

Annex H - current draft versions of policies and guidance documents

BTAS Policy on access to tribunal documents by non-parties

Introduction

1. This policy sets out BTAS' approach to providing access to non-parties (that is, any person who is not the BSB or the respondent barrister) to documents that relate to Disciplinary Tribunal proceedings.
2. The policy provides for the automatic publication of certain categories of documents served or filed during proceedings (see 'Publication of Public Domain Documents' below) and the handling of requests made by non-parties, including members of the public and the press, for other documents (see 'Applications for disclosure of other documents' below).
3. This Policy is separate and additional to BTAS' Publication Policy and the publication requirements set out in the BSB Disciplinary Tribunals Regulations 2027. In accordance with those regulations and BTAS' Publication Policy, certain other documents relating to Disciplinary Tribunal proceedings will be routinely published, including the charge sheet and the report of finding and sanction, but are not covered by this Policy.

Principles of Open Justice

4. Open justice is a common law principle that requires justice to be administered in public. It involves the following key elements:
 - Proceedings must be held in public;
 - Evidence must be communicated publicly; and
 - Fair, accurate and contemporaneous media reporting of proceedings should not be restricted, unless strictly necessary.
5. BTAS aims to act within the spirit of open justice, particularly having regard to the regulatory objectives in section 1 of the Legal Services Act 2007 (including protecting and promoting the public interest and improving access to justice), as well as the need for regulatory activities to be transparent under s28 Legal Services Act 2007.
6. Access to documents is a key part of open justice as it ensures that the information communicated to the Tribunal by the parties is available to the public. Providing access enables members of the public and the press, who are not party to the proceedings, to understand the issues in a case and the conclusions reached. In many cases, this understanding cannot be properly or reliably

achieved without access to some of the written material placed before the Tribunal. This enhances public confidence and understanding of the justice system, which supports better quality of decision-making and the proper administration of justice. It also builds trust with the profession as to the conduct and outcome of cases.

7. However, the principle of open justice is not absolute. Limitations may be required where unrestricted transparency would risk undermining the interests of justice or cause harm or prejudice to individuals or disrupt efficient conduct of a case. Such limitations may arise, for example, where it is necessary to protect vulnerable individuals, preserve confidentiality or safeguard other legitimate interests. However, personal or reputational embarrassment of the parties is not a reason to justify any limitation.

Open justice and BTAS disciplinary tribunal proceedings

8. While this policy establishes a framework for the application of the principle of open justice, the Disciplinary Tribunal retains the discretion to determine how that principle should be applied, having regard to the circumstances of any particular case.
9. In applying this policy, the Disciplinary Tribunal will routinely consider the interests of the public and the press, including the importance of freedom of expression. This includes, for example, decisions concerning anonymity or applications for a hearing to be in private. In all cases, the Tribunal will have regard to the rights of individuals, including the individual right to privacy under Article 8 of the European Convention on Human Rights and under data protection. Any departure from the principle of open justice must be justified and proportionate in the circumstances.
10. The Disciplinary Tribunal will also consider what steps, if any, are necessary to enable the public and the press to follow, understand and report proceedings effectively. This consideration applies irrespective of whether a member of the public or the press is observing the case, either in person or remotely, or at all. Remote observers must be able to access the same documents that would be available if attending the hearing in-person.
11. Certain documents will therefore be routinely published and made available to non-parties (see '*Publication of Public Domain Documents*' below). Non-parties may request access to other documents, which are not subject to automatic publication, in accordance with this Policy. Before making a request, non-parties should consider whether the document is already publicly available through other means.

Publication of Public Domain Documents

12. In addition to the information and documents published in accordance with the BTAS Publication Policy, during the course of Disciplinary Tribunal proceedings, certain other categories of documents will normally be routinely published in accordance with the timing and method set out below, subject to any objections and unless the Disciplinary Tribunal decides otherwise. For the purposes of this Policy, the documents referred to in paragraph 16 below are Public Domain Documents and their publication will, unless the Disciplinary Tribunal decides otherwise, occur without the need for a non-party (including the press) to make a request.
13. The purpose of publishing these documents is to ensure that the public and the press are able to follow proceedings as they take place and understand the nature of the case and the key issues of fact and law.
14. The expectation of routine publication only applies to Public Domain Documents (specified at paragraph 16 below) and is subject to the limitations set out in this policy. It applies to all substantive hearings which take place in public before the Disciplinary Tribunal after 1 February 2027.

