Annex F - BSB's Response to the second public consultation

The Bar Standard Board's Enforcement Powers and Procedures

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

Second Consultation

BSB Response

9 October 2026

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List of additional annexes (accessed as separate documents):

Annex 1 – New Enforcement Regulations (showing changes made to the draft regulations since the second consultation)

Annex 2 – Tracker of changes to Part 5 of the Handbook

Annex 3 – Draft policy on access to tribunal documents by non-parties

Annex 4 – Updated Equality Impact Assessments

Introduction

1. Between 1 May and 17 July 2026, the Bar Standards Board (**BSB**) held a second public consultation on the BSB's Enforcement Powers and Procedures (*Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook*). The consultation paper can be found here.

2. In our latest consultation, we sought feedback on new draft enforcement regulations to replace Parts 5A to D of the BSB Handbook, together with a small number of additional policy proposals and supporting guidance.

3. This feedback statement summarises the responses received to the BSB's second consultation, our analysis of the responses, the changes we intend to make as a result of the consultation and the next steps.

4. The second consultation followed an earlier consultation, held between July and October 2025, which sought views on 'in principle' proposals for change to the BSB's Enforcement Powers and Procedures (Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook). We published a Feedback Statement following that consultation in April 2026.

5. The draft enforcement regulations sought to give effect to the policy changes that were approved by the BSB's Board following the first consultation.

6. The overall objective of this work is to develop a set of regulations that help improve the efficiency and timeliness of the end-to-end enforcement process, while maintaining quality, respecting the balance of obligations between the BSB and respondent barristers, and enhancing public trust and confidence in the profession and its regulation.

7. As set out in the second 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

8. The recent consultation was wide-ranging, necessarily covering a large number of issues relating to the BSB's enforcement function and reflecting the comprehensive nature of the revisions to the Enforcement Regulations. In redrafting the regulations, we identified a small number of additional proposals for change and sought feedback on those.

9. A summary of these additional proposals is set out below. Each of the proposals was also captured in the draft regulations for stakeholder feedback.

   a. *Proposal 1: Transitional provisions.* The new regulations will come into force on or shortly after 1 February 2027, with a 'clean break' so that the new regulations will apply to all cases from that date, including those already in progress.

   b. *Proposal 2: Publication to occur in all cases, including dismissals.* Publication of Disciplinary Tribunal hearing outcomes will be extended so that outcomes are published in all cases, including where the charges against a barrister have been dismissed.

   c. *Proposal 3: The power to refer and impose immediate interim orders and interim orders on the basis of conditions only.* The powers to refer for and impose an immediate and interim order will be extended to allow such orders to be imposed on the basis of interim conditions, rather than interim suspension or disqualification only.

   d. *Proposal 4: Undertakings subject to review rather than appeal*. The right to request a review of an interim order will be extended so that it also applies in respect of undertakings accepted and imposed by an interim panel.

   e. *Proposal 5: Right of appeal in health matters.* The BSB will be given the right to appeal the decision of a Health Panel, which is currently only available to the barrister. The revised regulations will also require both parties to be notified of the appeal hearing, as well as the right to be heard and be notified of the outcome.

10. The consultation also sought views on the drafting of the new regulations themselves, including whether they properly give effect to the policy positions established through the first consultation and support the overall objectives of a fair, transparent, efficient and effective enforcement process.

11. Given the length and complexity of the regulations, the consultation paper focussed on the most significant and substantive thematic changes, rather than setting out every drafting amendment. The redraft of the regulations sought to implement the following key principles:

    - streamlining the revised regulations to ensure they are better organised, simplified and use plain English;
    - improving the structure and organisation by creating four distinct new sets of regulations which are capable of standing alone;

- clarifying the powers and delegated powers for key decision-makers; and
- changing and updating the terminology.

12. 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 is to improve the efficiency, effectiveness and timeliness of the enforcement process.

13. 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

14. We received fourteen responses to the consultation. Nine responses were from individual barristers, one was from a judge and five were from representative bodies and other organisations. We welcome the range of views provided by respondents as well as the engagement with the detail of these proposals. This is valuable and instructive in assisting the BSB settle the final draft of the new enforcement regulations.

The Harman Review

15. The BSB has welcomed the findings of the Independent Review of Bullying, Harassment and Sexual Harassment at the Bar (the **Harman Review**), which was published during our first consultation, and has begun to implement many of its recommendations. We recognise the importance of ensuring that those who report bullying and harassment have confidence that they will be supported through a robust, transparent and efficient enforcement process, without unnecessary delay.

16. We had already begun work to improve our enforcement processes and a number of the reforms consulted on as part of this project will address or complement recommendations made in the Harman Review. Our consultation provided a further opportunity to take forward some of those recommendations.

17. The following recommendations are particularly relevant to this project and have been reflected in the revised regulations:

- **Recommendation 21**: Anonymity orders must be dealt with promptly by the Tribunal. We have adopted this recommendation in our new approach to dealing with anonymity applications at the case management hearing, which is reflected in the *BSB Disciplinary Tribunals Regulations 2027*. Although agreements are not directly in the regulations themselves, we will also adopt measures to preserve confidentiality of the investigations (as set out in Part 5) – addressing **recommendation 20**.
- **Recommendation 22**: Decisions made by the Tribunal should be published promptly. In response to this recommendation, we developed an additional proposal for change in our second consultation, namely that publication should occur promptly and in all cases, including dismissals. Further detail on this proposal and the BSB response is set out under Proposal 2.

18. We are continuing to consider the wider findings and recommendations of the Harman Review as part of our broader organisational work, which sits outside the scope of this project. We are also 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 effective operation of the enforcement process.

