The Council of the Inns of Court

Response to the BSB Consultation document:

The Bar Standards Board's Enforcement Powers and Procedures (Proposed revisions to the Enforcement Regulations: Part 5 of the BSB Handbook)

Response from the Council of the Inns of Court (on behalf of the Inns of Court) 13 October 2025

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Introduction

1. The Council of the Inns of Court (COIC) thanks the Bar Standards Board (BSB) for the opportunity to respond to the consultation on the BSB's Enforcement Powers and Procedures.

2. The four Inns of Court have appointed COIC to submit a response to the consultation on their behalf. This is that response. It has been circulated to the Inns for their consideration and comment by the appropriate committees. This document therefore contains the common views of the Inns of Court and their members.

3. COIC endorses the findings of the review of the BSB enforcement system by Fieldfisher LLP (the Enforcement Review) and welcomes the BSB's response. As will be seen from the detailed comments which follow, COIC broadly agrees with the proposals presented by the BSB. The comments we make are directed to refining and improving the proposals where COIC considers that this would be useful.

4. We address the proposals in groups, as they have been grouped in the consultation paper. Thus, Proposals 1-5, 6-14, 15-20, 21-23 and 27-34 are each covered in sections directed to them.

5. As the proposals and their impacts interact and overlap, we have endeavoured in this response to address them thematically rather than simply sequentially. We have endeavoured to make clear by cross-reference where a response addresses more than one proposal where our response addresses the issues raised by a particular proposal elsewhere. Should there be any questions about any of the responses, COIC would be more than happy to engage with the BSB to discuss them further.

6. There is one initial point that we would wish to make in the introduction. The proposals are directed to the functions of the Investigation and Enforcement Team and the Bar Tribunals and Adjudication Service (BTAS). They do not extend to the operation of the Contact and Assessment Team (CAT). Reports to the BSB of potential misconduct are dealt with initially by the CAT. Only those assessed as requiring further action are passed on. The remainder are triaged out with letters of rejection to the complainant and notification to the barrister. The barrister has no contact with the process until he or she receives the notification that the complaint is not being taken up. As the Enforcement Review points out approximately 85% of reports are dealt with only by the CAT. Only 15% are assessed as requiring further action. Thus, this method of disposal of complaints is numerically extremely significant.

7. As noted above, where the CAT determines that no further action is required, the report is finally disposed of without the barrister having been informed. This does not give the barrister an opportunity to comment on the manner in which the potential complaint is to be dismissed. Unless great care is taken, this can result in a sense of unfairness if, for example, the barrister believes that the facts on which the complaint is based are not correct. The problem is exacerbated if the notice that the complaint will not be pursued suggests that there was misconduct but that it was of insufficient gravity to merit investigation. A barrister receiving such a notification could justifiably consider that he or she had been unfairly treated. That is particularly so if that conclusion is based upon factual allegations that the barrister considers to be inaccurate.

8. The present review of process does not consider whether the CAT processes are working well or whether any changes are required to improve them. We would suggest that this should be done as soon as reasonably possible. Whilst the Enforcement Review considered the efficiency of the CAT's processing, there does not seem to have been a review of the quality of the assessments or the manner in which they were dealt with when it is determined that no further action is required. In our view such a review is appropriate, not least because the vast bulk of reports to the BSB go no further and it is important that both the public and the profession have confidence in the initial filtering process.

9. With that introduction, we turn to the proposals put forward in the Consultation Paper.

Proposal 1 Communication of detailed, written 'allegations'

Question 1. Do you agree with our proposal to defer the point at which detailed, written allegations are formulated and sent to the barrister for comment to later in the investigation when relevant information has been gathered? If not, why not?

10. As noted in paragraph 54 of the Consultation Paper, Proposals 1 and 2 raise overlapping issues with the time at which and the way in which allegations are communicated to barristers.

11. COIC endorses proposal 1 subject to the following points which COIC considers need to be addressed in guidance and instructions to ensure that the processes are and are seen to be carried out fairly.

12. We agree that the drafting of detailed allegations before a proper investigation has been conducted is likely to cause difficulties and, as the Enforcement Review has found, may unduly limit the scope of the investigation. However, it is important to ensure that when a barrister is informed of the "broad summary of the potential breaches and the relevant underlying facts" these are presented in a way that makes clear to the barrister that they are provisional, subject to further consideration and review and that the barrister will have a proper opportunity to comment on and challenge any aspect of the matters raised with which he or she disagrees. Our understanding is that this is what is proposed in paragraphs 44 and 45 of the Consultation Paper.

