



PROPOSED FACULTY OF ADVOCATES DISCIPLINARY RULES 2026

Explanatory note on key changes from existing Rules

INTRODUCTION

1. This note has been prepared for the public consultation to assist the reader in understanding the proposed redrafted version of the Faculty's Disciplinary Rules, the Faculty of Advocates Disciplinary Rules 2026. It does not seek to explain every rule in detail but does seek to identify where a significant change has been made to the existing Rules (the Disciplinary Rules 2019), and to aid understanding of the proposed 2026 Rules for the purposes of responding to the consultation.
2. Since the establishment of the Scottish Legal Complaints Commission (SLCC) in 2007, the Faculty has revised its Disciplinary Rules on three occasions. The 2026 Rules are the product of the fourth and the most comprehensive redrafting project which has been undertaken by the Faculty since that date. As the Faculty exercises its role in respect of the discipline of advocates on behalf of the Court of Session, any disciplinary rules which it makes are subject to approval from the Lord President under section 121(2)(a) of the Legal Services (Scotland) Act 2010 (2010 Act). The results of the public consultation will inform the version of the 2026 Rules which is to be submitted to the Lord President for approval later this year.
3. The current review of the 2019 Rules began in late 2021. Between 2022 and 2025, over two phases, the Rules and a new publication policy (ultimately incorporated into the Rules) underwent several rounds of internal revision and consultation and took into consideration comments and recommendations made by the Lord President and SLCC. Draft Rules were submitted for approval to the Lord President in 2025, but approval was not given at that time and a further phase of redrafting work commenced in early 2026.
4. The enactment of the Regulation of Legal Services (Scotland) Act 2025 (2025 Act) was one of the key drivers for that further work. The current draft of the Rules reflects changes required due to the enactment of the 2025 Act, which has been assumed for the purposes of the 2026 Rules to be in force.
5. The Rules have been redrafted in their entirety, with a view to making them more accessible for all those who require to use them. The two main decision-making bodies (the Complaints Committee and the Disciplinary Tribunal) have been retained, but there is no longer a role for an Investigating Committee and the procedures before the Complaints Committee and Disciplinary Tribunal have been clarified and unified where possible. Timescales have been specified throughout the Rules with a view to ensuring the efficient resolution of complaints. A number of changes have been made with a particular view to supporting complainers. For example, non-technical language has been used where possible throughout the Rules; a table of contents page has been inserted, and a clearer structure adopted, to aid navigation of the Rules; and provision has been made for lay support. Although lay support is defined in the 2026 Rules so as not to include lay representation, the Faculty has committed to providing free legal representation for complainers and will publish a comprehensive, plain-English guide to the Rules for complainers when the Rules come into force.
6. In addition to the significant redrafting work which has recently been undertaken, consideration has been given by the Faculty as part of this further phase of work to the sanctions which are available to the Complaints Committee and the Disciplinary Tribunal where a conduct complaint is upheld. The Faculty has carried out and internally reported on a comparative review of the sanctions regimes



operated by other regulators. The guiding principles in considering the results of that review were that sanctions should:

- (1) Maintain public confidence in the public office of advocate and the Disciplinary Rules to which advocates are subject;
- (2) Maintain high standards of ethical behaviour and professional work;
- (3) Act as a deterrent to engaging in conduct which diminishes public confidence in the public office of advocate or fails to meet the appropriate standard of behaviour or work; and
- (4) Protect the public and consumers from conduct which does either of those things.

As a result of the review, it is proposed that the sanctions or penalty regime be revised in a number of respects, including by increasing (subject to an aggregate maximum) the level of fine and / or compensation which can be ordered to be paid. These changes are a key element of the redrafted Rules and are discussed further below.

7. In addition, the Faculty proposes for the first time to publish sanctions guidelines when the Rules come into force, to assist the Complaints Committee and Disciplinary Tribunal in making decisions on the appropriate penalty to be imposed, with a view to ensuring the proportionality, consistency and transparency of decision making.
8. There are 39 rules. Each rule is addressed in turn below after some general comments are made on the Rules.

Structure and layout of the Rules

9. The redrafted Rules were prepared by a specialist drafter and have the appearance and structure of subordinate legislation, with individual rules numbered, titled, and broken down into paragraphs and sub-paragraphs.
10. Italic cross headings are used throughout, and a contents page has been added, to assist the reader. The rules appear in roughly the chronological order in which a complaint is handled: the main exceptions are the rules on membership of the Complaints Committee and the Disciplinary Tribunal (rules 35 and 36), although those provisions are ‘signposted’ for the reader in earlier rules where appropriate.

Style and language

11. In general, the Rules have been redrafted in accordance with modern legislative drafting practice. They use the drafting style of primary or subordinate legislation, with more or less one principle stated in each provision.
12. The language has been sought to be kept as plain and accessible as possible for Rules which are quasi-judicial in nature. There are some commonly occurring expressions in the existing Rules, the meaning of which would be clear to a lawyer but perhaps less so to a lay reader, and these have been replaced (for example, “submissions” is replaced with “arguments”, “intimate” is replaced with “inform”, “counsel” is replaced with “advocate”).
13. The style of drafting is consistent with the style used for drafting Bills for Acts of the Scottish Parliament. Other drafting principles and practices, such as using gender neutral language, have been adopted consistently with modern drafting practice.



