

Supervision Department – Staff Structure

Introduction

1. The purpose of this note is to set out the structure of the Supervision Department and to demonstrate how, through the flexible management of resources, there will be adequate staff for 2015 / 2016 in order to meet the demands of supervision and entity authorisation / licensing.
2. The Department is responsible for two main areas of activity:
 - Risk based supervision
 - Entity authorisation / licensing
3. All members of the Department will be available for, and appropriately skilled in, supervision and authorisation / licensing activities and will be diverted where there is the greatest need or demand.
4. This paper focuses on the resource requirements for the supervision of chambers and entities and for the entity authorisation processes. Resource planning for the licensing process will be undertaken in due course and will be informed by further research into the likely scope and volume of applications.

Context

5. Risk based supervision builds on a monitoring approach to compliance which the BSB has operated over the last three years and has resulted in more proactive supervisory and monitoring activities. Entity authorisation was introduced in January 2015. These shifts in the Department's activities have necessitated a reshaping of the Department's resources to ensure that there is sufficient capacity and capability to meet the operational demands in these areas.
6. Given that entity licensing is a new area of regulation for the BSB, the resource planning for the Department has been undertaken for the first 12 months of operation. This allows for lessons to be learnt and changes to be made once there is a greater degree of certainty about the level and number of resources required to operate an effective supervision and authorisation / licensing regime. To over-resource the Department in the absence of any concrete evidence on the likely take up of entity licensing would be financially unwise and could lead to inflated fees (given that the intention is to operate a cost recovery model for entity authorisation / licensing).

Resourcing model

7. The Supervision Department will in part be resourced by current members of staff who have a broad range of regulatory and supervisory experience. Since late 2014 we have in place an Authorisations Team comprising:
 - a. An Authorisation Manager, Cliodhna Judge, who has legal qualifications and broad experience with risk management and financial services.
 - b. A Supervision and Authorisation Officer, DB Lenck who has expertise in risk and financial management; and
 - c. A Supervision and Authorisation Assistant, Mark Lawrence, who was already within the Department and has supervisory, technical and IT skills.

As part of the overall Department, this team has developed, implemented and is currently operating the end-to-end entity authorisation process. The associated skills and experience will be leveraged for entity licensing.

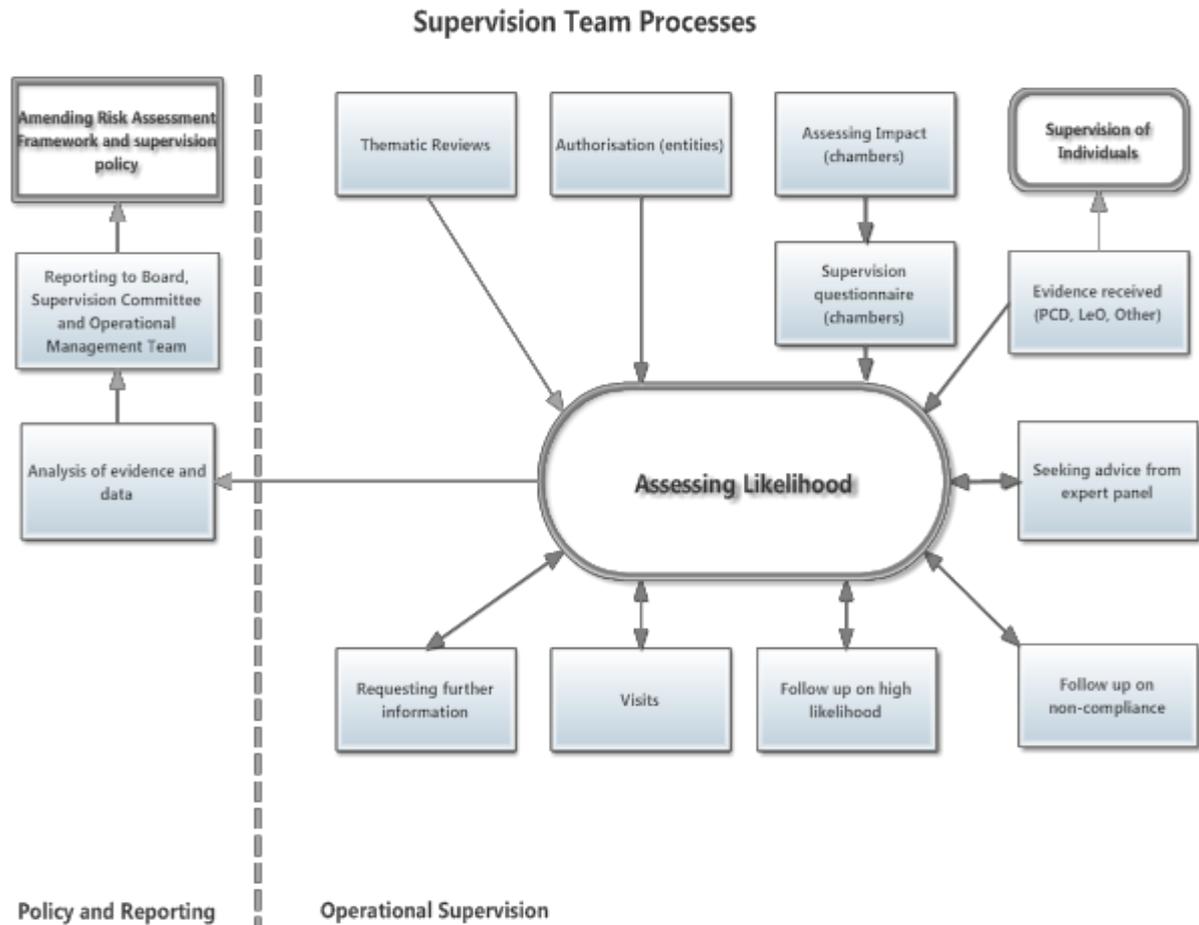
8. The Department will be complemented by the introduction of new resources with the primary intention of addressing any identified skills gaps. Further recruitment will be made to the Department to increase capacity and capability particularly in relation to risk management, finance and accounts and the administration and management of chambers / entities. For example a Supervision and Policy Officer, Faryal Khurram, has been recruited and she brings legal, risk assessment and audit skills to the Department.
9. The structure of the Department and the job descriptions of each member allow for a flexible resourcing model which has the agility to adapt to the demands of supervision / authorisation / licensing activities. Each member of the Department will be trained to work across a range of activities and there will be ongoing internal knowledge transfer sessions. Further, there is flexibility in the operating model for supervision to allow for spikes in authorisation activity (which is the area where it is most difficult to plan given the uncertainty over the likely number of applications) to be adequately resourced. Contingency resource planning is also being explored with a view to training staff outside of the Department who have the right capacity and capability to assist should additional resources be required to address a particular spike in activity.

External panel of advisors

10. A panel of advisors is being established with representatives with expertise in each area of regulatory activity. The panel will provide a valuable additional resource to the Department, particularly in the early stages of operation as the expertise within the Department develops.

Supervision processes

11. Once operational, the Supervision Department will be undertaking a number of different processes.



12. It can be seen from this diagram that the majority of the processes will be concerned with the supervision of chambers and entities and authorisation / licensing activities. By contrast, the supervision of individuals will be a largely separate process that will account for much less time.