Categories of Public Domain Documents to be published

15. The following documents are Public Domain Documents and will normally be published in accordance with the timing, method and format specified below.

Public Domain Document	Timing of publication	Method of publication
Skeleton arguments and any written submissions made in substantive hearings held in public	At the commencement of the substantive hearing in public or during the hearing day at which the skeleton argument or written submission, is relied upon and to be removed seven days after the end of the substantive hearing.	On the BTAS website. .

16. If a Public Domain Document refers to another document, that other document will not be published unless it also falls within the categories of Public Domain Documents specified above.
17. The classes of Public Domain Documents that are subject to this publication process may be reviewed and amended from time to time.

Non-party access to hard copies

18. Non-parties attending the disciplinary hearing in person may want hard copies of the skeleton arguments and written submissions to facilitate immediate access to published documents. Parties should therefore consider bringing additional copies to the hearing.

Exceptions to the publication of Public Domain Documents

19. For the avoidance of doubt, the publication of Public Domain Documents does not apply where a hearing is conducted in private.

20. The publication of Public Domain Documents may also be restricted, for example where disclosure would reveal:

- confidential information;
- legally privileged information;
- sensitive personal information;
- other private and materially prejudicial information; or
- the identity of persons otherwise protected by law, including by operation of section 1 of the [Sexual Offences \(Amendment\) Act 1992](#), the [Children and Young Persons Act 1933](#) and the [Youth Justice and Criminal Evidence Act 1999](#).

21. Where the Disciplinary Tribunal has ordered that the publication of Public Domain Documents should be restricted, or the identity of a person should not be disclosed, or anonymisation is otherwise required under the Regulations or by law, any document released under this Policy must comply with such orders or restrictions.

22. The publication of Public Domain Documents under this Policy also does not override any anonymity orders or impact the Disciplinary Tribunal's power to make such orders in a case.

23. In appropriate cases, such concerns may be addressed through redaction (see '[Redacted Publication](#)' below).

24. In addition to restrictions on publication, the Disciplinary Tribunal may make any other order in relation to a document that it would otherwise be able to make and any obligation, right or permission in this Policy is subject to any such order.

Objections to publication

25. Any party may object to the publication of a Public Domain Document. An objection should be made prior to the commencement of the hearing or as soon as reasonably practicable thereafter.
26. Although a formal application is not required, an objection should normally be made in writing to BTAS and on notice to the other parties. Objections made by other methods may also be considered, as appropriate and in accordance with the Equality Act 2010 and BTAS' Reasonable Adjustments Policy.
27. Written objections should refer to the following:
- the document(s) to which the objection relates;
 - the reasons why publication should not occur (in part or full) or should be delayed;
 - any evidence in support; and
 - any harm that would be caused by publication.
28. The party making the objection must bear in mind (and, where necessary, address) the tests set out in the authorities on derogations from open justice.

Determination of objections to the publication of documents

29. Any objection to the publication of Public Domain Documents will be determined by the Chair of the Disciplinary Tribunal, or a Directions Judge, as appropriate, which may be on the papers or at a hearing. For ease, we will refer to 'the Chair' as the decision-maker in this Policy but these decisions can also be taken by a Directions Judge or a Disciplinary Tribunal panel, where the Chair is not available or as appropriate.
30. The presumption is that Public Domain Documents should be published, to provide public access.
31. When determining objections to the publication of Public Domain Documents, the Chair must consider any submissions from the parties and balance the open justice principle against the potential risk of harm or prejudice to individuals or the administration of justice, based on the circumstances of the case.
32. In determining an objection, the Chair may:
- a. Direct that the Public Domain Document(s) should not be published;
 - b. Permit publication of the Public Domain Document(s) subject to conditions, including redaction or anonymisation or delay;

- c. Reject the objection so that publication of the Public Domain Documents takes place; or
- d. Make such other orders as they see fit.