Question 2. Do you envisage any issue (legal or practical) with our proposal to introduce the new approach to the communication of detailed, written allegations, before any change to the regulations?

13. COIC agree that the current regulations permit this proposal to be implemented without requiring change. We also agree that for clarity, either guidance or amendments to the regulations should be published which set out how clearly the process is conducted.

Proposal 2 Introducing a power to add to and/or amend the written allegation

Question 3. Do you agree with our proposal to introduce powers to add to, or amend, the written allegation(s), without an opportunity for further comment from the barrister, in the circumstances described in Proposal 2? If not, why not?

14. COIC endorses proposal 2. We anticipate that the effect of proposal 1 will be that it will rarely be necessary to invoke the step suggested by proposal 2. Further, any change to the allegations should be minor and have no impact on the substance of the allegation. From what is set out in paragraphs 52, 56 and 57 we understand that the proposal is to be limited to matters of formality to ensure that the most appropriate provisions are cited and the allegation is couched in the most appropriate terms. Subject to these comments we agree that this proposal is sensible.

Question 4. Do you agree with the introduction of a power to add allegations of non-cooperation during an investigation, without requiring an opportunity for further comment from the barrister? If not, why not?

15. COIC agrees with the introduction of the power to add allegations of non-cooperation during an investigation but is firmly of the view that that the barrister must first be given the opportunity to comment on any new allegations which are of a distinct and separate nature to those previously communicated to them.

Proposal 3 Giving staff the power to refer criminal convictions cases for disciplinary action

Question 5. Do you agree that staff should be given the power to refer all types of criminal convictions cases directly for disciplinary action? If not, why not?

16. COIC agrees that, subject to appropriate safeguards, it is sensible for a single BSB staff member to have the power to refer cases of criminal conviction directly for disciplinary action. It is, however, important to ensure that the threshold for such referral powers is both clear and high and that all cases of doubt are reviewed by a full Independent Decision-Making Panel to avoid unnecessary referrals.

Proposal 4 Amending the powers to reconsider post-investigation decisions

Question 6. Do you agree with the proposal to allow a single member of the Independent Decision-Making Body the power to determine whether a request for reconsideration meets the criteria? If not, why not?

17. COIC agrees that this proposal is sensible and should be adopted.

Proposal 5 Confidentiality of reports and investigations

Question 7. Do you agree with our proposal to amend the exceptions to the general duty of confidentiality imposed on the BSB to clarify the BSB's ability to make disclosures where necessary to further an investigation? If not, why not?

18. COIC address this proposal in detail with the proposals concerning public hearings and media and non-party access to materials (Proposals 33 and 34) as in their view, the issues raised by each of these proposals raises the same underlying issues of fairness to the accused barrister and public access to information about the way in which justice is dispensed.

19. COIC agrees that investigations should be kept confidential and recognises that limited disclosure of information may be required in order to conduct an investigation. Provided that there is clear guidance to those conducting the investigation both that the information which is disclosed should be kept to the minimum required to enable the investigation and that they should exercise caution when considering whether disclosure is indeed necessary, this proposal is supported.

Proposal 6 Introducing an overriding objective

Question 8. Do you agree with our proposal to introduce an overriding objective into the Disciplinary Tribunals Regulations? If not, why not?

Question 9. Do you have any observations on our proposed formulation for an overriding objective?

20. COIC agrees that it would be beneficial for there to be a defined, overriding objective written in the Disciplinary Tribunals Regulations that cases should be dealt with justly and proportionately.

21. We are concerned to observe, however, that the adoption of an overriding objective should not be regarded as a panacea for the myriad issues currently prevailing within BTAS that impact upon the way in which cases are managed.

22. The remedy is in ensuring that any overriding objective is achievable and that BTAS has the capacity and resources to achieve it.

23. Resources, plainly, are an ongoing issue. Insufficient numbers of case workers, the recruitment of tribunal clerks, a struggle to retain staff, greater complexity in some more recent cases and additional demands on the regulator by the profession all contribute to difficulties in case preparation and listing.

