



The Bar Council

The Bar Standards Board's (BSB) Enforcement Powers and Procedures, Proposed revisions to the Enforcement Regulations:

Part 5 of the BSB Handbook

July 17, 2026

About us

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to

- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board second consultation on the Enforcement Powers and Procedures, Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook.¹

¹ BSB [Consultation](#)

Consultation Questions

Question 1. Do you agree with our proposal to update the commencement and transitional provisions so that the new regulations will come into force on or around 1 February 2027 and apply to all new and ongoing cases from that specified date? If not, why not?

We agree that the same regulations should apply to ongoing, as well as future cases. This ensures a consistent approach to all BSB processes – in terms of disciplinary action, enforcement decisions, interim orders and health procedures.

We note the proposals change the threshold for referral into the health process (Fitness to Practise); we do not object to this, given that sufficient notice is being provided and there is limited practical impact on cases already within the Fitness to Practise system.

We agree that a consistent approach to both ‘live’ and ‘future’ cases promotes clarity and in addition avoids the complexity of operating different regulatory frameworks at the same time. The added benefit is that it should avoid unnecessary confusion and promote better understanding for both barristers and the wider public.

It is anticipated that the new enforcement provisions come into force on the 1 February 2027. As indicated in our response² to the First Consultation, we maintain that it is important to ensure any change is adequately communicated to the Bar in advance of any implementation date in order to minimise the risk of confusion.

The Bar Council, however, considers it important not only to provide sufficient notice that new regulations are being implemented; but also to ensure clear and summarised

² [Bar Council response to BSB consultation on enforcement powers and procedure](#) 2025

information is accessible and properly publicised to the Bar, in order to ensure they are aware of the impact of the changes.

We note and agree with the BSB's proposal to preserve the current and existing approach to pre-2014 conduct and the standard of proof.

Question 2. Do you agree with the publication provisions being extended so that outcomes are published in all cases, including where the charges against a barrister have been dismissed? If not, why not?

We are generally in favour of increasing transparency. However, the new proposal to extend publication of outcomes to cases where the charges have been dismissed is a particular area of complexity, where the delicate balance of rights swings towards the protection of privacy rights for barristers who have been subject to allegations that have been dismissed. Given this is a development since the earlier consultation and represents a significant change from the current position, we request that the BSB gives further thought to the ramifications, and serious consideration to developing a more nuanced approach.

We have considered the Harman report which suggests publication should include both proven and nonproven allegations, but it does not consider whether unproven allegations should be subject to the same regime of publication to the same extent that proven allegations will be. If the current proposal is to be adopted, then we suggest that a more limited period of publication should apply to non-proven allegations.

We understand the logic that if all charges are to be published, then the outcome should be. However, it is possible that some people who did not know about the original

charge(s) may come to learn of unproven allegation solely through the publication of the outcome.

There is a risk that people may perceive there to be some element of wrongdoing behind non-proven allegations, despite their dismissal in the disciplinary process. Therefore, publication of the dismissal of unproven allegations does risk damage to a barristers' reputation.

We note the proposals retain a discretion for the Tribunal to make reporting restrictions. We believe this is right and important. Additionally, the provisions allow for anonymity in appropriate cases. We think it would be helpful for regulations or guidance regarding reporting and anonymity to be developed.

If a policy of publishing non-proven allegations is adopted, consideration should be given to widening the test for discretionary non-publication and/or anonymity. We suggest that, where allegations have not been proved, the discretionary test should be whether there is any proper reason for publication. In this context, the views of the barrister exonerated should be considered. And we also think that careful consideration should be given to the length of time that reports of the dismissal of allegations should be publicly available.

The current regime for barristers has similarities to those adopted by healthcare regulators, doctors being an apt comparator. Publication of dismissal of unproven allegations appears less common with other regulators.

We caution that, in the absence of publication restrictions, or private hearings, or anonymised reports, information from hearings where charges have been dismissed may still end up in the public domain, causing harm to a barrister, even where the reporting makes clear that the outcome was not adverse to them.