THE RULES

Application and interpretation of the Rules

1 Application and citation

This rule sets out the application of the Rules in general, as well as how they are to be cited. Rule 1(1) applies the Rules to complaints remitted to the Faculty by the SLCC. Rule 1(2) applies the Rules to complaints identified by the Faculty, giving effect to what will become section 33A of the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act) when the 2025 Act comes into force. Complaints identified by the Faculty will, provided they are considered to be eligible complaints, be treated in the same way as remitted complaints.

Rule 1(3) makes transitional provision about complaints which are still in progress before the Rules come into force. Rule 1(4) allows related complaints to be dealt with together.

2 Meaning of key terms

This rule sets out the definitions for the key terms or expressions used in the Rules. There are around 10 additional defined terms relative to the existing Rules, and reference should be made to rule 2 of the 2026 Rules for the full list. A significant addition to the list is the term “final disposal”, which is defined to inform the point in time at which a number of other rules take effect (see, for example, rule 9 in relation to the withdrawal of a complaint; rule 15, for the period of time for which interim suspension is available; rule 19, for the point in time at which an interim suspension is brought to an end; and rule 38, for the starting point of the period of time within which a decision requires to be published).

The term “professional misconduct” is defined with sub-paragraphs to aid understanding, but the definition is not intended to depart from the definition in the 2019 Rules, which derives from established case law and is also used in Chapter 11.3 of the Faculty’s [Guide to Professional Conduct](#).

3 Sending and receipt of information and documents

This is a new rule which contains general provision on notification and the sending and receipt of information under the Rules, both as to manner and time of notification. Royal Mail does not now use a service called “recorded” delivery (it calls it “tracked” delivery), however other postal companies may do so, and the wording here is general enough to cover both. Rule 3(3) reflects the practical reality that a recorded or tracked letter should be received the day after it is sent. Provision is now also made to provide for the point in time at which email correspondence is to be taken as being received, with a person being taken to have been informed of something by email on the date on which the email is sent – and the following day, if it is sent after 5pm (rule 3(2)-(3)).

This rule also deals with the sending of documents under the Rules, for example, written arguments, a copy of which must be given to the other parties to the complaint, to ensure adequate notice.

4 Format of hearings

This rule allows hearings on a conduct complaint to be conducted in person, remotely or in ‘hybrid’ format.



General rules on conduct complaints

5 Standard of proof

This rule provides that the standard of proof for conduct complaints is the civil standard of balance of probabilities, replacing the criminal standard of proof of “beyond reasonable doubt” in the existing Rules.

6 Legal representation and lay support

This rule replaces the piecemeal provision which is made in the existing Rules in relation to legal representation. It also makes new provision for lay support, but not lay representation. As already noted, the Faculty has committed to providing complainers with free legal representation. In addition, each complaint will now be presented to the Complaints Committee or the Disciplinary Tribunal (as the case may be) by a Presenting Officer (see rule 14).

7 Confidentiality and privilege

This rule replaces rule 8 of the existing Rules. Express provision is now made for the situation in which the complainer is not the instructing client or the person exercising rights of direct access. In that scenario, the existing rules concerning legal professional privilege apply instead.

8 Delegation of complaints handling

This rule replaces rules 4 to 6 of the existing Rules. Rule 8(1) allows for the delegation of the handling of complaints, whether particular complaints or complaints generally, and also for the delegation of the taking of particular decisions in relation to complaints (to accommodate, for example, the possibility that the Dean is unavailable).

In rule 8(2), where a conduct complaint is made by or about the Dean of Faculty, it is now the Vice-Dean who must appoint another Office Bearer to handle the complaint. Rule 8(3) caters for the scenario where all Faculty Office Bearers are conflicted and requires a senior advocate to be appointed instead. In that scenario, the senior advocate has all the powers which the Dean would have had.

Rule 8(5) continues to allow for the delegation of matters relating to the administration of a particular conduct complaint, or complaints generally, to the Dean’s Secretariat or another person, and now also another body.

9 Withdrawal of a conduct complaint

This rule replaces rule 7 of the existing Rules, with rule 9(1) requiring to be read with the definition of “final disposal” in relation to a complaint.

Rule 9(2) is a new provision which allows the Dean to direct that a sufficiently serious complaint is to continue to be handled, despite being withdrawn. The criteria for the circumstances in which a direction can be made are set out in rule 9(3). Where a direction is proposed to be made, rule 9(4) requires the Dean to inform the parties and to give them an opportunity to make arguments in respect of the proposed direction at a hearing.

10 Complaint appearing to be services complaint

This rule gives effect to [section 67](#) of the 2025 Act. It requires the suspension of the investigation into a complaint, and ultimately the sending of that complaint to the SLCC, where the Complaints Committee or



the Disciplinary Tribunal considers that it is reasonably likely that a conduct complaint may instead constitute a services complaint.