24. It cannot be just or proportionate that some cases take 3 or 4 years to reach a tribunal hearing when the aim is "timely resolution." Whether an improvement in processes or resources or both will remedy those ongoing difficulties remains to be seen.

Proposal 7 Introducing a power for BTAS to regulate its own procedure

Question 10. Do you agree with our proposal to introduce a power for BTAS to regulate its own procedure in individual cases, strictly in accordance with the Disciplinary Tribunals Regulations and the proposed new overriding objective? If not, why not?

25. COIC agree that wider case management powers should be introduced for the Disciplinary Tribunal to regulate its own procedure in that context.

Proposal 8 Greater case management by BTAS

Question 11. Do you agree with our proposal to give BTAS responsibility for case management, including the setting of case management directions and the power to list a case management hearing at any time? If not, why not?

Question 12. Do you agree that certain case management decisions can be delegated to the BTAS executive? If not, why not?

26. Broadly, COIC agrees that extending BTAS responsibility for case management is a sensible and proportionate approach, and complementary to Proposal 7 and the achieving of the overriding objective set out in Proposal 6.

27. We see merit in a case management questionnaire, although we are concerned that there is no apparent provision to enable barristers to challenge case management directions set by BTAS based on the responses to that questionnaire.

28. On the same issue, paragraph 119 of the Consultation provides for BTAS to list further case management hearings as appropriate but does not appear to incorporate any provision should the barrister, but not BTAS, wish to initiate a hearing to deal with any issues the barrister considers outstanding.

29. It may be that the route for the barrister is via the Disciplinary Tribunal itself, which we note in paragraph 120 is to benefit from a power to list case management hearings itself; however, the impression at present is that the listing of a case is very much at the instigation of BTAS and the Tribunal to the exclusion of the barrister.

30. Where case management issues are not contested and do not involve matters of law, we see no difficulty in the delegation by the Chair of the Tribunals to a member of the BTAS executive. We infer that if an issue is not contested, then it is highly likely that the barrister will consent to such delegation.

Proposal 9 Clarifying when sanctions come into effect and broadening powers to impose an immediate sanction, pending appeal

Question 13. Do you agree with our proposal to clarify the timing of when a sanction imposed by the Disciplinary Tribunal comes into effect and that this is at the conclusion of any appeal period? If not, why not? Click here for Table of Contents 123

31. COIC agrees that it is essential there should be transparency and clarity as to when sanctions imposed should come into effect. The provisions are, at present, particularly opaque as to when sanctions begin and the Inns would benefit from a clearer indication on what should be communicated to them and when.

32. It is essential that correct terminology is adopted; there are, for example, differences between an immediate sanction and an interim sanction. Those differences may have different ramifications with principles governed by different case law.

Question 14. Do you agree with our proposal to widen the Disciplinary Tribunal's power to impose an immediate suspension or conditions, pending any appeal?

33. COIC agrees with the proposal to widen the Tribunal's powers regarding immediate suspension or conditions pending appeal for the protection of the public or in the public interest.

Proposal 10 Representations on sanction

Question 15. Do you agree with our proposal to amend the Disciplinary Tribunals Regulations to clarify that the Disciplinary Tribunal may hear representations from the BSB on the issue of sanction? If not, why not?

34. COIC agrees that the Regulations should be clarified; in practice, the BSB makes representations on sanction regularly, as paragraphs 145-146 note.

Proposal 11 Service by email

Question 16. Do you agree with our proposal to allow service by email where a barrister's email address is known to the BSB, without requiring the consent of the barrister? If not, why not?

35. COIC agrees that service by email is a sensible approach and in keeping with modern practice.

Proposal 12 Clarifying the BSB's entitlement to costs

Question 17. Do you agree with our proposal to clarify the Disciplinary Tribunal Regulations relating to the BSB's entitlement to claim costs relating to the conduct of disciplinary proceedings? If not, why not?

36. If there is any such confusion as set out in the Consultation, COIC agree.

Proposal 13 The BSB's right of appeal

Question 18. Do you agree with our proposal to clarify the BSB's right to appeal in cases where a charge is only partially dismissed? If not, why not?

37. COIC favours this proposal. The appeal process would benefit from clarity and simplicity, and this proposal should reduce the need for the drafting of repetitious charges.