Next steps

19. Following our analysis of the consultation responses, we are finalising the new Enforcement Regulations and preparing our application to the Legal Services Board (**LSB**) for approval of the proposed changes to these "regulatory arrangements".

20. Subject to LSB approval, we intend for the revised Enforcement Regulations to come into effect on or around 1 February 2027, save in two, limited respects (see below for more detail). We will keep the profession and the public informed of progress on this work and will confirm the commencement date for the new regulations once the approval process with the LSB has been finalised.

Responses to individual consultation questions

Proposal 1: Transitional provisions

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

21. We received mixed responses to our proposal to update the commencement and transitional provisions, including the proposal that the revised regulations should apply to all new and ongoing cases from a specified implementation date. Some respondents recognised the practical benefits of having a fixed implementation date. They generally agreed that applying a single regulatory framework to both live and future cases would promote consistency, avoid the complexity of operating two regulatory regimes simultaneously and minimise confusion for barristers and the general public.

22. Other respondents emphasised the importance of providing sufficient notice before the revised regulations come into force and ensuring that clear and accessible information about the changes is made available to the profession.

23. Conversely, some respondents questioned whether the proposed implementation date of 1 February 2027 would provide sufficient time for operational readiness, particularly for BTAS, and suggested that a longer mobilisation period may be required to support recruitment, training and implementation.

24. Some of the respondents who disagreed with this proposal expressed concern that applying the revised regulations to existing cases could be unfair to barristers already subject to ongoing proceedings.

25. The majority of respondents broadly supported our proposal to preserve the current and existing approach to pre-2014 conduct and the applicable standard of proof.

BSB Response

26. Having considered the helpful feedback, we intend to proceed with the implementation of the new enforcement regulations so that they apply to all cases (new and ongoing) from a single date. We believe that applying one regulatory framework is the most effective way to promote consistency, reduce complexity and avoid the practical difficulties associated with operating two regulatory regimes concurrently.

27. However, in response to concerns raised by some respondents, we have carefully considered the impact of applying the revised regulations to barristers with cases already progressing through the disciplinary system when the new regime comes into force.

28. While we remain of the view that the proposed changes will not adversely affect the rights of those individuals, we note the particular concerns about the earlier publication of charges. We have therefore decided that, for cases where case management directions have already been agreed or set before the revised regulations come into force, publication will continue to occur when the convening order is issued, in accordance with the current approach. We consider that this approach can be implemented as a matter of policy, rather than through a specific transitional provision in the regulations. We expect that this approach will be reflected in the BTAS Publication Policy.

29. In addition to the limited exception to the publication provisions set out above, we propose a further, narrow exception to the transitional provisions for cases where a substantive hearing has already been listed, and a convening order issued, on or before 31 January 2027. In these cases, the current regulations will continue to apply. As cases with imminent hearings can proceed under the existing framework, there will be greater certainty for parties who have prepared their cases relying on the existing regulations. It will also avoid Tribunal panel members having to undertake additional preparation, training and support to apply the new regulations at short notice. It will also allow sufficient time for the necessary operational arrangements, training and support to be put in place for the revised regulations to be implemented in practice. As convening orders must be issued at least 14 days before the substantive hearing, we expect only a small number of cases to fall within this exception.

30. Importantly, this is not intended to create a two-tiered approach to the application of the revised regulations. Subject to these limited exceptions, the revised regulations will apply to all cases from the commencement date (i.e. 1 February 2027), including cases already underway. We consider that the benefits of a single commencement date and consistent approach to cases outweigh the risks of operating two separate regulatory regimes and will provide greater clarity for both the profession and the public. We will make sure that this is clearly communicated to affected parties.

31. We also welcome respondents' comments regarding the importance of clear and effective implementation. We will continue to work closely with BTAS, the LSB and other key stakeholders to ensure operational readiness before the revised regulations come into force.

32. Finally, we intend to preserve the current and existing approach to pre-2014 conduct and the standard of proof, in light of the broad support received from respondents.

Proposal 2: Publication to occur in all cases, including dismissals

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

33. Half of the respondents to this question supported our proposal to make public that charges against a barrister have been dismissed. They also agreed that, if the details of charges are to be published at an earlier stage under the new regulations, the outcome should also be published where those proceedings are ultimately dismissed. They considered that this would address an existing gap in the current framework and improve transparency by ensuring that the information published reflects the final outcome in all cases.

34. Some respondents recognised that the proposal was consistent with the recommendations made by the Harman Review. However, they noted that the Harman Review did not consider whether unproven allegations should be subject to the same regime of publication as proven allegations.

35. Although respondents generally supported increasing transparency, many felt that the publication of dismissed cases raised particularly complex issues and that appropriate weight should be given to protecting a barrister's right to privacy. One respondent commented that dismissed cases are distinct and, when balancing competing principles, *"the delicate balance of rights [should swing] towards the protection of privacy rights for barristers who have been subject to allegations that have been dismissed"*.

36. Some respondents identified a number of potential risks associated with the proposal that could result in unfairness for barristers. These included that the publication of a dismissal could draw attention to charges that would otherwise have remained unknown, that members of the public may assume wrongdoing despite the dismissal and that published decisions may contain criticism of a barrister, even where the charges themselves are not proved.

37. Respondents considered that these factors could cause reputational harm for barristers, even where charges are dismissed. One commented that publication of unproven allegations is relatively uncommon outside of healthcare regulation and urged the BSB to give careful consideration to the potential impact on barristers.