Specific processes

13. Included below in the Appendix are process maps for each of the main processes that are set out above.
14. Based on a number of assumptions, estimated resource requirements are set out in the maps for each stage of each process. These are the estimated number of days that each process will take over 2015 / 2016-15. The maps record resource requirements as Administration, Supervisor or Other. The section below on Team Roles sets out what staff roles will cover each category.

Process	Assumptions (2014-15)	Admin days	Other days	Supervisor days
Assessing impact	Process to occur once for 800 chambers	36	35	12
Initial supervision questionnaire	Process to occur once for 400 chambers and 50 entities	47	50	61
Requesting further information	Required for 100 chambers/entities	0	0	23

Follow up on high likelihood	Required for 100 chambers/entities	18	1	28
Follow up on non-compliance	Required for 45 chambers/entities (10% rate of non-compliance)	9	1	25
Visiting chambers/entities	70 visits	12	60	90
Received evidence handling	Likely to occur every two weeks	0	2	25
Seeking advice from expert panel	Up to 50 occasions	2	0	16
Thematic review	One review	30	45	25
Supervision of individuals	50 individuals	12	0	45
Producing reports and analysing evidence	Twice a year	1	50	8
	Total	167	244	358

15. Overall, this equates to 769 days across all tasks and across all of the processes. One Full Time Equivalent is 220 days a year and therefore this is 3.5 FTE (770 days). In addition, there will be a number of ongoing policy functions to discharge, which will include the following:

- Deciding upon supervision / authorisation / licensing priorities and future policy;
- Speaking at events to explain the Department's activities;
- Explaining and justifying the approach to supervision / authorisation / licensing to the LSB and other key stakeholders;
- Managing relationships with the Bar Council and other support resources;
- Managing information sharing with LeO and other legal regulators;
- Maintaining guidance and other policy documents;
- Agreeing monitoring approach to new rules etc. with relevant departments.

16. These additional functions will be mainly undertaken by the Supervision and Policy Manager and the Authorisations Manager, with the guidance of the Director of Supervision.

17. The visits process is one of the more flexible processes. While it has been estimated that 70 visits will be undertaken during 2015-16, this number could be decreased if any of the other processes require more resources than estimated or increased if other processes take less time and staff have time to undertake more visits. In normal circumstances 2 members of staff will attend a visit. This will be one supervisor and one other member of staff. The Director of Supervision and Authorisations Manager will assist with visits if required.

Department roles

19. The following roles would be required in order to ensure the requisite expertise and experience to discharge the required tasks:

20. The Director of Supervision, Supervision and Policy Manager or Authorisations Manager would be responsible for all policy tasks set out above. All "Supervisor"

tasks set out in the process maps would be discharged by the Supervision and Policy Manager and / or the Chambers and Entity Supervisor. All “Authorisation” tasks would be discharged by the Authorisations Manager. The Supervision and Authorisation Officer will be responsible for all tasks assigned as “Other” in the process maps and will also be responsible for ensuring that all “Admin” tasks are discharged, either through the part time Administrative Assistant or by discharging the tasks themselves. The QASA Officer or members of other Departments would be able to assist with administrative or “Other” tasks as required.

21. The following table summarises the key responsibilities for each role:

Role	Responsibilities
Director of Supervision	<ul style="list-style-type: none"> • Oversight of the operation of the supervision strategy • Oversight of the entity authorisation / licensing process • Management of the Supervision and Policy Manager and Authorisations Manager <p><u>Operational Supervision</u></p> <ul style="list-style-type: none"> • Involvement in high profile or sensitive supervision activity • In those cases, undertaking the activities as listed under the entry for the Supervision and Policy Manager • Involvement in high profile or complex entity authorisation applications
Supervision and Policy Manager	<ul style="list-style-type: none"> • Management of Supervisor and Supervision Officer • Overall responsibility for operational supervision • Lead on supervision policy <p><u>Operational supervision</u></p> <ul style="list-style-type: none"> • Assessing evidence received and determining likelihood of risks materialising • Deciding when additional information is required and obtaining the information • Undertaking visits • Deciding an appropriate response to increased likelihood scores and following up on this with chambers/entities (including agreeing action plans) • Identifying non-compliance, deciding an appropriate response and following up on this with chambers/entities (including agreeing action plans) • Working with individual barristers to address non-compliance, including agreeing action plans and assessing the adequacy of action taken.

<p>Authorisations Manager</p>	<ul style="list-style-type: none"> • Management of Authorisation Officer and Assistant • Overall responsibility for operational authorisation • Lead on authorisation policy <p><u>Operational authorisation</u></p> <ul style="list-style-type: none"> • Assessing applications and evidence received and determining whether applicant should be authorized • Deciding when additional information is required and obtaining the information • Evaluating likelihood of risks materializing and producing risk profiles • Assessing and managing ongoing supervisory strategy for each entity in conjunction with Supervision and Policy
<p>Chambers and Entity Supervisor</p>	<ul style="list-style-type: none"> • Assessing evidence received and determining likelihood of risks materialising • Considering applications for entity authorisation • Deciding when additional information is required and obtaining the information • Undertaking visits • Deciding an appropriate response to increased likelihood scores and following up on this with chambers/entities (including agreeing action plans) • Identifying non-compliance, deciding an appropriate response and following up on this with chambers/entities (including agreeing action plans) • Working with individual barristers to address non-compliance, including agreeing action plans and assessing the adequacy of action taken.
<p>Supervision and Authorisation Officer</p>	<ul style="list-style-type: none"> • Planning and managing projects (impact assessments, supervision questionnaires, thematic reviews) • Assessment of entity applications. • Preparing questionnaires and setting up spreadsheets • Analysing evidence and producing reports (on supervision returns, thematic reviews and at regular intervals on whole market) • Assisting with communication with profession • Committee Secretary for Supervision Committee
<p>Supervision and Authorisation Assistant</p>	<ul style="list-style-type: none"> • Overseeing and assisting with discharge of all admin functions • Technical and IT support for end-to-end workflow processes • Involvement in the administration of

Part-time administrative assistant	<ul style="list-style-type: none">• Discharging all administrative functions.
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Next steps

22. This note sets out the resource planning for the supervision of chambers and new entities and for the authorisation / licensing of entities in the next financial year. Revisions to those resources will be informed through increased experience in the light of evidence and experience from supervision and authorisation activities.

23. Licensing resource planning will form part of the implementation project for the licensing regime. The structure (and working model) of the Supervision Department has been designed to provide the flexibility (supported by the contingency planning underway) to meet the initial demands of licensing (which are not anticipated to be high volume). However, the resource planning to be undertaken will enable this to be tested and revised, where necessary, prior to implementation.

Constitution of the Bar Standards Board
as amended 12 November 2011

PREAMBLE

- A. The Bar Council is an approved regulator for the purposes of the Legal Services Act 2007.
- B. The Bar Council has established the Bar Standards Board (“the BSB”) to exercise the regulatory functions of the Bar Council.
- C. The Bar Council wishes to have in place arrangements which observe and respect the principle of regulatory independence (as defined in rule 1 of the Internal Governance Rules 2009), i.e. the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions.
- D. The Bar Council intends that it should at all times act in a way which is compatible with the principle of regulatory independence and which it considers is most appropriate for the purpose of meeting that principle.
- E. Accordingly, and under paragraph 1(h) of the Constitution of the Bar Council, the Bar Council makes the following Constitution for the BSB.