We would like the BSB to consider how general publication might fit with a person's right to be forgotten, and with how internet search results are now presented (with the assistance of AI). Will a report of a dismissal of disciplinary charges appear as a "Page 1 hit" every time someone googles a particular barrister's name, for example? For how long will the report be retained? For how long will it persist in internet searches? We invite the BSB to identify some principles that might underpin a publication policy.

Question 3. Do you agree with our proposal to extend the power to impose an immediate and interim order so that such orders may be imposed on the basis of interim conditions, rather than interim suspension or disqualification only? If not, why not?

We consider this proposal is sensible, appropriate and proportionate. There may be particular facts within a case that mean interim conditions (rather than interim suspension or disqualification) are appropriate. The proposal offers a proportionate approach, enabling barristers to continue to earn a living, to the extent appropriate, whilst also maintaining protection of the public, the interests of clients and other public interests.

However please note our suggestion that 'the profession' itself should also be included as an explicit category of person whose interests may need to be protected through application of an interim measure, as explained in our response to question 10.

We consider that it would be helpful to have written guidance on the types of circumstances in which interim conditions would be appropriate. This would also help achieve the adoption of a consistent approach.

Question 4. Do you agree that the right to request a review of an interim order should be extended so that it also applies in respect of undertakings accepted and imposed by an interim panel? If not, why not?

We consider this is a sensible approach. A review of an interim orders allows increased flexibility and efficacy, and the same should be extended to undertakings.

Question 5. Do you agree with our proposal to allow both parties the right to appeal a decision of the Health Panel and to be notified equally of the appeal hearing, have a right to attend and be notified of the outcome? If not, why not?

Yes. We previously endorsed the BSB's proposal that it should have the right to appeal decisions in disciplinary cases. In light of that previous position, the Bar Council endorses this proposal, such that the health regime and disciplinary regime are aligned.

Question 6. Do you think the new regulations are:

- better organised,
- simplified,
- expressed using plain English and
- accord with regulatory best practice?

Please explain your view.

Our response to this is covered in the answers to questions 7 to 11.

Question 7. Do you agree with the proposed revisions to the defined terms in Part 6 of the Handbook, as set out in Annex 2? If not, please explain your view and whether you consider any amendments are required.

Yes, the revisions seem appropriate.

Question 8. Do you think that the proposed Enforcement Decision Regulations as set out in Annex 2 provide a suitable framework that:

a) implements our policy positions; and

b) accords with our overall objectives of improving the fairness, transparency, efficiency and effectiveness of the end-to-end enforcement process?

Please explain your view.

Yes, we mostly think that the proposed Enforcement Decision Regulations as set out in Annex 2 do provide a suitable framework in terms of implementing policy positions. The language used in the main is clear and the detail given is aligned with the policy positions.

However, it remains unclear in what circumstances regulation 7 -referral to another body- will or should be applied. In what circumstances might it be considered that a report in respect of an applicable person should more appropriately be dealt with by another body, such as an Inn, circuit, chambers or employer. It would assist to have examples in relation to this regulation in practical terms, akin to 'explanatory notes.' This would have the added benefit of encouraging consistency.

We agree with the reform of composition of IDB panels for Enforcement cases from five to three person panels (Schedule 1 to BSB Enforcement Decision Regulations 2027). We consider this would assist with making the process more efficient, proportionate and cost effective.

Schedule 1 to the BSB Enforcement Decision Regulations 2027 outlines that an Independent Decision-Making Panel may 'invite any person to attend an Independent

Decision-Making Panel meeting in an advisory or consultative capacity.’ Again, we consider that it would assist to have published guidance on the circumstances in which such an invitation and attendance would be considered to be appropriate.

We maintain as per our first Consultation response³ that tracking the analysis of equality and diversity data of panel members would assist in identifying any issues that need addressing.

We think the Enforcement Decision Regulations do accord with the overall objectives of the BSB in improving the fairness, transparency, efficiency and effectiveness of end-to-end enforcement.

Question 9. Do you think that the proposed Disciplinary Tribunals Regulations as set out in Annex 2 provide a suitable framework that:

- a) implements our policy positions; and**
- b) accords with our overall objectives of improving the fairness, transparency, efficiency and effectiveness of the end-to-end enforcement process?**

Please explain your view.