38. Several respondents therefore suggested that additional safeguards should accompany the proposal. Some considered that a more nuanced approach should apply to the publication of non-proven charges than to proven charges. For example, one respondent suggested that dismissed charges should remain published for a shorter period than proven findings.

39. Another recommended widening the discretion not to publish or to grant anonymity, together with developing clear guidance on publication and anonymity applications. Several respondents also expressed concern about the publication of full written decisions (including the charges and the reasons why they were not proved) and invited the BSB to give further consideration to the appropriate extent of publication.

40. One respondent considered that publication should not extend to all dismissed cases. Instead, they suggested that publication should be limited to dismissed cases involving allegations of bullying or harassment, reflecting the relevant Harman recommendation.

BSB Response

41. Having considered the feedback, we have decided to continue with our proposal to extend publication so that the outcomes of all disciplinary proceedings, including findings where charges against a barrister have been dismissed, are generally published. This proposal applies only to proceedings before the Disciplinary Tribunal. It does not extend to all reports received by the BSB. For example, reports that do not result in disciplinary proceedings (the vast majority) would fall outside the scope of this provision.

42. We recognise the concerns raised by respondents about fairness to barristers whose charges are ultimately dismissed, including the risk that publication may draw attention to allegations that have not been proved and cause reputational harm. However, where proceedings are already in the public domain, we consider that fairness and transparency requires the published record to accurately reflect the outcome.

43. Publishing the outcome of dismissed cases addresses the current gap in the framework and ensures that the public is aware that the charges have not been proven. In our view, this provides a more complete and transparent account of the proceedings, appropriately balancing the interests of the barrister with the principle of open justice.

44. We have considered one respondent's suggestion that the publication of dismissed cases should be limited to allegations involving bullying and harassment, in order to give effect to the recommendation from the Harman Review. However, we do not consider that publication should depend on the

category of the charge. Publication of outcomes in other types of cases is equally important in promoting transparency and serving the public interest.

45. We acknowledge the concerns regarding the scope of this proposal and the need for appropriate safeguards, in particular that a more nuanced approach should apply to the publication of dismissed cases. The draft new regulations already provide that publication is subject to any direction of the Disciplinary Tribunal that publication (either in whole or in part) would not be in the public interest.

46. We think this provides a sufficient basis for the Disciplinary Tribunal to decide on the issue of publication on a case-by-case basis, balancing an individual barrister's rights against that of the public interest and open justice. It also permits the Disciplinary Tribunal to decide, for example, that an anonymised summary be published instead if appropriate.

47. We agree that barristers should have the opportunity to raise any objections before publication takes place in such cases. The proposed publication timeframes provide an opportunity for parties to review the decision, comment on a draft, and raise any relevant issues before publication occurs. In addition, we are developing guidance to assist decision-makers in considering objections to publication and applications for anonymity, promoting consistency and transparency and fairness in the exercise of these powers.

48. Further, having considered the helpful feedback received raising the issue of the length of publication of dismissed charges, we intend to apply a shorter publication period of one year to dismissed cases.

49. The current approach to publication is that BTAS will publish findings and sanction for at least two years (publication periods are aligned to the level of sanction imposed), although this only applies to proven charges. We do not think cases that are dismissed in their entirety require publication for the same period as cases where there is a finding and sanction and consider that a period of one year is sufficient. We consider that this strikes an appropriate balance between promoting transparency and protecting the interests of barristers, who are the subject of charges that are dismissed.

Proposal 3: The power to refer and impose immediate interim orders and interim orders on the basis of conditions only

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

50. The majority of respondents supported our proposal to extend the powers to impose immediate and interim orders so that such orders may be imposed on the basis of interim conditions alone, rather than only in cases requiring interim suspension or disqualification.

51. Most respondents agreed that the proposal was sensible, appropriate and proportionate. They supported our rationale that there may be cases where an immediate or interim order is necessary to protect the public, but the most proportionate outcome would be to allow the barrister to continue practising subject to conditions, rather than being suspended or disqualified. One respondent observed that this would enable barristers to "*continue to earn a living, to the extent appropriate, whilst also maintaining protection of the public, the interests of clients and other public interests".*

52. While supportive of the proposal, one respondent suggested that written guidance should be developed to assist decision-makers in identifying the circumstances in which interim conditions would be appropriate, in order to promote consistency in decision-making.

53. Those who did not support the proposal expressed concern that it would result in unnecessary, additional regulation of the profession and the risk of punishment before a finding of misconduct. Respondents also reiterated concerns that immediate and interim orders may be imposed before findings have been made and that immediate interim orders may be imposed before a panel has been convened, However, these are both features of the existing interim order regime that we do not propose to change.

BSB Response

54. We welcome the broad support for this proposal. In the light of the responses, we still intend to proceed with this change. In our view, extending the available interim measures to include conditions will provide a more proportionate and flexible regulatory response.

55. We note the concern that the proposal could result in further regulation of the profession. However, we are retaining the requirement that a referral may only be made where it is 'necessary' (e.g. to protect the public or the public interest). In our view, this will provide an important safeguard. Once that threshold has been met, decision-makers will have greater flexibility to impose conditions, where these would be a more proportionate means of protecting the public, clients or public interest, while allowing barristers to continue practising.

56. We also welcome the suggestion that guidance should accompany this proposal to provide greater clarity and consistency in decision-making. We

intend to produce guidance to supplement the new regulations, to assist decision-makers in determining when interim conditions may be appropriate.

Proposal 4: Undertakings subject to review rather than appeal

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

57. The majority of respondents agreed with the proposal to extend the right to request a review of an interim order so that it also applies to undertakings. Respondents generally considered this to be a sensible and proportionate approach that would improve flexibility and consistency within the interim order regime.

