Annex D - BSB's responses to the first public consultation

Draft consultation feedback statement: Proposal 1

Introduction

1. Between July and October 2025, the Bar Standards Board (BSB) held a public consultation on its Enforcement Powers and Procedures (Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook).

2. The consultation paper can be found here. Our analysis of the responses to the consultation is ongoing and will be published in full in 2026. However, we set out in this paper the analysis and response to one proposal which we indicated would be adopted sooner than the publication of revised enforcement regulations in early 2027.

3. In particular, we consulted on a proposal to change our approach to the communication of detailed, written allegations (see Proposal 1), before any regulation changes come into effect. The purpose of this statement is to communicate clearly to the profession and the public that the BSB will now introduce this change, prior to formally amending the regulations.

The BSB Consultation: Proposal 1

4. Our consultation arose from a comprehensive review and redesign of our end-to-end enforcement process, informed by the recommendations following an independent review of our enforcement system. The proposals formed part of our wider programme to modernise the delivery of our gatekeeping and enforcement functions, ensuring they are efficient, effective and responsive, whilst maintaining the highest standards of quality.

5. In the consultation, we sought views on a proposal concerning the communication of detailed, written allegations (Proposal 1). Under this proposal, we would defer the point at which detailed, written allegations are communicated to the barrister until the investigation is more developed. Deferring the point at which we communicate detailed, written allegations to the barrister will allow the BSB to gather more evidence before drafting particularised allegations, which should reduce delays in the process and lead to a more open investigative approach. We considered that this revised approach is permitted by the current regulations and, therefore, proposed to introduce it without the need for immediate changes to the enforcement regulations. However, in the longer term, we also proposed to amend the regulations to clarify this position.

6. We recognised that this proposal represents a significant change from our current practice. Accordingly, before implementation, the consultation invited views on any practical and legal implications of introducing this new approach, ahead of any formal regulatory change.

7. We indicated that, subject to any feedback, we will implement this proposal once the consultation has closed.

Summary of responses and next steps

8. We received eight responses to the consultation. Of the responses, two were from individual barristers, one was from a chambers' representative, four were from legal regulatory/representative organisations and one was from a member of the public.

9. There was broad support for our proposal to defer the point at which detailed, written allegations are formulated and sent to the barrister for comment until later in the investigation, once relevant information has been gathered. However, some respondents raised concerns about the timeliness of the process, fairness to barristers and the need for further clarity in BSB guidance. These points are explored in greater detail below.

10. Following the consultation, in summary, we have decided to proceed to:

    a. **Implement the change in practice** – in line with Proposal 1 – with effect from **1 December 2025**, without any immediate change to the existing regulations.
    b. **Continue to analyse the feedback** received on the remaining proposals and publish a formal response in 2026;
    c. With the benefit of the feedback, **undertake a second consultation** next year focusing on drafting changes to the enforcement regulations.

11. Our aim remains to introduce a revised set of enforcement regulations with effect from early 2027, which will include regulations clarifying the new approach to allegations as captured in Proposal 1.

Response to proposal 1

Enforcement Decision Regulations: Part 5A

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REGULATING BARRISTERS

Question 1. Do you agree with our proposal to defer the point at which detailed, written allegations are formulated and sent to the barrister for comment to later in the investigation when relevant information has been gathered? Please give the reasons for your response.

Question 2. Do you envisage any issue (legal or practical) with our proposal to introduce the new approach to the communication of detailed, written allegations, before any change to the regulations? Please give the reasons for your response.

12. Most respondents were supportive of our new approach to communicating detailed, written allegations. They agreed that this approach has the potential to improve efficiency and avoid a more rigid investigation process – both issues identified in the Enforcement Review.

13. Some respondents expressed concern that the change in approach could impact the timeliness of communicating written, detailed allegations to barristers. They highlighted a potential risk that investigations may "drift" or lose priority, once the initial summary of the potential breaches and relevant underlying facts has been shared. One respondent also noted that any delay in the process could make it more difficult to obtain reliable evidence, with the passage of time.

14. One respondent recommended that barristers should be entitled to provide voluntarily the BSB with a response to the potential breaches at any stage of the process.

15. Several respondents emphasised the importance of clear guidance to support effective implementation of the new approach. They also suggested that clear time limits would promote accountability and ensure fairness to barristers.

BSB Response

16. We welcome the depth of feedback provided by stakeholders on this proposal and, having considered the views, we have decided to proceed with the implementation of it as proposed. Our intention is for the new approach to investigations to be effective from **1 December 2025**.

BAR STANDARDS BOARD

REGULATING BARRISTERS

17. We recognise the importance of providing further procedural clarity through updated BSB guidance. In line with the feedback we have produced updated guidance to explain the level of information that will be provided to barristers at each stage of the process and the timeframes that apply. The updated guidance will be published alongside implementation.

18. In relation to the concerns expressed about the impact of Proposal 1 on the timeliness of investigations, our existing overall timeframes for investigating reports will be retained. The timeframe for informing barristers that there is a concern being investigated and the timeframe for providing responses to the investigation will both remain. However, under the new approach, the detailed, written allegations will be communicated at a later stage of the investigation (still within the overall existing timeframe), ensuring that the new approach does not introduce delays or any risk of investigations drifting once barristers have been notified of potential breaches. The guidance on our new approach to allegations will be published alongside implementation, scheduled for 1 December 2025.

19. We agree with the feedback that barristers should be able to provide the BSB with a response to the potential breaches at any stage of the process. Under the new approach, barristers will continue to be entitled to do so prior to the drafting of the detailed, written allegations, but there will be no requirement or expectation that they do. This will be reflected in the updated guidance.

November 2025

Bar Standards Board

BAR STANDARDS BOARD

REGULATING BARRISTERS

Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook

BSB Response

April 2026

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Introduction

1. Between July 2025 and October 2025, the Bar Standards Board (**BSB**) held a public consultation on its Enforcement Powers and Procedures (*Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook*).

2. The consultation paper can be found here. This report summarises the responses received, the BSB's analysis of the responses and conclusions, and the next steps.

BSB consultation

3. The consultation sought feedback on proposed changes to our Enforcement Regulations in Part 5 of the BSB Handbook, which underpins the BSB's enforcement function. It covered a broad range of issues of wider principle and procedure, with changes varying from substantial alterations to our current process and practice, to changes that seek to codify or clarify existing practice.

4. The majority of the changes are intended to facilitate an end-to-end enforcement process which is more efficient, effective and timely, whilst still being fair and transparent and leading to the right outcomes, and therefore support the regulatory objectives, in particular of protecting and promoting the public interest.

5. As set out in the consultation paper, our work to review and modernise our Enforcement Regulations and allow for greater efficiency and effectiveness aligns with the regulatory objectives of:

    - protecting and promoting the public interest;
    - protecting and promoting the interests of consumers; and
    - promoting and maintaining adherence to the "professional principles".

Summary of our proposals and issues for feedback

6. The consultation was wide-ranging and covered a large number of issues relating to the BSB's enforcement function. We provide a high-level summary of all of the proposals on which we sought feedback in Annex A: Summary of proposals.

7. With regard to our duty under the Legal Services Act 2007 to act, so far as is reasonably practicable, in a way that is compatible with the regulatory objectives when discharging our regulatory functions, and as outlined above, the primary rationale underpinning most of the proposals for change is to improve the efficiency, effectiveness and timeliness of the enforcement process. In our view, the policy positions set out in respect of the proposals

are aligned with the need to protect and promote the public interest as their principal benefit is improved operational efficiency and speed, which has been a guiding consideration throughout. We therefore remain satisfied that this work furthers the BSB's regulatory objectives.

Summary of responses

8. We received eight responses to the consultation. Two responses were from individual barristers, one was from a chambers' representative, four were from representative bodies, and one was from an individual member of the public. We welcome the range of views provided by stakeholders and engagement with the detail of these proposals. This has been valuable in assisting the BSB to determine its policy approach.

The Harman Review

9. During our consultation, the Independent Review of Bullying, Harassment and Sexual Harassment at the Bar (the **Harman Review**), was published here. It referenced some of the issues raised in our work, and we both welcomed its publication and recognised the concerns raised about our current investigation and enforcement policies and processes.

10. In responding to its publication, we fully accept that complainants of bullying and harassment will be more likely to come forward and make a report to the BSB if they have confidence that they will be sensitively supported through a robust, transparent and efficient enforcement process, conducted without unnecessary delay.

11. We had already begun implementing changes when the report on the Harman Review was published. Our consultation also included a suite of reforms designed to improve the efficiency and effectiveness of our enforcement process, and which we believe will address or complement several of the recommendations arising from the Harman Review.

12. The following recommendations in the Harman Review are particularly relevant to our consultation:

- **Recommendation 20**: Confidentiality agreements should be signed by all parties involved in BSB investigations. We deal with this recommendation and the BSB response in greater detail under Proposal 5.
- **Recommendation 21**: Anonymity orders must be dealt with promptly by the Tribunal. We deal with this recommendation and the BSB response in greater detail under Proposal 32.
- **Recommendation 22**: Decisions made by the Tribunal should be published promptly. We deal with this recommendation and the BSB response in greater detail under Proposal 33.

- **Recommendation 23**: Changes are needed to the Tribunal's powers to award costs and compensation. We deal with this recommendation and the BSB response in greater detail under Proposal 12.
- **Recommendation 28**: The policy on handling complaints concerning serious criminal offences should be reviewed. We deal with this recommendation and the BSB response in greater detail under Proposal 15.

13. We are continuing to consider the full findings and recommendations of the Harman Review as part of our wider organisational work, outside the scope of this project, working with other stakeholders, including the Bar Council, BTAS and the profession, to support improvements to the culture of the Bar as well as the operation of the enforcement process.

Next steps

14. Following our analysis of the consultation responses, we are developing revised regulations to give effect to our proposals, which we plan to consult on in Spring 2026.

15. The consultation will focus on the changes to the text of the enforcement regulations. We may also use the opportunity to consult on new proposals and/or some of the guidance to support the implementation of new regulations or policy changes.

16. We intend to introduce the revised set of enforcement regulations to take effect in early 2027.

Responses to individual consultation questions

Enforcement Decision Regulations: Part 5A

Proposal 1: communication of detailed, written 'allegations'

Question 1. Do you agree with our proposal to defer the point at which detailed, written allegations are formulated and sent to the barrister for comment to later in the investigation when relevant information has been gathered? Please give the reasons for your response.

Question 2. Do you envisage any issue (legal or practical) with our proposal to introduce the new approach to the communication of detailed, written allegations, before any change to the regulations? Please give the reasons for your response.

17. On 1 December 2025, we published a separate feedback statement on Proposal 1 which can be found here.

Proposal 2: Introducing a power to "add" and/or "amend" the written allegation.

Question 3. Do you agree with our proposal to introduce powers to add to, or amend, the written allegation(s), without an opportunity for further comment from the barrister, in the circumstances described in Proposal 2? Please give the reasons for your response.

Question 4. Do you agree with the introduction of a power to add allegations of non-cooperation during an investigation, without requiring an opportunity for further comment from the barrister? Please give the reasons for your response.

18. We received mixed views on the proposal to introduce a power for decision-makers, including BSB staff and Independent Decision-Making Body (**IDB**) Panels, to add to, or amend, the written allegations without remitting the matter back to the barrister for further comment. Some respondents acknowledged the benefit of this proposal in terms of reducing delay and improving efficiency, while others raised concerns about fairness and the need to safeguard proper process.

19. Respondents who supported the proposal did so on the basis that the power would only apply in limited circumstances, i.e. where any additions or amendments to written allegations are aligned with the facts and substance of the original allegations so there is no unfairness to the barrister. One respondent also agreed with our view that, following the implementation of Proposal 1 (deferring the point at which detailed, written allegations are formulated and sent to the barrister for comment), the number of cases

requiring additions or amendments should decrease and this power would not be used frequently.

20. Several respondents suggested adding safeguards to this proposal. These included notifying barristers at the outset of the process that this power exists and ensuring that if any new material is received, the barrister should be provided with it and given the opportunity to respond. One respondent proposed that the barrister should have the right to object to any addition or amendment "*that cannot be dealt with fairly in the context of the existing proceedings or without undue delay*".

21. Conversely, some respondents did not support the proposal and considered that barristers should be asked for their views before any amendment is made, even if it is minor or a mere technicality. One respondent proposed that any concerns about delay could be addressed by introducing a strict timeframe for any response.

22. As part of this proposal, we also consulted on whether to introduce a power to add new allegations of a failure to co-operate with the BSB in relation to our enforcement work, provided the barrister has been notified of the risk that such allegations may be added without further notice to them.

23. Most respondents questioned the necessity for this power and expressed strong concerns about fairness to barristers. One respondent, a barrister, emphasised that the barrister should have an opportunity to comment on the allegation "*whenever it is made"*. Another noted that "*there is no good reason why the barrister cannot be asked for their views*" and that "*the solution for any purported delay is to provide a strict timeframe for any response*".

24. Respondents urged the BSB to limit the use of this power. Some also encouraged us to publish clear criteria defining what would amount to non-cooperation. Even those respondents who were neutral on the proposal stressed that any new allegation of a distinct and separate nature should still be communicated to the barrister and to allow for an opportunity to comment.

BSB Response

25. Having considered the feedback, we intend to proceed with introducing a power to add to or amend written allegations, subject to appropriate safeguards.

26. However, we acknowledge the concerns raised about the scope of this power and confirm that it will apply only to matters that are of a formal or technical nature, consistent with the feedback received. We also note the suggestion that any new material received by the BSB will be shared with

the barrister, which we would do under our current processes in any event. Further, the implementation of Proposal 1 (above) should reduce the number of cases where this issue will arise as allegations will be drafted at a later stage in the case. To provide clarity and transparency, we will produce guidance alongside the revised regulations, setting out how this proposed new power will operate in practice.

27. In response to the feedback that barristers should have an opportunity to object to any addition or amendment, we consider that the existing processes provide adequate remedies. For example, where a matter is referred to a Disciplinary Tribunal, the barrister will be able to challenge and dispute the charge before the Tribunal. In addition, existing avenues of review (including internal reviews or judicial review) will remain available.

28. We also considered the suggestion that any delays could be addressed by imposing a strict timeframe for any response, instead of introducing this power. However, under the current process, timeframes already apply and our practical experience is that these have created consequential delays, which undermine efficiency. We therefore consider that the proposal offers a more proportionate and practical solution, while maintaining fairness to barristers through strict safeguards. We plan to seek stakeholder views on the precise wording of the new proposed power in our second consultation, due later in Spring 2026.

29. Further, in light of the feedback, we do not intend to introduce a power to add new allegations of a failure to co-operate with the BSB, without providing further notice to the barrister. Most respondents questioned the necessity of such a power, particularly as it would not allow the barrister an opportunity to comment.

30. Under the BSB's new approach to allegations (effective from 1 December 2025 - see Proposal 1), we anticipate that there will be less need for this power, as any alleged non-cooperation is likely to be known by the conclusion of the investigation, i.e. at the point when the allegations are drafted and sent to the barrister for comment. We expect to be able to address any issue of non-cooperation before concluding the investigation and making a final decision on the allegations, which will allow the barrister an opportunity to respond, ensuring a fair process.

31. However, we will consider whether introducing additional provisions to emphasise the duty of cooperation is needed. For example, by adding in the revised enforcement regulations an explicit reference to a barrister's duty to provide promptly to the BSB such information as it requires for its regulatory functions, under rC64.1 of the Code of Conduct. If we decide that it is necessary, it will be included the in our forthcoming consultation, scheduled for later this year.

