES OF PANEL MEMBERS, CLERKS, COMMITTEE MEMBERS & CHAIRS

### Terms of Appointment

27. Individuals serving as panel members and clerks will give an undertaking to:
- I. abide by terms of this protocol and uphold the principles of public life;
  - II. make themselves available for service on the Disciplinary Tribunals, Inns' Conduct Committee and other Panels;
  - III. ensure that they have a clear understanding of their responsibilities and that they meet the requirements for eligibility to serve;
  - IV. notify the President of COIC or the Registrar if following appointment:
    - a) they are cautioned for, or charged with any criminal offence (excluding minor motoring offences),
    - b) they have been offered a caution,
    - c) disciplinary proceedings appear likely to be or have actually been initiated by a regulatory body;
  - V. be committed to the continuing demonstration of the competences required for the effective performance on Disciplinary Tribunals and Inns' Conduct Committees;
  - VI. participate in an appraisal process and actively commit to achieving any personal development objectives identified during the appraisal process;
  - VII. complete and maintain annually their entry in the Register of Interests, declaring any professional, business, or personal interests which may, or might be perceived to, conflict with their responsibilities;
  - VIII. notify immediately the President of COIC or the Registrar of any change to their circumstance that may affect their ability to discharge their role.

### Disciplinary Tribunal Pool Members

28. Appointments will be made for a maximum of 3 years, renewable once for a further period of up to 3 years, subject to satisfactory performance and continued eligibility (which will include compliance with any requirement of the Body to undertake training, appraisal or refresher training).

### Inns' of Court Conduct Committee Members

29. Appointments will normally be for a period of 4 years<sup>20</sup>, renewable once subject to satisfactory performance and continued eligibility. Appointments following the introduction of new ICC Rules in 2017 may be staggered for periods of between 2 and 4 years, renewable once for 4 years, subject to satisfactory performance and continued eligibility (which will include compliance with any requirement of the Body to undertake training, appraisal or refresher training).

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<sup>20</sup> This term of office was amended in the Rules in July 2013 from 3 to 4 years.

## **Clerks**

30. All appointments will be for a period of 3 years, renewable once subject to satisfactory performance and continued eligibility (which will include compliance with any requirement of the Body to undertake training, appraisal or refresher training).

## **Chair of Disciplinary Tribunals Service**

31. The President of COIC shall appoint a Chair on recommendation of the Chairman of the Tribunal Appointments Body. The Chair of the Disciplinary Tribunal Service shall serve for 4 years from the date on which s/he takes office as Chair and shall thereafter be eligible for a further term, subject to satisfactory performance and continued eligibility. Under powers delegated by the President the Chair of the Disciplinary Tribunals Service will make Directions, and will provide guidance and mentoring to panel members, and will have a role in the appraisal process. Individuals who serve as Chair will be subject to paragraphs 25 and 27 above.

## **Chair and Vice-Chairs of the Inns' Conduct Committee**

32. The President of COIC shall appoint a Chair, and two Vice-Chairs on recommendation of the Tribunal Appointments Body. The Chair and Vice-Chairs of the Inns' Conduct Committee shall serve for 4 years from the date on which they take office as Chair and Vice-Chair and shall thereafter be eligible for a further term of up to four years subject to satisfactory performance and continued eligibility. Individuals who serve as Chair or Vice-Chairs will be subject to paragraphs 25 and 27 above. Appointments following the introduction of new ICC Rules in 2017 may be staggered for periods of between 2 and 4 years, renewable once for 4 years, subject to satisfactory performance and continued eligibility (which will include compliance with any requirement of the Body to undertake training, appraisal or refresher training).

## **Automatic Upgrade–Taking Silk**

33. Barrister members of the Disciplinary Pool will automatically be eligible to chair three-person hearings upon taking silk, subject to any perceived training requirements.
34. A Judge or Queens Counsel designated by the President of COIC may be asked to sit as a Directions Judge in cases related to an alleged breach of practising requirements.

## **Termination of Appointment**

35. Persons will cease to be members of the pool if:

- I. they resign membership by giving one-month notice in writing to the Registrar, with a copy to the President of COIC;
- II. they complete their terms of office under the provision in paragraphs 28, 29, 30 31, or 32 above;
- III. they are no longer eligible to be a member of the pool pursuant to paragraph 25 above;
- IV. a barrister or silk member acts as defence counsel before a Disciplinary Tribunal or Inns' Conduct Committee Hearing during their term of office;
- V. they do not attend regularly<sup>21</sup> or their availability becomes a problem, in which case the President may ask them to step down on recommendation of the Body;
- VI. the President of COIC decides that they should cease to be a member following a recommendation by the Chairman and/or the Registrar; that they have brought COIC into disrepute and/or have breached the Standard of Conduct as set out in paragraph 36 below.

