

## STATUTORY INSTRUMENTS

# 2019 No. 1185

## The Solicitors (Disciplinary Proceedings) Rules 2019

### PART 5 **E+W**

#### EVIDENCE

#### **Evidence generally and service and sending of Evidence and bundles** **E+W**

**27.**—(1) Without prejudice to the general powers in Parts 2 and 3 of these Rules the Tribunal may give directions in relation to an application relating to any of the following—

- (a) the exchange between parties of lists of documents which are relevant to the application, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which the Tribunal requires evidence or submissions;
- (d) the nature and manner of the evidence or submissions that the Tribunal requires;
- (e) the time at which any evidence or submissions are to be sent;
- (f) the time to be allowed during the hearing for the presentation of any evidence or submission.

(2) The Tribunal may—

- (a) admit any evidence whether or not it would be admissible in a civil trial in England and Wales;
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not provided within the time allowed by a direction given under these Rules or a practice direction; or
  - (ii) the evidence was otherwise provided in a manner that did not comply with a direction given under these Rules or a practice direction; or
  - (iii) it would otherwise be unfair, disproportionate or contrary to the interests of justice to admit the evidence.

(3) Unless otherwise directed by the Tribunal, in cases where the Society is the applicant, it must send five copies of a paginated hearing bundle to the Tribunal no later than 14 days before the date listed for the substantive hearing.

#### **Commencement Information**

**II** [Rule 27](#) in force at 25.11.2019, see [rule 1](#)

#### **Written Evidence** **E+W**

**28.**—(1) If no party requires the attendance of a witness, the Tribunal may accept the Statement of that witness as evidence in respect of the whole case or of any particular fact or facts.

(2) Every Statement upon which any party proposes to rely must be sent to the Tribunal by that party and served on every other party on a date determined by the Tribunal which must be no less than 28 days before the date fixed for the hearing of the application. The Statement must be accompanied by a notice, using the prescribed form.

(3) Any party on whom a notice has been served under paragraph (2) and who requires the attendance of the witness in question at the hearing must, no later than seven days after service of the notice require, in writing, [F1 the party by whom the notice was served] to produce the witness at the hearing.

(4) Any application for a witness summons must be made to the High Court.

(5) If a Statement has not been served in accordance with paragraph 28(2) in relation to a witness, a party must apply to the Tribunal for permission—

- (a) to produce that Statement; and
- (b) for the witness to give evidence at the hearing.

(6) Any party to an application may, by written notice, not later than 21 days before the date fixed for the hearing, request any other party to agree that any document may be admitted as evidence.

(7) If a party desires to challenge the authenticity of a document which is the subject of paragraph (6), that party must, within seven days of receipt of the notice served under that paragraph, give notice that he or she does not agree to the admission of the document and that he or she requires that its authenticity be proved at the hearing.

(8) If the recipient of a notice given under paragraph (6) does not give a notice in response within the period mentioned in paragraph (7), that recipient is deemed to have admitted the document unless otherwise ordered by the Tribunal.

#### Textual Amendments

**F1** Words in rule 28(3) substituted (25.5.2020) by [The Solicitors \(Disciplinary Proceedings\) \(Amendment\) Rules 2020 \(S.I. 2020/462\)](#), rules 1(2), 14

#### Commencement Information

**I2** [Rule 28](#) in force at 25.11.2019, see [rule 1](#)

### Civil Evidence Act notices **E+W**

**29.**—(1) Subject to the following [F2 provision] of this Rule, [F3 the provisions of] the Civil Evidence Act 1995(a) apply in relation to proceedings before the Tribunal in the same manner as they apply in relation to civil proceedings.

(2) Any notice given under the provisions of the Civil Evidence Act 1995 as so applied must be given no later than the latest date for the service of witness statements under rule 28.

#### Textual Amendments

**F2** Word in rule 29(1) substituted (25.5.2020) by [The Solicitors \(Disciplinary Proceedings\) \(Amendment\) Rules 2020 \(S.I. 2020/462\)](#), rules 1(2), 15(a)

**F3** Words in rule 29(1) inserted (25.5.2020) by [The Solicitors \(Disciplinary Proceedings\) \(Amendment\) Rules 2020 \(S.I. 2020/462\)](#), rules 1(2), 15(b)

#### Commencement Information

**I3** [Rule 29](#) in force at 25.11.2019, see [rule 1](#)

## Expert evidence **E+W**

**30.**—(1) No party may call an expert or adduce in evidence an expert’s report at the substantive hearing of an application without leave of the Tribunal.