CONSTITUTION

The BSB

- 1. The BSB is the regulatory arm of the Bar Council. It has no separate legal personality.

Membership of the BSB

- 2. The BSB shall consist of fifteen members (including a Chairman and a Vice-Chairman) appointed by the Panel established under Schedule A to this Constitution (“the Panel”), who shall be appointed and hold office in accordance with the provisions of that Schedule.

3. The members of the BSB shall consist of:
 - (1) Seven practising barristers who are not members of the Bar Council (provided that the Panel may instead of one practising barrister either: (a) appoint a person who is neither a practising barrister nor a lay person if that person is the best candidate for appointment; or (b) re-appoint a member of the BSB who is neither a practising barrister nor a lay person).
 - (2) Eight lay persons.

Functions of the BSB

4. The BSB is responsible for performing all regulatory functions (as defined in section 27(1) of the Legal Services Act 2007) of the Bar Council.
5. The BSB is responsible for determining any question whether a matter involves the exercise of a regulatory function.
6. The BSB has no representative functions (as defined in section 27(2) of the Legal Services Act 2007).

Duties of the BSB

7. The BSB must act in a way which is compatible with the obligations imposed on the Bar Council or its delegate by the Legal Services Act 2007 or by any other law relating to the exercise by the Bar Council or its delegate of its regulatory functions.
8. The BSB must, so far as is reasonably practicable, act in a way:
 - (1) which is compatible with the regulatory objectives defined in section 1 of the Legal Services Act 2007; and
 - (2) which the BSB considers most appropriate for the purpose of meeting those objectives.

9. The BSB must at all times act in a way which is compatible with the principle of regulatory independence and which it considers is most appropriate for the purpose of meeting that principle.
10. The BSB must have regard to:
 - (1) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
 - (2) any other principle appearing to it to represent best regulatory practice;
 - (3) any guidance issued by the Legal Services Board under rule 11 of the Internal Governance Rules 2009; and
 - (4) the responsibilities and legitimate interests of the Bar Council as an approved regulator for the purposes of the Legal Services Act 2007, including the Bar Council's responsibility for oversight and monitoring of the BSB (in a manner consistent with the provisions of and made under the Legal Services Act 2007).
11. The BSB must:
 - (1) Supervise and monitor the work and conduct of any committee, sub-committee, panel, working party, body or person referred to in paragraph [14(3)] below.
 - (2) Monitor and ensure the just operation of disciplinary tribunals and any other panels assigned to determine (whether at first instance or on appeal) any issues as to the conduct of individual barristers, including whether barristers are guilty of professional misconduct or inadequate professional service or ought to be suspended from practice by reason of medical unfitness or criminal charges or convictions.
 - (3) Ensure that equal opportunity and diversity issues are taken into account in respect of regulatory functions.

- (4) Liaise as it considers necessary or appropriate with the Bar Council, the Inns' Council, the judges, other committees of the Bar Council and such other bodies or persons as it may consider necessary or appropriate.
 - (5) Prepare and keep under review a plan for the development and effective discharge of the regulatory functions of the Bar Council.
 - (6) In connection with all matters concerning the financial and other resources provided to the BSB by the Bar Council:
 - (a) co-operate with the Bar Council; and
 - (b) comply with the relevant procedures and requirements of the Standing Orders of the Bar Council.
 - (7) In connection with the oversight and monitoring of the BSB by the Bar Council:
 - (a) co-operate with the Bar Council;
 - (b) provide to the Bar Council all information and documents which it may reasonably request; and
 - (c) comply with any reasonable request by the Chairman of the Bar Council that he or any person nominated by him should be permitted to attend any meeting of any committee, sub-committee, panel, working party or other body established under paragraph 14(3) below.
 - (8) Prepare an annual report to the Bar Council on its work for publication.
12. The BSB must act in accordance with the "Nolan" principles of public life (set out in Schedule B to this Constitution) at all times and, in particular, when appointing, or making arrangements for the appointment of, the members of any committee, sub-committee, panel, working party or other body established under paragraph 14(3) below.

Powers of the BSB

13. The BSB shall have power to do all things calculated to facilitate, or incidental or conducive to, to the performance of its functions or duties. This includes, but is not limited to, power to do the things set out in paragraphs 14 and 15 below.
14. The BSB shall have power:
 - (1) To regulate its own procedure.
 - (2) To make such rules and/or arrangements as it considers necessary or appropriate.
 - (3) To establish, and regulate the procedure of, such committees, sub-committees, panels (including advisory panels, whether representing consumer interests or otherwise), working parties, other bodies as it considers necessary or appropriate to enable it to discharge any of its functions or duties.
 - (4) If, and on such terms as, it considers necessary or appropriate to enable it to discharge any of its functions, to delegate any of its functions to (or make or approve any arrangements for the delegation of those functions by):
 - (a) any committee, sub-committee, panel, working part or other body established under paragraph 14(3) above; or
 - (b) any other person or body.
 - (5) To invite any person to attend any meeting of the BSB in an advisory or consultative capacity.
15. The BSB (and any of its members or any other person involved in the exercise of the Bar Council's regulatory functions):
 - (1) may make representations to, be consulted by and enter into communications with any person(s) appearing to it to be relevant to its functions; and

- (2) may notify the Legal Services Board where it considers that its independence or effectiveness is being prejudiced.

Proceedings of the BSB

16. The quorum of any meeting of the BSB shall be five members, of whom at least two must be lay persons and at least two must be practising barristers.
17. The validity of any act of the BSB is not affected:
 - (1) by a vacancy in the office of Chairman or amongst the other members; or
 - (2) by a defect in the appointment or any disqualification of a person as Chairman, or another member, of the BSB.
18. Unless the BSB resolves that any meeting should be held in private:
 - (1) the Chairman of the Bar Council and/or any person or persons nominated by the Chairman of the Bar Council; and
 - (2) a person nominated by the President of the Inns' Council.shall be entitled to attend and speak (but not vote) at any meeting of the BSB.

Commencement and Transitional Provisions

19. Subject to paragraph 20 below, this Constitution shall take effect on 30 April 2010.
20. As to the membership of the BSB:
 - (1) Paragraphs 2 and 3 above shall not take effect until 1 January 2012.
 - (2) Until 1 January 2012, the BSB shall consist of those persons who were members of the BSB on 1 January 2010, subject to the following provisions:
 - (a) If any person ceases to be a member of the BSB (as set out in paragraph A21 of Schedule A to this Constitution) at any time between 1 April 2010

and 31 December 2011, then the vacancy thereby created shall be filled as follows:

- (i) In the case of any member other than the Chairman who ceases to be a member of the BSB during a calendar year, the BSB may appoint a person to be a member of the BSB in their place until the end of the calendar year.
- (ii) The Panel shall (in accordance with Schedule A to this Constitution) appoint (or, where appropriate, re-appoint) a person to be a member of the BSB to take the place of each of the following:
 - (1) With immediate effect, the Chairman, if she ceases to be a member of the BSB.
 - (2) With effect from 1 January 2011, any other member of the BSB who ceases to be a member of the BSB during or at the end of 2010.
 - (3) With effect from 1 January 2012, any other member of the BSB who ceases to be a member of the BSB during or at the end of 2011.
- (b) In making any such appointments or re-appointments to take effect before 1 January 2012, the BSB and the Panel shall observe the following requirements:
 - (i) Any replacement for the Chairman shall be a lay person.
 - (ii) Any replacement for a lay person shall be a lay person.
 - (iii) Any replacement for a practising barrister shall be a practising barrister, save that (except in the case of the Vice-Chairman) up to two practising barristers may be replaced by lay persons.