Yes. We broadly agree that these proposals improve the fair, transparent, efficient and effective nature of the enforcement process and implement the BSB’s policy positions.

We note and agree the time limits, which are designed to improve the efficiency of the process. However, any requirement of barristers to respond within 21 days, requires

³ <https://www.barcouncil.org.uk/static/d07083aa-6089-405b-a1006fab1bb54df3/Bar-Council-response-to-BSB-Consultation-on-Enforcement-Powers-and-Procedures-15-October-2025.pdf>

that the documents from the BSB are clear and comprehensive and we think it is important that the regulations allow for extensions in complex cases.

We agree with proposals regarding publication, subject to our response regarding publication of non-proven findings set out in our answer to question 3 above.

We agree with adopting a simplified approach to witnesses. We welcome the proposals that special measures may be applied to the respondent as well as witnesses.

The test of whether a measure is 'desirable' to facilitate the giving of evidence by a witness or the respondent (see regulation 20) should be amended to include an 'interests of justice' test. 'Desirable to facilitate evidence' places all the emphasis on the facilitation of evidence alone, when there may be reasons why although it may be desirable for a witness to facilitate evidence, it is in fact contrary to the interests of justice to allow the measure: for example, live evidence may be desirable for the tribunal, but the giving of remote evidence may be desirable for a witness.

In so far as the proposal to change the facilitation of bad character evidence merely permits agreements to be reached between parties, we welcome that proposal.

We have already responded to and has broadly welcomed the proposals on interim measures (Question 4). We agree that the test regarding interim orders should apply at all stages for the reasons set out in our response to the principle of interim orders. However, it must be recognised that at this stage in the process there should be an emphasis on whether limitations on practice would suffice.

We agree with the changes proposed, including allowing for 'equality', as a submission of objections on panel composition, by both the respondent and the BSB.

Question 10. Do you think that the proposed Interim Orders, Suspension and Disqualification (IOSD) Regulations as set out in Annex 2 provide a suitable framework that:

a) implements our policy positions; and

b) accords with our overall objectives of improving the fairness, transparency, efficiency and effectiveness of the end-to-end enforcement process?

Please explain your view.

The IOSD Regulations provide for

- The grounds for referral to an interim panel – proposal 15
- The imposition of interim orders including immediate interim suspension
- proposal 16
- Direct referrals to an interim panel - proposal 18
- Reviewing interim referrals and orders - proposals 19 and 20

We set out our position on these particular proposed regulations below and in the most part agree that they improve the fair, transparent, efficient and effective nature of the enforcement process, along with implementation the BSB's policy position.

Proposal 15: Simplifying the grounds for referral to an interim panel and imposition of interim orders

This relates to Question 20 of the first consultation exercise: "Do you agree with our proposal to simplify the grounds for referral to an interim panel and the imposition of interim orders? Please give the reasons for your response."

In its most recent proposals, concerning the grounds for referral to an interim panel and the imposition of interim orders, the BSB, purportedly taking into account Harman

Recommendation 28b has decided to separate the grounds for referral into three separate categories, being:

- to protect the interests of clients (or former or potential clients); or
- to protect the public; or
- otherwise in the public interest.

These grounds would also provide the basis for the BSB imposing immediate interim orders pending a hearing if ‘necessary’ within the meaning of relevant caselaw [see para 151 of the BSB proposed revisions with associated case law references].

Harman Recommendation 28b was not however focused just on clients or members of the public; it stated:

“28b Where allegations concern serious sexual offences, the BSB ought to take immediate action to consider what interim measures might be necessary for the purpose of protection or safeguarding, such as interim suspension, prohibitions on occupying certain roles, or restrictions on attendance at certain places”⁴

Concerning the then status quo:

“279. Barristers accused, for example, of rape, may therefore be able to continue practising at the Bar without any assessment of risk to the profession or the public whilst a police investigation is underway.”⁵

Our concern about the revised 3-pronged basis/grounds for referral to an interim panel is that it does not specifically include protection of the profession. Unfortunately, it will