33. Any decision not to publish a Public Domain Document will be noted on the BTAS website.

Redacted publication

34. When determining objections, the Chair may decide that any risk of harm or prejudice may be addressed by appropriate redactions.

35. However, redactions in themselves are likely to amount to a derogation from the principle of open justice. Therefore, only redactions that are strictly necessary should be applied to the documents.

36. Examples of redactions may include removing references to:

- matters relating to Legal Professional Privilege;
- individual's personal or identifiable details, such as home addresses;
- information relating to minors;
- commercially sensitive and irrelevant financial matters;
- health information;
- information identifying bystanders or third parties;
- as required by law (e.g. under section 1 of the [Sexual Offences \(Amendment\) Act 1992](#) or by Court Order; and
- other confidential matters which do not touch directly upon the substantive issues to be decided.

37. Redactions should not typically be permitted simply because they are sought or agreed by the parties, or to avoid reputational risk or embarrassment, although consideration may be given to the impact that reputation may have on an individual's wellbeing and/or circumstances if the unredacted material was to be published.

38. Where redactions are necessary, the parties will be expected to propose and agree appropriate redactions. The Chair will then confirm or vary the redactions to ensure they are necessary and proportionate.

Deferral of publication

39. In certain circumstances, the Chair may defer publication of a Public Domain Document that would otherwise be published in accordance with this Policy.

40. When deciding whether publication should be deferred, the Chair may have regard to the following factors:
- whether it is appropriate to defer while an objection is under consideration;
 - the potential risk of harm or prejudice caused to individuals or the proceedings if immediate publication was to occur.
41. Where publication is deferred, the Chair will determine when the Public Domain Document should be published and for how long. Publication of Public Domain Documents should not be deferred to a later stage on the sole basis that it would be more convenient for the parties or the Tribunal.

Applications for disclosure of other documents

42. Consistent with open justice, BTAS aims to make as much information about its public hearings publicly available as possible. Open justice and disclosure of case documents is a means of ensuring the best quality of justice and securing the confidence of the public.
43. Case documents that do not fall within the scope of the Public Domain Documents set out in paragraph 16 above may still be disclosed to non-parties upon request. However, the disclosure of such documents to non-parties is not automatic and will be determined on a case-by-case basis.

Requests by non-parties

44. A non-party seeking access to other case documents may make a written request to BTAS.
45. While no formal application form is required, the written request should include, where possible:
- details of the case that the request relates to;
 - the document or category of documents sought;
 - details of the requestor and proof of identity and, if a member of the press, proof that they are a member of the press (e.g. UK press card);
 - the purpose and reasons for the request; and
 - how the request advances the principle of open justice.

46. Applications made by other methods may also be considered, as appropriate and in accordance with the Equality Act 2010 and BTAS' Reasonable Adjustments Policy.

Determination of requests

47. Requests for disclosure under this section will be considered by the Chair (or a Directions Judge as per paragraph 29). The request may be determined on the papers or following a hearing.
48. Before reaching a decision, the Chair will invite and consider the views of the parties in relation to the request.
49. The Chair may:
- a. Grant the request;
 - b. Grant the request in part or subject to conditions, including redaction or anonymisation or delay;
 - c. Refuse the request;
 - d. Make such other orders as they see fit.
50. When determining a request for disclosure made by non-parties, the Chair will need to exercise their discretion based on the facts of the case and an assessment of proportionality. Each request should be considered on its merits, balancing the principle of open justice, on the one hand, against any risk of harm or prejudice that may arise from disclosure.
51. The decision-maker should take into account the following:
- the nature and reason for the request;
 - the public interest in disclosure;
 - the risk of harm or prejudice that disclosure may cause to the administration of justice or the legitimate interests of individuals; and
 - any other relevant factor.
52. In furtherance of the open justice principle, where documents have been placed in the public domain as before the Tribunal and referred to during a public hearing, the presumption should be that they are available for public access.
53. There is an additional presumption in favour of granting media requests for disclosure of material referenced in public proceedings, unless there is a compelling reason against it. This presumption applies where the applicant is a bona fide journalist (e.g. by producing a UK Press Card) and the request is made for proper journalistic purposes.
54. However, the presumption in favour of granting media access to documents does not mean that disclosure should take place by default. Requests for disclosure made by the press will need to be considered in each case and may be refused where there are compelling and countervailing reasons.