Proposal 3: Giving staff the power to refer criminal convictions cases for disciplinary action.

Question 5. Do you agree that staff should be given the power to refer all types of criminal convictions cases directly for disciplinary action?

32. We received broad support for our proposal to broaden BSB staff decision-making powers so that staff have the discretionary power to refer any case involving criminal convictions directly for disciplinary action at the conclusion of an investigation.

33. One respondent raised concerns that shifting responsibility from the IDB Panels to staff could result in an increase in referrals to the Disciplinary Tribunal. They suggested that expanding staff powers could "*increase the caseload… and could, therefore, contribute to delays overall"* in the disciplinary process.

34. Some respondents highlighted the importance of ensuring the power was subject to appropriate safeguards. They recommended that these safeguards be clearly articulated through BSB staff guidance. One respondent requested guidance on the types of exceptional mitigating circumstances that may make it inappropriate for staff to make a direct referral. A respondent suggested that "*such criteria could be based on the nature of the offence(s)…sentence… or ancillary order(s)"*. They considered that clear criteria would help ensure that "*undeserving cases*" are not referred to the Disciplinary Tribunal.

BSB Response

35. We have decided to proceed with implementing this change.

36. We note the concern that expanding staff powers could increase the number of referrals to the Disciplinary Tribunal and create additional delays in outcomes. However, we consider this concern unwarranted.

37. Currently, as articulated in the consultation paper, the BSB's policy is that most cases involving criminal convictions will (unless there are exceptional mitigating circumstances) warrant a referral to some form of disciplinary action (for example, a referral to the Determination by Consent process or to a Disciplinary Tribunal). The rationale for this approach is that the BSB takes the view that a criminal conviction is incompatible with the principles expressed through the Core Duties set out in the BSB Handbook. Consequently, most cases involving criminal convictions are referred to the Disciplinary Tribunal or for Determination by Consent (in relation to less serious convictions).

38. Notwithstanding the BSB's clear policy position, the decision-making powers currently available to staff require them to refer nearly all criminal conviction matters to an IDB Panel for a decision, even where a referral to disciplinary action is in effect the most likely outcome. This can create an unnecessary additional procedural step.

39. Broadening staff powers to cover all criminal conviction cases will streamline the process and reduce unnecessary delay by removing the need to convene an IDB Panel in cases where referral is highly likely and appropriate. We do not expect this change to increase the overall number of referrals. We envisage that the same volume of cases will be referred for disciplinary action, but our process will be more efficient in getting those cases to the disciplinary stage.

40. We also welcome the clear direction provided by stakeholders on how to maintain adequate safeguards to avoid unnecessary referrals. In line with this feedback, we will make clear that this power is discretionary; and that staff will not be required to refer all criminal convictions cases for disciplinary action if there are exceptional circumstances.

41. Similarly, we will continue to use our existing categorisation system, under which it will remain appropriate for certain types of cases to be referred to an IDB Panel for a decision. We recognise the need to make clear the relevant criteria for staff to consider. We agree that the relevant factors could include the nature of the offence, likely sentence and complexity. We will seek to incorporate these matters into updated staff guidance to ensure the referral process remains fair, proportionate and robust, while improving efficiency.

Proposal 4: Amending the powers to reconsider post-investigation decisions

Question 6. Do you agree with the proposal to allow a single member of the IDB the power to determine whether a request for reconsideration meets the criteria? Please give the reasons for your response.

42. Most respondents agreed with the proposal that requests for reconsideration first be reviewed by a single member of the IDB (the Chair, Vice-Chair or somebody appointed in their absence), before the full panel is convened. The purpose of this preliminary review is to determine whether the criteria for a reconsideration are met. The intention behind this proposal is to streamline the process, reduce delay and provide greater certainty at an earlier stage in the process. Respondents agreed with this rationale and reiterated that these review requests should be considered "*without delay and should be dealt with promptly".*

43. Some stakeholders expressed concern that there was an inherent unfairness in allowing this decision to be made by a single decision-maker. They argued that the use of three-person panels for reconsideration determinations (the BSB's current approach) would better ensure balance, mitigate unconscious bias and avoid potential conflicts. Concerns were also raised that this is a significant decision to entrust to a single decision-maker, particularly as there is no right of appeal.

44. One respondent suggested that the BSB could put adequate safeguards in place to reduce the risk of unconscious bias and were supportive of the proposal on that basis. While one respondent considered that "some other good reason" was too broad a ground for reconsideration, others felt it was important if this proposal was adopted to keep the threshold for reconsideration "fairly low". They suggested that the low threshold would ensure that only unmeritorious requests are refused so that arguable requests proceed before a panel for reconsideration. One respondent recommended that the BSB develop guidance to assist decision-makers in deciding whether the threshold criteria for a reconsideration request has been met.

45. No concerns were raised regarding our further proposal to amend the regulations to clarify that IDB Panels, as well as BSB staff, may take any further or different action following reconsideration, as if the earlier decision had not been made.

BSB Response

46. We intend to proceed with this proposal, given the largely supportive feedback, and are confident that any concerns can be addressed in the implementation of the proposal, including by developing guidance on the relevant threshold for reconsideration.

47. Respondents recognised that the change would improve efficiency and reduce delay. The revised regulations will also make clear that, following a reconsideration, the decision-maker may take any further or different action, as if the original decision had not been made.

48. We agree that the key risk associated with this proposal arises when a single decision-maker refuses a reconsideration request. We acknowledge that such refusals will have legal consequences and will develop guidance on the relevant criteria to promote consistency and fairness of decision-making.

49. We also note concerns about the lack of an internal appeal route. While a decision to refuse a reconsideration request is not subject to a right of appeal, and we do not propose that it should be, there are alternative remedies available. Where a matter has been referred to a tribunal,

barristers may contest the decision through the tribunal process, including a strike-out application. Where there has been no referral to a tribunal, routes for challenge may include a judicial review of the decision.

50. As set out in the consultation paper, while we acknowledge that this proposal has the potential to increase the risk of unconscious bias affecting decisions, we regard the primary risk to lie in the original decision of the IDB panel, rather than at the reconsideration stage. Nevertheless, we accept that the proposal may introduce a risk of unconscious bias affecting decisions on whether a reconsideration should proceed. However, we consider this will be mitigated by implementing measures to minimise potential unconscious bias, such as by the provision of targeted training and the application of equality and diversity policies.

51. We will further examine the equality impacts of this proposal as well as the appropriate mitigations when we complete our detailed equality impact analysis, as part of the next consultation.

52. We also note the feedback regarding potential conflicts of interest. However, we do not consider that this proposal introduces a new conflict. As a matter of practice, in any event, the IDB support team manages the process to avoid any conflicts of interest arising in the IDB.

Proposal 5: Confidentiality of reports and investigations

Question 7. Do you agree with our proposal to amend the exceptions to the general duty of confidentiality imposed on the BSB to clarify the BSB's ability to make disclosures where necessary to further an investigation? Please give the reasons for your response.

53. We received a variety of responses in relation to our proposal to amend the exceptions to the general duty of confidentiality. The responses highlighted the need to strike an appropriate balance between fairness to barristers and the BSB's ability to provide adequate information to further an investigation.

54. Respondents urged the BSB to exercise caution when disclosing otherwise confidential information. One respondent encouraged the BSB to "*align this clarified/explicit exception to confidentiality with UK GDPR such that the only information shared is that which it is necessary to disclose in order to further an investigation*". Another suggested that guidance for those conducting the investigation would assist those making a disclosure to determine the extent of the disclosure and the circumstances in which it is appropriate.

55. Other respondents considered the proposal too broad in scope. While recognising that the BSB may need to disclose otherwise confidential information to take legitimate investigative steps, they emphasised the

importance of appropriate safeguards to ensure fairness. One respondent suggested that the exceptions to confidentiality should be more tightly circumscribed, while another expressed concern about leaving the exercise of this power solely to the judgment of staff.

56. The Harman Review also included a recommendation that confidentiality agreements should be signed by all parties involved in BSB investigations (Recommendation 20). It suggested that such agreements would help ensure that all parties and witnesses clearly understand and agree what information must be kept confidential, by whom and for how long. The underlying purpose of this recommendation was to strike a balance between enabling complainants and respondents to confide and seek support throughout the process, while ensuring that sensitive information is not disclosed in a way that could jeopardise the investigation.

57. While not directly related to the confidentiality of reports and investigations, the Harman Review also recommended the creation of the post of 'Commissioner for Conduct' to be engaged by the Bar Council. As part of its recommendations on overcoming reporting barriers (Recommendation 10), the Harman Review proposed that the Commissioner must refer a report to the BSB if they believe it warrants enforcement action.

58. The review further recommended that the BSB and the Commissioner must work together to develop a protocol for referrals. Referrals arising from this new role may have implications for the sharing of information between the organisations (BSB and the Bar Council/Commissioner) and, consequentially, for the confidentiality of reports and investigations. This is being taken forward separately between the Bar Council and the BSB.

BSB Response

59. We will retain the duty on the BSB to keep confidential any reports or allegations assessed or investigated, as is the case under the current enforcement regulations. However, we will amend the exceptions to this duty of confidentiality to make clear that we are able to make disclosures for the purpose of seeking evidence or information from third parties.

60. Although some concerns were raised about members of staff being able to decide alone what to disclose, we consider it is essential that the BSB staff can make disclosures in prescribed circumstances. We recognise the basis for these concerns, however, and will develop internal processes and oversight arrangements to support decision-makers.

61. We do not intend to hamper the BSB's ability to progress investigations by introducing overly restrictive regulations, which could prevent appropriate disclosures being made or undermine fairness. However, we agree with the

feedback that careful staff instruction would be useful to ensure that confidentiality protections are maintained, as appropriate. We will produce guidance on how privacy, the duty of confidentiality and exceptions to it operate in practice to support BSB staff and barristers.

62. In line with the feedback, we agree that aligning the revised regulations with UK GDPR will strengthen safeguards. We therefore intend to qualify the proposed new exception so that disclosures may only be made where they are necessary for the purposes of furthering the investigation, consistent with the feedback. This will be a matter of judgement for the case handler but this clarification of the exception will ensure that confidentiality is properly protected and that fairness to barristers remains a paramount consideration.

63. We will also retain the other existing exceptions to confidentiality in the regulations. However, we intend to remove the reference to the BSB's "assurance, supervision or authorisations" functions as we consider that those functions may be unclear and should properly fall under the scope of the BSB's "regulatory functions".

64. We will introduce an additional exception to the duty of confidentiality to enable the BSB to disclose information to the Commissioner for Conduct in relation to the referrals it has received. The existing regulations already provide several explicit exceptions to the general duty of confidentiality, including for the purpose of keeping the barrister, or 'any source of information' relating to the barrister, informed of the progress of the consideration of a report or allegation. In our view, disclosure to the Commissioner could fall within the existing exception, where the Commissioner is the source of the information. However, to provide greater clarity and certainty, we propose to introduce an express provision confirming that disclosures may be made to the Commissioner in cases of bullying, harassment and sexual harassment.

65. We will consult separately on this new exception, both as a principle and as a written regulation, in our next consultation.

66. Lastly, we are considering the Harman Review recommendation that confidentiality agreements be introduced for all parties involved in BSB investigations. We recognise that this would be a change of approach for a regulator and so want to consider it more fully, alongside our wider review, and outside the regulations. We will update on this recommendation in the context of our overall response to the Harman recommendations.

Disciplinary Tribunal Regulations: Part 5B

Proposal 6: Introducing an overriding objective

Question 8. Do you agree with our proposal to introduce an overriding objective into the Disciplinary Tribunals Regulations? Please give the reasons for your response.

Question 9. Do you have any observations on our proposed formulation for an overriding objective?

67. Most respondents supported the proposal to introduce into the regulations an overriding objective that cases be dealt with justly and proportionately. While one respondent expressed concern that the overriding objective could be used to justify a departure from the regulations, the majority considered that it would promote efficiency and fairness.

68. Several respondents suggested additional areas to include in our proposed formulation of the overriding objective.

69. One stakeholder recommended that the Criminal and Civil Procedure Rules could be useful comparators. They particularly highlighted the elements of those overriding objectives which involve "*ensuring that the parties are on an equal footing and can participate fully in proceedings*"[1] and "*dealing with the case in ways which are proportionate to the importance… and complexity*" [2].

70. Respondents also suggested that providing further explanation of what 'justly and proportionately' means within the regulations would assist parties in proceedings. Examples offered by respondents included "*treating all participants with politeness and respect*" and "*dealing with cases efficiently and expeditiously*".

71. One respondent considered that it was unnecessary to impose an express obligation on the parties to support the Disciplinary Tribunal in furthering the overriding objective.

BSB Response

72. We welcome the feedback on our proposed formulation of an overriding objective and how best to clarify what we mean by "justly and proportionately".

73. We note the recommendation to align our overriding objective with those in the Criminal and Civil Procedure Rules. We found these provisions to be

[1] In accordance with the Civil Procedure Rules 1.1(2)(a).
[2] In accordance with CPR 1.1(2)(c)(i) & (iii).

instructive and will ensure that, where appropriate, some of the principles (including the principle of proportionality) are reflected in our formulation of an overriding objective in the revised regulations.

74. Some respondents identified that the overriding objective should include ensuring that the parties "are on an equal footing" which is a feature of the overriding objective in the Civil Procedure Rules. However, we are not persuaded that this is appropriate in the context of disciplinary proceedings, where the BSB is both a party and the prosecutor and given the dynamic that is inherent in such proceedings. In this respect, in seeking sanction, we think disciplinary proceedings more closely resemble criminal proceedings and note that, in those proceedings, there is no equivalent duty to ensure parties are on an equal footing in the applicable overriding objective.

75. We agree that the regulations should clarify what is meant by dealing with cases "justly and proportionately". In our consultation paper, we identified that the regulations would clarify that, so far as practicable, dealing with cases "justly and proportionately" would include ensuring that cases are dealt with efficiently and expeditiously, saving expense and in ways which are proportionate to the nature, importance and complexity of the issues. However, although we agree with respondents who suggested that the concept of "treating all participants with politeness and respect" is also relevant and appropriate in BSB proceedings, we do not think that needs to be explicit in our formulation of the overriding objective in the revised regulations.

76. While not all respondents agreed, we also intend to introduce in the revised regulations a requirement that the parties help further the overriding objective. We think that this could encourage compliance and improve timeliness and note that similar obligations apply in other regulatory regimes, including the Solicitors Disciplinary Tribunal.

77. We also note the concern that the overriding objective could potentially be used by the Tribunal to depart from the regulations. However, we do not anticipate that this will be a consequence of our proposal and would expect the Tribunal to appreciate the purpose of the objective is not for it to do so. The overriding objective will articulate the overall intention and guiding principles of the regulatory framework, while the detailed procedural requirements governing how tribunals conduct proceedings will be set by the revised regulations themselves.

Proposal 7: Introducing a power for BTAS to regulate its own procedure

Question 10. Do you agree with our proposal to introduce a power for BTAS to regulate its own procedure in individual cases, strictly in accordance with the

Disciplinary Tribunals Regulations and the proposed new overriding objective?

78. The vast majority of respondents were supportive of our proposal to introduce a power for BTAS to regulate its own procedure in individual cases. Several respondents noted that this would bring the BSB's powers into alignment with other regulators, many of whom already have equivalent powers in their regulatory frameworks.

79. Respondents were clear that their support for this proposal was contingent on the power not giving BTAS any freestanding power to amend the regulations of its own volition.

