BAR STANDARDS BOARD

REGULATING BARRISTERS

Summary of key proposals and impacts for the public.

On 2 July 2025, the BSB published a consultation document with proposals to amend the enforcement regulations. It is a lengthy paper containing about 40 different proposals for feedback. These cover a wide range of issues and the paper contains a lot of information and background for stakeholders.

The paper addresses the current regulations which govern our enforcement proceedings, from the initial assessment and investigation of reports of potential breaches of the Handbook, to proceedings before the disciplinary tribunal, interim suspensions and orders and the "fitness to practise" regime – as well as membership of the tribunals, publication of and access to the proceedings. The consultation follows the Enforcement Review carried out at the BSB by Fieldfisher in 2024.

Many of the proposals relate to procedure and process and may be primarily of interest to barristers, chambers and their representatives. However, we are keen to hear from the public too – who may occasionally be involved in individual cases, but on whose confidence and trust regulation depends.

We have produced this overview to direct members of the public to those issues that may be of most interest. These address: the approach to case management by the BSB and the Bar Tribunals and Adjudication Service, including confidentiality and witness anonymity; publication of proceedings and access to hearings; make-up of the Tribunal panels; updating the interim suspension regulations, and rebranding the fitness to practise regime. We have followed the numbering of the consultation paper for ease of reference. Please note that this is not an exhaustive list of the proposals – further details can be found in the full consultation document (link here).

Our aim is to enhance the effectiveness and efficiency of enforcement by the BSB, but also fairness and transparency.

Proposal 5: Confidentiality of reports and investigations

Current approach and reasons for change

The regulations currently impose a general duty on the BSB to keep reports and allegations assessed or investigated confidential[1]. The BSB must not disclose information about reports and allegations save as specified by the regulations, or as otherwise required by law. However, it is important that the regulations provide sufficient exceptions to the confidentiality provisions to allow the BSB to exercise its regulatory functions without unnecessary barriers and in a way that promotes efficiencies and allows for transparency in appropriate circumstances.

Proposal and benefits

We will retain the duty on the BSB to keep reports and/or allegations assessed or investigated confidential. However, we will clarify the exceptions to this duty of confidentiality

[1] rE63.

so that it is clear that we are able to make disclosures for the purpose of furthering an investigation. This will ensure that the BSB can share information with other regulators where it advances the investigation, which is a clear benefit for the handling of intelligence.

Proposals 6, 7 & 8: Accelerating cases: greater case management by the Bar Tribunals and Adjudication Service (BTAS) and introducing an overriding objective

Current approach and reasons for change

Currently, there is no single point of responsibility for setting and progressing case management directions {orders made for the timetable of a case] in the Disciplinary Tribunals Regulations. The Enforcement Review found that this has resulted in limited coordination and a lack of proactive case management by either the BSB or BTAS. This leads to frequent procedural hearings, adjournments and delays.

Proposal and benefits

We are keen to enable BTAS to assume greater case management responsibility to progress cases to final hearings. Our proposal is to introduce greater powers, e.g. to list a case management hearing at any time, which may be used to ensure or encourage compliance. To support that case management responsibility and to facilitate speedier progression of cases, we also propose to introduce an overriding objective (to ensure cases are dealt with justly and proportionately[2]) and a power for BTAS to regulate its own procedure – but strictly in accordance with the regulations and the proposed new overriding objective.

Proposal 14: Presumption of anonymity for witnesses

Current approach and reasons for change

The current regulations allow for special measures to be made by the Tribunal for vulnerable witnesses (which includes those who are involved in allegations of a sexual or violent nature). Separately, applications can be made for anonymity. However, in either case a decision is required by a BTAS Directions Judge or Tribunal panel. The BSB can only therefore provide limited assurance as to how vulnerable witnesses' identities will be protected, which can dissuade witnesses from assisting the BSB. This is particularly important in circumstances where their cooperation is entirely voluntary - unlike the courts, the BSB and BTAS do not have powers to compel witnesses to attend hearings.

