



**LEGAL SERVICES
BOARD**

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Stephen Crowne
Chief Executive
Bar Council
289-293 High Holborn
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13 September 2013

Dear Stephen,

As you know, on Wednesday 11 September the Board considered the Report into the Bar Council's involvement in the BSB application to the LSB for approval of changes to the Code of Conduct in relation to the "Cab Rank Rule". I attach a confidential copy of the report for your information.

The Board agreed with the Report's conclusions and is minded to find that:

- (a) That the Bar Council failed to comply with a requirement imposed on it by the IGR, namely the requirement at all times to act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle;
- (b) That the Bar Council failed to comply with a requirement imposed on it by the IGR, namely the requirement to ensure the exercise of regulatory functions is, so far as reasonably practicable, independent of any representative functions; and
- (c) That the Bar Council's acts (and omissions identified during the investigation), or a series of acts (or omissions identified during the investigation) had, or are likely to have, an adverse impact on protecting and promoting the public interest by undermining the principle of independent regulation.

It also minded to find that the Bar Council's acts (and omissions identified during the investigation), or a series of acts (or omissions identified during the investigation) did not, and are not likely to have, an adverse impact on supporting the constitutional principle of the rule of law to the extent that the Bar Council has breached a requirement within the Internal Governance Rules (IGR).

In accordance with the requirements of the Legal Services Act 2007 and its Statement of Policy on compliance and enforcement, the Board considered whether the Bar Council's actions or omissions were unreasonable and it decided that they were.

The Board considered that the Bar Council's acts and/or omissions were sufficiently serious that it would be appropriate to consider taking enforcement action. However, in accordance with the requirements of the Legal Services Act 2007 and its Statement of Policy on compliance and enforcement, the Board took into account of the desirability of resolving matters informally.

The Board has therefore delegated to me the power to discuss informal resolution with you in order to achieve the following outcomes (or ones in similar terms):

- The Bar Council and the BSB develop proper processes to govern Bar Council staff and officer involvement in regulatory matters, in particular where the Council acts as an adviser, rather than a stakeholder/commentator
- Bar Council staff and officers do not attend the non-public sessions of BSB meetings (and vice versa), other than in exceptional circumstances, with any reason for attendance fully documented in the public minutes.
- The requirement to pay the Members' Services Fee in order to complain about a solicitor/SRA authorised person is removed and processes are put in place to ensure that those who choose not to pay the fee for other (properly representative) services have identical access to those who do pay
- The BSB incorporates within its review of the Cab Rank Rule that it has agreed to undertake by March 2014, a reassessment of the appropriateness of including standard contractual terms in its regulatory arrangements. (This reflects our view that although the conclusions of this investigation bring into question whether the changes to the BSB's regulatory arrangements would be deemed appropriate in the absence of undue influence, it would not be proportionate in the light of other more pressing priorities.)

It is important to emphasise that the Board considers that informal resolution may be an alternative to enforcement action, but it is not an opportunity to negotiate different outcomes. The Board was clear that it expects to see clear and explicit action by the Bar Council to achieve these outcomes, within a short timescale. It has therefore asked for advice (to be considered at its meeting on 15 October 2013) about whether the Bar Council accepts the findings in the Report and is prepared to act in the terms described above, as this will be a very material factor in its final decision on whether to pursue enforcement action

We can discuss your views and next steps when we meet on Monday 16 September 2013.

I am sending a copy of this letter and the report to Vanessa Davies at the BSB.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris', written in a cursive style.

Chris Kenny
Chief Executive

E chris.kenny@legalservicesboard.org.uk

A handwritten arrow in black ink, pointing from the bottom right towards the email address.