80. Several respondents expressed concern about extending this power to BTAS without clear safeguards. They emphasised the need to maintain a clear and binding process in the regulations to prevent any risk of inconsistency in decision-making. Some respondents also urged the BSB to introduce guidance to support consistency in decision-making, if this proposal was adopted.

BSB Response

81. We welcome the feedback and note the broad support for the proposal. We are mindful of the concerns raised by some stakeholders about the need to ensure consistency in decision-making. To be clear, the proposed power is not intended to permit the Tribunal to depart from, or amend of its own volition, the governing regulations. Rather it is intended to allow the Tribunal to adopt a more proactive and flexible approach in the way it responds to issues that arise in cases in accordance with the proposed overriding objective (Proposal 7).

82. To support this proposal, we will work with BTAS to ensure consistency and fairness in decision-making, following the introduction of this power.

Proposal 8: Greater case management by BTAS

Question 11. Do you agree with our proposal to give BTAS responsibility for case management, including the setting of case management directions and the power to list a case management hearing at any time? Please give the reasons for your response.

Question 12. Do you agree that certain case management decisions can be delegated to the BTAS executive? Please give the reasons for your response.

83. Most respondents were broadly supportive of our proposal to give BTAS greater case management responsibility, including the power to set case management directions and to list a case management hearing at any time.

Respondents agreed that these powers would ensure "*the just and efficient conduct of a case*" and would support adherence to the overriding objective. One dissenting respondent believed that this new process may create delay.

84. Several respondents supported our rationale that enhanced case management powers would reduce the risk of late adjournments and last-minute applications, improving the overall efficiency of the disciplinary process.

85. Some respondents raised concerns about the absence of any mechanism for barristers to challenge case management directions set by BTAS or to request a hearing to address any outstanding matters, following the completion of the case management questionnaire. They commented that "*the impression at present is that the listing of a case is very much at the instigation of BTAS and the Tribunal to the exclusion of the barrister"*. In their view, there should be provisions that enable barristers to initiate hearings when needed.

86. As part of the consultation, we also sought views on the delegation of certain case management decisions to the BTAS executive. This proposal was also met with broad support, and while one barrister respondent considered the BTAS executive ill-suited to performing this function, most respondents felt it was appropriate for the BTAS executive to take on additional responsibilities. They noted that straightforward matters, such as uncontested administrative decisions or issues not involving legal argument, could appropriately be dealt with by the executive and this would support improved efficiency.

87. However, respondents were clear that it would be inappropriate for the executive to deal with case management issues that are disputed, contested or complex. They considered such decisions should remain within the ambit of a judge.

BSB Response

88. We note the broad support for these proposals. In light of this, we intend to introduce these amendments, allowing BTAS greater case management powers.

89. While we understand the basis for the concern raised by one respondent, that the proposals might create delay, we do not share their view. We intend these changes to reduce delay and improve efficiency and we note that most respondents shared this understanding. We are confident that this aim is shared by BTAS.

90. In response to the feedback that barristers would not have the ability to challenge directions under the new process, under these arrangements

where a directions hearing is listed the barrister will have the opportunity to make representations before directions are set. We also note that there is no equivalent power to challenge directions once made under the current process. There is an option to apply to vary, however, which we will retain.

91. Further, our view is that the decision to list hearings should sit with a Directions Judge or Chair of the Disciplinary Tribunal, rather than the parties, given their responsibility for the management of the case to a hearing. We also use pre-trial questionnaires, which provide an opportunity for parties to raise any outstanding issues in advance of the hearing date. In our view, this should provide the barrister with an opportunity to raise any matters that may require resolution before the full hearing.

92. We agree with respondents that delegating case management powers to the BTAS executive will not be appropriate in all circumstances. As set out in the consultation, any delegation would be limited to straightforward, non-contentious and administrative directions. We do not intend to extend this power to include directions that are contested, require consideration of legal argument or are otherwise complex. Our proposal is to retain proper oversight, as appropriate, while promoting efficiency in more straightforward matters.

Proposal 9: Clarifying when sanctions come into effect and broadening powers to impose an immediate sanction, pending appeal

Question 13. Do you agree with our proposal to clarify the timing of when a sanction imposed by the Disciplinary Tribunal comes into effect and that this is at the conclusion of any appeal period? Please give the reasons for your response.

Question 14. Do you agree with our proposal to widen the Disciplinary Tribunal's power to impose an immediate suspension or conditions, pending any appeal? Please give the reasons for your response.

93. Most respondents broadly agreed with our proposal to clarify when sanctions come into effect – only one respondent did not respond to this question. The respondents in favour of this proposal saw that it would improve the system and provide greater transparency, given the current provisions are opaque and lack clarity. One respondent commented that it would allow "*all parties and the public to be aware of when sanction comes into effect and we agree that it will thus avoid uncertainty and confusion*".

94. We also received broad support for our proposal to give the Disciplinary Tribunal greater powers to impose an immediate interim suspension or conditions, pending an appeal. Under our proposal, this power will no longer be exclusively reserved for cases involving disbarment, suspension or conditions that exceed 12 months. The benefit of broadening this power is

that it will allow the Tribunal to impose an immediate suspension or conditions, where it is necessary for public protection or otherwise in the public interest, improving the overall effectiveness of the disciplinary process.

95. In relation to this proposal, one respondent commented that there was a strong need to ensure that correct terminology is adopted. The respondent noted that "*there are, for example, differences between an immediate sanction and an interim sanction. Those differences have ramifications with principles governed by direct caselaw*".

96. One respondent also noted that it would be helpful if written guidance outlined when it would be appropriate for the panel to impose an immediate suspension or conditions to ensure that a consistent approach is adopted by the Tribunal. *"This is particularly so, if the Regulations are to make it mandatory for the panel to consider the question of whether to impose an immediate suspension or conditions before the hearing is concluded."*

BSB Response

97. We have considered the feedback and decided to proceed with this proposal. This amendment is intended to codify existing practice and address a point of uncertainty in the current framework to improve its effectiveness.

98. We also note the broad agreement for our proposal to broaden the existing powers of the Tribunal to impose an immediate sanction, pending an appeal. We have taken on board one respondent's suggestion that further clarity is needed regarding the scope and circumstances in which this power may be exercised and we agree that this can be achieved through guidance.

99. We agree with the feedback that the revised regulations must use clear and consistent terminology to avoid any potential confusion, particularly given any confusion can carry legal implications for barristers. As part of our wider review, we will draft the revised regulations in plain English and address issues of inconsistent or unclear terminology during the redrafting process. This will help ensure that the revised regulations are clearer and more accessible. As mentioned above, we will consult on the wording of revised regulations in our next consultation.

Proposal 10: Representations on sanction

Question 15. Do you agree with our proposal to amend the Disciplinary Tribunals Regulations to clarify that the Disciplinary Tribunal may hear representations from the BSB on the issue of sanction? Please give the reasons for your response.

100. Most respondents were in favour of the proposal to clarify that both parties will have the right to make representations before the Disciplinary Tribunal on the question of sanction, where charges against the barrister have been found proved. In one consultation response, a respondent noted that "*in practice, the BSB makes representations on sanctions regularly*", which highlights how this amendment will codify and clarify existing practice, while preventing future challenge, in cases where the Tribunal often invites representations from the BSB.

101. Several respondents emphasised that their support for this proposal was contingent on the BSB approaching its representations with a view to assisting the Tribunal, rather than advocating for a specific sanction. Most respondents agreed (including the individual barrister who did not agree with the overall proposal) that the sanction is ultimately a matter for the Tribunal to determine.

102. In addition, one respondent suggested "*the BSB should be required to provide a written note on sanction in advance of the hearing so that the barrister has fair warning of the BSB's position*".

103. Two respondents suggested that we consider including witness impact statements as part of the sanctions stage, for all cases before the Disciplinary Tribunal.

BSB Response

104. Considering the broad agreement received, we intend to proceed with this proposal to clarify that the Tribunal may hear representations from both parties on the question of sanction. The BSB currently sets out its view of the appropriate category of conduct and the relevant culpability and harm factors, in accordance with the BTAS Sanctions Guidance.

105. In the future, the BSB may wish to make representations on the particular sanctions in a case. However, we are aware that some respondents have raised concerns about any changes being made to the BSB's approach to sanctions.

106. We also note the suggestion that the regulations should go further than the proposal and require the BSB to confirm its position on sanction in advance of the hearing. While we understand that this suggestion is aimed at ensuring fairness to barristers, we do not consider it necessary or appropriate to make the regulations prescriptive in this way. In our view, this is a procedural matter that is better addressed through practice by the parties or direction of the Tribunal, rather than through the regulations.

107. We also note the suggestion that witness impact statements should be included as part of the sanctions process in all cases. We recognise that, in practice, Tribunals may already have regard to impact statements in appropriate circumstances. However, we do not consider that this is a matter that should be prescribed in the regulations and, accordingly, we do not propose to amend the regulations in response to this suggestion.

Proposal 11: Service by email

Question 16. Do you agree with our proposal to allow service by email where a barrister's e-mail address is known to the BSB, without requiring the consent of the barrister? Please give the reasons for your response.

108. We received mixed responses to our proposal to allow service by email where the barrister's email address is known to the BSB, without requiring the consent of the barrister. Some respondents recognised the benefit of modernising practice and improving efficiency, while others were concerned about the potential risks to confidentiality and privacy that this reform may introduce.

109. Respondents who agreed with this proposal emphasised the need to maintain adequate safeguards to ensure fairness to barristers. One response suggested that barristers need to be informed from the outset that email addresses can be used as a form of service and another urged the BSB to retain other means of service under the regulations "*where email is not appropriate or viable"* particularly where *"protected characteristics might well impact upon method of service".*

110. Several respondents expressed reservations about the proposal, primarily due to risks relating to confidentiality and potential data breaches. It was noted that, in many chambers and law firms, clerks or other staff may have access to a barrister's 'work' email account. One respondent suggested that this risk could be mitigated by requiring consent before using the barrister's email address for service.

111. Respondents also highlighted concerns about whether email service could always be effected properly. The examples provided included situations where a barrister might be in hospital, unable to monitor their email, no longer having access to the relevant address or where emails are quarantined or fail to deliver because they exceed size limits.

BSB Response

112. We welcome the range of views provided by stakeholders. Having carefully considered the feedback, we intend to proceed with the proposal to update the email service requirements in the revised regulations.

113. This measure is designed to address longstanding issues with service by post, including delays, cost implications, inefficiencies and defective service (where the barrister's postal address is out-of-date). We also note wider reforms that are modernising practice in other jurisdictions and which recognise the greater use of electronic communications (for example, the Civil Procedure Rules Committee's recent consultation on email service modernisation and the Online Procedure Rule Committee's digital inclusion consultation).

114. In line with the stakeholder feedback, our approach to email service will remain flexible and we do not currently intend to move to an email-only model. If there are particular reasons why service by email is inappropriate, we will take this into account and all existing alternative methods of service will remain available to the BSB. We recognise the importance of ensuring that vulnerable users are not disadvantaged and that reasonable adjustments can be made, as appropriate. We will set out our approach to email service in our dealings with individual barristers and in practice notes (as might be helpful).

115. We understand the concerns raised about privacy, particularly where chambers addresses are used and may be accessible to others. Our approach will give barristers full control over the contact details used by the regulator. We consider that the most effective way to manage this risk may be to update the MyBar portal so that barristers are required to provide an email address which may be used for the purpose of regulatory communications.

116. We have also considered feedback about the risk of large emails failing to be delivered, due to size restrictions. We are considering how this can be mitigated in practice for example by sending document bundles via secure links (such as OneDrive), rather than as large attachments.

Proposal 12: Clarifying the BSB's entitlement to costs

Question 17. Do you agree with our proposal to clarify the Disciplinary Tribunal Regulations relating to the BSB's entitlement to claim costs relating to the conduct of disciplinary proceedings? Please give the reasons for your response.

117. Most respondents generally agreed with this proposal. The majority supported clarifying the BSB's entitlement to recover costs and endorsed the proposal to limit this to external costs only, rather than extending to the costs relating to internal staff time.

118. However, a barrister respondent expressed concern that, in the interests of justice, barristers should be able to defend proceedings without fear of significant financial consequences.

119. In addition, further changes were recommended to the Tribunal's powers to award costs and compensation as part of the Harman Review. Recommendation 23 was to the following effect:

a) If charges are found proven by the Disciplinary Tribunal, the respondent should pay the BSB's costs. However, a barrister's means to pay should not form part of the decision as to whether a costs order is imposed.
b) Following a finding of serious misconduct, BTAS should have the power to order compensation to be paid to the complainant by the respondent for any harm, such as mental suffering, loss of earnings, or damage to reputation and legal advice costs.

BSB Response

120. We welcome the feedback and note the broad support for the proposal. As set out in the consultation, the BSB currently does not intend to seek to recover internal staff costs. The proposal is limited to recovering external costs only (such as external lawyer, witness and expert costs or other expenses, including transcripts). We consider this approach proportionate and practical. If we decide to seek to recover internal costs in the future, we will notify stakeholders at that time.

121. We also intend to introduce a policy confirming that we will not seek to recover external costs where, in comparable circumstances, the costs would have been incurred internally. This would include, for example, where an external firm is instructed due to a conflict or internal capacity issues. In our view, this approach promotes consistency and fairness to barristers regarding the costs payable.

122. We note the concerns about the financial impact of this proposal for individual barristers. However, the Disciplinary Tribunal would ultimately retain the broad discretion to award such costs 'as they think fit'. This means that any decision to award costs will involve an assessment of proportionality and the Tribunal may take into account the individual's financial circumstances, ensuring fairness in each case.

123. While we do not propose to amend the regulations in this regard, we are continuing to consider whether we will give effect to the recommendation in the Harman Review that a barrister's means to pay should not form part of the decision on whether to impose costs, rather that means should be relevant to the question of enforcement.

124. We will keep this policy matter under review and believe that it is best addressed outside the revised regulations (for example, in the BTAS Sanctions Guidance and the BSB's internal approach to enforcement). We note that BTAS has been invited to review the Sanctions Guidance, as part of the Harman Review.

125. At this stage, we do not intend to implement the other recommendation from the Harman Review to introduce a power for the Tribunal to order compensation in the revised regulations (we will discuss this in due course with COIC and the Bar Council).

Proposal 13: The BSB's right of appeal

Question 18. Do you agree with our proposal to clarify the BSB's right to appeal in cases where a charge is only partially dismissed? Please give the reasons for your response.

126. Most stakeholders agreed with our proposal to confirm the BSB's right to appeal to the High Court, where charges are partially dismissed. Respondents recognised that the current wording of the regulations creates uncertainty as to whether the BSB has a right of appeal where part of a charge has been proved and part dismissed.

127. In response to the current uncertainty, the BSB has adapted its approach to drafting charges by including multiple charges on a charge sheet to preserve the right to appeal if some charges are dismissed but others are proved. Stakeholders who supported the proposal acknowledged that this current practice – where the same conduct may be captured across several charges – results in *"unmanageable charge sheets that are unnecessarily complex and unwieldy, which gives rise to additional and unnecessary burden upon the BSB and… the barrister in the course of preparation and at the final hearing itself"*.

128. Respondents noted that the proposal would allow the overriding objective to be more readily achieved and would improve the operational efficiency of the process.

129. While supportive of our proposal overall, one stakeholder also urged the BSB to exercise caution in exercising any expanded right of appeal.