11 Discontinuing or reinstating investigation of complaint

This rule gives effect to [section 68\(2\)\(a\)](#) of the 2025 Act. It provides for the possibility of the investigation of a conduct complaint to be discontinued, or a discontinued investigation reinstated, where the Complaints Committee or the Disciplinary Tribunal considers it to be in the public interest.

12 General powers of the Complaints Committee and Disciplinary Tribunal

This rule makes general provision in relation to the powers of the Complaints Committee and the Disciplinary Tribunal. Rule 12(1) contains a “dispensing power” allowing either body to vary certain requirements and time periods in the Rules. Rule 12(2) provides that they may allow written and oral arguments at any stage.

Rule 12(3) replicates provision in the existing Rules allowing the Complaints Committee or the Disciplinary Tribunal to decide any incidental question of law arising in the course of the determination of a complaint (see rules 53 and 77) and extends it to ensure that the same power is given to a special committee determining an application for permission to appeal and the Disciplinary Tribunal deciding an appeal.

Rule 12(4) sets out a default position that hearings before the Complaints Committee and the Disciplinary Tribunal will be held in public, unless the Committee or Tribunal considers (whether on its own motion or on the application of a party) that it would be appropriate for the hearing to be held in private. It replaces similar provision made in the existing Rules, but which is only made there in relation to the Disciplinary Tribunal (see rules 55 and 75 of the existing Rules).

Rule 12(5) requires any new issues about the conduct of an advocate which are identified by the Complaints Committee or the Disciplinary Tribunal to be made known to the Dean’s Secretariat and thereafter the SLCC. It replaces rule 21 of the existing Rules in so far as it makes comparable provision.

Rule 12(6)(a) requires the Complaints Committee and Disciplinary Tribunal, when deciding a complaint or imposing a penalty, to take account of the professional principles set out in [section 4](#) of the 2025 Act. Rule 12(6)(b) implements [section 68\(2\)\(c\)](#) of the 2025 Act, requiring account to be taken of any decision by the SLCC in respect of a services complaint where it arises from the same matter as the conduct complaint.

13 Guidelines on penalties

Rule 13 is an enabling power which allows the Faculty to prepare and publish guidelines on the appropriate penalties where a complaint is upheld. Rule 13(2) requires the Complaints Committee or Disciplinary Tribunal to have regard to any such guidelines.



First steps in investigation of complaint

14 The first steps in investigation: Complaints Officer and Presenting Officer

Rule 14 sets out the first steps in the investigation of every conduct complaint. It replaces the “Initial Action” and subsequent provisions in the existing Rules and represents a significant departure from the current position, which confers certain investigatory powers on the Dean’s Secretariat and requires a Complaints Committee (and only a Complaints Committee) to be constituted by the Dean as the first formal stage in the determination of a complaint (see rules 21 and 22 of the existing Rules).

Under the proposed 2026 Rules, the first step is for the Dean’s Secretariat to refer a complaint to a Complaints Officer appointed by the Faculty, who will be legally-qualified, although they may obtain assistance from the Dean in performing their functions under the Rules (rule 14(2)). The principal function of the Complaints Officer at this stage of the Rules is to make a recommendation to the Dean as to whether the Dean should refer the complaint to the Complaints Committee or the Disciplinary Tribunal, having regard to the seriousness of the complaint; the sanctions (penalties) available to either body; and whether the complaint raises an issue of wider importance in how the Rules apply. The Dean is able to depart from that recommendation, but has to have regard to the same factors if doing so (see rule 14(6)). Specific timescales for the Dean then constituting the Complaints Committee or the Disciplinary Tribunal (as the case may be) have been included in the 2026 Rules to seek to ensure the efficient consideration of complaints (see rule 14(5)).

Rule 14 is also a significant departure from the existing Rules in so far as it requires, at the same time as the relevant decision-making body is appointed (i.e. the Complaints Committee or the Disciplinary Tribunal), the appointment of a Presenting Officer to present the complaint to that body and to appear at any hearing in relation to the complaint (see rule 14(7)). The Presenting Officer may be a solicitor or an advocate, and in terms of rule 14(8) may arrange for assistance to be engaged in relation to their presentation of the conduct complaint. The Presenting Officer role, and the role carried out by those engaged to provide assistance, is similar to that of “prosecuting advocate” and “prosecuting solicitor” in the existing Rules before the Disciplinary Tribunal (see: rules 67 and 68), the main differences being the name given to the role and the fact that it also exists for the Complaints Committee.