55. Any determination made by the Chair in relation to disclosure to non-parties will be published on the BTAS website.
56. Where a request is refused, reasons will be provided. It should be noted that reasons will only be provided to the extent that they do not undermine the refusal to disclose and reasons may be redacted, as necessary.

Method of disclosure for other documents

57. While the Chair will have the overall responsibility for determining whether documents should be disclosed, BTAS will be responsible for providing any documents which are approved for disclosure directly to the requesting non-party. Unlike Public Domain Documents, documents disclosed following a request by a non-party will not be published on the BTAS website.
58. Where redactions are required, the parties should agree and make the redactions, in accordance with any directions given by the Chair. Once the Chair is satisfied with the redactions, BTAS will provide the redacted documents to the requesting non-party.

Limitations and restrictions on non-party access to documents

59. As above, requests made by non-parties for access to documents may be subject to the same limitations and restrictions that apply to the publication of Public Domain Documents. Please refer to the sections on 'Redacted Publication' and 'Deferral of publication' above for further detail on how these limitations may operate.

Preliminary, directions or interlocutory hearings

60. This part of the policy also applies to preliminary, directions and interlocutory hearings held in public, provided that the hearing determines substantive or otherwise determinative issues in the case. Requests will generally be determined by the Directions Judge with conduct of the hearing, unless unavailable.

3. Process and Costs of accessing documents

Appeal

61. There is no right of appeal by a party or non-party against any decision made under this policy.

Fees

62. BTAS aims to minimise barriers to access and promote public engagement so access to documents is generally free of charge when shared electronically.

63. For physical copies of documents, BTAS may charge a small fee to cover copying and printing costs.

Fee Waivers

64. Physical copies of documents may be supplied free of charge to individuals who cannot access them electronically or afford to pay the copying and printing fees.

65. Requests for fee waivers should be submitted to BTAS when making a request for a document under this policy. Where possible, any fee waiver request should include information and evidence to address financial hardship and why electronic access is not practicable.

Review of the Policy

66. The President may review this policy from time to time, in consultation with BSB and others as appropriate, to ensure that it continues to operate effectively and appropriately balances the principles of open justice, transparency, accountability and fairness.

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REGULATING BARRISTERS

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Purpose

1. This policy sets out the BSB's approach to the publication of information relating to enforcement proceedings conducted in accordance with the BSB Enforcement Regulations.
2. The policy applies to the publication of information by the BSB in relation to all categories of enforcement proceedings, including disciplinary proceedings before a Disciplinary Tribunal, interim order proceedings and, where appropriate, the health procedure.
3. The term "publication" in the context of this policy means the extent to which the BSB puts information about enforcement proceedings into the public domain, either via our website, the Bar Register or on request.
4. Nothing in this document impacts the separate publication policies of BTAS, including the BTAS Publication Policy and the Policy on Access to Tribunal Documents by Non-Parties (which can be found on the BTAS website).
5. While the BSB regulates a number of bodies and entities under the Enforcement Regulations, we refer to 'barrister' throughout the document, for ease.

Principles of Transparency

6. The BSB is committed to operating, as appropriate, transparently to protect and promote the public interest, the interests of consumers and to promote and maintain adherence to the professional principles, in accordance with the regulatory objectives under section 1 of the Legal Services Act 2007. This is also consistent with the BSB's duty, under section 28 of the Legal Services Act, to have regard to the principles of transparency and accountability in its regulatory activities.
7. The publication of information relating to enforcement proceedings serves a number of important purposes, including:
 - promoting public confidence in the regulation of barristers;
 - promoting adherence by those we regulate to our regulatory arrangements;
 - providing a credible deterrence to non-compliance and preventing further breaches; and
 - ensuring that regulatory decisions and outcomes are known and understood.

