CONTENTS

	Preface The same to the same t	77
	Acknowledgements	vi
	How to Use this Book	XXX
	Table of Cases	xxxii
	Table of Statutes	lxx
	Table of Statutory Instruments	lxxv
	Table of European Materials	lxxvi
	Table of Abbreviations	
	daubiarlans are of historical milester	
	Part () - California de la companie	
	Disciplinary and Regulatory Proceedings	
	Conclusion de dispersión de la seconda de la	
	Chapter 1	
	The Basis and Extent of Jurisdiction	10 3
,	(1) The legal basis of the disciplinary and regulatory functions	IC 2
	Bodies acting under statutory powers	3
	Bodies acting under contractual powers	4
	What standards will the courts require of a contractual	raid .
	regulator?	5
	(2) The power of a tribunal to determine its jurisdiction	6
	(3) Territorial jurisdiction	6
	English or Scottish law?	7
	(4) Jurisdiction in time	7
	(5) The continuance of jurisdiction after cessation of membership	
	or authorisation	8
	(6) Who may be the subject of disciplinary action?	8
	Members in partnerships and companies	8
	The insolvency practitioner	8
	Jurisdiction over persons other than members	9
	(7) Responsibility for the acts of another	7
	Liability for employees	
	Chapter 2	
	The Right to a Fair Trial	
	(1) The common law right to a fair trial	11
	No application to contractual regulation	11
	Effects of non-compliance with the rules of natural justice	12
	Can a defect in natural justice be cured on appeal?	12

. /	on	+ 100	**

The tortious liability of reporting accountants and	Catala orden not a ch
other investigators	anotherwise line at 44
Investigation by the regulated person in the first in	nstance 44
(2) The adjudicatory body	and performs less from 144
The prosecutor	45
(3) The appellate body	asta, may distantial A 45
(4) Committees of inquiry	to form the land to the second 46
The duties of a committee of inquiry	46
	uce bon ambiguited put 47
Issue arbitration	low had he tale Ignis A 47
The duties of an arbitrator	48
Private arbitration hearings	to plant but almost but 48
Revocation	49
Duty of non-disclosure	49
Tortious liability	11 11 11 11 11 11 11 11 11 11 11 11 11
Enforcement of an arbitration award	50
Appeal from an arbitration award	50
	alling the black of 50
	ImbrashoD salratolW 50
Other techniques for resolving complaints	50
Mediation Mediation	ling to regularish ad 1/51
Conciliation	flod stuffel and they aid 51
Mini-trial or executive tribunal	may long sanding Do debrill 51
Dangerous incident reporting: a special case	sound a jurish the aid. 51
Chapter 4	
The Grounds for Disciplinary Action	53
(1) Epithet misconduct (or misconduct broadly del	
Serious professional misconduct	54
The meaning of 'serious'	54
The meaning of 'misconduct'	54
'Misconduct in a professional respect'	55
Conduct outwith professional practice	56
Misconduct by an expert witness	56
'Discreditable conduct'	57
Question of mixed law and fact	58
(2) Breach of rules	58
	58
	59
(1) 011111111111111111111111111111111111	59
Till Official Involving frage	59
Further clarification of 'Twinsectra'	60
Examples of dishonesty	60
	61
'An offence of violence'	61
Double jeopardy	62
Estoppel Farrign convictions	63
Foreign convictions	63
Proof of conviction	03