58. One respondent considered that undertakings are fundamentally different to other types of interim orders because they are freely given and therefore should not be subject to a generalised right of review. Instead, they suggested that any review mechanism should be incorporated into the terms of the undertaking itself. They also expressed concern that introducing a review mechanism into the regulations could create a right to seek a review of any undertaking, regardless of '*how categorical or unqualified'* it may be.

59. Some respondents also suggested that extending review rights to undertakings would create an unnecessary, additional burden on barristers.

BSB Response

60. We intend to proceed with this proposal. We agree that extending review rights to undertakings will improve the consistency of the interim orders regime by ensuring that the same review mechanism applies across all forms of interim measures.

61. We acknowledge the view that undertakings could include their own review mechanism, where appropriate. However, we consider it preferable for the right to request a review to be set out expressly in the regulations. This will provide greater clarity and consistency in the approach to a review, rather than relying on the drafting of individual undertakings. It will also ensure that the Panel has jurisdiction to review any undertaking that has been accepted.

62. We also consider it appropriate that the panel retains the responsibility for determining whether an undertaking should be confirmed, set aside or varied. Although undertakings are offered voluntarily by the Respondent, they are ultimately accepted by the interim panel on written terms satisfactory to the panel. Accordingly, we do not consider it appropriate that

undertakings be amended solely by agreement by the parties, without any oversight from the panel.

63. We do not consider that this proposal will create an undue burden on either barristers or the system. Although it introduces a new right to seek a review of undertakings, requests will remain subject to the existing threshold for review, namely that there has been a significant change in circumstances or there is some other good reason. Requests must firstly satisfy this threshold, before they will be referred to a panel for determination, ensuring that only appropriate cases will proceed to a full review. This approach will enable the panel to respond proportionately to those cases that genuinely warrant review, reducing the risk of unnecessary delay or inefficiency within the system.

Proposal 5: Right of appeal in health matters

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

64. The majority of respondents supported our proposal to provide both parties with an equal right to appeal a decision of the Health Panel. Those respondents also agreed that both parties should be notified of the appeal hearing, have the right to attend and be notified of the outcome.

65. Respondents who agreed recognised that the proposal addresses an existing gap in the current process and considered that it would improve consistency and fairness by ensuring that both have equivalent rights of appeal. Some respondents also noted that the proposal would align the health regime with the disciplinary regime, where equivalent appeal rights are available to both parties (further detail can be found at regulation 33 of the *BSB Disciplinary Tribunals Regulations 2027*).

66. However, one respondent, a representative body, disagreed with extending the right of appeal to the BSB. They considered that allowing the BSB to appeal decisions of the Health Panel would be inconsistent with the non-disciplinary nature of the health regime and that the panel is best placed to determine the appropriate outcome, based on the medical evidence before it. They suggested that judicial review is the more appropriate avenue for the BSB to challenge a decision, as it is subject to a higher threshold.

BSB Response

67. We are grateful for the feedback from stakeholders in relation to this proposal. We will introduce a right for both parties to appeal a decision of the Health Panel in the new regulations as proposed. We will also proceed with

enabling both parties to be notified of the appeal hearing, to attend the hearing and be notified of the outcome, ensuring consistency and fairness in health matters.

68. We note the concern that the BSB should not have a right to appeal decisions of the Health Panel. However, we consider that there may be exceptional cases where an appeal is necessary to ensure that the public interest is properly protected. For example, this may arise where the BSB considers that the panel has erred in its decision or has misapplied or misunderstood the medical evidence before it. In those circumstances, we consider it appropriate for the BSB, like the barrister, to have the opportunity to challenge the decision through the appeal process.

69. We also note the suggestion that judicial review would provide a sufficient mechanism for challenging Health Panel decisions. However, we consider that providing both parties with the right of appeal under the regulations is a fairer and more proportionate approach.

70. We envisage that the BSB would only exercise this right in a small number of cases. Decisions to appeal will continue to be subject to appropriate internal governance arrangements and will only be taken by authorised decision-makers. This will ensure that the power is exercised on a case-by-case basis and only where it is appropriate and necessary to do so.

Drafting approach and issues for feedback

Question 6. Do you think the new regulations are:

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

Please explain your view.

71. The majority of respondents agreed that, taken as a whole, the regulations are better organised, simplified, expressed using plain English and accord with regulatory best practice.

BSB Response

72. We are grateful for the broadly positive feedback from respondents on the clarity, readability and accessibility of the revised regulations.

73. In responding to this question, some respondents gave specific drafting feedback on the different parts of the regulations. Where such comments are relevant to a specific set of regulations (such as the Interim Orders Regulations), they have been included in our response to the related question below and incorporated, as appropriate, into the regulations as a drafting amendment. We attach, at Annex 1, a marked-up version of the revised regulations showing the changes that we have been made since the version published for consultation, as well as an updated tracker of the changes as compared against the current enforcement regulations (at Annex 2).

74. As we have identified, alongside the regulations, we are also developing and updating various policies and guidance documents, owned by both the BSB and BTAS, which will support implementation of the new regulations.

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

75. We did not receive feedback on all of the proposed revisions to the defined terms in Part 6 of the Handbook. While some respondents were neutral on the proposed revisions, others made observations on specific defined terms in Part 6 of the Handbook.

76. We received feedback in particular on the following definitions:
    - 'Judge' – some respondents considered that the proposed definition was unclear and did not resolve who may constitute a judge under the

regulations or address the existing practical challenges. They suggested that the definition be reframed to provide greater clarity.