Confidentiality of reports and allegations

8. Under regulation 19.1 of the BSB Enforcement Decision Regulations 2027, the BSB must keep reports and allegations assessed or investigated confidential. This means that the BSB must not disclose the fact that a report exists, details of the report or its treatment as an allegation or otherwise, unless specified under the Enforcement Regulations or as required by law.
9. Pursuant to regulation 19.2 of the BSB Enforcement Decision Regulations 2027, publication may be made for the purpose of publicising any forthcoming public hearing under the BSB Disciplinary Tribunals Regulations 2027 and/or where the BSB considers it is in the public interest to do so. The publication of any public hearing will complement the approach of BTAS, under its Publication Policy.
10. Information about ongoing investigations and their outcome will therefore not generally be published before the stage of disciplinary action, unless publication occurs in accordance with the Interim Orders Regulations 2027 or where the BSB determines that it is in the public interest.
11. The following sections set out what information the BSB will generally publish in relation to different stages of the enforcement and disciplinary process.

Determination by consent (DBC)

12. The 'Determination by Consent' process is a paper-based procedure carried out by an Independent Decision-Making Panel as an alternative to a referral of a case to a Disciplinary Tribunal. It is still a form of disciplinary action and involves the determination of charges of professional misconduct. However, it is reserved for cases where there is no dispute of fact and where the likely sanction would be lower than a term of suspension or disbarment. It is consensual and the process itself is conducted in private.
13. Under the Enforcement Decision Regulations 2027, the BSB must publish any finding and sanction and a report of the decision resulting from the DBC procedure. Publication will occur within 14 days of the date on which the respondent barrister accepts the decision, unless, on an application by the barrister, an Independent Decision-Making Panel directs otherwise. While this is a finding of professional misconduct, it is important to note that BTAS has no responsibility for publishing findings under the DBC procedure, responsibility for which lies entirely with the BSB.
14. The DBC report will include:
 - a) the name of the barrister subject to the finding of professional misconduct;
 - b) the details of the charge(s) or disqualification application(s) that were found proved; and
 - c) the sanction imposed.

15. The BSB will not publish any finding or report of the decision resulting from the DBC procedure where all charges are dismissed during the DBC procedure, unless the relevant person charged so requests.

Interim order proceedings

16. The Interim Orders Regulations 2027 allows the BSB to take prompt action to address a risk in relation to a practising barrister pending consideration of a case by a Disciplinary Tribunal. Interim order proceedings are generally conducted in private.
17. The BSB will not generally publish details of a referral to an interim panel or details of the interim panel hearing, unless it is in the public interest to do so.
18. However, where an immediate interim order is imposed by the Chair of the Independent Decision-Making Body, the BSB will publish that order on its website, in accordance with regulation 6.4 of the BSB Interim Orders Regulations 2027. The BSB will also annotate its Register to include any immediate interim order or disqualification order, as appropriate. Following the imposition of an immediate interim order, if the BSB accepts a written undertaking and withdraws the referral to the interim panel, the BSB may publish the fact of the undertaking on its website and its register for as long as it remains in effect.
19. Where an interim order or undertaking is imposed by an interim panel, review panel or appeal panel, the BSB will publish the fact of that order or undertaking on its website, for as long as it remains in effect. In addition, the BSB will annotate the Barrister's Register to reflect any interim orders or undertakings that are in place.
20. Where an interim order or undertaking ceases to have effect, the BSB will update its website and register accordingly.

Disciplinary proceedings

Publication at the case management stage

21. Following the setting of case management directions, BTAS will normally publish details of the case under regulation 7.10 of the BSB Disciplinary Tribunals Regulations 2027. This will ordinarily include the Respondent's identity and a summary of the charge(s) or disqualification application(s).
22. The purpose of publication at this stage is to ensure that members of the public and profession are aware that proceedings are underway, promoting

transparency and to support accurate reporting and encourage other witnesses in certain cases.

23. Where BTAS has granted an anonymity application, this does not mean that publication will not occur. Instead, in the interests of open justice, BTAS may publish anonymised details of the case, including an anonymised summary of the charge(s) or disqualification application(s).