(2) The Convention right to a fair hearing Professional self-regulation not necessarily incompatible with the	14
Convention	14
The Art 6 rights	14
How the Court has extended the Art 6 rights	15
Certain rights absolute	16
The interpretation of Art 6	16
Equality of arms	16
Procedural rules must be established by law	17
The state of the contract of t	1 /
(3) To what organisations do the rules of natural justice apply and	18
how may they be enforced?	
The organisations subject to judicial review	18
Judicial review not confined to the acts of judicial bodies	
Application to private bodies exercising statutory functions	19
Application to private bodies exercising public but not	20
statutory functions	20
(4) What organisations constitute a 'public authority' for the purpose	22
and of the HRA 1998?	22
Discretion exercised by an individual	25
To what extent are the loss of practising rights governed by the	26
ECHR? agailessort grainings it has grading	26
Loss of a specific job	26
Interim orders	27
Orders short of loss of professional rights	27
Does the application of Art 6 depend on the powers of the	
tribunal or the order made in the proceedings?	28
Public servants	29
Disciplinary proceedings as a 'criminal charge' or a	2.6
'criminal offence'	30
'Criminal charges': a summary	31
Can a lack of conformity to Art 6 be cured by a right of appeal to	
a conformable tribunal?	32
Effect upon subsequent proceedings	34
Rectification by judicial review	35
Victims	36
Margin of appreciation	36
Proportionality Proportion and Application of the A	37
Waiver of ECHR rights	38
Retrospective application of HRA 1998	38
(5) How is the Convention right to a fair hearing enforced?	38
(6) Applying to Strasbourg	39
The effect of a decision of the Strasbourg Court	40
Chapter 3	
The Common Framework	43
(1) The investigatory body	43
Delegation of the investigative function	43

Spent convictions

'Serious' bad work

The FSA principles
Departure from codes

(6) Conflicts of interest Bolkiah v KPMG

Commencing an Investigation

Meritless complaints

Anonymous complaints

Bad work charged as such

Course of conduct

(5) Bad work

(6) Insolvency

(7)

Chapter 5

Chapter 6

Certain orders not a conviction

Bad work as epithet misconduct

By what professional standard is bad work to be judged?

Single incident and course of action

Architects Registration Board

A single act of bad work

Bad work and negligence: a summary

Misconduct in public office

The Role of Ethical Guides and Codes of Practice

(2) Ethical Codes and rules contrasted

The advantages of guidance rather than rules

Codes of ethics not comprehensive statements of ethics

(3) The effect of a 'have regard to' provision

(4) The effect of Code obligations upon civil liability(5) Restrictive practices

(8) Fee complaints

The test for failure to comply with guidance

Bolkiah v KPMG
Irreconcilable duties

(1) What may trigger an investigation

(2) The decision to investigate

Complaints from clients and third parties Complaints arising from monitoring

Other reasons for investigation

Chinese walls

Complaints and reports from fellow members and competitors Complaints from employees and whistle-blowers

Statutory discretion to investigate

Can a person under investigation challenge a decision to investigate?

(3) Does the person under investigation have a right to know why the investigation was instituted?

(1) What the Codes deal with

-	
Cont	oute

	00
(4) The duty to report misconduct	90
(5) Inter-regulatory disclosures	91
Memoranda of understanding	92
Duty to notify other regulator	92
Disclosure of money laundering, etc	92
Disclosure authorised or required by statute	93
Disclosure by express consent	93
The need for clear drafting	94
(6) Confidentiality and inter-regulatory disclosure	94
Statutory prohibition of disclosure	95
Non-statutory prohibition of confidential information	95
When confidentiality may be breached by a regulator	95
Disclosure of confidential information by express consent	96
Disclosure by implied consent	97
Disclosure to a regulator in the public interest	97
Disclosure of wrongful acts	98
Disclosure by a regulator	99
Disclosure for self-protection	99
Information held by police	100
Restricted use of confidential information	101
Patient records	101
Libel implications concerning information supplied to a regulator	102
Absolute privilege	102
Qualified privilege	104
When can information supplied to a regulator give grounds for an	4 2
action for malicious prosecution?	104
Data protection	104
(8) Publicising the commencement of an investigation	105
Chapter 7	
The Investigation	10'
(1) What legal constraints govern the conduct of an investigation?	10'
Application of the European Convention to investigations by public	
authorities	108
What duty does the investigator owe to the subject of a	
disciplinary investigation?	109
Confidentiality	109
Entrapment	109
No duty to administer a caution	110
Provisional determination	11
The power to demand information	11
Inspection of computers and similar data collections	11
Demands for information by public authorities	11:
Exceptions to the duty to co-operate: privilege and confidentiality	11:
The problem of defamation	11
Regulator has no obligation to produce documents	11
(2) When should an investigation be deferred pending action by	
another regulator?	11

