

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.



REGULATING BARRISTERS

**Meeting of the Bar Standards Board
Thursday 18 July 2019, 5.00 pm**

**Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ**

Agenda - Part 1 – Public

				Page
1.	Welcome / announcements (5.00 pm)		Chair	
2.	Apologies		Chair	
3.	Members' interests and hospitality		Chair	
4.	Approval of Part 1 (public) minutes			
	• 13 June 2019	Annex A	Chair	3-5
5.	a) Matters arising and action points	Annex B	Chair	7-8
	b) Forward agenda	Annex C	Chair	9
6.	Proposed amendments to Publication of Disciplinary Findings policy (5.05 pm)	BSB 024 (19)	Sara Jagger	11-23
7.	Schedule of Board meetings Jan 2020 – Mar 2021 (5.20 pm)	BSB 025 (19)	Vanessa Davies	25
8.	Chair's Report on Visits and External Meetings from mid-June 2019 (*)	BSB 026 (19)	Chair	27
9.	Any other business (5.30 pm)			
10.	Date of next meeting			
	• Thursday 26 September 2019, Littleton Chambers, 3 Kings Bench Walk, Temple, London EC4Y 7HR			
11.	Private Session			

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
11 July 2019

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*

BSB 180719

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting**

Thursday 13 June 2019, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Baroness Tessa Blackstone (Chair)
Naomi Ellenbogen QC (Vice Chair)
Alison Alden OBE
Aidan Christie QC
Lara Fielden
Steven Haines
Zoe McLeod – by phone
Elizabeth Prochaska
Irena Sabic
Nicola Sawford
Adam Solomon QC
Kathryn Stone OBE
Leslie Thomas QC
Stephen Thornton CBE
- By invitation:** Amanda Pinto QC (Vice Chair, Bar Council)
Grant Warnsby (Treasurer, Bar Council) – by phone
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Rebecca Forbes (Head of Governance & Corporate Services)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct) – via Star Leaf
Michael Jampel (Head of Policy and Research)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
- Press:** Jemma Slingo (Law Society Gazette)

Item 1 – Welcome

1. The Chair welcomed Members and guests, in particular Elizabeth Prochaska and Leslie Thomas QC, both of whom were attending their first meeting.
2. **Item 2 – Apologies**
 - Andrew Mitchell QC
 - Richard Atkins QC (Chair, Bar Council)
 - Malcolm Cree CBE (Chief Executive, Bar Council)
3. **Item 3 – Members’ interests and hospitality**
None.

Item 4 – Approval of Part 1 (public) minutes (Annex A)

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 28 March 2019.

Item 5a – Matters arising and action points (Annex B)

5. The Board noted the updates to the action list.

Item 5b – Forward Agenda (Annex C)

6. Members noted the forward agenda list.

Item 6 – Year-end report of the Planning, Resources and Performance Committee (PRP) – Apr 2018 – Mar 2019

BSB 019 (19)

7. Steve Haines commented positively on the generally good performance results for last year. He highlighted the following:
- there is a concern about capacity in the Professional Conduct Department's Investigations Team due to a rise in the number of complex, resource intensive cases. The Committee will review this again in September;
 - the Finance Department is implementing a programme to update and improve its frontline services. The Committee strongly supports this initiative.
8. Board Members raised questions about the increase in staff turnover to 28% (the rate for 2017-8 was around 10%), and how the PRP Committee monitors this. In response, the following points were made:
- the PRP Committee considers both lead indicators eg outcome of staff surveys and lag data ie turnover rates reported in the quarterly HR dashboard;
 - the figure for 2017-18 was unusually small. Average turnover rates for comparable regulatory bodies are around 20-25%;
 - the Strategy & Policy Department experienced a higher than usual turnover, but this was co-incidental, being contingent on the various personal circumstances of the staff involved;
 - instead of a target threshold figure, we should take a broader view ie accept that some turnover is inevitable but add what controls we can eg improve recruitment practice to reduce loss of staff with just six months' service or less;
 - some regulators have operated staff exchange schemes or joint management training programmes. These can help develop and retain skills in the sector.
9. In response to questions about finance, the following comments were made:
- the end of year surplus reflects the conservative nature of our budgetary assumptions due to increased uncertainty over student registrations;
 - this is the final year that the BPTC will run in its current form. We should be able to predict registration numbers more accurately in future;
 - the overspend for non-staff was due to new arrangements for marking the ethics examination. This situation is unlikely to recur because of improved governance arrangements and our better understanding of the cost profile for examinations.
10. **AGREED**
to note the report.