Once a recommendation has been made by the Complaints Officer to the Dean and the relevant body has been appointed to consider the complaint, rule 14(9) gives the responsibility to the Complaints Officer to draft a summary of the complaint and to provide it, and all other information which is held in relation to the complaint, to the parties and the Complaints Committee or Disciplinary Tribunal (as the case may be). Relative to the summary of complaint, that is a departure from rule 69 of the existing Rules which requires the prosecuting solicitor to instruct counsel to draft a charge, although the Presenting Officer does have the power to propose an amendment to the summary of complaint (see the discussion of rules 20 and 30 below). In terms of rule 14(10), the Member is required to provide answers to the summary of complaint within 14 days of being provided with it. That is a departure from the existing Rules (see rule 69) for the Disciplinary Tribunal, in so far as answers are now mandatory rather than discretionary, and a particular lodging deadline is given. (See also rule 20(8) and rule 30(10) of the 2026 Rules in respect of an amended summary of complaint.)



Interim suspension of the Member

15 Interim suspension of the Member of Faculty

Rules 15 to 19 concern interim suspension pending the final disposal of the complaint (see the key terms for the definition of “final disposal”). Rule 15 is based on paragraphs 11 and 12 of the existing Rules but differs from the existing provision in a number of respects.

In terms of rule 15(1), the Dean no longer has the power to suspend a Member from membership of the Faculty (as is the position in the existing rule 11), but instead has the power to suspend a Member from practice. In terms of rule 15(4), interim suspension may now consist of suspension from practice in general, or suspension from particular areas or types of practice; and may also now be made subject to conditions, which may include conditions relating to aspects of Faculty membership. The ability to impose conditions relating to aspects of membership is intended to ensure a similar effect to suspension from membership on a proportionate basis having regard to the interim stage at which suspension is being imposed.

Rule 15(2) is a new provision which is intended to ensure that the Dean has the power to suspend a Member from practice on an interim basis in the exercise of his existing disciplinary functions under the Guide to Professional Conduct and as the leader of the profession, provided the Dean is satisfied that the matter which is identified by or reported to the Dean would be an eligible conduct complaint. The same provisions and remedies apply to each type of suspension (under rule 15(1) or (2)), although the Dean has the power to shorten the period of notice for a hearing in the case of a proposed suspension under rule 15(2) (see rule 15(8)), so that, in cases involving public safety, for example, suspension can, where necessary, take near immediate effect.

Rule 15(5) contains the test for exercising the power to suspend. The basic test is one of necessity, with two criteria added to define and qualify the meaning of necessity in this context: protection of the public, or the need to maintain public confidence in the legal profession.

16 Application for review of interim suspension by the Dean

Rule 16 allows the Member to apply to the Dean for a review of their interim suspension. Rule 16(1) sets out the generally applicable limitation period of 3 months before an application can be made, with rule 16(2) giving the Dean the power to consider an application for review before then in exceptional circumstances.

Rule 16(4)(a) requires the Dean to hold a review hearing on the interim suspension, but rule 16(4)(b) permits the Dean to carry out the review on the basis of written arguments alone, if the parties agree.

Rule 16(8) is one of a number of provisions in the Rules requiring the giving of reasons, in this case for revoking a suspension as well as for continuing it.

17 Duty on the Dean to review interim suspension

This rule requires the Dean to review an interim suspension at six-monthly intervals. It also requires a review hearing, but again allows the hearing to take place on the basis of written arguments alone (see rule 17(2)(b)).

Rule 17(4) confirms that any revocation of the interim suspension may only take place if the Dean considers that it is no longer necessary, having regard to the factors set out in rule 15(5)(a) to (b) – i.e. the ‘test’ which has to be satisfied in order for interim suspension to be imposed in the first place. Otherwise, the Dean must continue the interim suspension.



18 Appeal of interim suspension to the Disciplinary Tribunal

Rule 18 concerns the appeal of an interim suspension to the Disciplinary Tribunal. In terms of rule 18(6), and similarly to the provision which is made relative to decision-making by the Dean on review (see rule 17), the Disciplinary Tribunal must revoke the interim suspension if it considers that it is no longer necessary, having regard to the factors set out in rule 15(5)(a) to (b), otherwise it must continue the interim suspension. Rule 18(9) disapplies the rules relating to appeals more generally given the specific provision which is made relative to interim suspension.

Rule 36 on the Tribunal's membership is signposted for the reader in rule 18(1), given the gap between the rules.

19 End of interim suspension on final disposal of a conduct complaint

This rule provides for the automatic ending of an interim suspension on the final disposal of a complaint (see rule 2 for the definition of "final disposal").

Complaints Committee procedure

20 Complaints Committee procedure: general provisions

This rule and the equivalent rule 30 for the Disciplinary Tribunal makes general provision in relation to the first-instance decision-making procedure before the Complaints Committee (rule 20) and the Disciplinary Tribunal (rule 30). Although there are material differences, the procedure before both bodies is now broadly the same and follows a three-stage approach, requiring (subject to certain exceptions) the holding of: (i) a preliminary hearing; (ii) a determination hearing at which evidence may be led; and (iii) a hearing on penalty. As already noted, the role for the Investigating Committee within the Complaints Committee procedure (see rules 24 to 29 of the existing Rules) has been removed. It is now, consistent with the position before the Disciplinary Tribunal, for the Committee (or Tribunal) to obtain information or documents and take evidence from witnesses to decide the complaint, on the basis of representations made to it.