BSB response

130. In light of the positive response from stakeholders and their broad agreement with the rationale for this change, we intend to proceed with the proposal.

131. We are mindful of one respondent's concern about the potential for the number of appeals to increase as a consequence of this amendment. However, consistent with our current approach, we will continue to consider each case on its individual merits before deciding whether an appeal is appropriate. This safeguard ensures that we will only exercise our right to appeal in cases where it is proportionate and just to do so. If we fail to do so we are exposed to the risk of criticism of the appeal court (and possible costs sanction).

Proposal 14: Presumption of anonymity

Question 19. Do you agree with our proposal to introduce a presumption in favour of anonymity in disciplinary proceedings for any witness making an allegation of a sexual or violent nature? Please give the reasons for your response.

132. Most respondents supported the proposal to introduce a presumption in favour of anonymity for witnesses involved in allegations of a sexual nature. They felt that these protections were common in other regulatory regimes and should be adopted in our regime to ensure that such witnesses were not dissuaded from assisting us with investigations. We also received feedback on additional matters to consider when developing anonymity provisions for witnesses making an allegation of a sexual or violent nature.

133. One respondent urged the BSB to consider the effect of section 1 of the *Sexual Offences (Amendment) Act 1992* and whether this creates a requirement for anonymity, rather than just a presumption.

134. Another respondent wanted to ensure a codified discretionary power be created for BTAS to adopt anonymity provisions in other sensitive cases (aside from those involving matters of a sexual or violent nature). They also recommended we consider what consequences should follow from non-compliance with any anonymity order.

135. While the respondents agreed with a presumption of anonymity for witnesses who make allegations of a sexual nature, several respondents queried "*why the scope needs to be broader than the same*". Several also queried the need for anonymity in allegations of violent behaviour and noted that this is not common in other regulatory regimes. One respondent suggested that s.46 of the Youth Justice Act and Criminal Evidence Act 1999 provides us with a power to apply for restrictions in other serious cases.

136. Most respondents emphasised that fairness requires that the identity of witnesses be known to those participating in the proceedings, irrespective of any anonymity orders. They were opposed to any proposal that would prevent the barrister knowing the identity of their accuser.

BSB Response

137. Most respondents were supportive of our proposal to introduce a presumption in favour of anonymity for witnesses involved in allegations of a sexual nature. Considering this support, we intend to implement this proposal to offer some protection to vulnerable witnesses who are voluntarily assisting the BSB, which we consider is in the public interest. We believe this to be an important protection for witnesses and one that will make us consistent with other regulators. We are grateful to respondents who endorsed this rationale for the proposal.

138. However, and in response to concerns raised by respondents, the presumption of anonymity will not prevent a witness's identity being known to those participating in the proceedings; namely the BSB, the barrister and the Tribunal panel. We recognise this as an important tenet of natural justice and essential to ensuring fairness to barristers.

139. Some respondents suggested that the BSB's provisions should align with statutory protections that already exist, e.g. s1 Sexual Offences (Amendment) Act 1992. However, and as explained in the consultation, statutory protections for witnesses who make allegations of a sexual nature (outside of the BSB's regulations) are limited. They are only available to complainants of sexual offences and do not extend, for example, to allegations of sexual harassment.[3] In practice, this means that witnesses involved in making allegations of a sexual nature in BSB proceedings may fall outside the scope of the statutory protection.

140. There was limited support for extending the presumption of anonymity for witnesses involved in allegations of a violent nature, and so we will not proceed with this part of our proposal. Protections for witnesses in cases involving violence will continue to be available under the existing regime, through applications for anonymity orders made on a case-by-case basis. However, a specific presumption in favour of anonymity in the regulations will not apply.

141. We also note the recommendation that the BSB should consider the consequence of non-compliance with anonymity orders. As the regulator, we would always consider taking appropriate action where a barrister fails to comply with such an order.

[3] See, for example, the *Sexual Offences (Amendment) Act 1992*.

The Interim Suspension and Disqualification Regulations: Part 5C

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

Question 20. 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.

142. Respondents generally agreed with our rationale for streamlining and simplifying the grounds for referring a case to an interim panel. Only one respondent disagreed with the proposal on the basis that an interim suspension should be an exceptional measure.

143. Most respondents were also supportive of our proposal that, once a matter has been referred to an interim panel, the panel will have the power to decide whether an interim suspension (or other order) is necessary on the same three grounds.

144. However, two respondents queried whether the 'protection of the public' or 'otherwise in the public interest' should be separated so that there are three grounds instead of two.

145. One respondent supported the proposal on the condition that it would not narrow the types of cases that could be referred to an interim panel. Another suggested the introduction of a "*catch-all*" ground to be used in exceptional circumstances and queried whether such cases would already fall under the public interest grounds. They suggested that updated guidance was required and "*should be clear as to the types of circumstances that would lead an order to be necessary on 'public interest' grounds*".

146. The Harman Review is also relevant to this proposal. Recommendation 28(b) advised that 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) in allegations concerning serious sexual offences.

BSB Response

147. We are encouraged that respondents were broadly supportive of our proposal and are grateful for the clear direction to separate the grounds into three distinct categories. We agree with that suggestion and will proceed with streamlining the grounds for referral to an interim panel and the imposition of interim orders by those panels where it is necessary:

- to protect the interests of clients (or former or potential clients); or

- to protect the public; or
- otherwise in the public interest.

148. In relation to the Harman Review's recommendation that the BSB take immediate action in cases involving serious sexual offences, we agree that this is necessary. In the BSB's view, the three grounds identified above will support the BSB's ability to refer promptly cases involving serious sexual offences to an interim panel.

149. Further, the revised regulations will continue to allow the BSB to take immediate action in those cases, such as imposing an interim order immediately pending the hearing before an interim panel (see Proposal 16 below).

150. While we acknowledge concerns raised by respondents, the revised grounds should not narrow the scope of cases that may be referred for interim action. To address this, we will ensure that the guidance makes clear that serious matters, such as criminal convictions or findings by another regulatory body leading to a period of suspension or termination of the right to practise, would still justify referral on the revised grounds.

151. While we note the suggestion of introducing an additional "*catch all*" ground, we do not intend to add a further ground for interim orders. However, we agree that clear guidance is needed on the scope of the public interest ground and recent case law has confirmed that "*necessity*" is the appropriate threshold, which we will incorporate into the revised regulations.[4]

152. As part of our proposal to streamline the referral grounds, we also intend to remove the requirement that the BSB may only seek an interim order where it determines that suspension or disqualification is required. Under the revised approach, the BSB will be able to refer to an interim panel on the basis of conditions alone. Recent case experience has demonstrated that the option to seek conditions, rather than suspension or disqualification, can be a less onerous and fairer option for barristers. We consider this approach to be proportionate and practical, while still effectively protecting clients, the public and the wider public interest (without restricting the ability of the interim panel to impose a suspension if it considers it necessary).

[4] See *NMC v Richmond* [2025] EWHC 1828 (Admin), *NMC v Persand* [2023] EWHC 3356 (Admin); and *R (Sheikh) v General Dental Council* [2007] EWHC 2972 (Admin).

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

Question 21. 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.

153. Most respondents considered expanding the Chair of the IDB's power to impose immediate interim suspension (pending a hearing by an interim panel) in the public interest to be "*more controversial*" and potentially "*excessive*".

154. While respondents accepted that an immediate interim suspension may be justified to protect the public and particularly clients, they emphasised that such cases would be rare and "*the threshold for imposing an immediate interim suspension should remain high*". One respondent remarked that it is difficult to see "*how that [order] could be justified on the basis of the public interest in maintaining the reputation of the profession*". Several questioned whether an additional ground was needed at all.

155. In relation to the example provided in the consultation (where a barrister was remanded in custody and likely to receive a custodial sentence), some respondents considered the existing provisions broad enough to allow a Chair to make an order, where necessary. They queried why any expansion would be required if the current framework already enables urgent intervention. In the alternative, they remarked "*if not, then it is difficult to see why a Chair would need to make any order pending the interim panel's determination*".

156. Several respondents suggested that, rather than broadening the grounds for imposing an immediate interim suspension, a more proportionate safeguard would be ensuring that urgent matters can be listed and heard swiftly. They noted the current requirement for interim suspension applications to be determined within 21 days of a referral to an interim panel, which provides an appropriate safeguard.

BSB Response

157. We accept this feedback and have decided not to introduce an additional ground for imposing an immediate interim suspension. In line with the overall tenor of the feedback, we consider that an immediate interim suspension should be reserved for serious cases where such an order is justified having considered the risk posed to the public. In those limited circumstances where such an order may be required, we agree that the current regulations are sufficient.

158. Respondents also highlighted that the concerns around fairness to barristers are particularly acute in the context of immediate interim suspension cases, as the decision is made by the Chair of the IDB alone and the barrister has no right of reply. On that basis, we agree that an immediate interim suspension should be imposed only in the most serious cases.

159. However, we also recognise the importance of addressing the underlying concern that prompted our original proposal, namely the need for the BSB to be able to respond swiftly in urgent situations to protect the public and the public interest. On reflection, we now consider that this can be achieved within the existing framework. Under the current regulations, the BSB can request that BTAS list matters urgently, and there is a requirement for interim suspension cases to be dealt with within 21 days. We now consider these mechanisms sufficient to address cases expeditiously, without needing to expand the grounds for an immediate interim suspension.

Proposal 17: Listing process

Question 22. Do you agree with our proposal to streamline and simplify the listing process for hearings? Please give the reasons for your response.

160. Most respondents agreed with our proposal to streamline and simplify the listing process for hearings. They acknowledged that the current provisions are overly complex and can contribute to unnecessary delay and stress on the parties, agreeing with the BSB's rationale for change.

161. One respondent agreed with the proposal only on the basis that barristers must be consulted about their availability and it should be taken into account before a hearing date is fixed. However, they accepted that a barrister's availability cannot be the sole determinative factor and 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*". They suggested that delay could be reduced by introducing a provision for hearings to be listed within 21 days, unless there are exceptional circumstances and following consultation with the barrister.

162. One respondent also raised concerns that the proposal does not explicitly accommodate situations where there are good reasons why a barrister cannot attend on particular dates. They urged the BSB to provide reassurance that such circumstances would be properly considered under the revised approach.

BSB Response

163. Following the mostly positive response from respondents, and their agreement with the BSB's rationale for changes, the BSB has decided to

proceed with the changes to the listing process. Under the revised regulations, all interim suspension cases will be listed for hearing within a specified number of days (and we propose 21 days as a reasonable and balanced upper time limit) following a referral to an interim panel and with reasonable notice of the hearing given to the barrister. This approach will also apply to review and appeal hearings, ensuring consistency under the revised regulations

164. To provide fairness to the parties, the regulations will require advance notice to be given to both the barrister and the BSB of the hearing date. Where a barrister is unavailable on the fixed date, BTAS will be able to consider the reasons for that unavailability and determine whether the hearing should be relisted, without incurring undue risk or delays. While we recognise concerns that this places the onus on the barrister to request a change of date, we consider it appropriate that BTAS makes these decisions on a case-by-case basis, balancing fairness with the need for timely progression of cases.

165. Further accommodations such as remote attendance can also be available, where appropriate. In our view, any potential adverse impact on barristers, including those with protected characteristics, can be effectively mitigated through the practical management of cases by BTAS. This may include, for example, rearranging hearing dates or offering remote hearings to accommodate the barrister's availability.

Proposal 18: Direct referral powers

Question 23. 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.

166. As part of the consultation, we proposed to remove the power given to interim panels to refer cases directly to a Disciplinary Tribunal. Respondents agreed that if this power was exercised (although it has never been used in practice) it could result in incomplete investigations being referred to the Tribunal, effectively bypassing the usual safeguards in the enforcement process. The proposal was endorsed by all those who responded to this question in our consultation.

BSB Response

167. We welcome the positive feedback received from stakeholders in relation to this proposal and, given this support, we will remove the existing direct referral powers under the revised regulations.

Proposal 19: Right of review

Question 24. Do you agree with our proposal to allow the BSB the right to request a review of an interim order? Please give the reasons for your response.

Question 25. Do you agree with our proposal to allow both parties to make representations in relation to an interim order review request? Please give the reasons for your response.

168. Respondents were largely supportive of our proposal to allow both parties the right to request a review of an interim order. A majority also agreed that both parties should be able to make representations in relation to such a request and should be notified of the outcome of the decision. Most respondents endorsed our rationale, that the review process should operate equally for both parties regardless of which party initiates it.

169. One respondent emphasised there being a strong public protection basis for the BSB having the ability to request a review, for example where new evidence indicates that the level of risk has increased and, as a result, the existing interim order is no longer sufficient. A barrister respondent disagreed with the proposal on the grounds that the BSB should accept a determination that an interim order is not required. They suggested that giving the BSB the right to request an interim order be reviewed could increase the risk of delay and wasted costs.

170. Further, a respondent expressed concern that, if enacted the proposal would mean the decision about whether to convene a review hearing would move from the President of COIC and be given to BTAS. They argued that this decision "*should be taken by the Chair of the interim panel (who already exercises a number of powers in relation to interim orders…), not an unspecified person at BTAS*".

BSB Response

171. We welcome the positive response to our proposal, and so will introduce a provision allowing the BSB to request a review of an interim order, alongside the existing right for the barrister. We will also proceed with enabling both parties to make representations and to be notified of the outcome.

172. We note the concern that the BSB should accept a decision that an interim order is not required. However, the right of review only arises when an interim order is in place. The rationale for conferring this right on the BSB while an interim order is in force is to deal with cases where the level of risk has either increased or decreased, and the public interest would not be properly protected without revisiting the existing order. Our intention is to

ensure fairness and consistency by applying the review process equally to both parties.

173. We also note the feedback, but do not agree that this change will create additional delay or place undue pressure on the system. The proposal is to introduce a right to review in relation to interim orders that are already in place and so we expect that these matters could follow the usual timetable. We do not consider that this will delay the substantive hearing.

174. We agree with respondents that any BSB review request should be subject to the same threshold, i.e. the BSB would have to specify what it is alleged that amounts to the significant change in circumstances or other good reason justifying the review.

175. Lastly, we note the concerns about the decision on whether to convene a review being taken by BTAS executive staff. The revised regulations will provide for review requests to be submitted to the President, who will decide to refer them onto the panel. The role of the President will be to decide whether the request meets the threshold for a review and this decision may be delegated (for example to a panel chair), in accordance with the Scheme of Delegations. We still intend for substantive decisions on the review itself to be made by the interim panel on the basis that they will have the appropriate training and experience to make such determinations.

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

Question 26. 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?

176. We received broad support for our 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. Respondents generally agreed that a review mechanism is necessary where a hearing is underway, particularly if an adjournment is required and that adjournment may be lengthy.

177. One respondent noted that the Disciplinary Tribunal is well placed to undertake such a review, as it is already seized of the case and will have a full understanding of the relevant material.

178. Another respondent commented that such reviews will not always be necessary and, in those cases, it will be appropriate for any interim order that it is in place to continue. They emphasised that the regulations should

not "*make it mandatory for the Disciplinary Tribunal to conduct a review every time it adjourns".*

BSB Response

179. We are grateful for the support expressed by respondents in relation to this proposal. We will therefore introduce this power for the Disciplinary Tribunal, as proposed.

180. We agree that it should not be mandatory for the Disciplinary Tribunal to review the interim order on every adjournment. As such, where no request for a review is made, the interim order will remain in force. We will consult on the wording of the revised regulations which implement this proposal in our next consultation.