- (c) In making any appointments or re-appointments to take effect on 1 January 2012, the Panel shall ensure that the requirements of paragraphs 2 and 3 above are met.

Definitions

- 21. In this Constitution and in the Schedules hereto, the terms listed in Schedule B shall have the meaning there set out.

Amendments to the Constitution

- 22. This Constitution may be amended or revoked by the Bar Council only after consulting the BSB.

Schedule A to the Constitution of the Bar Standards Board

The Panel

- A1. The Bar Council shall establish an Appointments Panel (“the Panel”), which shall be responsible for appointing members of the BSB.
- A2. The Panel shall consist of:
- (1) A member nominated by the Lord Chief Justice.
 - (2) The Chairman of the Bar Council, *ex officio*.
 - (3) The Chairman of the BSB, *ex officio*.
 - (4) A member nominated by the President of the Inns’ Council, who shall be a practising barrister.
 - (5) A member nominated by the Chairman of the BSB.
 - (6) Two members who are lay persons, nominated by the Chairman of the Bar Council and the Chairman of the BSB:
 - (a) at least one of whom shall be accredited by the Office of the Commissioner for Public Appointments; and
 - (b) one of whom shall be the Chairman of the Panel,
- A3. With the exception of the *ex officio* members, members of the Panel will be appointed for a period not exceeding three years. If such period expires during an appointments round, the person will remain a member of the Panel until the end of that round.
- A4. Appointments to the Panel may be renewed once.

- A5. Subject to paragraph A6 below, the members of the Panel identified in sub-paragraphs A2(1) to (3) above, and the individuals who nominate members of the Panel under sub-paragraphs A2(4) to (6) above, may nominate an alternate who is entitled to take their place, or the place of their nominated member, at any meeting which the member is unable to attend.
- A6. For any meeting of the Panel at which any question relating to the appointment of the Chairman of the BSB is to be discussed, the BSB may nominate an alternate to take the place of the Chairman of the BSB.

Proceedings of the Panel

- A7. The quorum for a meeting of the Panel shall be five members.
- A8. Meetings of the Panel shall be chaired by the Chairman or a member of the Panel nominated by the Chairman.
- A9. The Chairman of the BSB may not take part in any discussion or decision of the Panel relating to any appointment to that office.
- A10. Matters requiring a vote by the Panel shall be decided by a simple majority of votes cast by the members present. In the case of a tie, the person chairing the meeting shall have a second, deciding vote.
- A11. In carrying out their functions, members of the Panel:
- (1) are under a duty to protect and promote the principle of regulatory independence; and
 - (2) must act:
 - (a) in the best interests of the proper exercise of the Bar Council's regulatory functions; and
 - (b) in accordance with the "Nolan" principles of public life (set out in Schedule B to this Constitution) and should take account of best practice

for public appointments, including in particular the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies.

Procedure for Appointments

- A12. Subject to paragraph A18 below, all appointments by the Panel shall be made by way of open competition, and appropriate arrangements shall be made, including advertisements in relevant publication, to ensure that suitably qualified persons have the opportunity to put their names forward to consideration for appointment.
- A13. In appointing members of the BSB, the Panel shall have regard to the desirability of securing that the BSB includes members who (between them) have experience in or knowledge of an appropriate range of relevant fields and any particular requirements identified by the BSB.
- A14. The Panel must report to the Bar Council the name of any person whom it has appointed at the first meeting of the Bar Council after the appointment has been made.

Criteria for Appointment

- A15. The competencies required of BSB members shall be those as agreed from time to time between the Bar Council and the BSB.
- A16. A member of the Bar Council or any of its representative committees may not hold office as a member of the BSB. A person who has been responsible for a representative function shall not thereby be ineligible for appointment as a member of the BSB, but, in considering whether to appoint any such person to the BSB, the Panel shall take account of his responsibility for a representative function, when that responsibility ended and any implications for the observance of the principle of regulatory independence.

Length of Appointments

- A17. All appointments made by the Panel shall be for a fixed period of up to three years.

- A18. The Panel may renew an appointment for a further fixed period of up to three years without holding a competition, if the Panel is satisfied that:
- (1) the person has performed to the standard to be expected of the office held, and
 - (2) it is in the interests of the BSB to renew the appointment.
- A19. With the exception of the Chair of the BSB, casual vacancies may be filled by the BSB but any appointment so made will last only until the next round of appointments made by the Panel.
- A20. A person may not serve more than six years consecutively as a member of the BSB.
- A21. A person shall cease to be a BSB member if:
- (1) the period for which he was appointed expires (and his appointment is not renewed);
 - (2) he resigns his membership by notice in writing;
 - (3) he was appointed as a lay person and ceases to be a lay person;
 - (4) he was appointed as a practising barrister and ceases to be a practising barrister or becomes a member of the Bar Council or one of its representative committees;
 - (5) he fails to attend four or more meetings in any one year and the BSB resolves that he should cease to be a member;
 - (6) the BSB or the Panel resolves that he is unfit to remain a member (whether by reason of misconduct or otherwise); or
 - (7) he is dismissed by the Bar Council.

Schedule B to the Constitution of the Bar Standards Board

B1. In this Constitution and in the Schedules to this Constitution, the following terms have the meanings set out below:

	the BSB	the Bar Standards Board
	the Inns' Council	the Council of the Inns of Court
	the "Nolan" principles of public life	The principles set out in paragraph B4 below
	the Panel	the Appointments Panel established under Schedule A to this Constitution
	the representative committees of the Bar Council	the committees established pursuant to Part Two of the Standing Orders of the Bar Council

B2. In this Constitution and in the Schedules to this Constitution, the following terms have the meanings given in the following provisions:

	lay person	Legal Services Act 2007, Schedule 1, paragraphs 2(4) and (5)
	the principle of regulatory independence	Internal Governance Rules 2009, rule 1
	regulatory functions	Legal Services Act 2007, section 27(1)
	representative functions	Legal Services Act 2007, section 27(2)

B3. For the avoidance of doubt, the regulatory functions of the Bar Council include, without limitation:

- (1) Qualifications and conditions for entry including fitness for practice.
- (2) All aspects of training, including continuing professional development.
- (3) The setting of standards for those practising at the Bar.

- (4) The determination, amendment, monitoring and enforcement of rules of professional conduct, including disciplinary rules.
- (5) Investigation and prosecution of complaints against barristers and students except in so far as those matters are assigned by statute or under a resolution of the Bar Council to an external body.

B4. The “Nolan” principles of public life are the “Seven Principles of Public Life” set out in the First Report of the Committee on Standards in Public Life. These are:

(1) Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

(2) Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

(3) Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(4) Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

(5) Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

(6) Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(7) Leadership

Holders of public office should promote and support these principles by leadership and example.