The general provision made by this rule includes the requirement for the Clerk to the Committee to arrange for the determination hearing to take place within 3 months (rule 20(1)), subject to the possibility of that period being extended by the Chair of the Committee on cause shown. This is a new provision which is intended to ensure the efficient resolution of complaints by imposing a fixed period (subject to extension) within which the main hearing on the complaint is to take place, and otherwise providing for the timetabling of the consideration of the complaint (see rule 20(3)).

This rule also provides a basis on which the Presenting Officer may, on cause shown, propose an amendment to the summary of complaint with a hearing being required to determine any amendment to which objection is taken (rule 20(6)). A Member is required to answer any amended summary of complaint once the period for objecting to it has passed or the objection has not been upheld.

21 Complaints Committee: preliminary hearing and case management

Rule 21 provides for wide-ranging case management powers for the Complaints Committee to seek to ensure the efficient resolution of a complaint, with the majority of the powers to be exercisable at a preliminary hearing. This is therefore a new provision as provision for preliminary hearings in the existing Rules is made only in respect of the Disciplinary Tribunal (rules 54 and 72 of the existing Rules). Under the 2026 Rules, a preliminary hearing may be held before the Chair of the Complaints Committee sitting alone, or with some or all of the members of the Committee (rule 21(2)). Rule 21(5) allows for the complaint to be decided at the



preliminary hearing, if the parties including the Presenting Officer agree. Rule 21(6) requires the parties to inform the Presenting Officer and the Committee whether agreement exists on the facts and issues to be decided, and if so the scope of that agreement.

22 Complaints Committee: determination hearing

Rule 22(1) sets out the actions the Complaints Committee may take at the determination hearing, ranging from identifying the issues, to taking evidence, to adjourning the hearing and determining the complaint (and penalty, where there is agreement that that should be done). Rule 22(2) enables the Committee to administer an oath or affirmation and to order a witness to take an oath or affirmation. The power to adjourn the determination hearing is subject, in rule 22(3), to the requirement to review the adjournment every 3 months. As with many other provisions in the rules, rule 22(4) imposes a requirement to provide reasons.

23 Complaints Committee: penalty hearing

Rule 23 makes provision in relation to the conduct of the penalty hearing before the Committee, based in part on rules 32 and 33 of the existing Rules. Rule 23(1) is a new provision requiring a penalty hearing to be held within 14 days of the substantive decision on the complaint being notified to parties. The requirement is imposed on the Committee to notify parties of the details of the hearing and to afford parties the opportunity to make representations (rule 23(2)(a)-(b)), but the procedure is otherwise (similarly to existing provision relative to the Disciplinary Tribunal) at the discretion of the Chair of the Committee (rule 23(3)). Reasons are required by rule 23(5).

Complaints Committee penalties

24 Complaints Committee penalties

Rule 24 makes provision in relation to the penalties which the Complaints Committee can impose after a finding of unsatisfactory professional conduct and (in terms of rule 24(2)) the more serious finding of professional misconduct. The main changes to the existing Rules are to remove the availability of the verbal sanction; and to simplify (to two) the written, non-monetary sanctions, being (i) a written warning and (ii) a written direction, with non-exhaustive wording provided on what such a direction might contain. As that wording confirms, a direction may include a requirement for retraining and assessment, or for the Member to refrain from particular areas or types of practice (such as sexual offences work).

Rule 24(3) represents a significant departure from the existing Rules. It imposes a new, higher maximum sanction of £25,000 in respect of the total fine and / or compensation to be paid for a single complaint, or multiple complaints arising from the same or substantially the same conduct, for a finding of either unsatisfactory professional conduct or professional misconduct. The existing Rules have lower amounts which differ according to the type of conduct found to be established (£3,000 fine or compensation for unsatisfactory professional conduct and £7,500 for professional misconduct). The Complaints Committee, in imposing a monetary sanction in any amount, or any other sanction for either type of conduct, will require to have regard to guidelines prepared and published under rule 13. It is expected that the guidelines will address the circumstances in which particular conduct falls within particular 'bands' of seriousness relative to both forms of conduct and so attracts a particular 'band' of compensation or fine.

25 Power of the Dean to refer penalty to the Disciplinary Tribunal

This is a new rule which creates a mechanism for the Dean to refer an unduly lenient penalty to the Disciplinary Tribunal for review.



26 Permission to appeal the Complaints Committee's decision

Rule 26 makes provision for the complainer or Member to seek permission to appeal a decision of the Complaints Committee to the Disciplinary Tribunal (including a decision on penalty: rule 26(1)(b)). The provision made by this rule differs substantially from the equivalent provision in the existing Rules. Most significantly, the application for permission to appeal is now to be directed to a special committee of the Disciplinary Tribunal rather than the Complaints Committee, and the possibility of appealing the refusal of permission to appeal has been removed (thus departing from rule 44 in the existing Rules).

The test for granting permission to appeal has been retained (see rule 42 of the existing Rules). Permission may only be granted if the appeal has a real prospect of success or there is another compelling reason to grant leave.