- 'Regulatory obligation' – respondents supported replacing 'breach of Handbook' with 'breach of regulatory obligation' as it was a sensible approach to future-proof the regulations. One respondent suggested further consideration of how the definition could accommodate future versions of the Handbook, particularly if the BSB moves away from the current Handbook model.
- 'Professional misconduct' – several respondents raised concerns about the removal of the definition of 'professional misconduct'. In particular, they were concerned that relying on the ordinary meaning of the term, as informed by case law, could broaden the scope of professional misconduct under the regulations.

BSB Response

77. We appreciate respondents engaging with the defined terms in Part 6 of the Handbook and providing detailed feedback on the proposed revisions. In light of the feedback, we have made some drafting amendments to proposed definitions. The changes made since the second consultation are shown in 'track changes' in Annex 1.

78. In particular, we have amended the definition of 'judge' to include a person who holds or has held judicial office in England and Wales. We have also clarified that the definition captures both retired judges and judges sitting in retirement, addressing the existing practical concerns.

79. We have considered the concerns raised about the removal of the definition of 'professional misconduct'. While we have considered the feedback, our view is that relying on the ordinary meaning of the term, as informed by case law, will ensure that the term is interpreted and applied consistently with established case law and does not extend beyond its proper scope. We therefore remain of the view that it is preferable to remove, rather than replace, the definition, in order to address practical difficulties with the existing definition.

Revised Part 5A of the Handbook: Bar Standards Board Enforcement Decision Regulations 2027

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

a) implements our policy positions; and

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

Please explain your view.

80. The majority of respondents agreed that the new regulations provide a suitable framework and are consistent with our overall aims.

81. One respondent noted that while they thought the framework to be broadly sound, they were unclear in what circumstances a referral to another body may be made (under Regulation 7). They suggested that the BSB include examples, akin to explanatory notes, in the regulations to make this clear.

82. We also note that some respondents sought to provide feedback on the policy positions, which were the subject of the BSB's first consultation, rather than focusing on whether the revised regulations accurately and effectively implement those decisions. However, these policy positions had been settled when the BSB's Board approved our response to that consultation and were not revisited.

BSB Response

83. We are reassured that respondents were broadly supportive of the new regulations. In light of the feedback, we have made some drafting amendments to the *Bar Standards Board Enforcement Decision Regulations 2027*. The changes made to the draft regulations since the second consultation are shown in 'track changes' in Annex 1.

84. We note the feedback that it would assist, in practical terms, to include examples of the instances when a referral to another body may be made by the BSB. Consistent with our approach to drafting across the regulations, we have chosen to produce policy and guidance documents, alongside the regulations, to provide operational and practical details for users of the regulations.

85. We note that the BSB's Policy on the 'Assessment of Reports' includes a number of examples setting out the circumstances when a referral may be made under the current regulations. We intend to update this guidance to reflect the revised regulations and, when doing so, we will retain the examples to ensure clarity and transparency on how the referral powers will operate in practice.

Revised 5B of the Handbook: Bar Standards Board Disciplinary Tribunals Regulations 2027

Question 9. Do you think that the proposed Disciplinary Tribunals Regulations as set out in Annex 2 provide a suitable framework that: a) implements our policy positions; and b) accords with our overall objectives of improving the fairness, transparency, efficiency and effectiveness of the end-to-end enforcement process? Please explain your view.

86. The majority of respondents agreed that the revised regulations provide a suitable framework and are consistent with our overall aims.

87. Respondents also provided a number of comments on the detail of the revised regulations, including:
- clarifying the delegation of powers by BTAS and other decision-makers;
- introducing a provision in the regulations in relation to the appropriate use of technology to allow for video hearings;
- removing the requirement for any oral case management hearing to take place within a set period, following the return of the case management questionnaire. One respondent considered that the time limits lacked sufficient flexibility and based on their experience as a directions judge, may be unworkable in practice, given the availability and resources of the parties and decision-makers. While another respondent agreed with the time limits for listing hearings to improve the efficiency of the process, they suggested that the regulations should allow for extensions in complex cases;
- introducing a directions template for decision-makers to reduce the burden on resources;
- strengthening the provisions regarding adjournments so that there is a presumption that the hearing will go ahead, unless the barrister satisfies certain criteria; and
- amending the test for special measures from whether a measure is 'desirable' to facilitate the giving of evidence by a witness or the respondent to include an 'interests of justice' test on the basis that the desirability by a witness should not be the sole, determinative factor for whether special measures are adopted.

BSB Response

88. We are encouraged that respondents were broadly supportive of the new regulations. In light of the feedback, we have made some drafting amendments to the *Bar Standards Board Disciplinary Tribunals Regulations 2027*. The changes made since the second consultation are shown in 'track changes' in Annex 1.

89. Whilst we have sought to incorporate the feedback provided by respondents into the revised regulations (where we agreed), we did not consider it necessary to amend the regulations in response to every point raised. We have addressed below the substantive issues on which we have decided not to make changes. It is important to view these provisions in the context of the enhanced framework, including the role of the directions judge and the new panel secretary.