38. Common practice suggests that the BSB has a tendency to capture the same conduct within multiple charges, each very similarly worded but with slightly different nuance. This practice in our view creates unmanageable charge sheets that are unnecessarily complex and unwieldy, which gives rise to additional and unnecessary burden upon the BSB and, importantly, upon the barrister in the course of preparation and at the final hearing itself.

39. The overriding objective would be more readily achieved if charges were worded in a lean, efficient way and without duplication.

40. We note that the Sanction Guidance itself stresses that the number of charges should not necessarily correlate with the gravity of the conduct under scrutiny. Charges should be transparent, clear and concise, promoting efficiency and fairness at a final hearing.

Proposal 14 Presumption of anonymity

Question 19. Do you agree with our proposal to introduce a presumption in favour of anonymity in disciplinary proceedings for any witness making an allegation of a sexual or violent nature? If not, why not?

41. COIC agrees that witnesses making allegations of a sexual nature should have the benefit of a presumption of anonymity in terms of reporting and disclosure to the

public. That is standard practice with other regulators, and we see no reason for any difference here.

42. We wish to ensure that there is no suggestion implicit in the proposal that the barrister themselves should not know the identity of their accuser. Paragraph 182 makes specific reference to the prevention of the identity of witnesses being revealed to the press or general public in an example of a circumstance in which a Tribunal "may adopt 'special measures.'" In the same paragraph, it is suggested that these special measures "are also not necessarily the equivalent of anonymisation."

43. We make it clear that we would oppose any proposal that suggested the barrister accused should be prevented from knowing the identity of their accuser.

44. With that in mind, Paragraph 187 reflects a proposal by which "the identity of the witness **may** still be known to those participating in the proceedings, namely the BSB, the barrister and the tribunal panel." [our emphasis]

45. We suggest that the word "may" should be replaced with "will always" for those reasons.

46. We query the need for anonymity in cases regarding allegations of violent behaviour, which we do not believe to be common practice with other regulators.

Proposal 15 Simplifying the grounds for referral to an interim panel and imposition of interim orders

Question 20. Do you agree with our proposal to simplify the grounds for referral to an interim panel and the imposition of interim orders? If not, why not?

47. COIC broadly agree.

48. We understand the reasoning behind this proposal; however, we note that in other regimes, 'protection of the public' and/or 'otherwise in the public interest' tend to be treated as two separate grounds. We query therefore whether the second of the two grounds should be separated such that there would be three grounds instead of two. This would still achieve the aim of simplifying the number of grounds. We note that

the proposal outlines that the intention is not to narrow the types of cases that may be referred and that "supporting guidance will be provided to ensure clarity". We agree that such guidance should be produced and should be clear as to the types of circumstances that would lead an order to be necessary on 'public interest' grounds. We also agree that consideration should be given to a 'catch-all' ground to be applied in exceptional cases – it may be that this is intended to be captured in the 'public interest' grounds and guidance would assist.

Proposal 16 Grounds for the imposition of an immediate interim suspension

Question 21. Do you agree with our proposal to broaden the power of the Chair of the Independent Decision-Making Body to impose an immediate interim suspension? If not, why not?

49. COIC do not agree.

50. We again understand the reasoning behind the proposal, however, we are concerned that the expansion of the test may be excessive. The example given is of a barrister having been remanded into custody. We do not see that in such a scenario a barrister would be able to continue practising and thus would pose no real risk to the public. In those circumstances we do not see that an immediate interim suspension would be necessary. In the unusual circumstances of an interim step prior to a convened interim panel hearing, the threshold for imposing an immediate interim suspension should remain high. We appreciate that there may need to be flexibility for unanticipated circumstances, however, BTAS is currently required to consider interim suspensions within 21 days, and this is a robust process.

Proposal 17 Listing process

Question 22. Do you agree with our proposal to streamline and simplify the listing process for hearings? If not, why not?

51. COIC agrees that it would be beneficial to streamline the process, not least because this will reduce anxiety for all involved. We believe that parties ought to have the opportunity to make representations on dates, however, this should not be to the detriment of the formal timetable.

Proposal 18 Direct referral powers

Question 23. Do you agree with our proposal to remove the power given to panels under the ISDRs to refer cases directly to a Disciplinary Tribunal? If not, why not?

52. COIC agree.

Proposal 19 Right of review

Question 24. Do you agree with our proposal to allow the BSB the right to request a review of an interim order? If not, why not?