(3) When must an investigation be deferred pending	
criminal proceedings?	114
When deferment of disciplinary proceedings may be justifie	ed and a second
pending criminal proceedings	115
Police: a special case	117
(4) Deferment of disciplinary investigation pending civil activities	on 117
Argument	m verseles (117
The case-law	118
'Fayed' and the principle of prejudice	119
'Conteh' and the undesirability of concurrent proceeding	s 120
'Brindle'	120
Ex parte Smith: Brindle distinguished	122
The principles in summary	123
Further doubt cast on the ratio in Brindle	124
(5) Resignation to prevent disciplinary action	125
Chapter 8	
The Decision to Prosecute	127
(1) The decision to bring disciplinary proceedings	127
The evidential test	127
(2) Who decides to bring disciplinary proceedings?	127
(3) The decision to prosecute	128
Can the complainant challenge a decision not to bring	
disciplinary proceedings?	128
Convention rights not engaged in decision to bring disciplin	nary
proceedings	129
Legitimate expectation	129
(4) Consent orders	130
Informal warning or rebuke	131
Formal advice	132
Powers without grounds for disciplinary action	132
Inappropriateness of dismissal from office as an alternative	
disciplinary action	132
	V.
Chapter 9	ab words and Wheel
The Tribunal	133
(1) The right to an independent tribunal	133
How can the independence of a tribunal be assured?	134
The assurance of lay (or public interest) membership	135
Public interest members	135
The assurance of independent appointment	135
The assurance of security of tenure	135
The convenor of the tribunal	136
Can a lack of independence be cured by the appointment of	
fresh tribunal?	136
(2) The right to an impartial tribunal	137
The common law right to an impartial tribunal	137
THE TAILSHILLIGED SHIP BURNINGH MINERVET	1 3 X

Reconciling Pinochet No 2 with Porter v Magill	139
The Convention right to an impartial tribunal	140
Application to tribunals	143
Plural tribunals	143
The presumption of impartiality	144
Knowledge of a witness	144
Disqualification for financial interest	144
How small is small? The de minimis exception reappears	144
Other grounds of objection	145
Representative interest	146
The problem of tribunal members having been involved in the	
investigation or the decision to bring proceedings	146
Prior involvement in an issue	147
The problem of disciplinary tribunal members who have been	
involved in separate proceedings against the accused	147
Involvement in the law or standard making process	148
The Luxembourg cases	148
The UK cases	148
The problem of informal contacts	149
Practical steps to avoid bias	
Waiver same allowed miles and appears a same same	150
The problem of prejudicial pre-trial publicity	151
3) The right to a tribunal 'established by law'	71110 b/4 151
4) The appointment of the tribunal members	153
The chairman	153
The composition of a tribunal	154
The need for public interest members to be trained.	154
Voting	154
The confidentiality of the retiring room	155
Transfer to a fresh tribunal	155
Interlocutory matters	155
Composition of tribunal after adjournment	155
5) The legal assessor	157
Legal assessor not analogous to judge	157
On what can the legal assessor advise?	158
The legal assessor and the preparation of findings	158
How should the legal assessor give his advice?	159
When may the legal assessor retire with the tribunal?	160
Questions by the legal assessor	160
A role model for a legal assessor	160
Bias on the part of the legal assessor	161 162
Should the regulator's in-house lawyer be the legal assessor?	
Security of tenure of legal advisers	162 162
(6) Judicial protection of tribunals	162
Immunity from suit	104