Proposal and benefits

We will introduce a presumption that, by default, any witness making an allegation of a sexual or violent nature will be anonymised in the disciplinary proceedings.

Proposal 15: Suspending a barrister before a Tribunal hearing: simplifying the grounds for referral to an interim panel and imposition of interim orders

Current approach and reasons for change

It is sometimes important for public protection to suspend a barrister before a tribunal has heard a case. Currently, we may refer a practising barrister to an interim panel for urgent intervention on five grounds. In our view, the grounds for referring a barrister to an interim

[2] This will include the need for cases to be dealt with expeditiously and according to their complexity etc.

panel are overly prescriptive and could be streamlined. We also think the grounds on which an interim panel may decide to impose an interim suspension should be aligned with the referral grounds so there is a consistent and uniform test at both stages.

Proposal and benefits

We propose to simplify the grounds for referral to an interim panel and the imposition of an interim order (pending the outcome of disciplinary proceedings). We will reduce the current five grounds to two grounds, being where an interim order is necessary (i) to protect the public or is otherwise in the public interest; or (ii) to protect the interests of clients (or former or potential clients). The public and client protection and public interest grounds reflect the core purpose of the interim suspension regime: to take prompt action to address any risk posed in relation to a practising barrister.

Although the proposal is to simplify the current regulations, the intention is not to narrow the types of cases that may be referred to an interim panel. Serious matters, such as criminal convictions or findings by another regulatory body leading to a period of suspension or termination of the right to practise, would still justify referral under the revised grounds.

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

Current approach and reasons for change

The BSB can refer a practising barrister to a fitness to practise panel if there are concerns about their health affecting their fitness to practise. Currently, the definition of "unfit to practise" requires "incapacitation" due to a health condition. However, this strict threshold is rarely met in practice and may limit the BSB's ability to act, even when there are genuine health-related concerns impacting a barrister's fitness to practise.

Proposal and benefits

We propose to rebrand the fitness to practise regime as a "health regime" to better reflect its purpose, which is non-disciplinary and designed to address health issues that may impair a barrister's ability to practise. This shift aims to modernise the process and emphasise its focus on managing health-related risks to the public and public interest. The proposal will reduce any potential for confusion with "fitness to practise" regimes which are common in healthcare regulation, as well as our own "fit and proper person" checks on admission to the Bar.

Alongside rebranding the "health regime", the proposal is to replace the current "incapacitation" test, which is a high bar and may suggest why the regime is little used in practice. The test will instead depend on evidence of a barrister's ability to practise being impaired on the grounds of a health condition in circumstances where a restriction (e.g. suspension) or conditions (or undertakings in lieu) are necessary to protect the public or otherwise in the public interest. Where a panel has found that an individual's ability to practise is "impaired", the panel can then only impose restrictions or conditions when it is necessary to protect the public or public interest. This will allow for greater flexibility and the scope to deal with conditions that reduce but do not eliminate the barrister's ability to practise, whilst ensuring the process cannot be used where a form of restriction is unnecessary (e.g. temporary conditions or long-term conditions which are being managed).

Proposal 24: Length of Fitness to Practise orders

Current approach and reasons for change

The current regulations allow a Fitness to Practice panel to impose orders indefinitely or for a period not exceeding six months. The six month's duration for orders is an arbitrary limit and requires matters to return to the panel after a relatively short period, especially if a barrister may be undergoing a course of treatment.

Proposal and benefits

We will remove the current six-month time limit on suspensions and disqualifications that can be imposed under the Fitness to Practise Regulations. The proposal offers either unlimited or a maximum term of 36 months to reflect the fact that health conditions may be longer term. Both options allow for review and we recognise that there needs to be sufficient checks and balances to ensure that an individual is ready to resume practice once any order has expired. We therefore propose to introduce an option for panels to hold a further meeting to assess whether there are any ongoing public protection or public interest concerns that need to be addressed, before the individual resumes their practice.