Item 7 – Professional Indemnity Insurance: Minimum Terms of Cover

BSB 020 (19)

11. Ewen Macleod outlined revised arrangements agreed with the Bar Mutual Indemnity Fund (BMIF) for Minimum Terms of Cover (MTCs). Changes has been introduced in response to the LSB’s thematic review of PII – this means that the BSB now sets the MTCs for the self-employed Bar and had made some changes to the MTCs for entities. Both were presented for Board approval.
12. In response to questions raised, Ewen Macleod confirmed the following:
- the new MTCs remove the requirement to involve the Bar Council Chair in any dispute resolution procedures where the parties cannot agree an arbitrator. However, this would not oblige the BMIF to change its current arrangements;
 - the recommendation to revisit the MTCs after Brexit refers to further changes that may be necessary after that time eg deletion of references to a “Registered European Lawyer” and use of the default term “foreign lawyer”.
13. **AGREED**
- a) to approve the new Minimum Terms of Cover for the self-employed Bar as set out in Annex 1 of the report.
 - b) to approve a small revision to the Minimum Terms of Cover for insurance of BSB entities as set out in the report.
 - c) to note a small consequential change to BSB guidance to reflect the existence of the MTCs for the self-employed Bar.

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Item 8 - Chair’s report on visits and external meetings (Apr – Jun 2019)

BSB 021 (19)

14. The Board **noted** the report.

Item 9 – Any Other Business

15. None.

Item 10 – Date of next meeting

16. • Thursday 18 July 2019

Item 11 – Private Session

17. The following motion, proposed by the Chair and duly seconded, was agreed. That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 28 March 2019;
 - (2) Matters arising and action points – Part 2;
 - (3) Update on IGRs
 - (4) Director General’s Quarterly Strategic update
 - (5) Any other private business.
 - update on Director General’s succession planning
18. The meeting finished at 5.30 pm.

**BSB – List of Part 1 Actions
18 July 2019**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
9b (25/10/18) - Modernising regulatory decision making –revised Standing Orders / BSB Handbook Regulations	seek a rule change application with the LSB for proposed revisions to the Enforcement Decision Regulations and the associated consequential amendments to the BSB Handbook	Sara Jagger	by 3 June 19 by early Feb 19	28/06/19	Ongoing – application was submitted on 4 June. LSB issued an extension notice on 27 June. Decision expected on or before 1 September.
				29/05/19	Ongoing – by date of meeting, application will be have been submitted and will be under consideration – LSB requested that it be submitted on 3 June to fit with its work schedule.
				08/03/19	Change to deadline – the implementation date for the Regulatory Operations arrangements has been put back to October, the submission of the LSB rule change application has accordingly also been put back. It is now due to be submitted in April.
				18/01/19	Ongoing – draft application in progress - -due to be discussed with LSB in early February prior to formal submission in mid/late February depending on LSB response to draft.
				13/11/18	Change to deadline – as the new Regulatory Operations arrangements are not now due to be come into force until 1 June 2019, the application to the LSB is scheduled for early February 2019.
9b (27/09/18) - Annual Enforcement Report 2017-18	engage with stakeholders to improve access to information for litigants-in-person about the UK legal system including the adversarial nature of the barrister’s role	Wilf White	before Aug 19	05/07/19	Completed - Legal Choices Review now complete and it has been decided to cover this content by linking to other sites. Advice for LiPs will also be included in our own new website launching in October.