Publication of disciplinary findings and sanctions

24. Following the conclusion of disciplinary proceedings, the BSB will normally make the following information available to the public where charges of professional misconduct are found proved, unless a Disciplinary Tribunal has ordered otherwise:

- the name of the barrister subject to the finding;
- the details of the charges that were found proved;
- the sanction imposed; and
- the status of the finding, i.e. whether it is open to, or the subject of, appeal or final.

25. The BSB will usually make this information available to the public by annotating the relevant record on the barrister register. The BSB does not normally publish reports of the Disciplinary Tribunal's decision, although there is a power to do so under regulation 32.2. These are published separately by BTAS, in accordance with its own publication obligations.

Health procedure

26. Meetings before any Health Panel or Appeal Panel are confidential in nature and are conducted in private, unless the barrister requests that the proceedings be held in public. As such, the BSB does not generally publish decisions made by a Health Panel or Appeal Panel.

27. However, it is important that members of the public are able to identify, where relevant to the public, whether a barrister is subject to a restriction(s) or condition(s) on their practice. As such, where a Health Panel has imposed a restriction(s) or condition(s) on an individual's practice of which the public should be aware, the BSB will reflect this as appropriate by the inclusion of relevant information on the public register.

28. Any entry on the BSB's register will be limited to what is necessary in the public interest, e.g. the fact of the restriction(s), condition(s) or undertaking(s) imposed. It will not disclose that the barrister has been subject to health proceedings or reveal any information about their health condition.

29. The BSB will update the information that is publicly available on the register where a restriction or condition is varied, extended or revoked, to ensure that the information remains accurate and current.

Length of publication

30. All findings of professional misconduct, including DBC reports, will remain in the public domain for a minimum of 2 years. In cases where all of the charges against a barrister have been dismissed, BTAS will publish for a period of 1 year.

31. Findings that do not result in a sentence involving a period of suspension, disbarment, or removal of the authorisation of an authorised body will cease being placed in the public domain by the BSB after 2 years.

32. Where a finding of a Disciplinary Tribunal involves a period of suspension from practice of 12 months or less, the finding will cease being placed in the public domain by the BSB five years after the end of the suspension period.

33. Where a finding of a Disciplinary Tribunal involves a period of suspension from practice of over 12 months, the finding will cease being placed in the public domain by the BSB ten years after the end of the suspension period.

34. Where a finding of a Disciplinary Tribunal involves a disbarment or removal of an authorisation of an authorised body, even if combined with other lesser sanctions, the full details of the finding will remain in the public domain for a period of 60 years.

35. The publication periods will run from the following dates:

- a) where no Notice of Appeal has been filed against a Disciplinary Tribunal decision within the 21-day appeal period, from the date of the Disciplinary Tribunal finding;
- b) where a Notice of Appeal is filed in the High Court within the 21-day appeal period, from the date the appeal is finally disposed of or abandoned; or,
- c) in the case of DBC decisions, from the date the decision is formally accepted by the relevant person.

36. Where an application to appeal has been lodged out of time but accepted by the High Court, the relevant publication period will recommence from the date that the appeal is finally disposed of or abandoned regardless of any period of publication on the website prior to the appeal determination.

37. Where an appeal is allowed in full or in part, any findings and sanctions which are already published on the BSB website will be updated to note the outcome of the appeal.

Review

Updating and reviewing published information

38. The BSB will keep published information under review and update or remove information where it is appropriate to do so. This may include the following:

- a) where a finding or sanction is overturned on appeal;
- b) where an immediate interim order or interim order ceases to have effect; or
- c) where a health order is revoked or varied.

Right of review

39. A person subject to this policy can exercise their individual right under the UK General Data Protection Regulation (UK GDPR) to request the erasure of personal data or object to the use of the data in certain circumstances.

40. Further information on the BSB's Privacy Statement can be found [here](#).

41. Any person who wishes to make a request under the UK GDPR in relation to information published by the BSB should contact the BSB's Data Protection Team at privacy@barstandardsboard.org.uk. Further information can be found in the [BSB's Guidance on Data Protection Rights Requests](#).