The jurisdiction which the Disciplinary Tribunal exercises on appeal, if permission is granted, has been clarified in the 2026 Rules as being based on legal error (rather than being a full merits review) and that is reflected in the grounds of appeal which are available in rule 26(3), which follows the model of [section 21\(4\)](#) of the 2007 Act.

Rule 26(5) makes provision for the membership of the special committee.

27 Disciplinary Tribunal appeal procedure: general provisions

This rule makes general provision in relation to the procedure before the Disciplinary Tribunal on appeal. Rule 27(1) requires the appeal hearing to be held within 2 months of the granting of permission to appeal. The Dean may be represented in an appeal (rule 27(4)), as may the complainer and Member, and rules 28 and 29 apply where they do so (but not otherwise).

28 Disciplinary Tribunal: preliminary hearing on appeal and case management

This rule makes similar case management provision as is made in rules 21 and 31 at first instance, including allowing the appeal to be decided at the preliminary hearing where there is agreement (rule 28(5)).

29 Appeal hearing

This rule governs the conduct of an appeal hearing. It makes similar provision to rules 48 and 52 of the existing Rules in so far as providing for representation (presentation of oral arguments) and for the procedure to be otherwise at the discretion of the Chair to the Tribunal. Rule 29(3) confirms the 'error of law' jurisdiction of the Tribunal by providing that an appeal may only be upheld if one of the grounds of appeal based on legal error are established (see rule 26).

Rule 29(5) specifies the actions which the Disciplinary Tribunal may take at the appeal hearing, and largely replicates rule 56 of the existing Rules, with the addition of a general power to make such other order as the Tribunal considers appropriate. Consistently with other provisions in the Rules, where a complaint is upheld on appeal, the Tribunal is empowered to determine penalty without a separate hearing, where there is agreement (rule 29(7)).

Rule 29(8) makes slightly different provision to the equivalent rule 56d of the existing Rules, in that, where a complaint is remitted, it is to be reheard on the same evidence but with the possibility of that 'same evidence' rule being departed from on cause shown. As with a number of other provisions in the Rules, rule 29(9) requires the provision of reasons.



Complaints referred to the Disciplinary Tribunal for decision or for penalty

30 Disciplinary Tribunal decision procedure: general provisions

This rule is the first in a series of rules making provision for first-instance decision-making by the Disciplinary Tribunal, following the same three-stage approach as discussed above relative to the Complaints Committee under reference to rule 20. It makes similar, general provision for the Disciplinary Tribunal as is made for the Complaints Committee in that rule. As should already be apparent, the most significant change to the first-instance procedure before the Disciplinary Tribunal is that a complaint may be referred to the Tribunal without having first been referred to the Complaints Committee or transferred by the Committee to the Tribunal (compare rule 22 of the existing Rules, and the limited provision for transfer in rule 23g). This and subsequent rules apply whether the complaint is referred to the Tribunal by the Dean at the outset (whether or not on the recommendation of the Complaints Officer), or transferred by the Committee to the Tribunal under rule 22(1)(e). Specific provision is, however, made in rule 30(3)(b) for the membership of the Tribunal to be provided to parties where it has been transferred, to reflect the fact that such information is only otherwise provided on initial referral (see rule 14(5)(c)).

Similarly to the general provision made for the Complaints Committee, the provision made by this rule includes the requirement for the Clerk to the Tribunal to arrange for the determination hearing to take place within 3 months (rule 30(1)), subject to the possibility of that period being extended by the Chair of the Tribunal on cause shown. Provision is also made for the timetabling of the consideration of the complaint (see rule 20(3)). As is the position before the Complaints Committee, this rule also provides a basis on which the Presenting Officer may, on cause shown, propose an amendment to the summary of complaint with a hearing being required to determine any amendment to which objection is taken (rule 30(6)) and answers being required in the event the amended summary is to be taken as the summary of complaint (rule 30(10)). The rule differs for the Disciplinary Tribunal, however, in so far as the Dean may be represented before it (rule 30(5)). For the avoidance of doubt, where the Dean appears or is represented before the Disciplinary Tribunal, that appearance or representation is proposed to be in addition to the appearance of the Presenting Officer. It is anticipated that the circumstances in which the Dean will require to appear or be represented will be limited, and are likely to encompass, for example, circumstances in which the complaint gives rise to issues of wider application. It is, in part, for that reason that one of the factors which the Complaints Officer (or the Dean) requires to consider when deciding where to refer the complaint at the initial stage is whether the complaint raises an issue of wider importance (see: rule 14(4)(c)).

31 Disciplinary Tribunal: preliminary hearing and case management

Rule 31 makes similar, wide-ranging case management provision for the Disciplinary Tribunal as is made for the Complaints Committee in rule 21. As with the Complaints Committee, a preliminary hearing may be held before the Chair of the Disciplinary Tribunal sitting alone, or with some or all of the members of the Tribunal (rule 21(2)). Rule 31(5) allows for the complaint to be decided at the preliminary hearing if there is agreement. Rule 31(6) requires the parties to inform the Presenting Officer and the Committee whether agreement exists on the facts and issues to be decided, and if so the scope of that agreement.