BSB – List of Part 1 Actions
18 July 2019
(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				05/06/19	Ongoing – The current review of Legal Choices’ existing content recommends that Legal Choices should make more use of links to other websites offering content rather than commissioning its own so it may be decided to link to advice for litigants in person from the Bar Council, Law Society and others.
				22/01/19	Ongoing – articles accepted by Legal Choices for May and August the first on transparency and the second on litigants in person
				13/11/18	Ongoing – Wilf White has spoken to the Legal Choices Steering Group and it has been agreed that the BSB will contribute two articles to the site this year one of which will cover this issue.

Forward Agendas**Thursday 26 Sept 19**

- BSB Budget 20/21
- Consolidated Risk Report (summary)
- Regulatory Operations – approval of update Scheme of Delegations and Commissioner’s prospective sub-delegations
- Strategic update from the Director General

Thursday 31 Oct 19

- GRA Annual Report
- 2018/19 Enforcement Report (summary)
- Mid Year report – PRP Committee
- Amendments to governance documents

Thursday 28 Nov 19 (BOARD AWAY DAY – inc. Joint Meeting with the LSB 1.00 pm – 2.30 pm, pending confirmation with LSB)

- Handbook Review – emerging findings

Thursday 30 Jan 20

- Strategic update from the Director General
- Corporate Risk Report (summary)
- Annual Diversity Data Report
- CPD evaluation report
- Handbook review

Thursday 26 Mar 20 (inc. Joint meeting with the OLC 3.30 pm – 5.00 pm, pending confirmation with LeO)

- Strategic update from the Director General
- Business Plan 2020/21
- Consolidated Risk Report
- Handbook review

Meeting:	Bar Standards Board	Date:	18 July 2019
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Title:	Proposed amendments to Publication of Disciplinary Findings policy
Author:	Sara Jagger
Post:	Director of Professional Conduct

Paper for:	Decision: <input checked="" type="checkbox"/>	Discussion <input type="checkbox"/>	Noting <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Recommendation(s)

1. The Board is asked **to approve** the revised policy on Publication of Disciplinary Findings for Professional Misconduct (see Annex B to the Report).

Executive Summary

2. The paper proposes changes to the BSB's policy on the Publication of Disciplinary Findings (Publications Policy), which applies to findings of professional misconduct made by BTAS Disciplinary Tribunals and by the BSB under the Determination by Consent Procedure.
3. The current policy has been in place since 2009 and has only been subject to one substantive amendment in 2017. However, in 2012, as part of a wider consultation on the BSB Handbook, proposals were put forward of a similar nature to those in the paper. Unfortunately, work on the revised policy stalled at that time although relevant changes to the Disciplinary Tribunal Rules were made in 2017. The introduction of the General Data Protection Regulation (GDPR) in May 2018, means it is important that we review our approach to publication to ensure compliance particularly in relation to the right to erasure (also known as "right to be forgotten").
4. The changes to the Publications Policy are twofold:
 - a. The extension of the policy to cover all avenues by which the BSB puts disciplinary findings into the public domain, including the Bar Register and on request, as opposed to current policy which applies only to publication on the BSB website; and
 - b. A reduction to the current time periods for "publication". In summary, the proposed changes are to reduce the time period for publication of suspensions under 12 months and over 12 months respectively from 10 years to three years and from indefinitely to five years from the end of the suspension period. Publication of disbarments would reduce from indefinitely to 60 years. All other findings will be published for two years.
5. The revised policy can be found at Annex B.

Risk

6. Revisions to the Publications Policy have been in contemplation for some time and there is now a risk that the publication periods could be considered under the GDPR to be too long. There are therefore reputational and potential legal risks in the maintaining the current policy.

Resources (Finance, IT, HR)

7. The policy itself has no new resource implications. The supporting systems for publishing findings are currently in place and will not change. However, the IS Department will need make the necessary arrangements to remove findings from the website and the Bar Register in line with the revised policy. The IS Department is aware of this and is able to provide the resource.