⁴ [Independent review of bullying, harassment and sexual harassment at the Bar](#), 2025:22

⁵ [Independent review of bullying, harassment and sexual harassment at the Bar](#), 2025:88

be the case that some of the serious sexual offences are committed by members of the Bar against their colleagues without a clear risk appearing to exist vis-a-vis clients or the public. Why should that type of scenario be shoe-horned into the grounds for protecting clients or the public when a discrete ground for protection of the profession would serve a clear need? Whilst it could be argued that the public includes the barristers' profession, having protection of the profession clearly identified as a separate ground will make it apparent that colleagues can be as vulnerable, or even more vulnerable than, as clients or the public at large. The need to protect this cohort is an objective which the BSB should consider highly significant. Accordingly, we suggest the first of the three proposed grounds is amended so as to read, "to protect the interests of members of *the profession and/or* clients (or former or potential clients)..."

We agree with the suggestion in para 152 that the BSB remove the requirement that it may only seek an interim order where it determines suspension or disqualification is required.

Proposal 16: Grounds for the imposition of an immediate interim suspension

This relates to Question 21 of the first consultation exercise: "Do you agree with our proposal to broaden the power of the Chair of the IDB to impose an immediate interim suspension? Please give the reasons for your response."

We agree that the circumstances where it is warranted that an immediate interim suspension is imposed will be rare. The BSB in its most recent response decided not to introduce an additional ground for imposing an intermediate interim suspension which

is what we argued for in our response⁶ to the first consultation. We continue to believe no changes are necessary.

Proposal 17: Listing process

This relates to Question 22 of the first consultation exercise: “Do you agree with our proposal to streamline and simplify the listing process for hearings? Please give the reasons for your response.”

The BSB’s concern is that current complicated provisions cause delay and stress to parties.

In response⁷ to the last consultation on this topic we stated –

Therefore, the Bar Council will only support this proposal if it includes a provision that the barrister must be consulted about their availability before an interim panel hearing date is fixed, and that it should be fixed taking into account the reasonable availability of the barrister to attend the hearing.

It is acknowledged that the barrister’s availability should not be the sole determinative factor. It is also accepted that a respondent to an interim order application should not be able to frustrate the process by claiming not to be available when they are or could be.

⁶ [Bar Council response to BSB consultation on enforcement powers and procedure](#) 2025:12,13 paras 53-57

⁷ [Bar Council response to BSB consultation on enforcement powers and procedure](#) 2025:13,14, paras 60-63

On the other hand, there might be good reasons why a barrister cannot attend a hearing on certain dates, and that should be taken into account. The current proposal makes no accommodation for that, because it proposes that the date is fixed first before the barrister is consulted about availability. The proposal is that the date will be fixed, and then it will be up to the barrister to persuade BTAS to move the date. That is putting the cart before the horse. The barrister who is at risk of being suspended from practice is a key stakeholder, and it is therefore, in our view, important that that they are first consulted about availability.

To help avoid barristers causing delay it would be appropriate for the rule to be that hearings will be listed within 21 days save for in exceptional circumstances and following consultation with the barrister. This would lay down a marker that the expectation is that the hearing is within 21 days and there needs to be a good and justifiable reason for it to be listed later than that.

We are content with the BSB's proposals in response to the consultation feedback to proceed with changes to the listing process subject to giving reasonable advance notice of the hearing date to the barrister and BSB, and for BTAS to decide upon relisting requests where appropriate, balancing fairness with prompt resolution of cases.

Proposal 18: Direct referral powers

This relates to Question 22 of the first consultation exercise: "Do you agree with our proposal to remove the power given to panels under the ISDRs to refer cases directly to a Disciplinary Tribunal? Please give the reasons for your response."

The BSB proposes to remove this power and all respondents to the Consultation, including the Bar Council (see para 64 of 15 October 2025 Feedback), approved that. We are content with the BSB's continued commitment to remove the existing and never used direct referral powers under the revised regulations.

Proposal 19: Right of review

This relates to Question 24 of the first consultation exercise: "Do you agree with our proposal to allow the BSB the right to request a review of an interim order? If not, why not?"