Bar Council and Bar Standards Board

Protocol for ensuring regulatory independence

Introduction

1. This protocol is designed to fulfil undertakings made jointly by the Bar Council (BC) and Bar Standards Board (BSB) to the Legal Services Board (LSB) in relation to ensuring regulatory independence.
2. The LSB Internal Governance Rules (IGRs) are designed to ensure that structures or persons with representative functions do not exert, or are not permitted to exert, undue influence or control over the performance of regulatory functions, or any persons discharging those functions. This protocol is designed to supplement the IGRs so that the BC and the BSB are able to give assurance that regulatory independence is being achieved.
3. This protocol has been agreed and adopted by the BC and BSB, and will be reviewed from time to time.
4. The Chief Executive of the BC, working with the Director General of the BSB, shall be responsible for ensuring the effective implementation and operation of this protocol, and maintaining documentary evidence of that.
5. The Chief Executive of the BC and the Director General of the BSB shall report to the LSB any material failure to comply with this protocol.

Principles

6. This protocol applies across the whole of the BC and the BSB and is based on the following principles:
 - a. the BC should not ordinarily be involved in the discharge of regulatory actions or obligations;
 - b. the BC is entitled to make representations to the BSB;
 - c. as Approved Regulator, the BC is entitled to be provided with assurance by the BSB that the BSB is fulfilling undertakings made to the LSB;

- d. in exceptional circumstances the BSB is entitled to seek expert advice from the BC;
- e. in such cases the decision to seek BC advice should take into account the risk of undue influence and there should be an assessment as to whether the BSB should develop in-house expertise or use other sources in future;
- f. such BC involvement should only proceed with the express approval of the BSB, under clear terms of reference and governance that are approved by the BSB;
- g. the BSB should lead all such work, and arrangements and actions should be recorded and transparent;
- h. individuals providing input to the BSB must do so independently of their responsibilities as staff of the BC.

General working arrangements

- 7. The following working arrangements apply in general.
- 8. No person exercising a representative function shall attend non-public sessions of the BSB Board or its committees other than in exceptional circumstances. Any such attendance should be by specific invitation relating to a relevant piece of business, and should be documented and made public.
- 9. No person exercising a regulatory function shall attend meetings of the Bar Council or BC committee meetings with a representative function other than by specific invitation relating to a relevant piece of business. Any such attendance should be documented and made public.
- 10. Where the BC wishes to give advice to the BSB in relation to a regulatory function from a representational point of view, this should be set out in writing and copied to the Chief Executive of the BC, making clear that this is a representational input. Once the advice has been provided and considered, the Director General of the BSB should confirm that she/he is content that this has been done in conformity with the IGRs and this protocol.
- 11. This protocol does not preclude meetings between the BSB and the BC to enable the BC to represent or promote the interests of barristers. Nor does it constrain the normal professional exchange of information between the BC and BSB, but in both cases the independence of the BSB must be unaffected.
- 12. It is the responsibility of the Director General of the BSB to provide the Chief Executive of the Bar Council with assurance that the BSB is fulfilling undertakings made to the LSB.

Working arrangements which will apply when the BSB assesses that the BC is the most appropriate source of external expert advice

13. The following arrangements supplement the general working arrangements set out above and apply when, in exceptional circumstances, the BSB considers it appropriate to seek expert advice from the BC.
14. The Chief Executive of the BC, working with the Director General of the BSB, is responsible for delivering awareness at all levels of the BC and BSB of the appropriate governance and behavioral action needed in these circumstances.
15. The risk of undue influence lies with those structures and persons with representative functions. For the BC, this will normally mean the Officers, members of representational committees and associated working groups, and staff in the Representation and Policy (R&P) Directorate.
16. It is the responsibility of the Director General of the BSB and her/his senior managers and of senior managers in the R&P Directorate to ensure that their respective staffs have a detailed understanding of the IGRs and this protocol, and are clear about their specific responsibility for abiding by them.
17. Where the BSB decides to seek advice or assistance in relation to a regulatory function, the Director General of the BSB should make a request in writing to the Chief Executive of the BC. It should set out what is required, from whom, over what timescale.
18. When those identified as contributing to advice and assistance are engaged on this work, they shall as far as reasonably practical set aside their representative work. Other than in exceptional circumstances, and then only with the express approval of the Chief Executive of the BC, they should not contribute to representative work on the same issue or issues.
19. Once the advice or assistance has been provided:
 - a. the senior member of staff responsible in R&P should confirm this in writing to the Chief Executive of the BC and the Director General of the BSB, providing assurance that this has been done in conformity with the IGRs and this protocol; and
 - b. the Director General of the BSB should confirm that she/he is content with that assurance.
20. Where the advice or assistance is of an on-going nature, interim reports may be required.
21. No person exercising a representative function should contribute to the drafting of papers to the BSB Board or its committees on regulatory matters. They may

however contribute to drafting supporting material for papers for these bodies, in which case the papers should make that contribution clear.

22. No person exercising a representative function should be invited to contribute to discussion in the BSB Board or its Committees in a matter on which advice or assistance has been sought or provided without a specific invitation from the Director General of the BSB and the agreement of the Chief Executive. The reason for their attendance should be made clear and minuted at the relevant meeting.

Equality Analysis - Application to Become a Licensing Authority

Date of Assessment	April 2015
Assessor Name & Job Title	Kuljeet Chung – Policy Manager (Professional Standards) Sarah Charlesworth – Senior Policy Officer (Equality and Diversity)
Name of Policy/Function to be Assessed	Application to become a licensing authority
Aim/Purpose of Policy	<p>The Legal Services Act 2007 established a statutory regime for the regulation of persons and entities to carry out reserved legal activities and other activities.</p> <p>In November 2014 the BSB’s application to the LSB to widen its regulatory regime to include entities was approved. Since January 2015 the BSB have been taking applications from barristers and other advocacy-focussed lawyers who want to form companies, become partnerships or set up set up Limited Liability Partnerships which will be regulated by the BSB. The first authorisation decisions were made in April 2015 and 17 have been approved so far. Of these 17, 16 are single person entities and 1 is a partnership between 2 barristers.</p> <p>The BSB now wants to extend its entity regulation regime to include Alternative Business Structure (ABS) entities. The application to become a licensing authority completes the programme of reform to further facilitate innovation in service delivery which we believe will bring benefits for consumers. The approach that has been adopted is a move towards a more outcomes-and risk based approach where we have sought to identify core duties and outcomes that apply to BSB regulated persons and provide appropriate, proportionate and targeted sanctions to ensure that our regulations, and hence standards, are maintained.</p> <p>This analysis specifically assesses the impact of the introduction of non-lawyer owners and managers into the BSB’s regulatory regime through ABSs on the barrister profession, consumers and the marketplace.</p> <p>The Licensing Authority Application details the BSB’s approach to regulating ABSs:</p> <p>The BSB has decided that it should be a niche regulator concentrating on those entities whose activities are similar to those traditionally undertaken by the Bar (not only does this build on the BSB’s existing capabilities, but promotes choice in the market over the type of regulatory regime available to legal professionals and their clients).</p> <p>The key additional risks that the licensing regime will introduce relate to the involvement of non-authorized individuals as owners or managers, who may be unfamiliar with the BSB’s (or in fact any) regulatory regime</p>