Fitness to Practise Regulations: Part 5D

Proposal 21: Rebranding the Fitness to Practise regime and the grounds for referral

Question 27. Do you agree with our proposal to re-brand the fitness to practise regime to a "health" regime and to make consequential amendments to the regulations to align with that re-branding? Please give the reasons for your response.

Question 28. Do you agree with our proposal to amend the threshold for referral into the health process by removing the requirement for incapacitation? Please give the reasons for your response.

181. The majority of respondents supported our proposal to rebrand the fitness to practise regime. They considered that the change would help avoid confusion with other regulatory frameworks in which 'fitness to practise' encompasses all types of regulatory concern, including misconduct and lack of competence. One respondent also noted that the rebranding could help reduce stigma for barristers.

182. Although the overall feedback was positive, a small number of respondents felt the change was unnecessary citing concerns about time and cost. One commented that the rebranding was inappropriate because "*it is not a health regime*", while another remarked that the term 'health regime' *"sounds like a gym membership*".

183. We received broad support (with only one barrister respondent disagreeing) for our proposal to amend the referral criteria under the Health Regulations, including removing the requirement for incapacitation. In summary, our proposal was that a referral to a health panel will be possible where the BSB receives information suggesting that:

a) there is a health condition (which may be physical or mental, including addiction);
b) the barrister's ability to practise is impaired on the ground of that health condition; and
c) the imposition of a restriction or conditions (or undertakings in lieu) is necessary for the protection of the public or is otherwise in the public interest.

184. Respondents also provided feedback on further considerations relevant to developing these criteria, which we explore in greater detail below.

a) Health condition

185. While respondents were generally supportive of our proposal, several were concerned that individuals who would fall within the health regime may also be considered to have a disability under the Equality Act 2010. Respondents emphasised the importance of the BSB being clear about how physical and mental impairments, including neurodiversity, will be assessed and treated under the health regime. One queried whether different types of neurodiversity (particularly those amounting to a disability for the purposes of the Equality Act) would ever fall within the definition of 'health condition'. Another respondent encouraged the BSB to consider "*all aspects of these cases... through this lens"* and noted that this approach should extend beyond the regulations and supporting guidance to "*include template communications, training of case officers, etc".*

b) Barrister's ability to practise is impaired

186. Most respondents supported the proposal to amend the referral threshold by removing the requirement for incapacitation. Although they recognised that this amounts to a lowering of the threshold, they agreed with our rationale for the change.

187. One respondent, while supportive overall, invited the BSB to retain the current formulation requiring a health condition to impair a barrister's 'fitness to practise', rather than the proposed 'ability to practise'. They expressed concern that assessing 'ability' may conflate health conditions with ability or skill as a barrister more generally. They felt that this could unintentionally encompass those whose ability is restricted because of a disability which can be addressed by reasonable adjustments. They urged the BSB to retain 'fitness to practise' or adopt alternative language.

c) The imposition is necessary for the protection of the public or otherwise in the public interest

188. Stakeholders were generally supportive of the requirement for referrals only where the imposition of a restriction (i.e. suspension or disqualification) or conditions (or undertakings in lieu) is necessary for the protection of the public or otherwise in the public interest. They noted that the necessity test is a safeguard that should help "*deter spurious and unfair referrals"* and promote fairness to barristers.

189. However, one respondent raised concerns around the removal of the existing criterion allowing the BSB to refer an individual where a restriction is necessary in the 'individual's own interests'. While they understood our rationale for the proposal, they noted that the consultation did not address situations in which there is evidence that the stress of practice may cause

the barrister's health condition to relapse or deteriorate. They recommended that "*the BSB consider whether it has any safeguarding duty in this situation, before finalising the criteria*".

BSB Response

190. In light of the largely positive feedback from stakeholders, we remain keen to rename the Fitness to Practise regulations and move away from a label and terminology that suggests enforcement or sanction so that it is more easily understood by the profession and public alike. We recognise the concerns raised about the term 'health regime' and propose to name the regulations along the lines of the "*Health Panel and Procedure Regulations",* on which we shall consult later in Spring 2026.

191. We also welcome the feedback provided by stakeholders on refining the criteria for referral under the revised regulations. In particular, we considered the feedback on the use of the term 'ability to practise'. While some respondents preferred retaining 'fitness to practise', we do not think it is appropriate to retain terminology linked to the concept that we are keen to move away from.

192. Our view is that 'ability to practise' is clear and in plain English, ensuring that there is less risk of confusion with other regulatory regimes, where 'fitness to practise' carries a broader meaning. It is our intention that the term 'ability' is seen as a reference to where a health condition may adversely impact a barrister's performance or professional judgement or places others at risk in the course of their work as a barrister (broadly similar to the approach of the Health and Care Professions Council in relation to the investigation of health matters).

193. We are also conscious that updating the threshold for referral may mean that a greater proportion of barristers could fall within the scope of the health regulations. We acknowledge the concern that this may disproportionately impact some groups, including barristers with disabilities under the Equality Act or those with other protected characteristics.

194. To mitigate this risk, we will ensure that the regulations and accompanying guidance provide clear direction on the meaning of 'impairment', which does not set too low a threshold, and emphasising the need for any referral to be 'necessary' for the protection of the public or in the public interest. This will help avoid referrals being made where a barrister has a chronic but managed health condition or any other condition that does not adversely impact their ability to practise.

195. We also intend to make clear that a referral will never be made solely because a barrister has a health condition. A referral will only be possible

where the other criteria are satisfied – i.e. that the health condition is having an adverse impact on the barrister's ability to practise and the imposition of a restriction or condition is necessary for the protection of the public or is otherwise in the public interest. Where a health condition (including one that meets the Equality Act definition of disability) impacts a barrister's ability to practise and the necessity test is met, we consider that the BSB should be able to take proportionate action.

196. The BSB is bound by and strives to act in accordance with its wider legal obligations to ensure fairness, safeguard proper process and avoid discrimination. This approach applies not just to the BSB's regulatory framework and supporting guidance but also our template communications and training of staff, consistent with feedback.

197. We also considered the concerns about the removal of 'the barrister's own interests' as a ground for referral. We acknowledge the example provided of cases where the stresses of practice may risk exacerbating a health condition. However, we consider that such circumstances are likely to be captured under the public protection or public interest criteria. If they are not, our view is that such cases would not meet the threshold to justify a referral solely on the basis of the barrister's own interests.

198. We are not persuaded that there are circumstances in which the BSB would be justified in imposing restrictions or conditions on a barrister's practice where it is in their 'own interests', where that would not also be for the protection of the public or otherwise in the public interest. Although the BSB does not owe a formal duty of care, we remain committed to mitigating risks to barristers by signposting appropriate support services and resources to those who may be struggling with health-related concerns or wellness issues.

Proposal 22: Convening a panel and fixing a hearing date

Question 29. Do you agree with our proposal to introduce an explicit duty for BTAS to convene a panel, fix a hearing date and notify both parties of the meeting date, following the referral of a barrister to a health panel by the BSB? Please give the reasons for your response.

199. Most respondents agreed with our proposal to introduce an explicit duty for BTAS to convene a panel and fix a hearing date, once a barrister has been referred to a health panel. Only one respondent, a barrister, objected to the proposal on the basis that BTAS should not be involved in the process.

BSB Response

200. We are grateful for the broad support provided by respondents in relation to this proposal. While we note the concern raised about the extent of BTAS's involvement in the process, we do not consider it appropriate for the Chair of the Panel to retain responsibility for notifying parties of the time and date of a meeting.

201. As set out in the consultation, a panel must first be convened and a hearing date fixed, and in practice, these functions are already performed by the President and BTAS. For these reasons, we will update the revised regulations to provide for the President to convene the panel and fix a hearing date and BTAS to notify both parties of the date fixed in health proceedings. These amendments will codify and clarify the existing process and ensure that administrative responsibility rests appropriately with BTAS. Elsewhere we address the resourcing and capacity of the BTAS function (see, for example, Proposal 30).

Proposal 23: Introducing a power to accept undertakings prior to a referral to a health panel

Question 30. Do you agree with our proposal to give the BSB the power to agree undertakings before and instead of a referral being made to a health panel? Please give the reasons for your response.

202. Stakeholders were supportive of the proposal to give the BSB the power to agree undertakings (in the form of conditions), before a referral to a health panel. Respondents generally viewed undertakings as a more compassionate approach for barristers, while maintaining necessary protections for clients and the public.

203. One respondent supported the proposal on the basis that a clear process should be introduced "*for ensuring the consistency and adequacy of the decisions*". Another respondent supported the power to agree undertakings with the barrister at any time during the health process. They also encouraged the BSB not to treat non-compliance with undertakings as a disciplinary breach of the Handbook. Instead, this respondent suggested that such cases should be referred under the health regime on the basis that undertakings were ineffective.

BSB Response

204. We welcome the strong support for this proposal and the recognition that it provides a more compassionate and proportionate approach to managing health matters in appropriate cases. We also acknowledge the feedback emphasising the importance of consistency in the decisions to accept these

undertakings. To support this, we propose to develop clear procedures for BSB decision-makers setting out the criteria for when it is appropriate to accept undertakings and to emphasise undertakings as a legitimate option in appropriate cases. As set out in the consultation, our intention is that undertakings should only be used in clear and straightforward cases.

205. Under the existing framework, undertakings may already be agreed by a barrister and accepted by a fitness to practise panel, once the formal process has commenced, as an alternative to formal orders. We intend to retain this approach. While we note the feedback, we do not propose to extend this new power to enable the BSB to accept undertakings at any time. In our view, it is appropriate for the panel to retain oversight and determine the most suitable outcome, once a referral has been made and the panel becomes seized of the matter.

206. We note the feedback suggesting that a failure to comply with undertakings should not result in disciplinary action but should instead be managed solely under the health regime on the basis that the undertakings were ineffective. However, we do not intend to remove the BSB's discretion to treat a breach of undertakings as a potential breach of the Handbook and take disciplinary action, where appropriate. The reason for a breach will be fact-specific and may be unrelated to the health concerns and also to do so might discourage decision makers from accepting undertakings.

Proposal 24: Length of orders

Question 31. Do you agree that six months is no longer an appropriate time limit to impose on fixed term suspensions or disqualifications that may be imposed by health panels? Please give the reasons for your response.

Question 32. Which option do you prefer and why? If you prefer neither option, please let us have your views on any alternative formulations that we should consider. Please give the reasons for your response.

Question 33. Do you agree with our proposal to introduce powers for health panels to review a barrister's health and ability to practise before they resume practice, to ensure there are no ongoing public protection or public interest concerns? Please give the reasons for your response.

207. Most respondents agreed that a six-month limit is not an appropriate maximum period for a fixed term suspension or disqualification imposed by a health panel. They accepted that many health conditions affecting a barrister's fitness to practise are serious and long-term and, therefore, it is unlikely that a barrister will show meaningful improvement within six months.

208. Several respondents also noted that a short maximum period could have a detrimental impact on barristers as it could lead to repeated reviews where

there is limited change. They agreed with our rationale that this period is likely to be too short to address most health conditions that are likely to impair a barrister's fitness to practise – serious and long-term conditions will often require longer than this period to respond to treatment. They also saw that, by having a shorter length of order, there was a risk that this could impact negatively on the barrister and their recovery by having repeated reviews, even where there is limited change.

209. Views were mixed on how to frame the time limit on the panel's powers to impose a suspension or disqualification to address concerns arising from a barrister's health condition. Some respondents favoured giving panels "*the greatest flexibility*" and acknowledged that this may mean that a restriction may be imposed for a fixed period (with no prescribed upper limit) or indefinitely (Option 1). They considered that the medical evidence and the circumstances of the case should guide the panel and noted that the barrister's right to apply for a review at any time would act as an important safeguard in these cases.

210. Other respondents opposed the possibility of an indefinite suspension and were concerned that barristers could be "*forgotten or left in limbo*". Their preference was for there to be a maximum upper limit of 36 months for any suspensions or disqualifications imposed under the regulations (Option 2).

211. A number of respondents did not express a preference for either of the two options. One respondent endorsed a 'mixed option' and another recommended the BSB set an upper limit for fixed-term orders, while retaining the power to impose an indefinite restriction only in exceptional cases. As indefinite orders are a potentially career-ending provision, they were not convinced that the power to make such an order was appropriate, without a robust and particularised process. They felt such an approach would balance realistic timeframes for recovery with the need to *"[provide] the barrister with a focus or target in their recovery"*.

212. There was broad support for the proposal to allow health panels to review a barrister's health before the expiry of an order and to impose a further order where necessary to protect the public or the public interest. Respondents felt that this would support the barrister's welfare and could reduce the need to rely on indefinite restrictions as panels would have the framework to reassess progress and risk under the regulations.

213. One barrister respondent disagreed with all proposals on the basis that these measures are a serious intrusion on the barrister's autonomy and that barristers themselves are best placed to determine when they are fit to return to practice.

BSB Response

214. We welcome the broad range of views provided by stakeholders on this proposal and, having carefully considered the feedback, we intend to make a number of changes to the length of orders that can be imposed by health panels.

215. Nearly all respondents agreed that the current six-month time limit on suspensions or disqualifications under the health regulations is inappropriate. We also welcome the support for our view that six months is too short a period to address many of the health conditions that are likely to impact a barrister's ability to practise.

216. In deciding the appropriate length of orders, we took into account the views expressed by stakeholders. In light of this feedback, we will adopt a hybrid approach that incorporates aspects of the two options in the consultation. We will give panels the power to impose a health order for a fixed period not exceeding 36 months. We consider that a maximum of 36 months will strike a balance between allowing sufficient time for recovery and supporting the interests of the barrister, while ensuring the protection of the public.

217. We will also give panels the power to reconvene and review the order, prior to its expiry, to assess whether there are any ongoing public protection or public interest concerns that need to be addressed, before the barrister resumes their practice. This type of review will be mandatory before the expiry of any order that was imposed for a period of 12 months or more. Where a barrister remains unable to practise safely at the point of the review, panels will have the power to impose a further order, including one potentially for an indefinite period (subject to further review). However, an indefinite order may only be imposed where the individual has been subject to a restriction (whether by order and/or undertaking) for a total period of 36 months. This ensures that indefinite orders can be imposed, where necessary, to protect the public. However, we recognise that these orders can significantly impact barristers, so we consider that appropriate safeguards are required to ensure that indefinite orders are only imposed where other measures have been attempted without success.

Proposal 25: Giving panels the power to impose interim conditions at Preliminary Meetings

Question 34. Do you agree with our proposal to introduce a power for health panels to impose interim conditions (in addition to the existing power to impose an interim suspension or disqualification) at a preliminary meeting to protect the public or in the public interest? Please give the reasons for your response.

218. Most respondents supported the proposal to allow health panels to impose interim conditions at a preliminary meeting as well as our rationale for the proposed change.

219. Only one barrister respondent disagreed with the proposal, as they felt that "*these are draconian orders capable of serious intrusion on the barrister's autonomy*".

BSB Response

220. Considering the largely positive feedback and the endorsement of our rationale, we will proceed with this proposal and incorporate the power for health panels at a preliminary meeting to impose interim conditions (as well as interim suspension or disqualification) into the revised regulations.

221. While most respondents were supportive, we recognise the concern that imposing interim conditions may have significant consequences for barristers. However, in some cases interim conditions may be a more proportionate and appropriate response than an interim suspension or disqualification; particularly where it would allow a barrister to continue practising safely while necessary conditions are in place.