We previously had two responses to this proposal, being that-

- a. Both the barrister and the BSB are to have, following a significant change in circumstances whilst an interim order is in place, the right to apply to an interim order panel to have the current order reviewed (with reasons), so as to avoid the public being under or over-protected depending on whether the level of risk has increased or reduced.
- b. In response to the suggestion at paragraph 243 of the first consultation concerning whether the decision to convene a review hearing should be taken away from the President of COIC and given to BTAS, the Bar Council believed it should be taken by the Chair of the interim panel.

We understand that the BSB accepts these responses, save that it believes the review request will remain with the COIC President albeit that the Interim Panel will take the substantive decision on the review itself. We are content with this position but

believe that it would be useful to have criteria identified as to whether the President can delegate the threshold question to another party such as a Panel chair.

As previously indicated, we agree that whichever party makes the application, the other should have the right to make representations and we are pleased the BSB is proceeding with this provision.

Proposal 20: Granting powers to the Disciplinary Tribunal panel to consider requests to review interim orders

This relates to Question 26 of the first consultation exercise: “Do you agree with our proposal to allow Disciplinary Tribunal panel to consider requests to review an interim order as part of the substantive hearing?”

This is the proposal that Disciplinary Tribunal panels should have the power to consider and decide on a request to review an interim order made by an interim panel, once the substantive disciplinary hearing has commenced. The rationale is a review mechanism is necessary where a hearing is underway, particularly if an adjournment is required and that adjournment may be lengthy.

Our view - stated previously - was that such a body must retain the power to review any interim order which is in place and the Disciplinary Tribunal will have the knowledge base to exercise this power, being seized of the case and with a full understanding of the case based on the material that has been supplied to it. That said, reviews need not occur simply because a Disciplinary Tribunal has adjourned and rather either party should have liberty to seek a review of an interim order when a substantive hearing is being adjourned, if the Tribunal does not consider a review of its own motion.

We are grateful that these considerations have been adopted by the BSB, it having considered the Consultation Feedback that:

- a. it should not be mandatory for the Disciplinary Tribunal to review the interim order on every adjournment.
- b. where no request for a review is made, the interim order will remain in force.

Question 11. Do you think that the proposed Health Panel and Procedure Regulations as set out in Annex 2 provide a suitable framework that:

- a) implements our policy positions; and**
- b) accords with our overall objectives of improving the fairness, transparency, efficiency and effectiveness of the end-to-end enforcement process? Please explain your view.**

Yes. Overall, the proposed regulations provide a suitable framework. However, there are some areas where refinement and/or reconsideration may still be appropriate. We previously suggested the BSB consider an alternative term to “ability to practise”, given alternative interpretations of a person’s “ability” as a barrister. We previously said that, “assessing “ability” to practise in the context of health risks conflating ability in that context with ability or skill as a barrister more generally; and could encompass those

whose “ability” is restricted because of a disability which can be addressed by reasonable adjustments”.⁸ We repeat this request.

The reference to conduct or behaviour at paragraph 8.3(b) could be better explained if, as is understood, this is to be the equivalent of agreed conditions in the form of undertakings. The wording is very broad and risks being misinterpreted as covering matters wider than would be appropriate for conditions, particularly in the more informal context of undertakings.

The interaction between provisions at 11 are somewhat unclear. In particular, use of future tense at 11.5 (“will be”) regarding restrictions/conditions for 36 months before moving to an indefinite order is not sufficiently specific to explain whether this is one period of 36 months or applies cumulatively to shorter periods where there have been several reviews. This should be clarified.

Paragraph 16 on service may require further thought in relation to email service. The email address need only be “known” to the BSB, rather than having been provided by the barrister or confirmed as appropriate for use. Given these issues arise in a workplace context there is a risk that a barrister may not have access to the email address that the BSB “knows” when these proceedings are instituted. There may be value in drafting provisions for where these presumptions of service can be disproved, for example, a bounce back email or returned post. Given our previous response on this issue referred to situations where email was not appropriate or viable, we urge the BSB to consider how to reflect circumstances where a barrister could object to email service and avoid the risk of not being made aware of the proceedings.