Equality & Diversity

8. An Equality Impact Screening has been carried out and it was considered that no adverse impacts arise for the equality groups as a result of the policy. The policy is not discretionary and applies equally to all those subject to disciplinary findings. Inevitably there is more risk of disparities in treatment in the underlying disciplinary processes that lead to such findings, however, these are not issues that can be addressed by means of this policy.

Proposed amendments to Publication of Disciplinary Findings policy

Executive summary

1. This paper covers the proposed future arrangements for the publication of disciplinary findings and thereby the revisions to the Bar Standards Board's (BSB's) current "Publication of Disciplinary Findings Policy" (Publication Policy).
2. As set out in the "Background" section below, the terms of our Publication Policy have been the subject of consideration and debate over many years. The introduction of the General Data Protection Regulations (GDPRs) in May 2018 has created a pressing need for the BSB to issue a revised policy.
3. The proposal is that the policy covers the full extent to which findings will be put in the public domain by the BSB, as opposed to the current policy which refers only to publication on the website. The time periods in which information on disciplinary findings will be made publicly available will apply to all avenues by which such information is provided, including the Bar Register and on request¹. It is also proposed that the time periods for publication are reduced (see paragraph 7 and Table 1).
4. The revised policy can be found at Annex B.

Background

5. The BSB's Publication Policy has been in place since 2009 and has only been subject to one significant adaptation (see paragraph 11 below). The current policy sets out the time periods which apply to the publication of disciplinary findings on our website as opposed to information about findings being in the public domain. Currently, any individual can request information about the disciplinary history of a barrister, and we will disclose any findings regardless of the age.
6. The current Publications Policy covers the publication on our website of all findings of professional misconduct, and the associated sanctions imposed by Disciplinary Tribunals or via the Determination by Consent (DBC) procedure. The Bar Tribunals and Adjudication Service (BTAS) also publishes Disciplinary Tribunal findings and has its own policy titled "*Publication Policy: Disciplinary Tribunals and other Adjudication Hearings*". That policy covers wider issues than publication of disciplinary findings. While section 3 of BTAS's policy is intended to mirror that of the BSB there are some differences and we are in discussions with BTAS regarding these. The intention is that the revised publication periods set out in the BSB's policy will be adopted by BTAS.
7. The current publication periods are:
 - For professional misconduct findings that do not result in a sentence involving a period of suspension or disbarment - 2 years from the date of the finding;
 - Findings that result in a sentence involving a period of suspension of 12 months or less - 10 years; and
 - Findings that result in a sentence involving a period of suspension of more than 12 months or disbarment - indefinitely.

¹ The "public domain" does not include disclosure of findings to the Queen's Counsel Appointments body or the Judicial Appointments Commission. Such disclosures are subject to separate arrangements with the two bodies.