Our proposals seek to balance fairness to the individual with the need to give panels sufficient powers to respond appropriately to the specific health concerns presented in each individual case. This flexible approach will improve the effectiveness of the system by allowing tailored outcomes that better reflect individual circumstances.

Proposals 27-29, 31: Disciplinary Tribunal Panel and Independent Decision-Making Panel composition and support

Current approach and reasons for change

Under the current regime, there are two types of Disciplinary Tribunal panels: a five-person and a three-person panel. Both panel sizes have a barrister majority, and the panel chair must be either a judge or King's [ie senior] Counsel (depending on panel size). At present, three-person panels do not have the full sanctioning powers available to them.

Proposal and benefits

We are considering the introduction of three-person panels only for all Disciplinary Tribunal proceedings. Three-person panels would likely consist of a practising barrister member, a lay member, and a legally qualified chair.

The change to three-person panels will reduce the delays and practical difficulties that arise when scheduling hearings around the availability of five panel members, particularly judges and barrister members. This will help to reduce delays and difficulty in assembling a panel, reassembling panel members for any adjourned hearings, as well as reviewing and agreeing written decisions, which will ultimately improve the speed and efficiency of the disciplinary process.

The intention behind retaining a legal majority (but not necessarily a barrister majority) – with only one lay member on the panel – is to ensure robustness in decision-making, maintaining fair outcomes as well as to recognise the professional context of these proceedings against legal practitioners and that cases can involve potentially career-ending sanctions.

We plan to remove existing requirements for panel chairs and invite views on our proposal for the chair of the panel to be legally qualified and suitably experienced with at least 15 years' practising experience (including solicitors and CILEX lawyers) [legal executives] but not requiring a judge or KC in all cases. Our data indicates that most KCs are appointed 20 years after call, but a lower threshold and allowing for a solicitor or a CILEX lawyer, as well

as a barrister, broadens the pool for selection and should promote equality of opportunity. Further even with 15 years' experience, a corresponding requirement of relevant experience is proposed for the BTAS recruitment process.

To ensure consistency across our enforcement processes, we also propose that panels drawn from our Independent Decision-making Body (IDB) will be made up of three-persons rather than five (as now), but with a lay majority (as is currently the case). We also plan to move to three-person fitness to practise (or "health") panels and are consulting on the option to include a medical member on the panel (as now) or move to a medical assessor model, who will provide advice and support to the panel.

Proposals 32-34: Open justice and the principles of transparency and accountability

Current approach and reasons for change

Open justice and transparency are key priorities for the BSB. Currently, charges are only published at the "convening order" stage, which is close to the substantive Tribunal hearing. This delays public awareness and reduces transparency.

Hearings, including directions hearings, are mostly private, unless ordered otherwise. While some outcomes are published (e.g. interim orders), access to information from disciplinary proceedings remains limited. Further, there is inconsistency in how media and non-parties request for access to documents are handled.

Proposals and benefits

Our review looked at "open justice" and greater transparency of the process to improve public trust and confidence. Our starting principle is that the BSB's enforcement processes should be transparent and open, unless there is good reason not to.

The consultation paper proposes earlier publication of charges either:

- when the charges are served by the BSB; or
- when case management directions are made by BTAS.

Following earlier publication of charges, all subsequent Disciplinary Tribunal hearings (including directions hearings) would be public by default, unless the Tribunal decides otherwise. Otherwise, the status of public access and awareness is to be unchanged – hearings of alternative proceedings e.g. interim orders and fitness to practise proceedings would be in private, subject to the panel determining otherwise. Outcomes would however be published for determination by consent, interim orders and fitness to practise – to protect the public.

We note that, by providing greater access, we will also in part address growing media interest in the conduct of proceedings. However, we also propose to develop an agreed BSB/BTAS Policy (not fixed regulation) to guide what documents can be shared with non-parties, by whom and when. This approach offers clarity and consistency, improves transparency, and allows for flexibility and future updates, based on experience.