53. COIC agree.

Question 25. Do you agree with our proposal to allow both parties to make representations in relation to an interim order review request? If not, why not?

54. COIC agree.

Proposal 20 Granting powers to the Disciplinary Tribunal panel to consider requests to review interim orders

Question 26. Do you agree with our proposal to allow Disciplinary Tribunal panel to consider requests to review an interim order as part of the substantive hearing? If not, why not?

55. COIC agree.

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

Question 27. Do you agree with our proposal to re-brand the fitness to practise regime to a "health" regime and to make consequential amendments to the regulations to align with that re-branding? If not, why not?

56. COIC agrees with the proposal to rebrand the fitness to practise regime as the health regime. We consider that this clearly and accurately describes the regime and its purpose. It avoids confusion with other regulatory regimes where "fitness to practise" is the term used to cover all types of regulatory concern, including misconduct and lack of competence. By avoiding this confusion, any stigma is also reduced.

Question 28. Do you agree with our proposal to amend the threshold for referral into the health process by removing the requirement for incapacitation? If not, why not?

57. Yes, COIC agrees with this proposal, and with the amended criteria set out in paragraph 268 of the consultation paper. However, we have the following observations on those criteria:

- We consider it vitally important that there should be a high threshold for intervention on health grounds.
- We note that the term "health condition" is to be used, and that it is to be defined as "a physical or mental health condition (including addiction)". We agree with this definition, as far as it goes, for the reasons set out in the consultation paper. However, we suggest it is also important for the BSB to be clear about how physical and mental impairments, including neurodiversity, are to be treated. It is important to consider whether different types of neurodiversity or learning difficulties (which may amount to a disability for the purposes of the Equality Act) ever fall within the definition of a 'health condition', and if not, what should be the regulatory response when concerns are raised about conduct which results from neurodiversity or a learning disability.
- We agree that any restriction (including conditions or undertakings) should be necessary for the protection of the public or otherwise in the public interest. We suggest that, taking account of case law from other regulatory regimes, "otherwise in the public interest" is a high threshold, effectively amounting to "necessity".
- We make the observation that a barrister's insight into their condition and the impact it has on their practice is likely to be important evidence about whether action is necessary to protect the public or otherwise in the in the public interest.
- We note the BSB's rationale for proposing that there should not be a ground for action of "in the barrister's own interest". This rationale does not include any reference to cases where there is evidence that the stress of practice may cause the barrister's to relapse/deteriorate, and for them to suffer serious harm as a result. We suggest it would be helpful for the BSB to consider whether they have any kind of safeguarding duty in this situation, before finalising the criteria.

Proposal 22 Convening a panel and fixing a hearing date

Question 29. Do you agree with our proposal to introduce an explicit duty for BTAS to convene a panel, fix a hearing date and notify both parties of the meeting date, following the referral of a barrister to a health panel by the BSB? If not, why not?

58. COIC agree.

Proposal 23 Introducing a power to accept undertakings prior to a referral to a health panel

Question 30. Do you agree with our proposal to give the BSB the power to agree undertakings before and instead of a referral being made to a health panel? If not, why not?

59. COIC agree.

Proposal 24 Length of orders

Question 31. Do you agree that six months is no longer an appropriate time limit to impose on fixed term suspensions or disqualifications that may be imposed by health panels? If not, why not?

60. COIC agrees that six months is too short. There are many serious and long-term health conditions that take very much longer to respond to treatment.

Question 32. Do you prefer Option 1 or Option 2 and why? If you prefer neither option, please let us have your views on any alternative formulations that we should consider.

61. COIC prefer Option 2. We are of the view that indefinite suspension is not suitable. We consider that indefinite suspension, or excessively lengthy maximum periods of suspension, carry the risk that the barrister is forgotten or left in limbo. One way of avoiding this risk is ensuring that unwell barristers can be represented throughout this regime. Another is to require there to be regular and timely reviews.

62. Although we prefer Option 2, we consider that a 36-month suspension may be excessive. We suggest a period of two years may be more appropriate. This would enable sufficient time and opportunity to assess whether the health condition, and its impact on the barrister's ability to practise, has improved.

Question 33. Do you agree with our proposal to introduce powers for health panels to review a barrister's health and ability to practise before they resume practice, to ensure there are no ongoing public protection or public interest concerns? If not, why not?