⁸ [Bar Council response to BSB consultation on enforcement powers and procedure](#) 2025:16

Question 12. Do you think the guidance has struck the right balance between the public interest in ensuring open justice and transparency and a barrister's rights, including those under the European Convention on Human Rights? Please explain your view.

The proposals broadly balance these competing interests though we highlight some concerns in our response to the remaining consultation questions.

Question 13. Do you have any general feedback on the guidance on access to tribunal documents by non-parties? We welcome as much detail as you can provide.

We welcome the proposed changes and support greater transparency in the process. This is in line with the direction of travel in legal and disciplinary proceedings in recent years. For example:

- Part 5 of the Civil Procedure rules,
- Case law, in particular the Supreme court case *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38)
- The Solicitors Disciplinary Tribunal Automatic Disclosure Policy⁹

The reform is timely and improves transparency in regulation as required by s28 Legal Services Act 2007.¹⁰

We welcome that there is to be a presumption in favour of granting media requests for disclosure unless there is a compelling reason against it, for example as set out in our response to question 14. This recognises the need to help reporters and the public understand proceedings. Without access to documents there is a danger that reporters

⁹ <https://solicitorstribunal.org.uk/wp-content/uploads/2025/01/Automatic-Disclosure-Policy-and-Guidance-1-1.pdf>

¹⁰ <https://www.legislation.gov.uk/ukpga/2007/29/contents>

and the public will not understand the proceedings, the nature of the case and the key issues of fact and law. Disclosure should enhance public confidence and understanding.

We make the following the following recommendations:

Applying Dring

The basic principle set out in Dring should apply “... where documents have been placed before a judge and referred to during proceedings... the default position should be that access should be permitted because of the open justice principle; where access is sought for a proper journalistic purpose the case for allowing it will be particularly strong.”

We would suggest a three-tier approach:

1. Charge sheets and skeleton arguments and written submissions will be routinely published
2. *All documents referred to in a public hearing should routinely be disclosed.* There should not be a need for a request or for the matter to go to the Chair and this is consistent with Dring.
3. Requests may be made for access to other documents.

This differs from the proposed two-tier approach: those documents that should be published and those that may be made available on request.

A high bar for non-disclosure of documents and redaction

It is recognised that open justice is not absolute, and that justified and proportionate restrictions may be required. However, the reality of open justice means that unless proscribed by law, (for example, the UK GDPR and the Data Protection Act 2018 - and

there is more detail on relevant considerations in response to Q15) a lot of information that is sensitive or prejudicial is nonetheless publishable.

Therefore, consideration should be given to limiting redactions and non-disclosure to a small category of material: Information relating to minors, those alleging a sexual offence, legally privileged information or where *the disclosure would be likely to cause any person serious harm and (b) it is in the interests of justice to make such a direction (the latter part adopting the test in the Solicitors Disciplinary Rules)*

Non-disclosure should be subject to a “strictly necessary” test and should not be permitted simply because one (or both) of the parties wants to avoid causing embarrassment to someone.

Disclosure at the start of the hearing

At present disclosure is proposed to take place “within one day of the start of the hearing or hearing day at which the skeleton argument or written submission is relied upon”.

We request that the disclosure should take place at the commencement of the hearing, not later. This will promote contemporaneous reporting. News is generally about reporting what happens that day, not what happened the day before. This proposal is also consistent with the Solicitor Rules which require disclosure at the commencement of the substantive hearing

The role of the Chair

Any redactions must be subject to approval by the Chair. It should not be up to the parties to decide what to redact.

Redactions should not be permitted simply because they are agreed by the parties.

Mechanism for disclosure

It is worth considering the practical issue of how documents are to be disclosed and the mechanism for disclosure.

There is presently a pilot regarding disclosure of documents running in the Commercial Court which may provide a useful precedent.¹¹

UK Press Card

It may be worth adding in the document that a reporter will be expected to be able to verify their journalistic credentials, for example, by producing a UK Press Card. This may obviate the need for a formal request procedure for bona fide reporters. The Press Card is recognised widely in the legal system, for example at hearings where the public may be excluded and in documents such as the Reporters Charter¹² and the Police Media Charter¹³.