8. In 2012, as part of a wider public consultation on the proposed new BSB Handbook, the BSB sought views on introducing, what was termed then, a concept of “spent findings” which would limit the time information about findings would remain in the public domain, both in terms of publication on the website and disclosure on request. The paper put forward the following “publication” lengths:
 - For professional misconduct findings for which a sentence of up to three months’ suspension was imposed - 5 years;
 - Findings for which a sentence of between three months’ and 12 months’ suspension was imposed - 10 years; and
 - Findings for which a sentence of disbarment or of in excess of 12 months’ suspension was imposed - indefinitely.
9. The BSB proposed that it would not, once the publication period for a disciplinary finding had expired, disclose that finding to any other person or body (other than the “Named Bodies” set out in the Complaints Regulations) without the consent of the barrister concerned or “for any other good reason” as provided for in the regulations.
10. The responses to the consultation indicated general agreement with the proposals outlined above. The Board accepted in principle that the BSB should proceed with implementing the changes and a Professional Conduct Committee working group was established to consider how best to do this as well as finalise the consultation response paper and draft the revised policy. The working group met on several occasions in 2013/14 and was near to finalising a policy part of which required changes to the Disciplinary Tribunal Regulations. Unfortunately, progress stalled on taking the matter forward and while relevant changes to the Disciplinary Tribunal Regulations were made as part of the review of those regulations in 2015/16 (although the regulations did not come into effect until November 2017), the Publications Policy was not revisited.
11. In 2017, the Publication Policy was amended in response to concerns raised about the length of time suspensions from practise were published on the BSB website. The change was limited to reducing the period of publication for suspensions of 12 months or less from indefinitely to 10 years from the date of the finding (or an appeal outcome). The change was always considered to be an interim measure pending the implementation of the wider changes outlined above.
12. With the introduction of the General Data Protection Regulation (GDPR) in May 2018, we needed to reconsider our approach to ensure compliance particularly in relation to the right to erasure (also known as “right to be forgotten”) introduced by the GDPR.
13. Therefore an Executive working group, consisting of members of the Professional Conduct Department (PCD), was set up in 2018 to take forward changes to the policy based on the previous consultation, the terms of the GDPR, Article 8 of the European Convention on Human Rights; and the Rehabilitation of Offenders Act 1974 (ROA). The working group also reviewed the outputs of the previous Board Working Group and researched the current approach of other relevant regulators. The working group also consulted the Bar Council’s appointed GDPR solicitors and the BSB’s information law and data protection APEX member.
14. The outcome of the research into the practice of eight other regulators in publishing disciplinary findings is set out at Annex A. The research revealed that publication periods ranged from four months to indefinitely across a spectrum of sanctions imposed with the dividing lines being similar to those used by the BSB’s. It is notable that many of the other regulators have shorter publication periods than our current periods and, in some cases, have no provision for indefinite publication of findings (such as we have in relation to disbarments). However, this is not a reason in itself for amending our current policy, and

we need to ensure that in the context of the Bar, any publication periods we adopt are justified, fair and proportionate.

15. On 26 March 2019 the working group presented a detailed paper to SMT, the principles of which were accepted (the paper is available on request). The SMT felt that, given the proposals put forward were not the same as those initially consulted on in 2012, a further targeted consultation should be carried out. Therefore, a roundtable consultation meeting of relevant stakeholders was held on 5 June 2019. The outcome of the meeting is outlined below at paragraphs 25-31. Further, the SMT was of the view that the general terms of the policy should be approved at Board level.

Changes to the current publication policy

16. The changes to the Publication Policy are two-fold:
 - a. The policy is now expressed in terms of the extent to which disciplinary findings will be put in the public domain by the BSB. This reflects the concept presented in the 2012 consultation of “spent findings” although that term is now considered inappropriate as our approach is not directly analogous to that of the ROA. It means that the policy applies not just to publication on the website but publication by other all other means such as the Bar Register and on request²; and
 - b. Changes to the periods in which disciplinary findings will be “published” i.e. remain in the public domain.

Rationale and justifications for the changes to the publication policy

17. As a public interest regulator, it is important for public protection reasons that the public are aware of disciplinary findings of professional misconduct. Such findings only flow from serious breaches of the ethical obligations we place on the profession and those we regulate. We would be failing in our statutory duty to be transparent if we did not make this information available for at least some period.
18. The public, and those instructing barristers, need to be able to make informed choices about the barristers they choose to provide legal services. They should be able to access all relevant information that might impact on that choice and be able to assess the potential risks posed by individual barristers. It is also essential that public confidence in the profession, and the BSB’s regulation of it, is maintained and transparency in the outcomes of disciplinary action helps to promote this. The BSB has statutory obligations to protect and promote the public interest as well as have regard to the principle of transparency in discharging our regulatory functions.
19. Therefore, our publication policy should be based on public protection, public interest and public confidence in the profession and our regulation. However, where there is no justifiable or objective reason to publish findings for one of these reasons, then we should not be doing so. In any event, unjustified publication would fall foul of the GDPR.
20. While the public interest and the associated statutory obligations are paramount in this context, we also need to consider and balance the impacts on the Bar including the competing statutory right to be forgotten.

² The “public domain” does not include disclosure of findings to the Queen’s Counsel Appointments body or the Judicial Appointments Commission. Such disclosures are subject to separate arrangements with the two bodies.