Chapter 10		Is the power to stay shared by disciplinary tribunals?	187
Pre-trial Issues	165	(11) Disclosure	188
1) Pre-trial hearings	165	Disclosure before the tribunals of public authorities	189
Pleadings and skeleton arguments	166	Disclosure in civil proceedings	189
2) The right to fair notice	166	Disclosure limited to relevant material	190
The right to fair notice at common law	166	Balancing the public interests	19
The Convention right to receive particulars	167	Confidentiality of sources	19
(3) What particulars?	167	Limits on disclosure	192
No right to evidence	168	Subsequent use of documents	192
Change in particulars	168	Without prejudice communications	193
(4) Striking out on grounds of inadequate particulars	169	Production by non-parties	194
5) The charges	169	Disclosure ordered by the court on the application of non-parties	194
The trial of multiple charges	169	bisclosure ordered by the court on the application of non-parties	1)-
'And/or' allegations	170	Chapter 11	
The trial of multiple defendants	170	Public Hearings	19
(6) The rule against duplicity	170	(1) Public hearings	19
7) How much notice?	171	The disciplinary hearings of private bodies	198
Where notice is not received	171		
The effect of a finding or order obtained without notice received	171	The disciplinary hearings of public authorities	198
	171	Public at what stage?	199
Notice not given through fault of defendant's solicitor	7.5	Waiver of right to a public hearing	199
The avoidance of delay as a reason for joinder of charges	173	Exceptions to the ECHR right	199
Technical defects in the charge	173	Applications for anonymity	200
8) Adjournments	173	The confidentiality of disciplinary proceedings	201
The need to exercise discretion	174	Preliminary hearing	203
Doubtful reasons for adjournment	175	Multiple defendants	204
The criteria to be adopted in applications to adjourn	176	Disorderly behaviour	204
Adjournment on grounds of criminal proceedings against the		(2) The problem of defamation	204
defendant	177	Absolute privilege	204
Repeated applications for adjournment	177	Qualified privilege	203
Adjournment on grounds of defendant's ill health	1,27	Immunity to suit	206
Adjournments to consider fresh developments	\\178	(3) Reports of disciplinary proceedings	206
Convenience of tribunal carries little weight	178	The position at common law	206
Notice of adjourned hearings	178	The duty to publish under the European Convention	207
9) Trial in the absence of the defendant	178	The problem of libel in reports of disciplinary proceedings	207
10) Stay of proceedings	180	The statutory defences to libel	207
Stay on the ground of delay	180	Possible defence of qualified privilege?	208
The criteria to be applied	181	The defence of volenti	208
Stay on grounds of bad faith, etc	182	The risk of contempt in published reports	208
Stay on ground of prosecutorial fault	183	The state of the contract of the property of the state of	
The remedy for delay	183	Chapter 12	
Permanent stays	183	Witnesses, Evidence and Proof	211
Delay before the tribunals of public authorities	184	(1) The burden of proof	211
When does time run from?	185	Reverse onus clauses	211
Stay on the ground of unfairness	185	Burden of proof in fitness cases	212
Stay on the ground of a collateral attack on a decision of a	DELVIS I	(2) The standard of proof	213
competent court	185	What is the civil standard?	213
Stay pending application to Strasbourg	186	Re B affirmed and the role of 'inherent probability' explained	215
Other grounds for stay	187	Application to disciplinary proceedings	216
		Transfer of Property	

-	9729	2000	
Con	110	mis	

S	A.	1	А	
7				

The standard of proof in allegations of criminal conduct	216
Reverse onus in the case of criminal conduct	217
'Satisfied that the allegation is well founded'	217
(3) The admissibility of evidence	218
Common law not restrictive	218
The Strasbourg approach to the burden of proof	219
The limits to discretion	220
In summary	220
Hearsay	220
Hearsay and public authorities	221
Anonymous witnesses	223
Reliance on the tribunal members' knowledge	223
Evidence of similar facts	224
(4) Proving particular facts	224
Findings in civil proceedings	224
Probative value of tribunal finding	225
Proof of criminal acts	226
Can a defendant in disciplinary proceedings assert that, thou	agh
convicted by a court of law, he was not in fact guilty o	f
the offence?	226
Illustrations	227
Proof of criminal convictions	227
The status of findings and orders of other bodies	227
(5) Expert witnesses	229
The Ikarian Reefer	229
The Protocol	230
Expert witnesses' immunity	232
(6) Securing the attendance of witnesses	232
The issue of a witness summons	232
Witnesses before the tribunals of public authorities	233
Apparent conflict between the ECtHR and the Supreme Co	urt 233
Date of attendance	235
Name on witness summons	235
Witness summons and disclosure	236
Third party objections	236
The burden of objecting to a witness summons	236
Witnesses outside the jurisdiction	237
Objections to a witness summons	237
Privilege against self-incrimination	237
Legal professional privilege	237
Public interest immunity	237
Confidentiality	238
Request not specific/too wide/oppressive	238
Relevance	239
Hearsay must be potentially reliable	239
Admissibility	240
Necessity	240
Bankers' books	240