Question 14. Do you have any feedback about the EIAs we have conducted? Are any other equality impacts we should consider, beyond those set out in the EIAs? Where possible, please provide evidence.

The EIAs provided at Annex 5 of the consultation have been considered as follows. Those policies about which there are grounds for further concern are referred to below. Overall, it appears that the area which may give rise to the greatest need for mitigation is in relation to the protected characteristic of disability where reasonable adjustments may be required. We are also concerned that the publication of matters must be given

¹¹ New pilot to provide greater access to Commercial Court case documents

¹² Reporters' Charter

¹³ The Policing and Media Charter

careful scrutiny and that the Article 8 rights of barristers should be given proper consideration.

Policy - Adding and amending allegations.

The EIAs do not consider that there is any potential discriminatory aspect to any protected characteristic. However, the policy refers to the need to consider fairness when adding or amending allegations. We would suggest that there is a potential need to consider “fairness” in more detail within the guidance, in light of any identified needs for adjustments. There does not appear to have been any separate consideration given as to how the “fairness” aspect of the policy is to be considered and whether a step taken as fair to those without additional characteristics may not be so for those with a need for reasonable adjustments or needing advance notice of changes of the case against them. It would be helpful to have further guidance as to how fairness is to be construed, taking an individual’s characteristics into consideration.

Policy – Amending the powers to reconsider post investigative decisions.

Response – the outcome of the EIA states;

“Whilst the consultation did not raise any additional concerns, the BSB has considered the likelihood and impact of unconscious bias as a result of this proposal. It was concluded that the inception point of unconscious bias is likely to be the initial decision as opposed to decisions related to the IDB, and either way, efforts to anonymise barristers will be made prior to the decision. We believe therefore that the impacts of this proposal, based on the recommendations of this EIA are sufficiently mitigated.”

We would suggest that more is required than simply “making efforts” to anonymise barristers. Given that a risk of unconscious bias has been identified, it would be

appropriate to anonymise all barristers whose cases go for reconsideration, and that anonymization should be a requirement rather than left for efforts to be made. This would be an appropriate safeguard given the identified risk.

Policy – Costs

Within the reason for the decision – it is stated;

“Since the completion of the first analysis the ER team have provided a series of clarifications. First, that tribunals will consider an individual’s circumstances “as they think fit” (as stated in rE244). This sufficiently mitigates many of the original concerns relating to barristers on lower earnings being unable to afford costs. Second, that BTAS may appoint a costs expert to assist in this. Responses to the consultation did not highlight any additional equalities impacts.”

It is unclear why “as they think fit” is considered an appropriate safeguard. Given the risks of discriminatory impact on low-income groups and the various intersectionalities of low-income concerns across all relevant groups, should the tribunal not simply be mandated to consider an individual’s circumstances? We would suggest the removal of the wording “as they think fit” as this suggests that there may be cases in which individual circumstances can properly be ignored.

Policy – Listing process

The recommendation made by the EIA was for this policy to only continue if an additional element was added, namely that it be permissible for a barrister to object to the date of a hearing as a reasonable adjustment or for exceptional circumstances related to the 2010 Act. It does not appear that this has been accepted, and instead it is said to remain a matter of discretion for BTAS. We would support express reference to a change of date on the grounds of reasonable adjustments or equality reasons, so that

attention is specifically drawn to the need to consider this, given that the policy is otherwise at risk of having a disproportionate impact on those with medical issues or caring responsibilities.

Policy – non-party disclosure policy

The action plan highlights the difficulties in seeking to constrain the ability to appropriately redact. The policy sets out the public domain documents, including skeleton arguments and written submissions, which will contain sensitive and private information.

Question 15. Are there any other potential data protection or privacy issues raised by the new regulations that you think we should be aware of? Where possible, please provide evidence.

We support the BSB's objective of improving fairness, transparency, efficiency and public confidence in the enforcement process. We also support the general direction of travel towards more open justice in disciplinary proceedings, including publication of outcomes and improved access to tribunal documents. We do not believe data protection should be treated as a reason to dilute open justice; rather, the BSB should ensure that the framework for publication and disclosure is supported by clear, proportionate and lawful safeguards.