21. Given that most of the Bar are self-employed, the potential impact of the publication of disciplinary findings may be greater on members of the Bar than it might be on other professions. Further, in taking a risk-based approach to regulation we need to ensure that our regulatory activities are targeted where they needed most in the interests of the public, are proportionate and focussed on those who give rise to the biggest risks to the regulatory objectives.
22. However, the self-employed Bar is different to many other professions where the underlying structure is one of employment with its associated structure for oversight of individual performance. Such structures can provide additional protection for the public through the monitoring of individuals' performance and internal mechanisms that often require individuals to demonstrate that they have learnt from and addressed the issues that gave to rise to disciplinary findings. While many chambers have similar systems in place to monitor member performance, the inherent structure of the self-employed Bar means that, in most cases, it remains a matter for the individual barrister what steps they decide to take to address issues arising from conduct that has led to disciplinary findings.
23. Balancing all these considerations, the working group was of the view that slightly longer periods of publication than some other professions regulators are justified. What the periods should be is not a matter of science and, in determining the recommended lengths of publication, the working group tried to balance the factors rehearsed above. The working group recommended the publication periods set out in Table 1 below. The SMT agreed in principle that these periods were appropriate subject to targeted consultation.

Table 1 – Proposed changes to the publication periods

	Minimum for all findings	Findings that do not result in a sentence involving a period of suspension, disbarment	Findings that result in a sentence involving a period of suspension of 12 months or less	Findings that result in a sentence involving a period of suspension of more than 12 months	Findings that result in a sentence involving disbarment
Proposed	2 years	2 years	Sanction length + 3 years from end of sanction	Sanction length + 5 years from end of sanction	60 years
Current	2 years	2 years	10 years	Indefinitely	Indefinitely

24. The view is that a minimum two-year period for publication of all findings, for the reasons given above, is reasonable and should be retained. For findings that attract a suspension, the period should be longer in the public interest and in the interests of transparency in regulation given the more serious nature of the breaches. The proposed three- and five-year publication periods for suspensions from practise (depending on the length of the suspension) were considered appropriate for these reasons
25. The publication period for disbarments is more difficult. By definition, a disbarment will have flowed from very serious breaches and the view is that the public should be allowed to have access to this information during any theoretical period that an ex-barrister might choose to provide legal services to the public. This is because unreserved legal activities can be provided by any person and therefore those that are disbarred can continue to

provide legal services to the public. However, we currently publish disbarments indefinitely which, in theory, means that they could remain in the public domain long after the barrister has died. This does not seem reasonable. Given average life expectancy is currently 79-83 years and barristers are unlikely to be called (and then disbarred) before they are 23 years old, a publication period of 60 years will in nearly all cases cover a person's life span.

26. **Criminal convictions:** the proposed publication periods outlined will involve publishing some criminal convictions for longer than the time period for spent convictions under the ROA. The view is this is justified given the different context of regulating a profession. The ROA applies to all members of society, whereas the BSB's regulation is limited to barristers and authorised bodies who, as professionals, are required to achieve and uphold higher standards than the general public. Only serious criminal convictions will remain published under the revised time periods after they are "spent". Given the risks to the public confidence of an ex or current barrister, who has had a criminal conviction, continuing to offer legal services to the public, the view is that this is justified.