32 Disciplinary Tribunal: determination hearing

Rule 32 makes similar provision for the Disciplinary Tribunal as is made for the Complaints Committee in rule 22. The actions which the Tribunal may take, in terms of rule 32(1), similarly range from identifying the issues, taking evidence, adjourning the hearing and determining the complaint (and penalty, where there is agreement that that should be done). Rule 32(2) similarly enables the Tribunal to administer an oath or affirmation and to order a witness to take an oath or affirmation. The power to adjourn the determination hearing is similarly subject, in rule 32(3), to the requirement to review the adjournment every 3 months. As



with many other provisions in the rules (including rule 22), rule 32(4) imposes a requirement to provide reasons.

Disciplinary Tribunal penalties

33 Disciplinary Tribunal penalty hearing

This rule makes similar provision to rule 23 in relation to the conduct of the penalty hearing, based in part on rules 84 and 85 of the existing Rules. Rule 33(1) sets out the circumstances in which the rule applies, to accommodate the various mechanisms by which the Disciplinary Tribunal may be required to determine the appropriate penalty (the rule therefore differs in this respect from the equivalent rule for the Complaints Committee). Rule 33(2) requires a penalty hearing to be held within 14 days of the substantive decision on the complaint being notified to parties, as is the position for the Complaints Committee. Similarly, the requirement is imposed on the Tribunal to notify parties of the details of the hearing and to afford parties (which here includes the Dean) the opportunity to make representations (rule 33(3)-(4)), but the procedure is otherwise at the discretion of the Chair of the Tribunal (rule 33(5)). Reasons are required by rule 33(7).

34 Penalties available to the Disciplinary Tribunal

This rule is in similar terms to rule 24 and makes provision in relation to the penalties which the Disciplinary Tribunal can impose after a finding of either form of conduct is made. As with rule 24, the main changes relative to the existing Rules are to remove the availability of the verbal sanction; and to simplify (to two) the written, non-monetary sanctions, being (i) a written warning and (ii) a written direction, with non-exhaustive wording provided on what such a direction might contain. As that wording confirms, a direction may include a requirement for retraining and assessment, or for the Member to refrain from particular areas or types of practice (such as sexual offences work).

Rule 34(2) represents a significant departure from the existing Rules. It imposes a new, higher maximum sanction of £50,000 in respect of the total fine and / or compensation to be paid for a single complaint, or multiple complaints arising from the same or substantially the same conduct, for a finding of either unsatisfactory professional conduct or professional misconduct made by the Disciplinary Tribunal. The existing Rules provide for a maximum fine or compensation before the Disciplinary Tribunal of £15,000. The Disciplinary Tribunal will, similarly to the Complaints Committee, require in imposing a monetary sanction in any amount, or any other sanction for either type of conduct, to have regard to guidelines prepared and published under rule 13. Again, it is expected that the guidelines will address the circumstances in which particular conduct falls within particular ‘bands’ of seriousness relative to both forms of conduct and so attracts a particular ‘band’ of compensation or fine.

Rule 34 differs from the existing Rules in one further respect: the limitation in rule 86 of the existing Rules, which prevents the imposition of a fine where a Member is suspended or expelled from membership of Faculty, has been removed. It is expected that the proportionality of such a ‘dual sanction’ will be addressed in the sanctions guidelines.

Membership of Complaints Committee and Disciplinary Tribunal

35 Membership of Complaints Committee

This rule makes similar provision to rule 94 of the existing Rules. As is currently the position, the Complaints Committee will consist of four people, with two selected from a panel of eight senior advocates and two lay persons selected from a panel of lay people nominated by the Faculty and approved by the Scottish Ministers. Similarly to rule 94c, the Dean has the power to appoint a senior advocate to serve on the Committee on a



temporary basis. Similar provision is also made in relation to determining the Chair of the Committee, with the phrase “most senior as counsel” in the existing Rules being replaced, for clarity. The Chair is now to be the most senior advocate, as determined by the number of years since appointment as a KC or QC (rule 35(4)). Where the number of years since appointment is equal, provision is made for seniority to be determined by the Dean.

The most significant difference as between this rule and the provision in the existing Rules relates to objecting to membership of the Committee, provision now being made for recusal. Where an objection to membership of the Committee is made and accepted, the member recusing themselves is to be replaced with another member by the Chair; or, where the person being objected to is the Chair, is to be replaced with another Chair, by the Dean (rule 35(7)). Where the member of the Committee does not recuse themselves, the objection is to be decided on by the Chair or the Dean (as the case may be), either at a hearing or on the basis of written arguments, where it is agreed that that should be done (rule 35(8)).