222. We also note that health panels already have the power to impose interim suspensions or disqualifications at a preliminary meeting and interim conditions would provide a less restrictive alternative within the regulatory framework.

Proposal 26: Rights of review and clarifying the review process

Question 35. Do you agree with our proposal to simplify the rights to review and the review process under the regulations? Please give the reasons for your response.

223. Most respondents agreed with our proposal to streamline the rights to review and the review process under the regulations. Only one barrister respondent disagreed with the proposal, saying that it would make the system overly complex.

224. One respondent, who agreed with our proposal, suggested that to be fair to barristers, review requests should be considered and determined by a directions judge rather than BTAS staff, who are not medically or legally qualified.

225. Another supporter of the proposal recommended that the right to appeal be extended to include decisions refusing to review a restriction, not just the review decision (as is currently the case under the regulations). They felt that

this additional safeguard would be appropriate under the revised framework, particularly as it would remove the general right to request a review of an interim restriction and instead require the barrister to demonstrate a significant change in circumstances or some other good reason.

BSB Response

226. We note the concern that the proposed changes could introduce greater complexity into the system. However, we consider that the proposal will simplify the revised regulations by creating a single, streamlined right of review of any restriction or condition. Most respondents agreed with this rationale and were supportive of our approach. We therefore intend to implement the proposal which we consulted on.

227. We have carefully considered the recommendation that review requests should be determined by a directions judge, rather than by BTAS staff. We agree that review requests should not be decided by BTAS executive staff. However, we do not consider that a directions judge is the appropriate decision-maker. Instead, the regulations will provide for review requests to be submitted to the President, who will decide whether to refer them onto a panel to undertake the review. The role of the President will be to decide whether the request meets the threshold for a review and this decision can be delegated (for example to a panel chair), in accordance with a Scheme of Delegations. We still intend for the substantive decisions on the review itself to be made by the Health Panel, as they will have the appropriate authority, expertise and independence to make such determinations. This approach is proportionate and promotes fairness and consistency in decision-making, particularly as it mirrors the approach adopted under the revised interim suspension regulations (see Proposal 19 above).

228. While we understand the rationale behind the feedback that the right of appeal be extended to include refusals to review a restriction, we disagree with this recommendation. In our view, extending appeal rights to refusals to review would create an additional process and carry a real risk of overburdening the system, which may create additional delay and inefficiencies in the system.

229. We consider that adequate safeguards are already in place for barristers. In particular, barristers are not prevented from making further requests for a review where there is a significant change in circumstances or some other good reason, following an initial refusal. The threshold for seeking a review is sufficiently broad to capture legitimate grounds for a review and requests will only be refused where they lack merit.

230. We also note that decisions to refuse a review request may be susceptible to judicial review and that a right of appeal exists for a period of 14 days

following any decision to impose, extend, vary or replace a period of restriction or condition(s).

Other issues: Disciplinary Tribunal Panel and Independent Decision-Making Panel Composition and support

Proposal 27: Changes to Disciplinary Panel composition

Question 36. Do you agree with the introduction of a three-person panels for all disciplinary tribunals? Please give the reasons for your response.

Question 37. Do you agree with our proposal for panels to have a legal (not necessarily barrister) majority, rather than a lay majority? Please give the reasons for your response.

231. Many respondents were supportive of the proposal to introduce three-person panels for all disciplinary tribunals. They endorsed the approach on the basis that it would likely improve efficiency by ensuring that the process is proportionate and cost effective. Respondents noted that three-person panels are common among other regulators.

232. However, while supportive, some respondents emphasised that efficiency should not "*come at the cost of fairness*". Further, in disagreeing with the proposal, one respondent argued that disciplinary cases are often factually complex and sensitive and there is benefit to having panels "*as broad as possible*". They favoured retaining five-person panels for certain cases only and suggested that concerns about delay and inefficiency could be addressed by recruiting additional panel members, rather than reducing panel size. This respondent also preferred retaining five-person panels as they felt that a larger panel size would dilute the impact of any one panel member's unconscious bias.

233. Views were mixed on the proposal to have a legal (not necessarily barrister) majority on panels. Some respondents supported a legal majority, and others considered that the legal majority should consist of barristers only on the basis that retaining a barrister majority would maintain the confidence of the profession and uphold the principle of being judged by one's peers.

234. One respondent commented that having barrister panel members is greatly desired as "*lived experience in the panel members*" will assist panels in judging whether there has been professional misconduct by a barrister. In contrast, one member of the public expressed concern that a legal majority could undermine public confidence. This respondent, who disagreed with our proposal, suggested that the proposal risks "*an appearance of lawyers marking their own homework*".

BSB Response

235. We are grateful for the range of views provided by respondents in relation to this proposal. Although there was support for the proposal to move to three-person panels for all disciplinary cases, on reflection we have decided not to

proceed with this proposal at this time for the reasons below. Instead, we intend to maintain our current approach to panel composition as we believe this approach will maintain the quality and robustness of decision-making in our disciplinary proceedings, while retaining the trust and confidence of both the public and of the profession in the Disciplinary Tribunal and its decision-making.

236. Following our consultation, we have further reviewed available data on the efficiency and timeliness of the disciplinary process. While it does show significant delays in the end-to-end process, the data does not conclusively link such delays to panel size or composition. As a result, and in line with some of the feedback received, we are keen to explore other ways of improving efficiency and reducing delays, before we adjust our tried and tested approach to panel composition.

237. For example, we consider that recruiting additional panel members, who are both experienced and readily available, may be one option. Further, we consulted on, and will implement, other proposals which seek to empower BTAS to take a proactive approach to case management with a view to reducing delays and handling claims proportionately, according to the nature and complexity of the case. We are confident that we will also see the benefit of these additional case management powers in terms of timeliness of the end-to-end enforcement process. We will therefore monitor the impact of these additional and other steps (alongside the wider suite of proposed reforms) on the disciplinary process to assess improvements in efficiency and may revisit the approach to panel composition in due course.

238. In line with feedback received, we accept that there are benefits to retaining the use of five-person panels in certain cases, as now, which ensures a high quality of decision-making, including those with serious and long-lasting consequences for barristers. The current framework reserves the use of larger five-person panels for the most serious cases (i.e. where a greater sanction may be appropriate).

239. We also note the feedback regarding panel size and the risk of unconscious bias, including that decreasing panel size may increase the risk of an individual panel member's own biases affecting decisions. We can see that reducing the number of panel members could create the potential for a decrease in the diversity of panel members. As we will continue using five-person panels for disciplinary cases, we do not expect there to be any adverse impact on diversity or equality of outcomes, given we are maintaining current practice. Nevertheless, it is important to note that our equality impact assessment concluded that diversity on a panel is primarily influenced by the diversity of the overall pool of available members, rather than the panel size itself. To promote diversity, we will explore with BTAS further diversifying the pool from which panel members are appointed and

would expect training for panel members to continue, covering issues such as unconscious bias and equality and diversity, which will help mitigate any adverse impacts.

240. We also acknowledge the concerns raised in responses about moving to a legal (rather than barrister) majority, including the impact on the confidence of the profession as well as the importance of barristers being judged by their peers. The role of a professional panel is to independently determine the facts and apply the relevant regulatory framework. It is not uncommon across other professional regulators to have professional majorities on their panels. As such, we remain confident that BTAS panels with a barrister majority will continue to operate independently and deliver fair and proportionate outcomes in the public interest.

Proposal 28: Changes to the IDB Panel

Question 38. Do you agree with altering the composition of IDB panels considering enforcement cases from five to three-person panels, with a lay majority? Please give the reasons for your response.

241. Respondents expressed mixed views on the proposal to change the composition of IDB panels to three-person panels with a lay majority. A number of respondents were supportive of the reduction to a three-person panel. They recognised this approach to be consistent with other regulatory panels and agreed with the BSB's rationale that it would improve efficiency, while remaining proportionate and cost effective.

242. However, concerns were raised about retaining the lay majority in IDB panels. Some respondents questioned whether there would be sufficient legal input on a reduced panel size with a lay majority. They opposed the proposal on the basis that it could affect the quality of decision-making and increase the risk of challenge to decisions. Others emphasised the importance of maintaining the confidence of the profession, not just the public confidence.

243. One respondent highlighted the need for a consistent approach between the IDB and disciplinary panels, suggesting that this may support a legal majority across both types of panels.

244. By contrast, another respondent, a member of the public, strongly supported a lay majority and emphasised that the BSB regulates in the public interest. This respondent cautioned against abandoning a lay majority as that would risk the perception of the profession regulating itself.

BSB Response

245. We are grateful for the range of views provided by stakeholders on this proposal. In light of the overall feedback, we intend to proceed with our proposal to reduce IDB panels to three members with a lay majority – and one barrister member. A three-person panel will promote efficiency in the determination of cases. This is particularly relevant and pressing in light of BSB data showing an increased flow of cases to the IDB, which underscores the need for a more streamlined and sustainable approach to IDB cases.

246. We note the concerns raised about retaining the lay majority in a three-person panel, particularly in relation to the quality of decision-making and the level of legal input. However, we do not consider that there is a need to change from the current composition of IDB panels, which already have a lay majority. At this stage of the process, the lay majority model has operated effectively (as reflected in the report of the independent review of the enforcement function by Fieldfisher LLP) and we do not intend to change it, without a strong evidentiary basis.

247. We do not consider that a three-person panel with a lay majority will undermine the quality of decision-making. These IDB panels can be distinguished from other disciplinary panel proceedings on the basis that they perform different functions. The IDB acts predominantly as a referral body and any sanctions imposed are either administrative to address lower-level breaches or by consent and only where the likely sanction is no more than a fine. Therefore, we do not see a strong need to adopt a legal majority, similar to the Disciplinary Tribunal panel. We also note that this approach, of a three-person panel with a lay majority, will mirror the existing composition of IDB panels considering reviews of Authorisations decisions.

Proposal 29: Changing the requirements for panel chairs

Question 39. Do you agree with our proposal to change the existing requirements for a panel chair to a requirement for a legally qualified chair with at least 15 years' practising experience? Please give the reasons for your response.

248. We received mixed views on the proposal to change the current requirements for a panel chair (to be either a judge or King's Counsel) to a requirement for a legally qualified chair with at least 15 years' practising experience.

249. Respondents were supportive of some aspects of the proposal. One respondent agreed with the preference for using "practising experience" rather than simply counting years since qualification. Another respondent emphasised that recruitment should be focused on competencies and the

quality of experience, rather than the length of practice alone. Further, one respondent agreed with our rationale that the current requirements disproportionately favour self-employed barristers and risks reducing diversity on panels. They noted that women and minority ethnic groups remain underrepresented amongst KCs and the judiciary.

250. Some respondents did not support the proposed length of practising experience. One considered that a 15-year requirement set too high a threshold and risked age discrimination, recommending instead 7 years' relevant experience. One barrister organisation cautioned that moving away from barrister chairs would risk a perception that barristers are no longer being judged by their peers, particularly if the chair requirements could include other legal professionals as they "*are not as immersed in the code or our practices on a daily basis*".

251. Several respondents argued strongly in favour of retaining the current requirement that panel chairs be judges or KCs. They considered that the gravity of sanction (including disbarment) demands significant seniority and experience. They were concerned that a barrister with 15 years' experience may lack the judgment or authority required to chair effectively disciplinary proceedings.

252. Some respondents also highlighted that the KC and judicial appointment processes provide rigorous external vetting and are recognised as the "kitemark of excellence". They felt that this was essential to maintaining the confidence of the profession in panel decision-making.

253. A number of respondents warned that moving away from the judge and KC requirements could undermine the trust in the disciplinary process, particularly among senior practitioners. They emphasised that confidence and respect for the system depends not only on "*suitable qualification, experience and <u>also status</u>".* Several respondents suggested that fairness requires that a senior barrister's professional fate be determined by someone of equal or greater seniority. One argued that for a junior member of the profession to try a senior member would be considered "perverse" by both the profession and the public.

254. A contrasting perspective was provided by a respondent, a member of the public, who questioned the emphasis placed on titles within the profession. They commented that "*to a member of the public from outside the legal professions, the obsequiousness and deference to seniority shown towards KCs or Judges by less senior lawyers, is striking*". This respondent was also concerned that this could marginalise lay panel members as a "*token add-on*".

BSB Response

255. We welcome the range of views provided by respondents on this proposal and, having considered the feedback, we do not intend to change the eligibility requirements for panel chairs at this time. We will therefore retain the current requirement for chairs of disciplinary tribunal panels to be a judge or KC.

256. A number of respondents emphasised the importance of the seniority and status, in addition to suitable qualifications and experience, in order to maintain the confidence of both the profession and the public. We recognise the strength of such views and the concerns raised about potential risks to confidence were the eligibility criteria to be broadened. On balance, we consider that maintaining the existing framework best supports confidence in decision-making and the BTAS system generally, at this time.

257. We also acknowledge the value that senior members of the profession and judges bring to chairing tribunals. While it is the role of the panel as the professional decision-making body to make decisions on the evidence and legal argument of the parties/their representatives, the Chair needs the skills to lead the panel, manage hearings and engage with potentially complex legal argument. Although these skills required to chair are not confined to any particular professional title, we recognise that judicial appointments are an indication that those skills have been demonstrated to a high standard. We therefore accept that judges or KCs are well placed to chair disciplinary proceedings effectively and intend to maintain the current eligibility requirements to ensure we do not diminish the confidence and experience that their involvement provides.

258. We acknowledge concerns raised by stakeholders that retaining the current panel chair requirements may be seen as overly deferential to the profession and may marginalise lay panel members. However, it is not uncommon for disciplinary proceedings to use professional majority panels and we remain confident that BTAS can compose strong and robust panels of judges or KCs, barristers and lay members that assure both the profession and the public interest using a competency framework.

Proposal 30: Panel secretary role

Question 40. Do you agree with our proposal to replace the role of a clerk in disciplinary tribunals with that of a Panel Secretary who will be a BTAS employee?

259. Respondents were broadly supportive of the proposal to replace the clerk role with a new panel secretary role. Stakeholders supported the proposal, in principle, that the panel secretary should be a BTAS employee.

260. However, one respondent sought further clarification on the evidence underpinning the proposal, including the extent to which BTAS staff have covered hearing days, according to BSB data.

261. Concerns were also raised about the potential costs implications of recruiting an additional BTAS employee to perform the panel secretary role. One respondent felt that they could not properly assess the advantage of the proposal until further information about the anticipated costs is provided by the BSB. In particular, they queried whether the costs would ultimately be borne by the profession via increased practising certificate fees.

BSB Response

262. We welcome the feedback from stakeholders and note that respondents were broadly supportive to introduce a new panel secretary. However, we are mindful of the concerns raised in relation to the evidential basis for the proposal and the potential cost implications for the profession.

263. As set out in the consultation, in practice it has become increasingly difficult to source junior barristers to act as clerks, particularly for longer hearings. As a result, BTAS staff have frequently had to step in to ensure that hearings can proceed.

264. In response to the request for further clarification on the data underpinning this proposal, we are able to provide additional information here. In 2023, BTAS staff covered 21% of total hearing days (13 out of 61 hearing days). In 2024, this increased to 33% (62 out of 85 hearing days). In 2025, as at the date of the consultation, BTAS staff covered 82% of hearing days (9 out of 11 hearing days). This data illustrated the increasing operational strain on BTAS under the current regime and support the case for formalising this role.