Consultation

27. On 5 June 2019, the BSB held a consultation roundtable meeting for key stakeholders including representatives from specialist Bar Associations, the Council of the Inns of Court, the Bar Council, the Solicitors Regulatory Authority, a charity dealing with criminal records, and the Legal Services Board Consumer Panel. The participants were provided with the working group's paper on the proposals and statistics from the last two years in relation to disciplinary sanctions imposed by Tribunals.
28. The participants were asked whether the proposed publication periods were reasonable and strike the right between regulation in the public interest and the interests of the regulated community. In particular, they were asked for their views on whether publication of disbarments for the potential lifetime of the individual is appropriate, or whether we should apply a shorter period considering the right to be forgotten. They were also asked whether they could foresee any problems or issues that the BSB had not taken into account.
29. There was general agreement with the proposals put forward, which were positively received. Nearly all participants felt that we had achieved the right balance between protection of the public, regulation in the public interest and the rights of the individual.
30. The key points raised and the BSB's response to each are set out below:
- **Consumer/client input:** There was a broad consensus that from the point of view of consumer information, service users should know about a barrister's disciplinary findings. One participant felt that the BSB should attempt to obtain evidence of what publication periods "consumers" might think would be reasonable to ensure the BSB is acting genuinely in the public interest. The view of the Executive is that such research would present significant practical difficulties in producing results that could be reasonably relied on to inform the terms of the policy. Identifying a research cohort of "consumers" who could provide disinterested but informed views based on the risks to the regulatory objectives, the better regulation principles and the terms of the GDPR would be extremely difficult. Further the costs of any such research is likely to be disproportionate to the potential benefit that might be gained. Given that nearly all participants in the roundtable meeting were of the view that the publication periods are reasonable, the Executive is not proposing that such research is carried out now prior to agreement of the revised policy. However, if an opportunity arises in the future, as part of other projects, consideration will be given to whether we can obtain reliable feedback on the policy from relevant "consumers".

- **Publication of convictions:** Most participants felt that it was appropriate to publish disciplinary findings resulting from a conviction, even if that conviction had subsequently become 'spent' under the ROA. The reasons given mirrored the justification set out paragraph 26 above, i.e. that barristers hold a privileged professional position and should be held to higher account than the general public. One participant felt that the policy should be consistent with Disclosure and Barring Service (DBS) checks. However, Article 29 of the GDPR Working Party, in its guidance on the "right to be forgotten", acknowledges that the position of "members of the regulated professions" may be different and that the continued availability of data can be justified where it would protect the public against 'improper professional conduct'. The advice received from our Information Law expert confirms that this is a relevant and appropriate consideration in determining the BSB's policy. The view of the Executive is therefore that any risk of spent criminal convictions remaining in the public domain via our publication is justified.
- **Mechanism for seeking an exception to the proposed policy:** Two participants questioned whether the policy should contain exceptions or a general discretion to disapply it. However, most of the participants were of the view that allowing for this would create a position whereby every publication of a finding could be subject to challenge on its individual facts thus undermining the efficacy of the policy. The general view was that the policy should be applied strictly without exceptions. Nevertheless, individuals subject to the policy can exercise their right to erasure under Article 17, or the right to object under Article 21 of the GDPR. The Executive is of the view that this is the appropriate means to challenge any publication and such avenues of objection are set out in the BSB's Privacy Statement to which the policy refers. This approach has been confirmed by our Information Law expert as appropriate and reasonable. Further the terms of the Disciplinary Tribunal Regulations allow for a person subject to findings to apply at the time of the finding to the Tribunal for an order that it is not in the public interest for the finding to be published.

Conclusions and recommendations

31. Following the roundtable consultation meeting, the Executive is confident that the revised approach to publishing disciplinary findings as set out in this paper, is reasonable and justified.
32. The revised policy is attached at Annex B. The intention is that the policy will be introduced as soon as possible but work will need to be carried out to ensure that the current entries on the website, which fall outside the revised publication periods are removed at the time of its introduction. The date is therefore subject to the IS department carrying out this work.
33. The Board is asked to approve the revised Publications Policy, specifically:
 - a. The extension of the policy to cover the full extent to which the BSB will put disciplinary findings into the public domain; and
 - b. The revised periods of publication of disciplinary findings as set out at Table 1 above.