## Standard of Conduct

36. In performing their duties, TAB members, clerks, and panel and committee members appointed by the TAB must uphold the seven principles identified by the Nolan Committee in its first report on standards in public life in May 1995 (the Nolan principles):

- I. **Selflessness:** to take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- II. **Integrity:** to not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- III. **Objectivity:** in making appointments, awarding contracts, or recommending individuals for awards or benefits, choices must be made on merit.
- IV. **Accountability:** to be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- V. **Openness:** to be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- VI. **Honesty:** to have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- VII. **Leadership:** to promote and support these principles by leadership and example.

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<sup>21</sup> Whether someone has attended regularly is to be decided by the President after his consideration of the views of the Registrar or the Chairman of the Tribunal Appointments Body.

## Record Keeping<sup>22</sup>

37. All documentation for successful candidates will be retained by The Bar Tribunals and Adjudication Service for no longer than one year after the subject's last contact with BTAS, as described in the BTAS Data Retention, Storage and Disposal Policy<sup>23</sup>. Application Forms and score sheets will be retained for unsuccessful candidates for a maximum of one year.
38. Copies of all appointment and reappointment letters shall be retained by The Bar Tribunals and Adjudication Service for 10 years.

## Amendments

40. The contents of this document may only be amended with the agreement of COIC.

*Please note that the provisions set out in this Protocol take effect from the date this document is approved by COIC.*

The Appointments Protocol:

- Approved by COIC on the 23<sup>rd</sup> February 2022.

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<sup>22</sup> The Council of the Inns of Court is a registered data controller and must comply with any obligations set by the Information Commissioner.

<sup>23</sup> The Bar Tribunals & Adjudication Service will comply with all statutory obligations when handling data and will act in accordance with best practices.

# SCHEDULE A

## Glossary of Terms

“Appropriate person” means a person of good character who is fit to sit as a panel member.

“Clerk” means a person appointed to provide procedural support to the Disciplinary Tribunals. A clerk for the purposes of the COIC Disciplinary Tribunals will **NOT** provide legal advice.

“COIC” means the Council of the Inns of Court.

“European Lawyer” means a person who is a national of a Relevant State and who is authorised in any relevant state to pursue professional activities under any of the professional titles appearing in Regulation 2(4) of the European Communities (Lawyer's Practice) Regulations 2000, but who (subject to Regulation 2(3) of those Regulations) is not:

- I. a solicitor or barrister of England and Wales or Northern Ireland; or
- II. a solicitor or advocate under the law of Scotland.

“Inn” means one of the four Inns of Court, namely, the Honourable Societies of Lincoln’s Inn, Inner Temple, Middle Temple and Gray’s Inn.

“Inns’ Conduct Committee” means a Committee constituted by the four Inns for the purpose of considering matters relating to admission to an Inn and to the conduct of Students. .

“Inns’ Conduct Committee Rules” means rules made by the Inns and approved by COIC which govern the composition and operation of the Inns’ Conduct Committee, and provide the terms under which matters regarding whether an Inn of Court should refuse to admit an applicant for admission, or expel or refuse to Call a student to the Bar shall be determined.

“Lay” means a lay person as defined in paragraphs 2 (4 and 5) of Schedule 1 of the Legal Services Act 2007; and means a person who has never been an authorised person in relation to reserved legal activity, such as a barrister or solicitor.

“Practising barrister” for the purposes of appointment to the Tribunals Appointments Body or appointed as a panel member, means someone who is a practising barrister of not less than seven years' standing.

“Renewal” means to be eligible to serve one further term of office where such second term is provided for in Rules or Terms of Office and the individual has been appraised as performing satisfactorily to remain an appropriate person to sit. No person shall hold a right to be re-appointed for a second term.

“Silk” means someone who holds the working rank of Queen’s Counsel proper. For the purposes of appointment to the Tribunals Appointments Body or appointment as a panel member, this definition specifically excludes those who hold the title Queen’s Counsel *honoris causa*.