265. We also acknowledge the concerns raised about the potential costs impact of the proposal, particularly given that a person will specifically be recruited for this role by BTAS. The cost of the role will be covered by BTAS' existing annual budget, which is equally funded by the Inns and the BSB. We will seek to ensure that any additional costs are proportionate and that the impact on the profession, including through practising certificate fees, is kept to a minimum. This reflects BTAS and the BSB's shared commitment of improving the system efficiency, by ultimately reducing delays while balancing costs and resources.

Proposal 31: Panel composition in health proceedings

Question 41. Do you agree with our proposal to change the composition of panels in health proceedings? Please give the reasons for your response.

Which option do you prefer and why? If you prefer neither option, please let us have your views on any alternative formulations that we should consider. Please give the reasons for your response.

266. Respondents were broadly supportive of our proposal to change the composition of panels in health proceedings by reducing panel size to three members. They agreed that, given the unique nature of health proceedings, a smaller panel size would be beneficial as it may reduce stress for barristers dealing with sensitive health matters. One respondent also commented that this approach would improve efficiency, making it more proportionate and cost effective.

267. Views were split regarding the two options for the composition of a three-person health panel.

268. Several respondents supported Option 1, whereby the panel would comprise a legally qualified chair, a barrister and a lay member. They felt this structure would provide an appropriate balance between "*legal oversight and access to specialist medical input, while keeping decision-making accessible and proportionate*".

269. Other respondents preferred Option 2, which proposed a lay chair, a barrister member and a medical member. They saw value in having a medical member directly involved in decision-making as it may offer efficiency and align with the non-disciplinary nature of health proceedings. We also received feedback that this option removes the need to appoint an external medical advisor, which would also save costs.

270. Regardless of their preferred option, respondents consistently emphasised the importance of retaining a legally qualified chair. One of the respondents who was otherwise supportive of Option 2 urged that a legally qualified chair should sit "*in order to retain the confidence of the profession and of the barrister*".

BSB Response

271. We are grateful for the feedback and welcome the broad support for our proposal to reduce the size of panels in health matters. We appreciate respondents engaging with our rationale that a reduced panel size is appropriate and proportionate in health proceedings given their sensitive and less adversarial nature.

272. We also welcome the range of views provided on the options for panel composition set out in the consultation. Having considered the feedback, we have decided to proceed with a slightly adjusted Option 1, which will mean that health panels will comprise of three members, being a chair, a practising barrister and a lay member. We recognise the emphasis from stakeholders that there should be a legally qualified chair to maintain the confidence of the profession. Therefore, consistent with our response to Proposal 29 (above), we have decided to retain the current approach to the requirements for a chair of health panels, which requires a KC chair.

273. As part of this model, we intend to introduce a medical advisor role to support panels. The medical advisor will not be a member of the panel or involved in the decision-making. While we note the concerns raised about potential practical and cost implications associated with this approach, we consider that these can be mitigated. BTAS does not currently have an established pool of medical panel members and recruiting such a pool could be resource intensive.

274. By contrast, under the proposed approach, medical advisors can be appointed on a case-by-case basis, and panels will have the discretion to dispense with the advisor as required. This would be decided by the Chair working with the Panel Secretary. It would also not displace the options of parties introducing their own expert evidence. We consider this to be a more flexible and cost-effective approach, while ensuring that panels have access to medical expertise when needed.

Other issues: Open justice and the principles of transparency and accountability

Proposal 32: Bringing forward the timing of publication of disciplinary cases

Question 42. Do you agree in principle that the point of publication of the fact that disciplinary proceedings are underway should be brought forward? Please give the reasons for your response.

Question 43. If the point of publication is brought forward, do you prefer option 1 or 2 and why? If you do not agree with either option, please explain why. Please give the reasons for your response.

Question 44. What are the circumstances in which you think the rights of a barrister will outweigh the principles of transparency such that publication will not be appropriate?

275. Respondents were broadly supportive of our proposal, in principle, to bring forward the point of publication of charges in disciplinary proceedings. However, views were mixed about which of the options offered were preferable, if the point of publication is brought forward.

276. One respondent, while agreeing with the proposal in principle, raised concerns that where there are significant delays before a hearing takes place, early publication of charges could "*cause disproportionate reputational harm and unnecessary anxiety for the barrister concerned*". On this basis, they supported publication only at a fixed point before the substantive hearing, such as one month prior.

277. Another respondent acknowledged that earlier publication may have disproportionate impacts on barristers in some cases but considered that a single and consistent rule was necessary. Therefore, they supported bringing the publication forward to align with the point at which charges are served on the barrister (Option 1). They viewed this approach as consistent with criminal law and other regulatory regimes, including the SRA, and aligned with the move towards greater transparency in disciplinary proceedings, as supported by the Harman Review. However, one respondent considered comparisons with criminal law to be "*misguided*".

278. Some respondents however favoured publication by BTAS following the setting of case management directions (Option 2). One respondent noted that this approach would allow BTAS and the parties to engage in an initial case management hearing in private and this hearing could be used to resolve any preliminary issues that may be relevant to publication. Another supported this option on the basis that publication would only occur when it is known that the case is going to be taken forward.

279. Two barrister respondents expressed concern about the potential harm to barristers arising from earlier publication. One commented that publication causes stress for witnesses (particularly complainants) and for the barrister and that "*earlier publication will increase the time that the barrister and the witnesses have to endure this discomfort*". Another respondent, while supporting earlier publication, emphasised that the Article 8 right to a private life is essential and will act as an important safety valve.

280. Respondents also raised concerns regarding the publication of sensitive personal data about a barrister. One highlighted the need to strike an appropriate balance "*between the barrister's right to privacy and the public interest*". They suggested that cases involving sensitive personal information, including medical and family information, should be considered on a case-by-case basis. Several others suggested that matters relating to health, personal circumstances or safety would weigh against publication.

281. One respondent commented that any circumstances justifying departure from publication at the point of service of charges should be narrowly drawn and will be grounded in Article 8 rights. They noted the difficulty of predicting the circumstances in which an infringement of Article 8 rights would justify departure from the standard rule on date of publication. Their view was that each case will depend on its own facts and require a balancing exercise.

282. We also recognise that the proposal to bring forward the point of publication may have implications for anonymity applications made by barristers. There is a clear link between earlier publication and the timing and handling of anonymity applications, which connects with the Harman Review recommendation that anonymity orders be dealt with promptly by the Disciplinary Tribunal (Recommendation 21).

283. Specifically, the Harman Review urged BTAS and the BSB to introduce requirements for any anonymity application by a barrister to be made within 14 days, following the decision to charge, and be dealt with swiftly thereafter at an interlocutory hearing. It further suggested that anonymity must only be granted in exceptional circumstances. As one respondent suggested, this approach would align with the proposal to bring forward the point of publication to when charges are served (Option 1).

BSB Response

284. We welcome the general support to the principle of bringing forward the point of publication of charges. We also welcome the range of views offered on the options for the timing of publication and the clear feedback provided on the factors that should be relevant when considering whether a barrister's rights

outweigh the principles of transparency such that publication should not occur. This feedback will assist us in developing a robust and effective approach.

285. Having considered the responses, we will proceed with bringing forward the point of publication. Our preferred approach is for publication to occur by BTAS following the setting of case management directions (Option 2). On balance, we consider that there are several potential issues associated with Option 1 and that Option 2 provides a more appropriate and proportionate approach.

286. Under this approach, we will publish the charge sheet on the basis that there is merit in being open and transparent with this information. We agree with respondents that a key benefit of this option is allowing the parties an opportunity to address and resolve any preliminary issues or applications, including anonymity applications, before publication takes place. In addition, we consider that it will promote greater procedural fairness, by allowing the barrister or the BSB the opportunity to object to publication before it occurs. In our view, the opportunity to raise and determine such objections or applications outweighs the benefits of publication at an earlier stage.

287. We recognise taking this approach may lead to some variation in the timing of publication across cases, as the first case management hearing may be listed at different times in a case depending on the matter. To mitigate this risk, we propose that the revised regulations will prescribe a maximum time limit within which the first case management directions must be made, whether that is with or without an oral hearing. This will help to reduce unnecessary delay and will ensure that publication is not deferred through delaying tactics.

288. While our starting position is that publication should occur in all cases, we consider it necessary to retain a power for BTAS not to require publication in certain cases. In relation to the circumstances that would justify a decision not to publish, we accept the feedback that these should be narrowly drawn and assessed on a case-by-case basis. We consider that non-publication should be reserved for exceptional cases. We intend to develop criteria and grounds for non-publication. We will use the feedback received to develop these criteria, including where publication may have implications for health, safety or other sensitive matters.

289. We also note that the BTAS Publication Policy will need to be updated to ensure that the implementation of this approach is clear, consistent and well supported.

290. In relation to the Harman Review recommendation 21, we note that the proposed timeframe would require barristers to make anonymity applications

within 14 days of being charged. However, there is no corresponding requirement for a Directions Judge or Disciplinary Tribunal to be convened within that period. As a result, there would be no appropriate forum with jurisdiction to determine any application, at that stage.

291. On this basis, we consider it more appropriate for anonymity applications to be raised through the case management questionnaire and dealt with promptly at the first case management hearing. The point of publication will then follow the case management directions or the determination of an anonymity application (if applicable). This approach will ensure that applications are considered promptly by the tribunal at an early stage in the proceedings.

Proposal 33: Public vs private hearings across the enforcement process

Question 45. Do you agree with our approach to holding administrative sanctions and appeals in private? Please give the reasons for your response.

292. The majority of respondents agreed with our proposal to continue to hold administrative sanctions and appeals in private. Respondents supported our rationale for doing so, particularly that administrative sanctions are non-disciplinary in nature, less likely to impact the reputation of the profession or public confidence as they involve less serious breaches and that private proceedings may encourage greater frankness from barristers.

293. One respondent commented that it is important for guidance on determining appropriate sanctions in these cases to be robust. They recommended that the BSB retain records of administrative sanction decisions so that these matters can be taken into account and relied on if further concerns are later raised in relation to a barrister.

294. However, one respondent, a member of the public, strongly opposed the proposal. They expressed concern that matters dealt with by way of administrative sanction are effectively allocated to a separate 'track', compared to the disciplinary process. They considered the administrative sanctions process to be secretive and lacking an open and transparent investigation. The respondent also referred to BSB figures indicating that a high proportion of appeals against administrative sanctions are successful and argued that this undermines public confidence in the effectiveness of the system and the BSB, as the regulator.

BSB Response

295. We are grateful for respondents' feedback on this proposal. While we note the concerns raised about administrative sanctions and appeals being held in private, we consider that the rationale for doing so remains compelling.

296. We understand and accept the feedback regarding the high rate of success when administrative sanctions are appealed, as reflected in the BSB's own data. However, it is important to note that the number of appeals are low. With that in mind, and taking account of the feedback, we accept the importance of making the guidance on determining appropriate administrative sanctions robust and clear. We will ensure that updated guidance is effective for decision-makers and will continue to monitor the operation of the administrative sanctions regime, including appeal outcomes, to ensure it remains fair, proportionate and effective.

Question 46. Do you agree that determinations by consent should continue to be held in private? Please give the reasons for your response.

297. All respondents who answered this question were supportive of the proposal.

BSB Response

298. In light of the positive feedback, we will continue to hold determination by consent proceedings in private.

Question 47. Do you agree that interim suspension hearings should continue to be held in private (unless the barrister requests a public hearing)? Please give the reasons for your response.

299. All respondents who answered this question were supportive of the proposal.

BSB Response

300. In light of the positive feedback, we will continue to hold interim suspension hearings in private, unless the barrister requests a public hearing.

Question 48. Which option do you prefer in relation to case management and interlocutory hearings? If you do not agree with either option, please explain why.

301. Most respondents were supportive of our proposal that the first case management hearing should be held in private, with all subsequent case management hearings and interlocutory applications held in public (Option 1). Respondents recognised that this approach would allow parties the opportunity to resolve sensitive, private or preliminary issues, before the matter enters the public domain.

302. However, one respondent supported holding the entire case management process in public, including initial case management hearings and any

hearings of interlocutory applications (Option 1). This position was consistent with their broader support for increased transparency in the disciplinary process.

BSB Response

303. In light of the feedback received, we will proceed with the approach favoured by most respondents which was for the first case management hearing to be held in private, with all subsequent case management hearings being held in public (subject to any decision of the Tribunal to the contrary). This approach is also consistent with our proposal to bring forward the point of publication to follow the setting of the case management directions (see Proposal 32). As a result, all preliminary case management hearings will be held in private, regardless of whether anonymity is in issue.

304. One potential consequence of this change is an increase in applications for anonymity or private hearings. As set out in the consultation, we intend to mitigate this risk by working with BTAS to establish clear guidance to assist decision-makers considering such applications. This guidance will set out a defined threshold for granting anonymity, ensuring consistency and reducing the risk of an overly cautious (or inconsistent) approach.

305. We also note that the BTAS Publication Policy will need to be updated to support the effective implementation of this approach to ensure it is clear, consistent and understood by all parties.

Question 49. Do you agree that substantive disciplinary tribunal proceedings should remain in public? Please give the reasons for your response.

306. Most respondents were supportive of our proposal for substantive disciplinary tribunal hearings to remain in public to ensure accountability and uphold public confidence. Respondents also highlighted that the disciplinary tribunal needs to have a discretionary power to direct hearings be held in private.

307. The Harman Review highlighted the importance of transparency and recommended that written findings of BTAS should be published within four weeks after the decision by the Tribunal, unless there are good reasons for delay (Recommendation 22). It found that written reports must include findings in relation to all charges, setting out reasons as to why charges were proved or not proved and suggested that the Regulations be amended to reflect this.

BSB Response

308. In light of the positive feedback, substantive disciplinary tribunal hearings will remain in public. We also note and accept the feedback that the disciplinary tribunal needs to retain a discretionary power to allow disciplinary hearings to be held in private, a power that already exists and will be retained.

309. We agree with the Harman Review recommendation that prompt publication of tribunal findings would benefit all those involved in proceedings and promote transparency. The current regulations require the finding and sanction to be published by BTAS within 14 days of the conclusion of tribunal proceedings, with the report (or written reasons) to be published within 'a reasonable time'. We are not minded to prescribe a fixed period for publication of the written reasons as recommended by the Harman Review as we consider that to be an operational matter for BTAS that can be addressed outside the regulations, via the new Panel secretary role working with Tribunal chairs.

310. However, the current approach to publication differs where the charges are dismissed. Under the current Regulations, findings are not published by BTAS where the charges have been dismissed unless the respondent requests publication. We agree with the Harman Review that the requirement to publish should be extended so that outcomes are published in all cases. This is particularly important in light of our proposal to bring forward the point of publication. In our view, where a case has already entered the public domain, it is in the interests of transparency and fairness that the final outcome is also generally published, including if the outcome is that all charges are dismissed.

311. Similarly, the BSB is free to publish the findings and sanction of a Disciplinary Tribunal on its website, if the charges are proved, in accordance with the regulations. However, the BSB is not permitted to publish outcomes of cases where the charges are not proved. Consequently, we intend to amend the regulations to allow publication by the BSB to occur in all cases, including where the charges are proved or not proved.

312. We will consult separately on the wording of the new proposed provisions permitting publication in all cases (unless it is not in the public interest) in our forthcoming second consultation.

Question 50. Do you agree with our approach to holding all fitness to practise hearings in private, subject to the barrister's right to request a public hearing? Please give the reasons for your response.

313. All respondents who answered this question were supportive of the proposal.

BSB Response

314. In light of the positive feedback received, we will continue to hold all fitness to practise hearings in private, subject to the barrister's right to request a public hearing.