Review of this Publication Guidance

42. The BSB may review this Guidance from time to time to ensure that it continues to operate effectively and appropriately balances the principles of open justice, transparency, accountability and fairness.

43. The BSB reserves the right to publish information or make any other communications, where the information is publicly available.

Draft - BTAS Practice Direction: Witnesses and Special Measures

Introduction

1. This Practice Direction is issued under regulation 4.3 of the Bar Standards Board Disciplinary Tribunals Regulations 2027 ('the Regulations') under the authority of the President of COIC, following consultation with the BSB.
2. This Practice Direction supplements regulation 7.8 and regulation 20.3 of the Regulations, which confer powers on Directions Judges, the Chair of the Disciplinary Tribunal or the Disciplinary Tribunal itself to set directions and/or adopt such measures as are considered desirable to facilitate the receipt of evidence from a witness or respondent¹.
3. This Practice Direction sets out the approach of the Disciplinary Tribunal in relation to applications for special measures to ensure these applications are dealt with consistently and efficiently, whilst ensuring the receipt of the best possible evidence from all those who appear before the Disciplinary Tribunal.
4. Nothing in this Practice Direction limits the inherent power of the Disciplinary Tribunal to regulate its own procedure under regulation 4.1 or to dispense with requirements under regulation 4.2.
5. A decision to put special measures in place does not indicate that the Disciplinary Tribunal has drawn any conclusions about the allegations or applications made against the respondent or about the credibility of any witness.
6. The prohibition on cross-examination by a respondent in cases of a sexual or violent nature is addressed in the section '*Prohibition on cross-examination by a Respondent*' below.

Overriding objective

7. The overriding objective of the Regulations is to enable the Disciplinary Tribunal to deal with cases justly and proportionately. This means, so far as is practicable, ensuring that cases are dealt with efficiently and expeditiously, saving expense and in ways that are proportionate to the nature, importance and complexity of the issues. Consistent with the overriding objective, the Disciplinary Tribunal will take all proportionate measures to ensure that the parties can fully participate in proceedings and that parties and witnesses are able to give their best evidence.
8. The parties are required to help the Disciplinary Tribunal further the overriding objective. This includes making the Disciplinary Tribunal aware of any

¹ For ease, we refer to the Chair in the remainder of this Practice Direction but these decisions can also be taken Directions Judge or Disciplinary Tribunal, as appropriate.

circumstances that may affect the ability of a witness or the respondent to give evidence effectively and making any application for special measures as early as possible.

9. The Disciplinary Tribunal will also have regard to the regulatory objectives set out in section 1 of the Legal Services Act 2007 when exercising its functions and considering applications for special measures. The Disciplinary Tribunal will have particular regard to the objectives of protecting and promoting the public interest and improving access to justice to ensure that witnesses and the respondent can give their best evidence and the Disciplinary Tribunal can reach properly informed decisions.
10. The Disciplinary Tribunal is also committed to ensuring that all parties receive a fair trial, in accordance with Article 6 of the European Convention on Human Rights. In this context, the Disciplinary Tribunal must, in every case, consider any risk of prejudice or unfairness to the respondent that may arise from the adoption of special measures. Therefore, the grant of special measures is not automatic (although a presumption may apply in certain cases) and the Disciplinary Tribunal will carefully balance the desirability of any measures against the interests of the respondent and will provide an appropriate opportunity for the parties to make representations before any direction is made.

Applications for special measures

11. While this policy establishes a framework for dealing with applications for special measures according to the overriding objective and the principles of fairness, the Disciplinary Tribunal retains the discretion to determine how those principles should be applied, having regard to the circumstances of any particular case.

Who can apply for special measures?

12. An application for special measures can be made in respect of any witness or respondent, where a measure is considered desirable to facilitate the receipt of that person's evidence. There is no requirement that a witness or the respondent be categorised as vulnerable before special measures may be sought or directed.
13. An application for special measures may be made by:
 - a) the BSB, in respect of any of its witnesses; or
 - b) by the respondent, in respect of their own evidence or any of their witnesses.
14. The Disciplinary Tribunal may also give a special measures direction of its own motion, where it considers it desirable to do so, in accordance with regulation 4.1.