Lead responsibility

Sara Jagger

Director of Professional Conduct

Publication of disciplinary findings

Publication periods of other regulators

	Minimum for all findings	Findings that do not result in a sentence involving a period of suspension, disbarment or RoA ¹	Findings that result in a sentence involving a period of suspension of 12 months or less	Findings that result in a sentence involving a period of suspension of more than 12 months	Findings that result in a sentence involving disbarment or RoA
<i>Legal Executives (CILEx)</i>	N/A	1-year warning 3 years fine	Length of sanction	Length of sanction	Length of sanction
<i>Nurses and Midwives (NMC)</i>	4 months	Length of sanction	Length of sanction	Length of sanction	Length of sanction
<i>Chartered Accountant (ICAEW)</i>	1 year	1 year	1 year	1 year	1 year
<i>Opticians (GOC)</i>	1 year	1 year	1 year	Length of sanction	Length of sanction
<i>Veterinary Surgeons (RCVS)</i>	3 years	3 years	3 years	3 years	3 years
<i>Solicitors (SRA)</i>	3 years	3 years	3 years	3 years, unless suspension is >3 years in which case length of suspension	Indefinitely
<i>General Medical Council (GMC)</i>	1 year	5 years from the date of the end of the MPTS hearing	10 years from the date the sanction expires or is revoked	15 years from the date the suspension expires	10 years from date of ROA
<i>General Dental Council (GDC)</i>	One month	One year	For the period of the conditions and for a period of one month when fitness to practise no longer impaired	For the period of suspension and for a period of one month when declared no longer impaired	Five years following date of erasure

¹ ROA refers to Removal of Authorisation, which is the term used by some other regulators to denote our concept of disbarment



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. Regulation E73 of the Complaints Regulations, Part 5, Section A of the BSB Handbook governs the publication of disciplinary findings made under the DBC procedure. rE73 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 three 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 five 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.

Part 1 – Public

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 General Data Protection Regulation (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 GDPR should contact the Head of Investigations and Hearings.

Schedule of Board Meetings Jan 2020 – Mar 2021

Status

1. For noting and approval.

Executive Summary

2. The paper sets out proposals for the 2020/21 cycle of Board meetings. This reduces the overall number of meeting days per calendar year to six (five Board meetings and one Away Day). This is the minimum number of business meetings allowed under the current BSB Standing Orders.

Recommendation

3. The Board is asked to **agree** the schedule.

Detail

4. The proposed dates for Bar Standards Board meetings (Jan 2020 – Mar 2021) are:
 - Thurs 30 January 2020 – already diarised
 - Thurs 26 March 2020 – already diarised (possibly preceded with joint BSB / OLC meeting)
 - Thurs 21 May 2020
 - *Thurs 16 July 2020 (Board Away Day)*
 - Thurs 24 September 2020
 - Thurs 26 November 2020 (possibly preceded with joint BSB / LSB meeting)
 - Thurs 28 January 2021
 - Thurs 25 March 2021
5. We have not yet confirmed the dates proposed for joint meetings with the Office for Legal Complaints (OLC) and the Legal Services Board (LSB). We will attempt to arrange these on the same day as our own meetings (as above) but cannot guarantee this.
6. Previously, we have held two half-day Away Days during the year, in April and December. On reflection, it may be just as productive, and more cost effective, to hold just one of these a year but to extend the duration to a full day eg 10.30 am – 4.30 pm. This broadly reflects the practice of other regulators. Holding such a meeting in July sits better with the BSB strategic and business planning cycles and affords the Board an opportunity to set its direction in a more obviously timely way.

Rebecca Forbes
Head of Governance and Corporate Services
July 2019

Chair’s Report on Visits and External Meetings from mid-June 2019

Status:

1. **For noting**

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair’s visits and meetings since the last Board meeting.

List of Visits and Meetings:

18 June	Introductory meeting with the new Chair of SRA, Anna Bradley
1 July	Attended the Law Officers’ Reception at Dover House
2 July	Introductory meeting with the new Solicitor General, Lucy Frazer, QC MP accompanied by Vanessa Davies
	Attended Middle Temple Garden Party
4 July	Attended the Honourable Society of Lincoln’s Inn Garden Party
5 July	Met with Jetsun Lebaschi and colleagues, Cardiff University
	Attended the Circuit Dinner, Cardiff
6 July	Attended the Bar Council meeting, Cardiff
9 July	Attended the 125 th Anniversary of the Bar Council, Reception
11 July	Attended the Inner Temple Summer Party
12 July	Attended the BSB DG Longlisting
17 July	Attended the Board briefing meeting