90. In light of feedback received, we have reconsidered the proposed 21-day time limit for listing any oral case management hearings following the expiry

of the period of the parties to return a case management questionnaire. We recognise that prescribing a set time limit may cause practical and operational difficulties and, as a result, we consider it more appropriate for the regulations to require oral hearings to be held ‘as soon as practicable’, allowing greater flexibility. Instead, the performance and time efficiency of the case management process (and the overall disciplinary process) will be monitored through KPIs and other targets, which we are developing with and are supported by BTAS. The updated drafting is reflected in regulation 7.6 of the *BSB Disciplinary Tribunals Regulations 2027.*

91. In response to feedback about the presumption against adjournments, we agree that there is a need to address delays in the end-to-end enforcement process. However, we do not consider it necessary to strengthen the adjournment provisions further by introducing an explicit presumption against adjournments. In our view, some flexibility is necessary to ensure that adjournments can be granted where appropriate and proportionate, having regard to the circumstances of each case. The wider reforms are intended to reduce delay and improve overall efficiency, whilst striking an appropriate balance between fairness to barristers and the need to improve timeliness. We intend to monitor the impact of the proposed reforms on the efficiency of the disciplinary process to ensure they are effective.

92. We recognise the concern raised about removing the existing standard directions. However, we do not anticipate that the revised approach will place an additional burden on decision makers as it is intended to streamline case management and improve efficiency. To that end, we are developing a case management questionnaire to help parties, BTAS and decision-makers identify and address potential issues at an early stage, and to empower proactive case management. We will also be working with BTAS to develop a bank of standard directions that decision-makers can draw on when setting directions.

93. In our view, these measures will support a more consistent and efficient approach to case management. To address the existing burden on directions judges, the regulations allow for their functions to be delegated, for example to members of the BTAS executive in relation to straight-forward, non-contested and administrative directions, as we have set out in the previous consultations. This will be governed by a BTAS Scheme of Delegations, which will be developed to support implementation of the new regulations and provide appropriate oversight, whilst promoting efficiency in straightforward matters.

94. Finally, we are not persuaded that the ‘interests of justice’ is preferable to the current test of ‘desirability’ for determining whether special measures should be granted. We consider that, on its ordinary reading, the existing test makes clear that measures will not be granted simply to accommodate a witness’

preference where they are not considered appropriate in the circumstances of the case. We will, however, clarify the operation of the test and the approach for special measures in supporting guidance.

95. We have also updated the test that applies when a Respondent objects to the automatic protection afforded to a witness and where the allegation is of a sexual nature and the witness was the alleged victim. The test now focuses on whether the protection would cause the Respondent to suffer 'substantial prejudice in the conduct of their defence', rather than prejudice more generally. In our view, this more closely reflects the purpose of the test and aligns with the approach taken in other jurisdictions.[1] This change is reflected in regulation 7.9 of the *BSB Disciplinary Tribunals Regulations 2027*.

Revised Part 5C of the Handbook: Bar Standards Board Interim Orders and Disqualification Regulations 2027

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

a) implements our policy; and

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

Please explain your view.

96. The majority of respondents agreed that the revised *Interim Orders and Disqualification Regulations* provide a suitable framework and are consistent with our overall aims.

97. Respondents made several observations on how the regulations have implemented our policy positions. Firstly, in relation to the listing process, one respondent suggested that the regulations should require BTAS to consult barristers about their availability before listing a hearing date as there may be genuine availability issues. While they recognised that the barrister's availability is not the sole determinative factor and that there is a need to reduce delay in interim proceedings, they suggested that the regulations could provide for a hearing to be listed within 21 days, save for in exceptional circumstances and following consultation with the barrister. Secondly, in relation to the review process, one respondent suggested that the regulations should clarify when the President can delegate the threshold question to another decision-maker, such as a Panel Chair.

[1] For example, under the *Sexual Offences (Amendment) Act 1992*, s3.

98. We also note that some respondents sought to provide feedback on the policy positions, which were the subject of the BSB's first consultation, namely the threshold for referral and imposition of an interim order. One respondent was concerned that the grounds for an interim order does not specifically include the protection of the profession and they suggested including an additional ground for 'protection of the profession' to serve a clear need, as recognised in the Harman Review, which recommended that the BSB take immediate action in cases involving serious sexual offences (for example, where a serious sexual offence is committed by a member of the Bar against their colleague(s)).

BSB Response

99. We are pleased that respondents were broadly supportive of the new regulations. In light of the feedback, we have made some drafting amendments to the *Bar Standards Board Interim Orders and Disqualification Regulations 2027*. The changes made since the second consultation are shown in 'track changes' in Annex 1.

100. While we note the suggestion to introduce flexibility into the regulations and to consult the barrister prior to listing a hearing, we do not intend to add this further requirement into the regulations. The current wording of the revised regulations is intended to progress cases and reduce delays, which is a particularly important consideration, given the urgency of the interim order jurisdiction. In fairness to the parties, the regulations require advance notice to be given to both the barrister and the BSB of the hearing date and include a power to relist hearings. We have expanded this power to allow a relisted hearing to take place within four weeks of an immediate interim order being imposed or 'as soon as practicable thereafter', which would empower BTAS to relist hearings where a barrister has real availability difficulties.

101. We note that as a matter of procedure, BTAS will routinely contact the parties for their availability where practicable before listing the hearing; although it will be a rare case where the BSB will be unable to attend a date. This process will be reflected in procedural guidance that is being developed by BTAS, in support of the regulations.

102. We note the feedback suggesting that we should clarify the circumstances when the President can delegate the threshold decision on a review to another decision-maker. We consider that this feedback equally applies to other decisions that can be delegated by the President under the regulations, in accordance with Regulation 2.4. Whilst we agree that it would be helpful to clarify the scope of the delegated powers, we do not propose to amend the regulations to achieve this. Instead, BTAS are developing a Scheme of Delegations to provide clear direction on the delegation of powers.

103. We are not persuaded that it is necessary to introduce an additional ground for the referral and imposition of an interim order on the basis of the 'protection of the profession'. In line with the Harman Review, we recognise that there is a need to protect members of the profession, who may be involved in cases of bullying and sexual harassment, as well as clients and members of the public.