Conduct money and costs	240
Disobedience to a witness summons	241
Use for collateral purposes	241
The advantages of a witness summons	241
(7) Legal professional privilege	
Waiver of privilege	
In-house advisers	
The extent of privilege	243
Solicitors and privilege	243
(8) Public interest immunity	244
(9) The privilege against self-incrimination	245
The civil law rule	245
Acceptance of rules can exclude the privilege	246
Self-incrimination before public authorities	247
Sen-incrimination before public authornies	247
Chapter 13	
The Hearing	249
(1) The right to an oral hearing	
No general right to an oral hearing at common law	
The right to an oral hearing before the tribunal of a	
public authority	250
Trial in the absence of the defendant	250
(2) The right to legal representation	
Limited right to legal representation at common law	
	231
The ECHR right to legal assistance before the tribunals of	252
public authorities	252
The tribunal's duty towards the unrepresented defendant	254
Is there a right to a McKenzie friend?	254
(3) The order of proceedings	254
The tribunal's power to regulate its own procedure	255
Cross-examination	256
Questions from the tribunal	256
Taking a plea	257
(4) The giving of evidence	257
Exclusion of witnesses from hearing	257
The administration of an oath or affirmation	258
Interpreters as a willing light to asking a for glimbal no else it.	
No case to answer	259
(5) The conduct of the tribunal	260
Inattention of tribunal member	260
When should objection be made?	260
Interruptions from the tribunal	261
The recording of disciplinary proceedings	261
(6) The giving of reasons	262
The purpose of reasons	262
When reasons are required at common law	263
No distinction between 'reasons' and 'grounds'	266

When reasons are required of public authorities under the		The need for warning before suspension	288
European Convention	266	Admonitory penalties	288
The extent of reasons under UK jurisprudence	267	Orders requiring medical treatment	289
Issues of fact and opinion	269	Fines — — — — Halla di Glargela ni notat la navgilano inocepti	289
A structured approach to reasons	269	The defendant's means	290
The legal assessor's role in preparing reasons	269	Fines imposed by public authorities	290
At what stage should reasons be given?	269	Compensatory orders	290
Conflicting reasons	270	(7) The need for an indicative sanctions policy	291
Unnecessary advice	270	Changes of sanctions policy	291
Failure to give reasons as a ground for appeal	270	The need for reasons in penalty decisions	292
When reasons may be unnecessary	271	(8) Costs	292
Vulnerable witnesses and disability	271	What may be subject to an order for costs?	292
No power to reopen	271	Fair procedure	293
Two power to reopen	iremialis XXVI -	Costs against the defendant	293
Chapter 14		Defendant's means	294
Penalties, Powers and Costs	273	Partial success	294
(1) The order of proceedings in determining penalty	273	Costs against a regulator	295
Disputed facts following an admission of guilt	273	Costs under the Convention	298
Submissions on penalty by the prosecution	274	(9) Payment of fines and costs	299
Address in mitigation of penalty	275	Time to pay	299
(2) The purpose of disciplinary sanctions	275	Enforcement of fines and costs	299
Bolton v The Law Society	276	Milorcement of fines and costs	277
	277	Chapter 15	
Application of <i>Bolton</i> beyond police officers	278	Appeal and Judicial Review	301
Bolton and the ECHR	278	(1) Introduction	301
Public confidence in the medical profession	278	No right of appeal at common law	301
Protecting the public generally as well as the patient	279	No right of appeal under the European Convention	301
Public confidence in the police	279		301
Ending the career of a competent practitioner	279	Application of Art 6 to Convention appeals	302
(3) Proportionality in the imposition of sanctions	230	(2) Internal appeals	302
(4) Minimal sanctions to be considered first		Appeal must be within time	
(5) Factors relevant to penalty	280	Unreasonable time rules	303
The past record of the defendant	281	Discretion to allow late notice	303
Dangers of over-reliance on sentencing precedents	281	Security for costs	304
Conduct outside the profession	282	Excluding prejudicial information from appeal papers	304
The relevance of facts admitted but not charged	283	Form of appeal	304
The relevance of foreign regulatory orders	283	Questions of law	305
The effects on penalty of a plea of not guilty in		Fresh evidence	305
criminal proceedings	284	The composition of the appellate body at common law	305
Dealing with co-defendants		The composition of the appellate tribunal of a public authority	306
(6) Particular penalties and powers	284	Remission for rehearing	306
Expulsion from membership/removal of authorisation	285	(3) Appeals to the court	306
Commission of a criminal offence	285	Appeal by way of rehearing	307
Dishonesty	286	(4) Judicial review	308
Lack of integrity short of dishonesty	286	Person aggrieved	309
Drugs convictions	286	The application	309
Penalties for bad work	286	Time for making application	309
Temporary suspension	287	Disclosure	310
Suspension: a useful model	288	Availability of alternative remedy	310