When should an application for special measures be made?

15. Where practicable, applications for special measures should be made as early as possible and, in any event, before the substantive hearing to ensure that any necessary arrangements can be put in place in good time.
16. Where a party becomes aware of circumstances that may require the consideration of special measures (whether in respect of a witness or the respondent) that party should notify BTAS or the Disciplinary Tribunal as soon as reasonably practicable, which may include through the case management questionnaire.
17. Applications should be made in writing and should set out:
 - a) The witness and/or party to which the application relates;
 - b) The measure(s) being sought;
 - c) The reason(s) why the special measures are considered desirable to facilitate the receipt of the evidence of the witness or Respondent concerned; and
 - d) Any relevant supporting information or documentation.
18. Although a formal application is not required, an application should be made by a written request and on notice to the other parties. Requests for special measures made by other methods may also be considered, as appropriate and in accordance with the Equality Act 2010.

Determination of applications for special measures

19. Once an application for special measures is received, the Chair will provide an appropriate opportunity for the other party to provide representations in respect of the application. However, the Chair may decide that the other party should not receive all or any of the supporting information or documentation where it is particularly sensitive or confidential.
20. Any application for special measures will be determined by the Chair, as appropriate, which may be on the papers or at a hearing, and only once an opportunity to make representations has been afforded. It is for the party making the application to explain why special measures would be likely to improve the quality of the witness's or respondent's evidence or participation in the hearing, and which measure(s) would be likely to achieve this.
21. The default starting position is that special measures should be adopted, where it is desirable to facilitate the receipt of evidence at a hearing from a witness or the Respondent.

22. When determining applications for special measures, the Chair must balance the desirability of special measures against the potential risk of prejudice or unfairness or the administration of justice, based on the circumstances of the case.
23. Without limiting the circumstances in which a witness may be granted special measures, it is likely to be desirable to adopt such measures to facilitate the receipt of evidence from a witness when one or more of the following applies:
- the witness is under the age of 18 at the time of the hearing;
 - the witness has a mental disorder within the meaning of the Mental Health Act 1983;
 - the witness has a significant impairment in relation to intelligence and social functioning;
 - the witness has a physical disability or impairment that requires assistance in order to give evidence;
 - any witness, where the allegation against the Respondent is of a sexual or violent nature and the witness was the alleged victim; and
 - any witness who complains of intimidation.

Special Measures

24. Every case before the Disciplinary Tribunal is considered on its own facts. It is not possible to set out the full range of specific measures that might be appropriate in relation to an individual case.
25. The types of special measures that may be directed by the Disciplinary Tribunal may include, but are not limited to:
- a) preventing a party or witness from seeing another party or witness by the use of screens or other such measures;
 - b) allowing a party or witness to give evidence remotely by video conference;
 - c) hearing a party or witness's evidence in private;
 - d) admitting pre-recorded video evidence as the evidence-in-chief of a witness;
 - e) using interpreters (including signers and translators) or intermediaries;
 - f) scheduling additional or more frequent breaks during the giving of evidence;
 - g) using a device or other aid to help a party or witness communicate; and
 - h) other case specific measures that will help the witnesses and/or Respondent give their best evidence and participate in the hearing.

Prohibition on cross-examination by a Respondent

26. Pursuant to regulation 20.4, a respondent charged with an allegation of a sexual or violent nature is not permitted to cross-examine a witness who is the alleged victim, whether in connection with that allegation or any other allegation with

which the respondent is charged in the proceeding. Nothing in this Practice Direction limits this prohibition.

27. In such cases, BTAS must appoint a legally qualified person to conduct cross-examination of the witness on the respondent's behalf, no less than seven days before the hearing, even in the absence of the respondent's consent.
28. Where a respondent is unrepresented and the prohibition in regulation 20.4 does not apply, the Disciplinary Tribunal may nonetheless consider whether it is appropriate in the circumstances of the case to limit the cross-examination of any witness by the Respondent. A direction to this effect may be given under regulation 7.5.

Review of the Practice Direction

29. The President may review this Practice Direction from time to time to ensure that it continues to operate effectively, fairly and appropriately.