104. In our view, however, the existing grounds of public protection and public interest will allow the BSB to pursue an interim order in cases where a member of the profession is the complainant in a serious sexual offence. We therefore do not consider it necessary to introduce an additional ground for the 'protection of the profession'.

105. Further, we consider that introducing the 'protection of the profession' as a ground risks being misinterpreted or misunderstood as placing the interests of barristers above the public interest or as encouraging a culture of protecting the profession from scrutiny, which could undermine public confidence and our regulatory objectives.

Revised Part 5D of the Handbook: Health Panel and Procedure Regulations 2027

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

a) implements our policy positions; and

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

Please explain your view.

106. The majority of respondents agreed that the revised *Health Panel and Procedure Regulations* provide a suitable framework and are consistent with our overall aims.

107. While respondents were generally supportive of the revised regulations, several were concerned about the drafting in relation to the continuation of orders and the imposition of indefinite orders. They suggested that the BSB should revisit these provisions to clarify how the process will operate in practice. One respondent also suggested that the BSB could put adequate safeguards in the regulations themselves to ensure that indefinite orders were only used as a measure of last resort.

BSB Response

108. We are encouraged that respondents were broadly supportive of the new regulations. In light of the feedback, we have made some drafting amendments to the *Bar Standards Board Health Panel and Procedure Regulations 2027*. The changes made since the second consultation are shown in 'track changes' in Annex 1.

109. Having considered the drafting feedback on the 'continuation of restriction or condition', we have made amendments to clarify how the provisions operate in practice and when an indefinite order may be imposed. We have sought to clarify that the provisions for imposing an indefinite order only become available when an individual has been subject to a period or periods of restriction that, when taken together or otherwise total a period of 36 months.

110. We agree with respondents that indefinite orders should only be a measure of last resort, as set out in our consultation, recognising the significant impact such orders may have on barristers. However, we do not consider it necessary to include further safeguards in the regulations themselves. To provide clarity and transparency, we will produce updated guidance for decision-makers, which will ensure that indefinite health orders should only be imposed as a last resort.

111. In relation to the notice and publication of health decisions, we have also updated the regulations to allow the BSB to keep a record of barristers who are subject to an order or undertaking and annotate the BSB's register with the fact of any order or undertaking. We have introduced this provision to ensure that the fact of any order can be made public to ensure that the public is adequately protected, without publishing details which will reveal information about a barrister's health.

112. We also note that some respondents sought to provide feedback on the policy positions, which were the subject of the BSB's first consultation, particularly they raised concerns that the term 'ability to practise' and its implications for those whose 'ability' is restricted because of a disability that can be addressed by reasonable adjustments. As set out in the consultation, we are also conscious that updating the threshold for referral may mean that a greater proportion of barristers could fall within the scope of these regulations, which may disproportionately impact some barristers, including barristers with disabilities under the Equality Act.

113. However, we consider that the risk is appropriately mitigated by the fact that all criteria must be satisfied for a health referral or order to be made. This means that a referral or order may not be imposed where a barrister's ability to practise is impaired alone (e.g. by reason of a disability); the referral or order must also be 'necessary' for the protection of the public or in the public interest and it would not be necessary if a barrister's ability to practise can be addressed through reasonable adjustments. We intend to make this

position clear to decision-makers in guidance, which will supplement the regulations.

114. In our view, this will help avoid referrals being made where a barrister has a health condition that can be appropriately managed with reasonable adjustments or any other condition that does not adversely impact their ability to practise.

Draft guidance on access to tribunal documents by non-parties

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

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

115. Of the respondents who responded, the majority were in favour of the proposed approach to non-party access to Disciplinary Tribunal documents. They supported a presumption in favour of granting access to non-parties, particularly the media, and considered that establishing a clear process for non-parties to access tribunal documents would promote greater transparency and consistency. Some respondents also noted that the approach to tribunal documents by non-parties was consistent with developments in other legal and disciplinary jurisdictions in recent years.

116. Respondents also provided a number of comments on the detail of the proposed guidance, including:

- whether possession of a UK Press Card should be relevant to assessing whether a request is made for a proper journalistic purpose;
- whether the approach should more closely reflect the three-tier approach to access set out in *Dring,*[2] including routine disclosure of documents referred to in public hearings. One respondent felt that introducing a process whereby all documents referred to in a public hearing should routinely be disclosed will emphasise that there is a high bar for non-disclosure of documents and redaction. Conversely, other respondents felt that no other documents beyond the charge sheet should be published, including skeleton arguments and submissions;
- the appropriate timing and practical arrangements for providing documents to non-parties; and

[2] *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38.

- the role of the parties and the Chair in identifying and approving any necessary redactions.

117. There were differing views on the practical implications of requiring parties to prepare and redact documents for non-parties access. One respondent emphasised that it should not be permissible for the parties to agree the redactions and, instead, considered that all redactions should be approved by the relevant decision-maker, in order to promote consistency and ensure transparency. Another respondent felt that it was unrealistic to expect parties to bring additional copies of materials for observers and were concerned that process for providing tribunal documents and agreeing redactions may create an unnecessary burden on the system.

BSB Response

118. We welcome the detailed feedback provided by respondents on the draft policy for non-party access to tribunal documents. We are also grateful to respondents for highlighting for our consideration some key case law on these issues. Having carefully considered this, where we feel it to be appropriate, we have made amendments to reflect feedback. The updated version of the BTAS policy reflecting changes made since the second consultation is included at Annex 3.

