

BAR STANDARDS BOARD

REGULATING BARRISTERS

Policy on the publication of disciplinary findings of professional misconduct

1. This document sets out the Bar Standards Board's (BSB) policy on the publication of disciplinary findings. The term "publication" in the context of this policy means the extent to which the BSB puts information about disciplinary findings into the public domain, either via our website, the Bar Register or on request.
2. Disciplinary findings of professional misconduct can be made in two ways:
 - By a Disciplinary Tribunal convened by the Bar Tribunals and Adjudication Service (BTAS); or
 - By the BSB under the Determination by Consent (DBC) procedure.
3. **Regulatory framework:** the regulations governing the publication of Disciplinary Tribunal findings are set out at E243 and E243A of the Disciplinary Tribunals Regulations: Part 5, Section B of the BSB Handbook. rE44 of the Enforcement Decision Regulations 2019, Part 5, Section A4 of the BSB Handbook governs the publication of disciplinary findings made under the DBC procedure. rE44 provides that DBC findings are published to the same extent as Disciplinary Tribunal findings as provided for by E243 and E243A.
4. The relevant regulations do not require the BSB to publish Disciplinary Tribunal findings. Responsibility for publishing findings, sanctions and reports of Disciplinary Tribunals lies with BTAS. However, the regulations allow for the BSB to publish findings and sanctions of Disciplinary Tribunals on its website and this policy covers such publication. BTAS has no responsibility for publishing findings under the Determination of Consent procedure, responsibility for which lies entirely with the BSB.

Information that will be made available to the public by the BSB

5. **Disciplinary Tribunal findings:** the BSB will make the following information available in relation to Disciplinary Tribunal findings (subject to paragraphs 13-21 below):
 - 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.
6. The BSB does not publish Disciplinary Tribunal reports but these are available from BTAS in accordance with BTAS's policy on publication of findings. A copy of BTAS's "Publication Policy: Disciplinary Tribunals and other Adjudication Hearings" can be found at <https://www.tbta.org.uk/policies-guidance-and-publications/policies/publication-policy/btas-publication-policy-2/>.

7. **DBC findings:** the BSB will make the following information available in relation to findings made under the DBC procedure (subject to paragraphs 13-18 below):
- The full DBC report which includes:
 - The name of the barrister subject to the finding;
 - The details of the charges that were found proved; and
 - The sanction imposed.

Extent of the publication

8. The BSB will make available to the public, the information set out at paragraphs 5 and 7 above in relation to all proved findings of professional misconduct (subject to the periods set out in paragraphs 13-19 below) unless a Disciplinary Tribunal has ordered that it is not in the public interest to publish the finding and/or sanction.
9. The information will be posted on the BSB's website, included in the barrister's entry on the Bar Register and will be available on request.
10. Where a charge in front of a Disciplinary Tribunal, or under the DBC procedure, is found not proved, details of the outcome will **not** be put in the public domain by the BSB unless the relevant person charged so requests.
11. All relevant findings will be posted on BSB website within **seven days** of the finding being made, regardless of whether an appeal has been lodged with the High Court.
12. All Disciplinary Tribunal findings will be listed initially on the BSB's website as "open to appeal" and such listings will remain in place until the 21-day period for submission of a Notice of Intention to Appeal has expired without such a Notice being submitted. Where a Notice of Appeal is submitted, the finding will be listed as "Subject to Appeal" and this listing will remain on the website until the appeal has been determined by the High Court at which point it will either be marked as "final" or removed (see paragraph 20 below).

Length of publication

13. All findings, including DBC reports, will remain in the public domain for a minimum of 2 years.
14. 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.
15. Where a finding of a Disciplinary Tribunal involves a period of suspension from practise 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.
16. Where a finding of a Disciplinary Tribunal involves a period of suspension from practise 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.
17. 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.

18. The 2 and 60-year periods, referred to under paragraphs 14 and 17 above, will run from the following dates:
 - a) where no Notice of Appeal has been submitted against a Disciplinary Tribunal decision within the 21-day period, from the date of the Disciplinary Tribunal finding; or,
 - b) where a Notice of Appeal is submitted within the 21-day period, from the date the High Court determines the appeal; or,
 - c) in the case of DBC decisions, from the date the decision is formally accepted by the relevant person.
19. Where an application to appeal out of time has been accepted by the High Court, the 2 or 60-year period, if applicable, will recommence from the date of the High Court's determination of the Appeal regardless of any period of publication on the website prior to the appeal determination.
20. Where an appeal to the High Court is successful, the postings on the BSB website and Bar Register will be removed and details of the findings will no longer be put in the public domain by the BSB. However, the BSB may choose to post, or provide a link to, the High Court appeal judgment on its website, including a covering summary of the case, where the judgment may be of relevance in future cases or includes points of wider interest. A relevant person may request that the fact the appeal has been allowed be published on the BSB's website, however, the entry will not include any details relating to the appeal apart from a statement that it was allowed. Such requests should be addressed to the Head of Investigations and Hearings of the BSB.
21. Where an appeal is allowed in part, the findings which were overturned on appeal will be removed from the website, unless the relevant person requests otherwise (see paragraph 20 above).

Right of review

22. This policy applies to all relevant findings. However, a person subject to this policy can exercise their individual right under the UK General Data Protection Regulation (UK GDPR), as set out in the BSB's privacy statement, which gives a person the right to ask us to erase personal data or object to the use of the data in certain circumstances. Details of our Privacy Statement can be found at <https://www.barstandardsboard.org.uk/footer-items/privacy-statement/>
23. A person wishing to exercise their rights under the UK GDPR should contact the Head of Investigations and Hearings.

Bar Standards Board
16 April 2021