Mediation	357	(11) Proposals for reform	379
Decision notice procedure	357	Financial Services Act 2010 and recent proposals	380
Supervisory notice procedure	357	The state of the s	
Publication	358	Chapter 18	
(5) The discipline of authorised firms and approved persons	359	Healthcare Regulation	383
Alternatives to commencing disciplinary proceedings	359	(1) The Council for Healthcare Regulatory Excellence	383
The decision to take disciplinary action	360	(2) The General Medical Council (GMC)	384
The nature and seriousness of the breach	360	The Medical Practitioners Tribunal Service	385
The conduct of the firm or the approved person after the breach		Fitness to practise	385
The previous regulatory record of the firm or approved person	360	The burden of proof	386
Guidance given by the FSA	360	The test of impairment	386
Action taken by the FSA in previous similar cases	361	Misconduct as a ground for fitness proceedings	387
Action against approved persons	361	Deficient professional performance	389
Public censure and statements of misconduct	361	Convictions and decisions by other regulatory bodies	389
Financial penalties	362	Extraterritorial acts	389
Factors which may be relevant in determining the level of fine	362	The fitness to practise investigation	390
The seriousness of the misconduct	362	The hearing before the FTP Panel	391
The extent to which the contravention was deliberate or reckless		Reasons Reasons I would be a grant of the remaining the second of the se	392
Whether the person on whom the penalty is to be imposed is an		Warnings Warnings	393
individual, and the size and financial resources of the firm		Undertakings	393
and individual	363	Interim Orders Panel (IOP)	394
The amount of profits accrued or loss avoided	363	Extension of an interim order	395
Conduct following the contravention	363	Health assessments and anorthing assessments	395
Disciplinary record and compliance history	363	Performance assessments	396
The variation or cancellation of permission and withdrawal of a	303	Sanctions	397
firm's authorisation	363	Time-limits	397
Withdrawal of approved person status	364	Transitional provisions	397
Prohibition of individuals	365	Appeals from the doctor	397
Cancellation of Part IV permission on FSA's own initiative	366	CHRE's power to refer decisions to the court	399
Prohibition of unfit persons	367	The court's approach to referrals	400
(6) The market abuse regime	367	ADDENDUM A: The Shipman Inquiry: recommendations of Dame	400
What is market abuse?	368	Janet Smith	402
Sanctions for market abuse	369	ADDENDUM B: Recent Law Commission consultation and	402
(7) The role of the FSA as prosecutor	370	proposals for reform	405
Regulatory or criminal proceedings?	371	The proposed framework	405
Sentencing guidelines	372	The proposed framework	403
(8) A summary of FSA's restitution powers	373	Chapter 19	
FSA's power to require restitution	374	The Regulation of Legal Services	409
FSA's criteria for determining whether to exercise its	371	(1) The structure of legal services regulation.	409
restitution powers	374	The Legal Ombudsman	409
FSA's choice of powers	375	(2) The Legal Services Board	409
Determining the amount of restitution	375	The professional principles	410
Other relevant powers	375	(3) The Solicitors Regulation Authority (SRA)	411
(9) The role of the Upper Tribunal (Tax and Chancery Chamber),	illetesitä	The Handbook	411
formerly the Financial Services and Markets Tribunal	376	(4) The SRA Principles	411
The Upper Tribunal (Tax and Chancery Chamber)	376	(5) Outcomes-focused and risk-based regulation	411
Rules and legislation	377	(6) The SRA's powers	413
(10) Designated professional bodies	378	Investigations	413