63. COIC agree.

Proposal 25 Giving panels the power to impose interim conditions at Preliminary Meetings

Question 34. Do you agree with our proposal to introduce a power for health panels to impose interim conditions (in addition to the existing power to impose an interim suspension or disqualification) at a preliminary meeting to protect the public or in the public interest? If not, why not?

64. COIC agrees. We consider that this enables a more proportionate response in individual cases. We suggest that the review process for such orders must include a safety valve to avoid any unfairness or injustice.

Proposal 26 Rights of review and clarifying the review process

Question 35. Do you agree with our proposal to simplify the rights to review and the review process under the regulations? If not, why not?

65. COIC agrees with the proposal, but we consider that review requests should be considered and determined by a directions judge. This avoids any perception of unfairness that might arise from the fact that BTAS staff are not necessarily medically or legally qualified.

Proposal 27 Changes to Disciplinary Panel composition

Question 36. Do you agree with the introduction of a three-person panels for all disciplinary tribunals? If not, why not?

Question 37. Do you agree with our proposal for panels to have a legal (not necessarily barrister) majority, rather than a lay majority? If not, why not?

66. COIC notes that most regulators operate with panels of three members. The BSB's initial preference for a lay majority has been revised to a legally qualified majority, not necessarily comprising barristers, and there is no proposal for panels to be supported by an independent legal adviser.

67. COIC considers that the BSB should give further thought to whether the legally qualified member should be a barrister. Barristers have an understanding of practice at the Bar, its professional environment, and the realities of work which are likely to be central to any allegations under consideration.
    The possible inclusion of judges was also discussed. Judicial expertise may well improve decision-making, but only provided that their appointment does not compromise efficiency—for example, through delay in listing or availability.

Proposal 28 Changes to the Independent Decision-Making Panel

Question 38. Do you agree with altering the composition of IDB panels considering enforcement cases from five to three-person panels, with a lay majority? If not, why not?

68. COIC is content with the proposal to reduce the size of IDB panels from five to three members.

Proposal 29 Changing the requirements for panel chairs

Question 39. Do you agree with our proposal to change the existing requirements for a panel chair to a requirement for a legally qualified chair with at least 15 years' practising experience? If not, please indicate why this criteria is insufficient?

69. COIC recognises that the decision to disbar a barrister is of the greatest seriousness and demands significant seniority and experience. The consultation refers to a threshold of 15 years' practice. Some have argued that only a KC, judge, or circuit judge should be entitled to take such a decision, given the gravity of the sanction.

70. COIC notes, however, that this approach would carry risks. A requirement that panel chairs be KCs would disproportionately favour self-employed barristers. It could also reduce diversity on panels, as women and those from minority ethnic backgrounds remain underrepresented amongst KCs and the judiciary. In addition, length of practice is not always a reliable proxy for suitability: a barrister of 15 years' call may not necessarily have the judgment or authority required to chair disciplinary proceedings effectively.

Proposal 30 Panel secretary role

Question 40. Do you agree with our proposal to replace the role of a clerk in disciplinary tribunals with that of a Panel Secretary who will be a BTAS employee? If not, why not?

71. COIC agrees in principle with there being a BTAS employee Panel secretary, but notes that the potential advantages of this cannot be properly assessed until information is provided by the BSB about the anticipated cost of this and whether it is assumed that this will be borne by the profession via increased practising certificate fees.

Proposal 31 Panel composition in health proceedings

Question 41. Do you agree with our proposal to change the composition of panels in health proceedings? If not, why not? If you do, do you prefer option 1 or option 2?

72. COIC supports reducing the size of health panels from five to three members, recognising that smaller panels may be less intimidating for barristers appearing in sensitive health-related proceedings. COIC acknowledges the need to retain medical expertise and supports both options proposed.

73. COIC considers that Option 1, comprising a legally qualified chair, a barrister, and a lay member, supported by a medical advisor, provides an appropriate balance between legal oversight and access to specialist medical input, while keeping decision-making accessible and proportionate. COIC also recognises the merits of Option 2, with a lay chair, barrister member, and medical member directly involved in decision-making, which may offer efficiency and align with the non-disciplinary nature of health proceedings.

74. COIC emphasises that whichever model is adopted, procedures should ensure transparency and fairness, including open communication of medical advice to the parties and opportunities to respond. COIC also supports unconscious bias training to mitigate any risks associated with a smaller panel size.