(2) An application under this rule must be determined by a panel.

(3) The Tribunal may permit expert evidence to be adduced where it considers that such evidence is necessary for the proper consideration of an issue or issues in the case.

(4) If two or more parties wish to submit expert evidence on a particular issue, the Tribunal may direct that the evidence on that issue is to be given by a single joint expert.

(5) The Tribunal may, at any stage, direct that a discussion take place between experts for the purpose of requiring the experts to identify and agree the expert issues in the proceedings and provide a joint schedule setting out the matters that are agreed and not agreed. The Tribunal may specify the issues which the experts must discuss.

(6) Any expert evidence must be in the form of a Statement and must set out—

- (a) the expert’s professional qualifications;
- (b) the substance of all material instructions (including a general description of the documents provided), whether written or oral, on the basis of which the Statement was written;
- (c) a declaration that the expert understands and has complied with the expert’s duty to assist the Tribunal on matters within the expert’s expertise and understands that this duty overrides any obligation to any party from whom the expert has received instructions or by whom they are paid.

### Commencement Information

**I4** [Rule 30](#) in force at 25.11.2019, see [rule 1](#)

## Interpreters and Translators **E+W**

**31.**—(1) If any witness [<sup>F4</sup>, applicant] or respondent requires the assistance of an interpreter to participate in a hearing the Tribunal must be notified of this fact by the party requiring the interpreter when sending the list of witnesses.

(2) Where a witness statement has been translated from a language other than English it must be accompanied by a Statement confirming—

- (a) the language in which the original witness statement was made; and
- (b) that the translator has translated the witness statement into English to the best of the translator’s skill and understanding.

### Textual Amendments

**F4** Word in [rule 31\(1\)](#) inserted (25.5.2020) by [The Solicitors \(Disciplinary Proceedings\) \(Amendment\) Rules 2020 \(S.I. 2020/462\)](#), [rules 1\(2\)](#), [16](#)

### Commencement Information

**I5** [Rule 31](#) in force at 25.11.2019, see [rule 1](#)

### Previous findings of record **E+W**

**32.**—(1) A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances.

(2) The judgment of any civil court, or any tribunal exercising a professional or disciplinary jurisdiction, in or outside England and Wales (other than the Tribunal) may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based [<sup>F5</sup>are admissible] as proof but not conclusive proof of those facts.

(3) Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed the Tribunal may, on the application of the Law Society or the respondent to the application in respect of which the finding arose, revoke its finding and make such order as to costs as [<sup>F6</sup>appears] to be just in the circumstances.

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#### Textual Amendments

- F5** Words in [rule 32\(2\)](#) substituted (25.5.2020) by [The Solicitors \(Disciplinary Proceedings\) \(Amendment\) Rules 2020 \(S.I. 2020/462\)](#), [rules 1\(2\)](#), [17\(1\)](#)
- F6** Word in [rule 32\(3\)](#) substituted (25.5.2020) by [The Solicitors \(Disciplinary Proceedings\) \(Amendment\) Rules 2020 \(S.I. 2020/462\)](#), [rules 1\(2\)](#), [17\(2\)](#)
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#### Commencement Information

- I6** [Rule 32](#) in force at 25.11.2019, see [rule 1](#)

### Adverse inferences **E+W**

**33.** Where a respondent fails to—

- (a) send or serve an Answer in accordance with a direction under [rule 20\(2\)\(b\)](#); or
- (b) give evidence at a substantive hearing or submit themselves to cross-examination;

and regardless of the service by the respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the respondent has chosen to adopt and to draw such adverse inferences from the respondent's failure as the Tribunal considers appropriate.

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#### Commencement Information

- I7** [Rule 33](#) in force at 25.11.2019, see [rule 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Solicitors (Disciplinary Proceedings) Rules 2019, PART 5.