and .		
Con	toni	t.C

			٠	
TU Y	v.	T 7	÷	1

R	Lebukes and penalties	413
R	deconsideration	414
I	nternal appeals	414
(7)	Reference to the Solicitors' Disciplinary Tribunal	414
(8)	The Solicitors' Disciplinary Tribunal: status, functions and	
RI B	composition	415
(9)	The Solicitors' Disciplinary Tribunal: hearings	415
(10)		416
(11)	The Bar Standards Board (BSB)	418
(12)	The Bar's Code of Conduct	418
(13)		420
(14)		421
	DENDUM A: The background to reform	421
	DENDUM B: The Legal Services Act 2007; origins and	
	implementation	422
	Clare to block that the below as and manufacture and below as and a	
Cha	pter 20 sources of the muse about Jenn's ETV and embed energed a	
	Civil Liability of Disciplinary and Regulatory Bodies	425
	Liability towards members and authorised persons	425
	emedies in tort	425
	The 'complete control' principle	425
	Effect of a statutory remedy	426
	No damages without loss	426
	Malicious prosecution	427
R	emedies in contract	427
VIII	Limitations on contractual remedies	428
	Right to a declaration absent a contract	428
(2)	Liability towards third parties	429
25 250	ummary	429
	lo general duty of care arising from authorisation	430
	he government function principle	431
	he self-contained statutory machinery principle	432
	To general liability for a failure properly to investigate a complaint	433
	Indemnity	434
	xclusion of liability by statute	434
	xclusion of liability by contract	434
	ndemnities	434
	Privilege and immunity	435
	Disciplinary body liable to disclosure	435
	he availability to a disciplinary body of legal professional privilege	
	(LPP)	435
	Does LPP apply to in-house advisers?	435
	The dominant purpose principle	436
	Privilege absolute	437
т	Disclaimer	437
	adicial immunity	437
P	Determine the second of the se	438
	Duty not right	438

Documents produced by a self-regulating organisation	
Reluctance to extend class-based immunity	440
In camera discussions of tribunal	441
The 1997 Statement	441
The balancing act	
Sources of information	443
The threshold test	445
Disclosure against third party	445
Confidentiality merely a factor	446
Prohibition from use	446
Public interest immunity and the ECtHR	446
Chapter 21	
The Retrospective Effect of Rule Changes	449
(1) Retrospection at common law	449
(2) Exceptions to the 'presumption' against retrospectivity	450
Procedual or substantive provisions	450
Non-penal provisions	451
The case-by-case approach	451
The disqualification cases	452
The intention of Parliament	450
The Interpretation Act 1978	454
Public authorities	454
Chapter 22	
Data Protection and Freedom of Information	457
(1) The Data Protection Act 1998	457
The data controller	457
The offence	457
Permitted processing	459
'Consent'	459
'Fair and lawful'	460
Notifying the data subject	460
Sensitive personal data	460
The regulatory activity exemption	461
The 'publicly available information' exemption	462
The 'disclosures required by law' exemption	463
Discretionary disclosure not exempted	463
Other statutory exceptions	463
Individuals' right of access to data	464
The intention of the Data Protection Act	465
(2) The Freedom of Information Act 2000	466
Introduction	466
A 'public authority'	466
Response to a request for information	167
Right to levy reasonable charges	
Refusals – reliance on exemptions	1.50
Exemptions	468
The second of th	