As we noted in our response to the first consultation, the proposals raise significant data protection and privacy considerations under the UK GDPR and the Data Protection Act 2018. While the BSB may be able to rely on its regulatory functions as a lawful basis for processing and disclosure, that does not remove the need to comply with the core data

protection principles of lawfulness, fairness, transparency, data minimization, accuracy, storage limitation, security and accountability.

The central issue is therefore not whether publication and disclosure should occur, in many cases they should, but how the BSB and BTAS will ensure that the process is lawful, consistent, secure and proportionate. The following points may require consideration:

(1) First, publication and non-party access to tribunal documents may involve personal data relating not only to respondent barristers, but also complainants, witnesses, pupils, clerks, chambers' staff, clients and other third parties. Such documents may contain special category data, including health information, information about sex life or sexual orientation, disability, race, religion or belief, and information about alleged criminal conduct. We therefore consider that the BSB and BTAS should adopt a structured redaction protocol before publication or disclosure, identifying categories of information which should ordinarily be removed unless disclosure is strictly necessary for open justice. This should include private addresses, contact details, dates of birth, medical information, irrelevant third-party material, confidential client information, legally privileged information, and material which risks identifying complainants or witnesses who are entitled to anonymity.

Any proposed redactions, particularly where disputed or material, should be subject to approval by the Chair or Tribunal. This would promote consistency, avoid inappropriate private agreement between the parties, and ensure that data protection concerns are balanced properly against open justice.

(2) Secondly, particular care is required in relation to health proceedings. Health information is special category data and attracts a higher level of protection. The proposal to give the BSB a right of appeal in health matters may be justified in the

public interest, but it will necessarily involve further processing and sharing of sensitive health information. The BSB should ensure that only information necessary for the appeal is shared with the parties, panel members, advisers and any appellate body. Where the public needs to know that a barrister is subject to a practice restriction, the public wording should generally focus on the practical restriction, rather than disclosing the underlying health condition unless that disclosure is strictly necessary.

(3) **Thirdly**, interim conditions and undertakings may also give rise to privacy issues if published or recorded in a way which reveals sensitive personal information, including health, disability, caring responsibilities, family circumstances, or unproved allegations. The BSB should distinguish between information necessary for public protection and information which is merely explanatory. Conditions should be drafted, where possible, in neutral terms that disclose no more than is necessary to inform clients, courts and the public of the practical restriction on practice.

(4) **Fourthly**, the transitional “clean break” approach may affect individuals whose cases began under a different regulatory framework, with different expectations as to publication, confidentiality and access to documents. Those involved in ongoing cases should therefore be given clear and timely privacy information explaining the new rules, the categories of personal data that may be processed or published, the lawful basis relied upon, the retention period, and any route to make representations about publication, redaction, anonymisation or removal.

(5) **Fifthly**, the BSB and BTAS should ensure that the mechanics of disclosure are secure and workable in practice. If documents are to be disclosed to the press, non-parties, experts, medical advisers or other external persons, there should be clear arrangements for secure transfer, access control, audit trails, and responsibility for maintaining confidentiality where material is not otherwise public. The process

should also identify how bona fide journalists are to be recognised. We have already suggested the UK Press Card as a helpful verification mechanism.

(6) Finally, but pertinently, if the BSB intends to use third-party technology, automated tools or AI-assisted systems for case management, document review, redaction, publication, triage or analysis, this should be addressed expressly in the DPIA. In particular, the BSB should identify controller/processor arrangements, whether personal data or special category data may be used for training or model improvement, whether data may be transferred outside the UK, and what human oversight and audit mechanisms will apply.

We recommend that, before implementation, the BSB publish a final DPIA or DPIA summary addressing these issues. That should include clear guidance on publication criteria and retention periods; redaction and anonymisation; non-party access requests; health and other special category data; correction and removal mechanisms; secure disclosure processes; and the treatment of ongoing cases affected by the transitional provisions. These safeguards should support, rather than undermine, open justice by ensuring that transparency is delivered in a lawful, fair, consistent, and proportionate manner.

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