

Disciplinary and Regulatory Proceedings

Seventh Edition

Brian Harris OBE QC

Contributing editor

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PREFACE

These are turbulent times for regulators with a number of them coming under criticism for failures to anticipate or act upon major failings in the environments which they regulate (eg the banking crisis, Libor fixing, the supervision of care homes, and the alleged fixing of wholesale energy prices).

The near revolution in regulation which has engulfed the legal and medical professions recently and the changes in the regulation of financial services now taking effect have caused us effectively to rewrite those parts of this book which deal with those subjects.

Our objective here and throughout is to provide the reader with a clear overview of the new regulatory architecture so as to enable them better to apply the core legal principles governing disciplinary and regulatory proceedings. At the same time we have reviewed the way in which information is presented with a view to making a complex subject as readily accessible to the practitioner as possible.

In addition to the statutory changes we have had to incorporate more than the usual number of new cases, including *Mattu v The University Hospitals of Coventry and Warwickshire NHS Trust* (application of Convention to interim orders), *Puri, R (on the application of) v Bradford Teaching Hospitals NHS Foundation Trust* (application of Convention to disciplinary proceedings), *McLaughlin v Governor of the Cayman Islands* (whether the rules of natural justice rendered a finding void or voidable), *Coke-Wallis, R (on the application of) v ICAEW* (the need not to take shortcuts in the investigative and charging stage of disciplinary proceedings), *General Dental Council v Savery & Others* (communications between regulators), *Quinn Direct Insurance Ltd v Law Society of England and Wales* (privilege and the regulator), *Holmes v Royal College of Veterinary Surgeons* (incompatibility of tribunal members' roles), *Pohoska v Poland* (Art 6 and independence), *Baxendale-Walker v Middleton & Others* (the privilege of the SDT), *JIH v News Group Newspapers Ltd, Rev 1* (anonymity), *R (on the application of Perinpanathan) v City of Westminster Magistrates' Court & Another* (costs against a regulator), *R (on the application of Stephane Alhy) v General Medical Council* (orders of a foreign regulator), *Lutton v General Dental Council* (warning letters), *Hazelhurst & Others v Solicitors Regulation Authority* (the need for indicative sanctions), *Bozhkov v Bulgaria* (the test of 'necessity in a democratic society').

Regulatory bodies are looking increasingly toward the evolving role of the Upper Tribunal to provide the forum for the determination of disputed

disciplinary proceedings and the common legal principles that determine efficient and effective disciplinary processes. There are increasingly strong arguments for the separation of supervisory regulation from the enforcement and disciplinary processes.

It would in our view be helpful if the Upper Tribunal were able to scrutinise the conduct of regulatory bodies. This could reduce the incidence of many of the procedural irregularities which have arisen (eg bias, privilege, Art 6 independence, the proper application of sanctions, interim suspension).

Brian Harris and Andrew Carnes
December 2012

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We would also like express our gratitude to the various regulatory and professional bodies who have assisted us in preparing the summaries of their rules contained in Part II.

Finally, we are grateful to Hodge Malek QC of 39 Essex Street for his invaluable comments on disclosure and privilege.

HOW TO USE THIS BOOK

After a few introductory chapters dealing with matters of general interest, such as jurisdiction and the right to a fair trial, the first Part of this book seeks to take the reader logically through the disciplinary/regulatory process, from the making of a complaint, the decision to investigate, the composition of the tribunal, the conduct of a hearing, disciplinary sanctions and so on. It has not always been possible to follow this order strictly. (Many pre-trial matters, for example, arise at other stages of the process also.) Wherever necessary we have endeavoured to provide helpful cross references.

Part II of the book deals with disciplinary and regulatory arrangements in practice, for example by way of advice to prosecuting and defence advocates, as well as for those unlucky enough to be the subject of a disciplinary or regulatory hearing. Here also are to be found brief descriptions of the architecture of some of the most important disciplinary and regulatory bodies, including their Codes and principles. After examples of model indicative guidance and a model investigatory protocol the book ends with the text of the Human Rights Act 1998, in which are set out those aspects of the European Convention on Human Rights with which the Act is concerned.

Anyone wishing to investigate a point of law, therefore, should begin by consulting the appropriate chapter of this book (which can readily be accessed via the full list of contents at the beginning or the index at the end). Thereafter, they should consult the authors' website, <http://regulatorylaw.co.uk>, where cases and legislation after the date of publication may be found arranged in the same order as in the book, along with articles dealing with current disciplinary and regulatory topics.

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