Contents	xxi
Making a reality of consultation	50
In the retiring room	
Announcing the decision	-
Eliza in the control of the control	
Chapter 24 agoldbook from amps	
Exemplars to ill bousblemon and of a flamed fuses	50
(1) Examples of the disciplinary arrangements of some prominent	
regulatory and professional bodies	50
Architects Registration Board	50
British Psychological Society	50
Bar Standards Board	50
General Dental Council	50
General Medical Council	51
Institute of Chartered Accountants in England and Wales	51
Chartered Institute of Management Accountants	51
Nursing & Midwifery Council	51
Police Disciplinary Tribunal	52
Royal College of Veterinary Surgeons	52
Society of Lloyd's	52
Solicitors' Disciplinary Tribunal	52
The General Pharmaceutical Council	52
Rugby Football Union	53
(2) Examples of ethical codes	53
The Fundamental Principles of the Financial Services Authority	
(made under FSMA 2000, s 64)	53
The Fundamental Principles of the Institute of Chartered	
Accountants in England and Wales	53
The Key Responsibilities of a Pharmacist (General Pharmaceutical	
Council)	53
The Conduct and Competence Standards of the Architects	
Registration Board	53
(3) Model indicative guidance	53
The seriousness of the misconduct or contravention	53
The extent to which the contravention or misconduct was deliberate	
or reckless	53
The financial resources and other circumstances of the individual	
defendant or firm	53
The amount of profits accrued or loss avoided	53
Conduct following a contravention	53
Disciplinary record and compliance/regulatory history	54
The nature of the misconduct and the use of particular sanctions	54
Dishonesty	54
Lack of probity short of dishonesty	54
Criminal convictions other than for dishonesty	54
Committal for civil wrong	54

541

542

Students

500

Poor work

Act	t 1998 – which route should	l applicants take?	
Part II Disciplinar	y and Regulatory Arrange	ements in Practice	

The Freedom of Information Act 2000 versus the Data Protection

Disciplinary and Regulatory Arrangements in Practice	
Chapter 23	
Practical Advice	475
(1) Advice for the defence lawyer in disciplinary proceedings	475
The investigation	470
Once charges have been brought	47
Preparation for trial	47
At the hearing	479
Following a finding of guilt or an admission of guilt	479
The appeal	480
(2) Advice for the prosecution lawyer in disciplinary proceedings	481
The investigation	481
Once charges have been brought	483
Preparation for trial	483
At the hearing	484
Following a finding of guilt or an admission of guilt	485
The appeal	485
(3) A specimen code for the charging of disciplinary offences	486
(4) Advice for the lay member of a disciplinary tribunal	490
Creating the right atmosphere	491
Courtesy and consideration	491
'And yet don't look too good, nor talk too wise'	492
Furniture and fittings	492
'A diversity of creatures'	49
Naming difficulties	493
Communication difficulties	493
Behavioural difficulties	494
An ounce of preparation	494
Cultivating a judicial attitude	494
Listening with a purpose	494
The need for note-taking	495
In the retiring room	495
Constructive discussion leading to a reasoned decision	495
The need for reasons	496
Disagreement among the panel	497
Conflicts of interest	497
How should I check for a disqualifying interest?	498
Advice for the non-lawyer chairman	498
Introductions are in order	498
Clarity of language	499
Aiding the unrepresented party	499

Avoiding confrontation Speeding things up

The use of particular orders	542
Expulsion/exclusion	september to be seen appropriate and part 542
Temporary suspension	542
Fines	543
Terms and conditions	543
Lesser penalty to be considered fir	rst 543
Costs	more visual specification for endounced 543
(4) A model investigatory protocol	illed lames ling law validages 544
A model investigatory protocol	544
Part III	
Appendix	
The Human Rights Act 1998	toward leaded discuss 549
of the later of the state of the	
Index	tremegonald, he digitally because 573
	Note that the land of the land
	The Key Secondillines of a Party
	Hammad 1 A
	and of Conduct and Competence Stan
	learned mountained
	managama sanggal X

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 is 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.