	<p>and the responsibilities that entails. However it is unlikely that the BSB will regulate ABSs that are not predominantly owned and managed by individuals who are authorised persons.</p> <p>Our regulatory approach takes an entity based approach where appropriate (in particular when authorising and supervising entities and in an analogous way when supervising barristers' chambers). The BSB has designed this regime with an analysis of the market and the end user in mind. The BSB believes that there is a public interest in offering a choice of regulatory regimes to both clients and the legal professions.</p> <p>The BSB will exercise its discretion about the proportion of lawyers and non-lawyers as owners and managers and about the nature of the legal services to be provided, as set out in its entity regulation policy statement. The policy statement sets out factors that will be taken into account when assessing the risks associated with the entity, and highlights some factors, which, when present, would indicate that an entity would be appropriate for BSB regulation. The BSB may still refuse an application in certain circumstances. An equality analysis has been completed for the process of authorising non-ABS' entities and this will be updated to include authorising ABS entities. The Licensing Authority Application outlines that the BSB will be taking a flexible approach in its assessment of whether an entity is appropriate for BSB regulation: the inclusion of discretionary factors in a policy statement rather than rules enables us to react to developments in the market and approve new types of entity that are low risk without having to go through the cumbersome process of updating our authorisation rules. Risk assessment will be central to any authorisation decision.</p>
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1. Evidence

<p>What evidence will you use to assess impact on equality?</p>
<p>A survey was undertaken by YouGov on behalf of the BSB in July 2010 to gauge interest in the regulation of new business structures.</p> <p>A consultation exercise (<i>Regulating Entities: The Legal Services Act 2007 Implications for the Bar of England and Wales</i>) which invited responses from the entire Bar, was conducted in September 2010. The consultation asked specific questions regarding the impact on equality of an entity regulation scheme, namely:</p> <ul style="list-style-type: none"> • Would prohibiting BSB regulated entities from providing reserved instrument activities or probate services have any impact from people of different ethnic groups, men and women or disabled people? • What equality and diversity implications will recouping set up costs from the whole profession (by way of an increase in the practising certificate fee) have on people from different ethnic groups, men and women or disabled people?

- Would setting a 10% maximum for non-lawyer ownership of ABSs as opposed to 25% have any impact on equality and diversity?
- Are there likely to be any negative consequences for people from different ethnic groups, men and women or disabled people arising from the BSB's proposals to regulate entities?
- If so, how could these be mitigated?

There were approximately 20 responses (out of 1,913 from barristers and 141 from clerks) which made specific comment or raised concerns about the four equality and diversity questions. The majority of the responses were in respect of the equality and diversity implications in recouping the costs of setting up the entity regulation scheme. It was suggested that recouping the costs from the profession as a whole would unfairly burden the lowest earners at the Bar, and may have a disproportionate indirect effect on those at the junior Bar and those who do a large proportion of publicly funded work, which tends to include black minority ethnic (BME) barristers, women and disabled people. There was particular concern that recovering the set up costs across the profession would have an adverse impact on those earning less, the junior Bar or those working part-time or flexibly. These groups tend to include a higher proportion of women, disabled and BME barristers.

The Biennial Survey of the Bar 2013 looked at barristers' working lives. 26 per cent of criminal barristers and 23 per cent of family barristers had definite or potential plans regarding entities with barristers and other lawyers as owners and managers; and 18 per cent of criminal barristers and 17 per cent of family barristers had definite or potential plans regarding entities with barristers, other lawyers and lay people as owners and managers.

Recent experience gained through authorising non-ABS entities has highlighted considerable interest in ABSs. In particular, the Authorisations Team has received a number of queries from barristers seeking to set up single person entities with one other non-authorised owner, often this is a spouse or a practice manager.

Bar Council Exit Survey 2011¹

The last exit survey completed by the Bar Council in 2011 showed there was a disproportionately high number of female practitioners who are leaving or changing their practice status. It found that financial factors have consistently been the most common factor causing people to leave/change status. The number of people citing a desire to spend time with the family had increased from 22% in 2001 to 34% in 2010, women were more likely to say they had left for child care responsibilities. Finally 15% of all leavers said that having children had a negative effect on their career.

2. Impact on Equality

The BSB has identified a range of potential impacts on equality as a result of the introduction of ABSs. The impacts are discussed below in relation to specific impact on the profession and also impact on consumers and the wider market.

Impact on the profession

Financial impact

A consultation was carried out when proposing fees for authorising non-ABS entities and it is

¹ Bar Council Exit Survey 2011,
http://www.barcouncil.org.uk/media/18145/15_12_general_council_of_the_bar_leavers_report.pdf

envisaged that a consultation or review will occur for proposed fee levels for ABS entities as we will have a truer reflection of costs since authorising non-ABS entities. In the case of non-ABS entities, fees vary depending on the number of authorised persons in the entity (with the lowest fees applying to single person entities). A similar approach will be taken in relation to ABS fees, taking account of the relative cost of authorising different types of ABS.

The Bar Council's Exit Survey 2011 found that financial factors have consistently been the most common factor causing people to leave/change status. The formation of an ABS entity could provide financial stability as a regular income is more likely, than at the self-employed Bar.

Widening access

ABS entities will allow non-lawyers to become owners and/or managers and this may be beneficial in bringing a diverse range of people and skills into an entity and the Bar profession as a whole.

Flexibility/ Working life

The BSB believes that ABS entities may allow barristers to have more control over their working patterns. They will also enable BSB regulated persons to work with non-authorised individuals who may have a wider range of business expertise than may be found at the Bar alone. ABSs may also provide increased employment opportunities which may be attractive to the young Bar in particular, who may prefer the security of an employed position whilst still doing their preferred type of work, as opposed to working through the traditional self-employed model. The BSB would also hope that greater employment opportunities would increase retention rates amongst the Bar, particularly of women and ethnic minorities. Increased employment opportunities will result in increased protections for those working in this way, as ABS's will fall under the ambit of employment legislation. This will be particularly relevant for certain protected characteristics such as pregnancy and maternity, as employees of an ABS would be entitled to statutory maternity pay (or an enhanced package if their employer offers this) and would be retain the security of their job.

Impact on consumers/wider market

Access to justice for all consumers may be improved through permitting new ways of working. Competition between entities may drive down costs and lead to more competitive pricing between entities, which could be of financial benefit to consumers. As part of the application process ABS entities will be required to provide a statement detailing how they would improve access to justice, if a license was to be granted.

The BSB hopes that by seeking to become a licensing authority and to regulate ABSs, it will enable the introduction of businesses which are focussed on the services provided by the Bar (i.e. a range of services that by their nature are closely related to access to justice) and for those services to be provided through differing business models, operating under the aegis of a regulatory regime which is tailored to, and has considerable experience of regulating, those types of services. As individuals and entities operating under differing regulatory regimes compete to provide services, the BSB is of the view that this will encourage the development of differing models and approaches and will provide consumers with greater choice. Those individuals and entities that provide the best services and customer care, and ensure that costs are kept to a minimum, should flourish. Such developments will be beneficial to customers and should improve access to justice.