Question 51. In what circumstances should the outcome of fitness to practise/health decisions be published?

315. We received helpful feedback from respondents on the circumstances in which outcomes from fitness to practise or health decisions should be published. All respondents were clear that publication should only occur in "*very exceptional*" circumstances. They emphasised the strong need to protect sensitive information and highlighted the significant impact that publication could have on a barrister's right to privacy, particularly regarding health matters.

316. One respondent noted that the current approach is not to publish such decisions but instead to provide information to any person where it is justified in the public interest. They did not consider that sufficient justification had been provided for departing from this established approach.

317. One respondent also recognised that there may be a public interest in making information available where the barrister has caused harm to the public or profession.

BSB Response

318. We welcome the clear direction provided by stakeholders in relation to the publication of decisions from fitness to practise (health) decisions. In light of the feedback, we do not intend to change the current approach of not publishing these decisions.

319. However, we consider it important that members of the public can identify, where relevant, whether a barrister is subject to restrictions or conditions on their practice. To address this, we intend to update our approach to ensure that appropriate information is recorded on the public register to show the restrictions or conditions, without disclosing that a barrister has been subject to health proceedings or disclosing information about a barrister's health condition.

320. In our view, it is not necessary to amend the regulations to achieve this. Instead, this change can be implemented through operational practice and supporting guidance, which will ensure the approach is consistent and respects privacy rights.

Proposal 34: Media and non-party access to documents

Question 52. Do you agree with our proposal not to amend the regulations to address the issue of the media and non-party access to documents, but to work with BTAS in the future to produce guidance on the approach to such issues? Please give the reasons for your response.

321. Most respondents supported our proposal not to amend the regulations to address media and non-party access to documents. Respondents welcomed the development of policies and guidance to clarify the approach instead. One respondent highlighted difficulties with the current framework and the challenges they create for non-parties seeking access to documents.

BSB Response

322. We welcome the positive feedback from respondents in relation to developing guidance on media and non-party access to documents.

323. We note wider reforms that are allowing greater access to court documents by non-parties in other jurisdictions. For example, the 'Access to Public Domain Documents Practice Direction 51ZH (PD 51ZH)' introduced significant changes in the Commercial Court and the Financial List as part of a pilot scheme, effective from 1 January 2026. This new scheme alters the default position in certain courts, requiring the provision of documents (including skeleton arguments, written opening and closing submissions, witness statements and expert reports) to non-parties unless a Filing Modification Order (FMO) is obtained.[5]

324. Similarly, Rule 5.4C of the *Civil Procedure Rules* already allows a person who is not a party to the proceedings, such as the press, to access all statements of case filed at court, without first obtaining the court's permission or notice being given to the parties.[6] This means that non-parties have a default right to access the particulars of claim, the defence, any reply and any further information provided by the parties. However, the rules also allow parties to apply to the court in advance for a pre-emptive order restricting the release of court documents to non-parties.

325. Recent judicial commentary has also underlined the importance of open justice, including in relation to the provision of skeleton arguments. For example, in *R (Metropolitan Police Commissioner) v Police Misconduct Panel* [2025] EWHC 1462 (Admin) at paragraph 5 Mr Justice Fordham commented:

[5] Further information about the Pilot Scheme can be found here.
[6] See Civil Procedure Rules, Rule 5.4C.

"Skeleton arguments relied on at a public hearing should ordinarily be made available to the press, promptly on request at the hearing, in paper or electronically. This promotes open justice, as to both public scrutiny and intelligibility (see Dring v Cape Intermediate Holdings Ltd [2019] UKSC 38 [2020] AC 629 at §§42-43). It promotes contemporaneous reporting and public confidence. Often, it is entirely appropriate for skeleton arguments also to be available to members of the public who wish to understand the hearing. Any person wanting a skeleton argument should identify how this will advance open justice, a threshold often easily cleared by reference to understanding the case. The question is then whether there are countervailing factors which justify withholding the skeleton or part of it. It follows from all of this that advocates should come to a public hearing, prepared promptly to provide their skeleton argument, having thought ahead about any countervailing factor, and bringing any contingently-redacted version."

326. We will reflect on these principles and consider that providing clear and accessible guidance in this area will be beneficial and proportionate. We therefore intend to work with BTAS to develop guidance on handling requests by non-parties to access documents before the Disciplinary Tribunal in the spirit of open justice. We propose to consult on that guidance.

Equality Impact Assessment

Question 53. Do you have any comments or views in relation to our assessment of the equality impacts of our proposals? Where possible, please provide evidence.

327. As set out in the consultation, we carried out preliminary Equality Impact Assessments to identify any early issues that may indicate the need for a different approach. These assessments indicated that the majority of proposals did not raise any significant equality concerns and respondents did not disagree with our preliminary conclusions.

328. One respondent suggested that it would be useful to have the equality impact assessments and proposed mitigations collated, in order to better assess and comment on them overall.

BSB Response

329. We are grateful for the feedback from respondents in relation to our equality assessments and will take this into account as we continue to develop our Equality Impact Assessments.

330. In response to the feedback received, we intend to publish our completed final Equality Impact Assessments as part of the next consultation to ensure they are publicly available, transparent and accessible to stakeholders.

Data Protection Impact Assessment

Question 54. Do you have any comments or views on the potential data protection and privacy issues raised by the proposals? Where possible please provide evidence.

331. We invited feedback from stakeholders to better understand external opinions as to whether any of the proposals being put forward are considered to materially alter or change an individual's rights and freedoms as recognised under current data protection legislation, notably the UK General Data Protection Regulation and the Data Protection Act 2018. Respondents advised that the proposals relating to open justice and non-party access raise significant data protection and privacy considerations.

BSB Response

332. We are grateful for the feedback from respondents and will further consider the data and privacy implications of our proposals relating to open justice and non-party access. We will take this feedback into account as we continue to develop our Data Protection Impact Assessments and invite further comment as part of our next consultation.

Annex A: Summary of proposals

Enforcement Decision Regulations 2019 (Part 5A)

a. **Proposal 1: Communication of detailed, written 'allegations'.** We will communicate detailed, written allegations of potential breaches of the BSB Handbook to the barrister at a later stage than now, once the investigation is more developed.

b. **Proposal 2: Introducing a power to 'add' and/or 'amend' the written allegation.** Decision-makers, including members of staff and the IDB Panels will have the power to add to, or amend, the written allegations, without the matter being remitted back to the barrister for comment, before a decision is made at the conclusion of an investigation. This power will only be exercisable in limited circumstances, where any additions or amendments are aligned with the facts and substance of the original allegations, so there is no unfairness to the barrister.

   We will also introduce a power to add new allegations of a failure to co-operate with the BSB in relation to our enforcement work, provided the barrister has been notified of the risk that such allegations may be added without further notice to them.

c. **Proposal 3: Giving staff the power to refer criminal convictions cases for disciplinary action.** BSB staff decision-making powers will be broadened so that they will have the power to refer all cases of criminal convictions directly for disciplinary action at the conclusion of an investigation.

d. **Proposal 4: Amending the powers to reconsider post-investigation decisions.** Requests for a reconsideration of decisions made by an IDB Panel will first be reviewed by a single member of the IDB (the Chair, Vice-Chair or somebody appointed in their absence) to decide whether the criteria for reconsideration are met.

e. **Proposal 5: Confidentiality of reports and investigations.** We will retain the duty on the BSB to keep reports or allegations assessed or investigated confidential. However, we will amend the exceptions to this duty of confidentiality so that it is clear that we are able to make disclosures for the purpose of furthering an investigation. We also consulted on the publication of charges once the investigation is complete and the case is proceeding to the Tribunal (proposal 32).

The Disciplinary Tribunals Regulations (Part 5B)

f. **Proposal 6: Introducing an overriding objective.** We will introduce an overriding objective to the Disciplinary Tribunals Regulations that cases be dealt with justly and proportionately. We will also introduce a duty on the Disciplinary Tribunal to give effect to that overriding objective when exercising any power under, or interpreting, the regulations. The parties will be required to support the Disciplinary Tribunal to further the overriding objective.

g. **Proposal 7: Introducing a power for BTAS to regulate its own procedure.** We will introduce a power for the Disciplinary Tribunal to regulate its own procedure in relation to the management of individual cases, but strictly in accordance with the Disciplinary Tribunals Regulations and any guidance issued.

h. **Proposal 8: Greater case management by BTAS.** We will introduce greater case management powers and responsibility for BTAS so they are able to set directions more quickly and actively manage proceedings, this will include a power to list case management hearings at any point.

i. **Proposal 9: Clarifying when sanctions come into effect, pending appeal.** We will provide clarity in the Disciplinary Tribunals Regulations that a decision on sanction will not come into effect until any appeal has concluded or the appeal period has passed (if no appeal is filed).

   We will also give the Disciplinary Tribunal greater powers to impose an immediate interim suspension or conditions pending an appeal. In relation to disbarments, we will retain the current approach that requires the Disciplinary Tribunal to impose an immediate suspension or conditions unless it is inappropriate to do so. In relation to all other cases, the Disciplinary Tribunal will be able to make an immediate order where it considers that it is necessary for the protection of the public or is otherwise in the public interest.

j. **Proposal 10: Representations on sanction.** We will amend the Disciplinary Tribunals Regulations to make it clear that both parties will have the right to make representations before the Disciplinary Tribunal on the question of sanction, where charges against the barrister have been found proved.

k. **Proposal 11: Service by email.** We will amend the regulations to allow service by e-mail without the prior consent of the barrister, where the barrister’s e-mail address is already known to the BSB. This is likely to

result in service by e-mail becoming the default method of service in most cases.

l. **Proposal 12: Clarifying the BSB's entitlement to costs.** We will clarify the position that the BSB is entitled to seek to recover the costs we incur in relation to the conduct of disciplinary proceedings from the point a barrister is referred to a Disciplinary Tribunal.

m. **Proposal 13: The BSB's right of appeal.** We will clarify the BSB's right to appeal to the High Court in cases where charges are partially dismissed.

n. **Proposal 14: Presumption of anonymity.** We will introduce a presumption that, by default, any witness making an allegation of a sexual or violent nature will be anonymised in the disciplinary proceedings.

<u>The Interim Suspension and Disqualification Regulations (Part 5C)</u>

o. **Proposal 15: Simplifying the grounds for referral to an interim panel and imposition of interim orders.** We will reduce and simplify the grounds for referring a practising barrister to an interim panel when deciding whether to impose an interim suspension pending the outcome of disciplinary proceedings. The grounds will be reduced from five to two, being where a referral is necessary:
   - to protect the interests of clients (or former or potential clients); or
   - to protect the public or is otherwise in the public interest.

   Once a matter has been referred to an interim panel, the panel will have the power to decide whether an interim suspension (or other order) is necessary on the same two grounds.

p. **Proposal 16: Grounds for the imposition of an immediate interim suspension**. We will broaden the power of the Chair of the IDB to impose an immediate interim suspension (following referral to, and pending consideration by, an interim panel) so that one may be imposed where it is justified having considered the risk to the public or the public interest if one were not imposed.

q. **Proposal 17: Listing process.** We will streamline the listing process for interim suspension cases. All interim suspension cases will be listed for hearing within a specified number of days (e.g. 21) following a referral to an interim panel and reasonable notice of the hearing will be given to the barrister. This approach to listing will also apply to review and appeal hearings.

r. **Proposal 18: Direct referral powers.** Panels considering interim suspension cases will no longer have the power to refer matters before them directly to a Disciplinary Tribunal.

s. **Proposal 19: Right of review.** We will extend the right to request a review of an interim order, which is currently only afforded to the barrister, so that the BSB also has a right to request a review.

We will also amend the regulations to allow both parties to make representations in relation to a review request and to be notified of the outcome of BTAS' decision as to whether to convene a review panel.

t. **Proposal 20: Granting powers to the Disciplinary Tribunal panel to consider requests to review interim orders.** Disciplinary Tribunal panels will be given the power to consider and decide on a request to review an interim order made by an interim panel once the substantive disciplinary hearing of related charges has commenced.

<u>The Fitness to Practise Regulations (Part 5D)</u>

u. **Proposal 21: Rebranding the Fitness to Practise regime and the grounds for referral.** We are proposing to 'rebrand' the fitness to practise regime as the 'health regime' and to make consequential changes to the regulations. We also intend to update the criteria for referring a matter under the health regime by removing the current requirement for "incapacitation" and for the same test to apply to panels deciding whether to impose orders either for the protection of the public or otherwise in the public interest.

v. **Proposal 22: Convening a panel and fixing a hearing date.** We will impose a duty on BTAS, following a referral by the BSB of a barrister to a health panel, to convene a panel, fix a hearing date and notify both parties of the date.

w. **Proposal 23: Introducing a power to accept undertakings prior to a referral to a health panel.** The BSB will have the power to agree conditions which are intended to manage a barrister's health issues in clear and straightforward cases before and instead of a referral being made to a health panel.

x. **Proposal 24: Length of orders.** We will remove the current six-month time limit on suspensions and disqualifications that can be imposed under the regulations, and we seek feedback on whether:

- there should be no upper time limit on any period of suspension or disqualification that may be imposed by a health panel; or
- we should set a maximum time limit of 36 months on all suspensions or disqualifications that may be imposed by a health panel.

y. **Proposal 25: Giving panels the power to impose interim conditions at Preliminary Hearings.** We will give health panels the power, at preliminary meetings, to impose interim conditions to protect the public or in the public interest (in addition to the existing power to impose an interim suspension or disqualification).

z. **Proposal 26: Rights of review and clarifying the review process.** We will simplify the regulations by providing for a single right of review of any restriction or conditions. The right of review may be requested at any time during the period of any restriction or conditions where there has been a significant change in circumstances or some other good reason. Review requests will be submitted to BTAS, who will decide whether to refer them onto the panel. The review process will be streamlined, with the review panel empowered to issue directions as needed.

Other Issues

aa. **Proposal 27: Changes to panel composition.** Whether all Disciplinary Tribunal panels should consist of three members with a *legal* majority or whether the option to refer more serious cases to a five-member panel with a *barrister* majority should be retained.

bb. **Proposal 28: Changes to IDB Panel.** IDB Panels considering enforcement cases will consist of three members with a lay majority.

cc. **Proposal 29: Changing the requirements for panel chairs.** We propose that chairs of Disciplinary Tribunal panels need not be a Judge or King's Counsel but may be an experienced legal practitioner with at least 15 years' practising experience.

dd. **Proposal 30: Panel secretary role.** Disciplinary Tribunals will be supported by a Panel Secretary, rather than a clerk (as now), who will be a BTAS employee.

ee. **Proposal 31: Panel composition in health proceedings.** The composition of panels in health proceedings will consist of either:
- Three panel members supported by a medical advisor; or
- Three panel members, including a medical member.

ff. **Proposal 32: Bringing forward the timing of publication of disciplinary cases.** Our proposal was to bring forward the publication of the fact that disciplinary proceedings are underway by publishing a summary of charges, either:

a. upon the service of charges by the BSB; or

b. following the setting of case management directions by BTAS.

gg. **Proposal 33: Public vs private hearings across the enforcement process.** We have undertaken a review of the current approach to holding hearings in public vs private across the enforcement process. We proposed to change the approach in some of those hearings, to support the principle of transparency.

hh. **Proposal 34: Media and non-party access to documents.** To support further the principle of transparency and accountability, our proposal was to develop policies and guidance which will set out the approach to disclosure and access to documents for non-parties (including the media), without introducing explicit provisions in the regulations.