75. COIC agrees with the proposal to move to three-person panels for health proceedings, on the condition that medical expertise is preserved and procedural fairness, transparency, and accessibility are fully upheld.

Proposal 32 Bringing forward the timing of publication of disciplinary cases

Question 42. Do you agree in principle that the point of publication of the fact that disciplinary proceedings are underway should be brought forward? If not, why not?

Question 43. If the point of publication is brought forward, do you prefer option 1 or 2 and why? Please explain why.

Question 44. What are the circumstances in which you think the rights of a barrister will outweigh the principles of transparency such that publication will not be appropriate?

76. COIC agrees that transparency in the publication of charges is important for maintaining public confidence. However, in cases where hearings take several years to come on, publication of charges at an early stage would cause disproportionate reputational harm and unnecessary anxiety for the barrister concerned.

77. COIC therefore suggests that charges should be published only at a fixed point before the hearing—for example, one month prior to its commencement. This approach would strike a fair balance between transparency and fairness to the individual.

Proposal 33 Public vs private hearings across the enforcement

Question 45. Do you agree with our approach to holding administrative sanctions and appeals in private? If not, why not?

78. Administrative sanctions and appeals should continue to be private, reflecting their non-disciplinary nature.

Question 46. Do you agree that determinations by consent should continue to be held in private? If not, why not?

79. Determinations by consent should remain private, with outcomes published, to encourage efficient resolution.

Question 47. Do you agree that interim suspension hearings should continue to be held in private (unless the barrister requests a public hearing)? If not, why not?

80. Interim suspension hearings should also remain private unless requested otherwise by the barrister, with outcomes published to maintain transparency.

Question 48. Do you prefer Option 1 (that all case management and interlocutory application hearings are generally held in public) or (Option 2 (that the first case management hearing is in private but generally all further hearings will be in public unless the Tribunal orders otherwise)? Please explain why.

81. COIC supports bringing forward the publication of the fact that disciplinary proceedings are underway, while distinguishing between administrative sanctions and disciplinary proceedings: administrative sanctions are minor and should remain private. COIC prefers Option 2, where the first case management hearing is private and subsequent hearings are public unless ordered otherwise, balancing transparency and procedural fairness.

Question 49. Do you agree that substantive disciplinary tribunal proceedings should remain in public? If not, why not?

82. Substantive disciplinary tribunal hearings should remain public, with outcomes published, to uphold accountability and public confidence.

Question 50. Do you agree with our approach to holding all fitness to practise hearings in private, subject to the barrister's right to request a public hearing? If not, why not?

83. Fitness to practise and health-related hearings should remain private by default, subject to the barrister's right to request a public hearing.

Question 51. In what circumstances should the outcome of fitness to practise/health decisions be published?

84. *COIC supports* outcomes being published or anonymised where appropriate to protect sensitive information.

Proposal 34 Media and non-party access to documents

Question 52. Do you agree with our proposal not to amend the regulations to address the issue of the media and non-party access to documents, but to work with BTAS in the future to produce guidance on the approach to such issues? If not, why not?

85. COIC welcomes the proposal to develop policies and guidance with BTAS on non-party access to documents, including media requests, without introducing formal amendments to the regulations.

Question 53. Do you have any comments or views in relation to our assessment of the equality impacts of our proposals? Where possible, please provide evidence.

86. COIC recognises the importance of transparency and the public interest in open justice and considers that providing a clear framework for handling such requests will support consistency and fairness in the Disciplinary Tribunal's decision-making.

Question 54. Do you have any comments or views on the potential data protection and privacy issues raised by the proposals? Where possible please provide evidence.

87. COIC agrees that non-party access should be managed flexibly, taking into account the interests of press freedom, fairness to the parties, and the protection of sensitive or confidential information. Guidance should ensure that requests for access to documents, and representations from the media regarding anonymity or private hearings, are dealt with transparently and consistently across cases.

88. COIC has no evidence to suggest that this proposal will have a positive or adverse impact on any protected characteristic. In relation to data protection, COIC emphasises the need for guidance to safeguard personal data in accordance with the UK GDPR and Data Protection Act 2018, particularly when dealing with sensitive material or health-related information.

89. COIC endorses the BSB's approach of issuing guidance rather than amending the regulations, provided that the guidance clearly balances transparency, procedural fairness, privacy, and compliance with data protection obligations.