The BSB will be regulating ABSs that are different from those regulated by other approved regulators. This will help to promote choice for consumers who might wish to employ lower risk

services. For example, BSB regulated ABSs will not involve material external ownership and they will not be able to hold client money, thus helping to avoid the associated risks to the rule of law and other regulatory objectives. Whilst these represent restrictions on what the entities can do, they are restrictions which ensure that consumers have available to them, clearly identified in the market-place by the “BSB-regulated” badge, the choice of entities that do not carry the risks that external ownership and holding of client money are capable of presenting. External ownership can potentially create risks of a conflict of interest and can prejudice the independence of legal advisers employed within a business, to the detriment of consumers. Permitting the holding of client money creates the risk of misapplication of client funds, whether carelessly or deliberately. Regulatory regimes which permit external ownership and the holding of client money must establish ways of mitigating those risks and in doing so they must impose additional regulatory burdens, and costs, on their regulated community, costs which are likely to be passed on to consumers. Consumers already have available to them entities which do present those risks (and which are subject to regimes which seek to mitigate them). The approach the BSB is taking will ensure that consumers can choose to “opt out” of exposure to these particular risks, rather than simply having a choice between “more of the same”.

As well as considering the equality impact of the policy on the profession and consumers, the BSB has also set out below the application of the equality and diversity rules to entities and the impact of the risk assessment process carried out during the authorisation stage.

Equality and Diversity Rules

It is important to note that as part of the authorisation process, every application will be risk assessed with regard to the likelihood of “entities failing to comply with equality and diversity requirements in relation to staff”. The Handbook places a personal obligation on the managers of BSB authorised bodies, as well as on the entity itself to ensure they have appropriate policies in place to comply with the Equality and Diversity Rules of the Code of Conduct in the BSB Handbook, just as self-employed barristers in Chambers must comply with these rules. Guidance goes on to state that if you are a Head of Legal Practice it is likely to be reasonable for you to ensure that you have the policies required by the Handbook and, that an *Equality and Diversity Officer* is appointed to monitor compliance, and that any breaches are appropriately punished. Guidance also states that managers of BSB authorised bodies will be expected to take reasonable steps to ensure that there are policies and they are enforced.. In particular managers of BSB authorised bodies will need to take reasonable steps to ensure that the following requirements are complied with:

- Entities must appoint at least one Equality and Diversity Officer, one of whose responsibilities is to ensure compliance with the Equality and Diversity Rules;
- Save in exceptional circumstances, every member of all selection panels must be trained in fair recruitment and selection processes;
- Recruitment and selection processes must use objective and fair criteria;
- Entities must conduct a regular review of their policy on equality and diversity and of its implementation, in order to ensure that it complies with the Equality and Diversity Rules;
- Entities must take any appropriate remedial action identified in the light of that review;
- Entities must have a written anti-harassment policy;

- Entities must have a flexible working policy which covers the rights of managers and employees to take a career break, to work part-time, to work flexible hours, or to work from home, so as to enable them to manage their family responsibilities or disabilities without giving up work;
- Entities must appoint a Diversity Data Officer, whose responsibility is to ensure compliance with the Equality and Diversity Rules in relation to the collection, processing and publication of diversity data.

Entities will also need to have reasonable adjustments policies aimed at supporting not only their workforces, but disabled clients and others including temporary visitors.

Existing entities that convert to ABS status will need to ensure their policies are fit for purpose and new applications will need to be conscious that the equality rules apply to non-lawyer owners/managers.

Finally, the BSB will supervise entities by reference to a number of risks. In terms of specific entity risks. One of the risks it will focus on will be entities failing to comply with equality and diversity requirements. In any event, ensuring that all regulated persons are complying with the specific requirements outlined above, forms a key part of the Supervision regime.

Risk Assessment

Risk assessment of entities will potentially place a greater regulatory burden on certain practice areas if these are deemed to present higher regulatory risk. There is therefore a risk that areas (such as criminal, family or immigration) which attract a higher risk rating contain a higher proportion of BME or female practitioners and as such our authorisation and subsequent supervision activity may have a disproportionate impact on these groups. The BSB analysed the impact when introducing risk-based supervision for chambers – as the risk areas are broadly similar to those identified for chambers, it is likely that the impact will be similar. It is necessary in the public interest to supervise effectively those areas assessed as high risk, but ongoing monitoring and consultation by the Supervision Department will seek to ensure that individuals are treated fairly and proportionately. If any particular group is over-represented in the higher risk banding this will be investigated to ensure that no policies or processes are indirectly discriminatory. This will also be revisited when the equality analysis completed for the authorisation process for non-ABS entities is updated to reflect ABS entities.

Race	<p><u>Representation</u></p> <p>The BSB's Diversity Data Report 2014 highlighted that 11% of the total Bar are BME. As BME practitioners are overrepresented in sole practitioner numbers (compared to the whole profession) the introduction of entities could potentially compound this disparity. Small chambers and sole practitioners may face stronger competition from ABS entities and –may not necessarily survive due to market competition. However the introduction of non-lawyer ownership and management through the ABS regime could create opportunities for BME practitioners who operate as sole practitioners or from small chambers currently as they will have the option of setting up an ABS entity with a non-</p>
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	<p>lawyer, for example a spouse or a practice manager. As with the current non-ABS entity regime, fees will take account of the complexity of the entity that seeks authorisation, to avoid being a barrier to smaller ABS entities.</p> <p>The impact of entity regulation in this area will be monitored for its impact on the market via the BSB's risk framework.</p> <p>According to the Biennial Survey of the Bar 2013, criminal law is the main area of practice covering just under a third (31%) of all barristers. Many BME barristers work primarily in areas of practice which are predominantly publicly funded. Barristers who undertake immigration work (contained within the civil practice broad group) are more likely to be from BME backgrounds (36%). Entity regulation may therefore offer the possibility of increasing access via competition in the legal services market at a time when legal aid is being cut, thereby presenting consumers with increased choice and the option of consulting a barrister direct and cutting out the intermediary solicitor. The option of developing new ways of working may also assist barristers to obtain legal aid contracts. The BSB considers that this is likely to have a positive impact on this group.</p> <p><u>Working Life</u></p> <p>The Biennial Survey of the Bar 2013 also showed that BME respondents reported bullying, harassment and discrimination was more prevalent at the employed as opposed to the self-employed Bar. In 2013, one in four BME barristers (25%) report personal experiences of bullying, harassment or discrimination, compared with 12% of white barristers. More BME barristers at the employed Bar (31%) have reported experiencing bullying, harassment or discrimination, compared to white barristers (21%) Entity regulation could potentially increase the number of employed barristers, therefore could increase the experiences and/or reporting of bullying, harassment or discrimination. However the risk of greater reporting needs to be balanced against the opportunities that the introduction of ABSs will provide. In particular barristers employed in ABSs would have greater protections in place through employment law and the BSB Handbook and could become owners or managers of such entities.</p>
Gender	<p>The BSB believes that the entity regulation scheme will present women barristers with additional opportunities. In the Biennial Survey of the Bar 2013, respondents were asked to indicate the two most important reasons to them as to why they chose their areas of practice. Women, across all areas of practice, are more likely to say that flexible working/availability of part-time working was an important reason to them (6% compared with 1% of men). In the Bar Council's Exit Survey 2011, the number of people citing a desire to spend time with the family had increased from 22% in 2001 to 34% in 2010, women were more likely to say they had left for child care responsibilities. The formation of an ABS may provide greater flexibility for a woman barrister and also decrease uncertainty by allowing a wide range of investors and professional expertise.</p> <p>Female barristers are also significantly more likely than their male colleagues to report having experienced bullying, harassment or discrimination, both</p>