36 Membership of Disciplinary Tribunal

This rule makes similar provision to rule 96 of the existing Rules and is similarly drafted to rule 35. The main difference is that the Disciplinary Tribunal will consist of a Chair and five other people appointed by the Dean: the Chair, selected from three people approved by the Lord President; two advocates, including at least one senior advocate, selected from a panel approved by the Faculty; and three lay people, selected from a panel of lay people approved by the Scottish Ministers. The Chair of the Disciplinary Tribunal must be either a retired Justice of the Supreme Court, a retired Senator of the College of Justice or another appropriate person (the reference in the existing Rules to the Judicial Committee of the Privy Council has been removed, on the basis that the last sitting Lords of Appeal in Ordinary became judges of the Supreme Court on the coming into force of section 24 of the Constitutional Reform Act 2005). In terms of rule 36(3), the Chair of the Disciplinary Tribunal may appoint a solicitor to serve on the Tribunal in place of one of the advocates. This provision (together with rule 36(4)) replicates rule 97 of the existing Rules, but is not currently replicated in the 2026 Rules for the Complaints Committee.

The process for objecting to membership of the Disciplinary Tribunal is the same as the process for objecting to membership of the Complaints Committee, on which see the discussion on rule 35. It differs for the Disciplinary Tribunal relative to the existing Rules in one respect, in that the power to appoint a replacement Chair is currently conferred on the Lord President (see rule 99 of the existing Rules) but in the 2026 Rules it is conferred on the Dean (see rule 36(8)). The Lord President already has a role in respect of appointing the panel of persons who may serve as Chair (see rule 36(1)(a)), and it is considered to be unnecessary to also require the Lord President to decide which other person on the panel should be appointed as a replacement Chair in any given case.

Petition for removal of the Member

37 Petition for removal of the Member from the public office of advocate

This rule makes similar provision for petitioning the court as is made in rule 93 of the existing Rules, but differs in certain significant respects. It requires the Dean to petition the Court of Session to remove a person from the public office of advocate only if the member is suspended or expelled from membership of Faculty (a sanction which can only be imposed by the Disciplinary Tribunal). Further, a petition is no longer required in respect of interim suspension (the possibility of interim suspension from membership having been removed).

Differential provision is also made, depending on whether the sanction is suspension from membership, in which case the petition requires to seek removal for the period of the suspension; or expulsion from



membership, in which case the petition requires to seek removal from the public office of advocate without limitation of time. The difference in provision is intended to ensure that a Member who is not being expelled does not require to be formally re-admitted to Membership of Faculty and the public office in the same way as someone who has never held the public office.

Publication of decisions on conduct complaints

38 General Rules on publication of decisions

These are new rules, which incorporate provision which, at an earlier stage of the redrafting project, was proposed to be made by way of a publication policy. In so far as comparable provision is made, these provisions replace rules 90 to 92 of the existing Rules.

Rule 38(1) sets out certain requirements regarding the publication of decisions by the Complaints Committee and the Disciplinary Tribunal where they determine a conduct complaint (see rule 38(1)(a), under reference to the provisions listed) or impose a penalty (see rule 38(1)(b), under reference to the provisions listed there).

Rule 38(2) sets out what the published decision requires to include and rule 38(3) where (on the Faculty website) and when (within 28 days of final disposal) it has to be published.

Rules 38(4) and (5) make provision for the information which may be omitted from the published decision and give effect to section 78 of the 2025 Act which will amend section 122 of the 2010 Act, once the 2025 Act comes into force. The amended section 78 will require that rules regulating the discipline of advocates must require publication; and must require the published decision to include details of the facts established, a statement of reasons, and, where the complaint is upheld, information about any penalty imposed. It will also require the Faculty to allow certain information to be omitted from the published decision which the Faculty considers would be likely to damage the interests of persons other than the advocate in question or their partner or family. The reasons for omitting the information will require to be published. Where a complaint is not upheld, the Faculty will require to be allowed to omit the name of the advocate in question where it considers that to be appropriate. This rule gives effect to those changes and requires arguments to be received or heard on the question of publication (see rule 38(7) and (8)). The various references in the 'reasons' provisions elsewhere in the Rules to "omitting or deciding not to omit any information from the decision" (rule 22(4)(c), 23(5)(b), 29(9)(c), 32(4)(c), 33(7)(c)) are intended to provide early notice to parties of the basis on which information is or is not to be included in the published decision, to allow them to appropriately direct their arguments on whether the information should be included or omitted (as the case may be).

39 Time periods for publication of decisions

This rule is also new and sets out the periods of time for which certain categories of decision are to remain on the Faculty's website. The periods proposed (the 2 year default; the 5 year period for suspension for 12 months or less; the 10 year period for suspension for 12 months or more; and the 60 year period for expulsion) mirror those applicable to findings of the Bar Standards Board (BSB) in England and Wales (meeting of [18 July 2019](#)). Like the BSB, the Faculty has statutory obligations as a regulator of legal services which include protecting and promoting the interests of consumers and the public interest. It proposes the same publication periods essentially for the reasons given by the BSB. Acting compatibly with its statutory obligations requires publication, and the periods proposed are suggested to be proportionate to the importance of those requirements when balanced against the rights of individual advocates to be 'forgotten'.