119. We also address some of the substantive issues raised by respondents below.

120. We have considered the suggestion that we adopt a three-tier approach, consistent with the approach in *Dring*, under which all documents referred to in a public hearing should be routinely disclosed. However, we have decided to retain a two-tier approach, under which documents falling outside those routinely published will be available on request and subject to approval.

121. In our view, it would not be proportionate to require the routine disclosure of all documents referred to in public hearings. This would significantly widen the range of documents subject to automatic disclosure and would increase the administrative and resource burden on the parties and Tribunal, particularly where such documents contain confidential or sensitive information and may require consideration of redactions. Instead, we consider that these issues are more appropriately managed through a request-based process, where the relevant decision-maker can effectively manage the risk of disclosure.

122. While we recognise that our approach places the onus on non-parties to make a request to access tribunal documents if they fall outside the categories of documents that are routinely published under the policy (even if they are referred to in a public hearing), the presumption in favour of

access will still apply to these documents where a request can demonstrate why providing access furthers the principle of open justice. We consider that this strikes an appropriate balance between facilitating access to information and avoiding the unnecessary disclosure of documents, where it is not appropriate. In our view, this approach remains consistent with the relevant case law.

123. In developing and refining the Policy on access to tribunal documents by non-parties we have had regard to leading and recent cases on open justice in legal and regulatory proceedings.[3] In particular, our approach under the policy does not limit disclosure to the charge sheet as it creates a presumption for publication of skeleton arguments and written submissions. We have also drawn upon the principle that open justice does not entitle observers to access all material informing judicial decision-making. Instead, access to documents must be justified by a demonstrable application of the open justice principle, not by 'curiosity, research, education, or personal interest'.[4] Further, in relation to anonymity applications, the case law supports that in regulatory proceedings anonymity will be very rare and stresses the weight to be given to the principles of open justice.[5]

124. We have also considered the practical arrangements for providing documents to non-parties. Although not required, we do not agree with feedback that parties should not be expected to bring copies of relevant documents, such as skeleton arguments, to the hearing. We consider that the BSB and respondents should be sufficiently resourced to be able provide a reasonable number of copies for non-parties, consistent with practice in other courts and tribunals,[6] including the SDT.

125. While we recognise that the preparation of documents and redactions may create an additional administrative burden, we consider this to be appropriate and parties are encouraged to adopt practical measures that may limit this burden (such as including confidential information in an annex).

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[3] *Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38; Linda Lu v Solicitors Regulation Authority [2022] EWHC 1729 (Admin); Solicitors Regulation Authority v Spector [2016] EWHC 37 (Admin).*
[4] *Cowles v Gardner & Ors* [2026] EWCA Civ 640.
[5] *Nursing and Midwifery Council v Pestano* [2026] EWHC 1412 (Admin); *Phillips v Nursing and Midwifery Council* [2025] EWHC 2993 (Admin); *MC v A Local Health Board* [2025] EWCA Civ 1126.
[6] Recent judicial commentary has underlined the importance of making skeleton arguments available on request, promptly at the hearing, either in paper or electronically, see the comments of Fordham J in *R (Metropolitan Police Commissioner) v Police Misconduct Panel* [2025] EWHC 1462 (Admin).

Equality Impact Assessment

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

126. As part of the second consultation paper, we sought feedback on the Equality Impact Assessments (EIAs) for the proposals. Our assessments did not identify any significant equality concerns from the proposals and, similarly, the responses to the consultation did not identify any material impacts.

127. While respondents largely agreed with our assessment of the equality impacts for our proposals, several raised some specific points for our consideration.

BSB Response

128. We are grateful for the feedback from respondents in relation to our equality assessments and have taken this into account in finalising our assessments.

129. In response to the feedback received, we have updated the EIAs for the proposals relating to allegations, powers to reconsider post investigative decisions, costs, service by email and the interim order listing process. The updated EIAs are included at Annex 4.

130. As set out in the updated EIAs, we do not consider that the issues raised by respondents required amendments to the regulations. Instead, we consider that they can be adequately and appropriately addressed through other means, including supporting guidance.

131. While we have not identified any significant equality concerns directly arising from the proposals, we recognise that individuals with certain protected characteristics are disproportionately represented in the BSB's disciplinary processes. We remain committed to ensuring that the new regulations and processes do not exacerbate these disparities. To support this, we will monitor, evaluate and report on the equality impacts of the changes, including any unintended consequences, during and following implementation of the new regulations.

Data Protection Impact Assessment

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

132. We invited feedback on whether any of the proposed changes to the Enforcement Regulations could materially affect individuals' rights and freedoms under data protection legislation, including the UK General Data Protection Regulation and the Data Protection Act 2018.

133. One respondent suggested that the Data Protection Assessments (DPIAs) should be made available as part of the consultation.

134. Another respondent considered that, although the proposals have potential data protection and privacy implications for individuals, this should not be used 'as a reason to dilute open justice'. However, they highlighted the need to ensure that the publication and disclosure framework is supported by clear, proportionate and lawful safeguards, particularly in relation to the data protection and privacy implications of these processes.

BSB Response

135. We are grateful for the feedback received on the data protection and privacy implications of our proposals, particularly those relating to publication and disclosure.

136. We have taken this into account in developing our DPIAs and have completed assessments of the proposals relating to confidentiality exceptions and publication. The assessments identify the relevant risks and the measures available to the BSB to mitigate them.

137. We have not identified any significant data protection arising from the proposals that would require amendments to the regulations and the consultation responses did not identify any material impacts that would alter our assessments.

138. In response to the feedback received, we will make the completed DPIAs available upon request to ensure that they are publicly available and accessible to stakeholders.