	<p>overall and within each practice area. Across all respondents in the Biennial Survey 2013, 22% of women report such personal experiences compared with 9% of men. Around a quarter of female barristers in the criminal, civil and international/EU/other practice areas report personal experiences of bullying, harassment or discrimination. Gender differences are much stronger in the self-employed Bar, where 21% of women reported such personal experiences compared with 7% of men; in the employed Bar the corresponding figures are 24% and 21% respectively. The BSB considers that the possibility of starting up an entity with a wider range of ownership structures than are currently permitted may offer female barristers more choice as to the way in which they work and therefore may promote equality.</p> <p>36% of female barristers indicated in their survey response that their main area of practice is criminal law. Entity regulation has offered the possibility of increasing public access via competition in the legal services market at a time when legal aid is being cut, with the opportunity for entities to bid direct for LAA funding. The option to structure such entities as ABS provides further opportunities and the BSB considers that this is likely to have a positive impact on female barristers.</p> <p>The Biennial Survey of the Bar 2013 also established that among self-employed barristers, receiving 90% or more of fees from publicly funded work is associated with decreased earnings. This correlates to changes to the Legal Aid scheme and government policy of cutting public spending. The BSB considers that the opportunities afforded by working in new ways may make it easier for criminal barristers to obtain legal aid contracts, and consequently there would be benefit for women barristers.</p>
Disability	<p><u>Access to Justice</u></p> <p>Disabled consumers could benefit from entity regulation due to the convenience offered by accessing services from a “one stop shop”. The new ABS changes could also lead to an increased choice of providers and greater innovation in service delivery.</p> <p>In contrast, the possible migration of some sole practitioners into an entity with other barristers may reduce the access opportunities for vulnerable people (e.g., some disabled consumers) as it may be difficult for them to access face to face meetings due to access to public transport and mobility issues. Alternative methods of conducting business, such as telephone interviews, video conferencing via the telephone or visiting clients in person may address this issue. In addition, it is important to emphasise that entities will need to have reasonable adjustments policies aimed at supporting disabled clients and others including temporary visitors.</p> <p>Furthermore, many disabled people are economically disadvantaged. The Bar Council Disability Sub Group indicated concerns that entities which operate with a view to maximise business returns may be less inclined to deal with disabled or vulnerable clients, due to the increased level of support such clients may require (e.g., home visits, paper transcription, reasonable adjustments etc.). These are costs that an entity cannot legally pass on directly</p>

	<p>to the individual client. However the BSB is not aware of any evidence that entities are less inclined to help disabled people than self-employed practitioners.</p> <p>In the Regulating Entities consultation, only four respondents made specific responses to the question; “Are there likely to be any negative consequences for people from different ethnic groups, men and women or disabled people arising from the BSB’s proposals to regulate entities?” However, it was suggested that regulating entities could have a negative impact on disabled people as entities could be under a duty to maximise financial security. There may therefore be fewer barristers willing to grant access in difficult circumstances (or give pro bono advice). These concerns mirror those of the Bar Council Disability Sub Group. However, the BSB believes that maintaining the cab-rank rule and the duty to put a Reasonable Adjustment policy in place will ensure the removal of any barriers – physical or otherwise – which could make it difficult or impossible for disabled customers or visitors to use barristers’ services.</p> <p><u>Financial Implications</u></p> <p>Disabled barristers are more likely to work as sole practitioners. As such they can already form single-person entities. The introduction of ABS entities will give additional options for involving non-lawyers (perhaps spouses or practice managers) in the structure of an entity. There is a risk that the cost of setting up an ABS may be a disincentive for those who may work reduced hours or on a part-time basis, as licensing costs will be in addition to the requisite practising certificate costs. As with the non-ABS entity regime, fees will vary according to the complexity of the entity structure, with the aim of avoiding such a disincentive for smaller entities.</p>
Age	<p><u>Employment Opportunities</u></p> <p>The BSB is aware of the amount of people being called to the Bar (the majority under 35) who have a large amount of debt from course and living costs. ABSs should provide increased employment opportunities which may be attractive to the young Bar in particular, who may prefer the security of an employed position whilst still doing their preferred type of work, as opposed to working through the traditional self-employed model. They will also have increased protection through the application of employment legislation.</p> <p><u>Equality of Opportunity</u></p> <p>The Biennial Survey of the Bar 2013 shows that those barristers working as sole practitioners in self-employed practice are more likely to be over the age of 50. There is no evidence to suggest that this would mean fewer opportunities for them to form an ABS entity. The introduction of ABS entities mean they could do so with non-lawyers such as their clerks or spouse. In addition, the non-ABS scheme already permits a self-employed barrister to incorporate a company wholly owned by them as a vehicle through which to</p>

	supply their own services.
Sexual Orientation	We have not identified any specific impact in relation to sexual orientation.
Religion/Belief	Entities have the potential to facilitate flexible working once they are established, which could be of benefit to those with a religious affiliation and indeed all parties.
Gender Reassignment	We have not identified any specific impact in relation to gender reassignment.
Pregnancy/ Maternity	Entities have the potential to facilitate flexible working once they are established, which could be of benefit in the event of a pregnancy or maternity and indeed to all parties. Employees of an ABS who fall into this protected characteristic will also be protected by employment legislation.
Marriage and Civil Partnership	We have not identified any specific impact in relation to marriage and civil partnership.
Other Identified Groups	A disincentive for those from lower socio-economic groups to enter the profession and in particular, enter into self-employed practice is that regular work and income is not guaranteed. For those from lower socio-economic groups, working for entities may therefore be more attractive than entering into self-employed practice, as a regular income is more likely.

How does the policy advance equality of opportunity?
The analysis highlights a number of areas where the BSB's proposals offer opportunities for new ways of working which might bring benefits. The proposals promote greater opportunities to control business practices, either to become an owner/manager, share risks and rewards or seek employment options. The analysis also provides consideration of how the introduction of ABSs will impact on consumers, particularly in relation to choice in the market and access to services traditionally provided by the Bar.

How does the policy promote good relations between different groups?
We have not identified any specific ways in which entities would promote good relations between different groups but they will provide opportunities for different groups to work together in new ways.

3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	X
c. Adjust the policy and continue	Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision:		
While the impact is positive overall, we have identified some risks. These will be monitored but we have not identified any major impact on equality and diversity.		

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.			
Action Required	Desired Outcome	Person Responsible	Timescale
Update existing equality analysis on authorisation process to include ABSs.	Identify whether any disproportionate impact is being introduced as part of the ABS authorisation process.	Cliodhna Judge, Authorisation Manager, Supervision Department	To be mapped out as part of the implementation plan.
Monitor distribution of different protected groups following the introduction of ABSs	Analysis of take-up by different groups.	Oliver Hanmer, Director of Supervision	Ongoing after regime launched.
Communications strategy	Ensure that the communications strategy highlights and clarifies the differences between the non-ABS regime and the introduction of non-lawyer	Amanda Thompson, Director of Strategy and Communications	Once the BSB has been designated as a Licensing Authority and during the pre-

	ownership/management and the opportunities this could bring.		launch.
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