

SCREENING FORM:
Change to the Code of Conduct to facilitate the Legal Services Act 2007

Date of Screening	November 2009
Assessor Name & Job Title	Simon Garrod, Head of Professional Practice
Policy/Function to be Assessed	<p>Following consultation during August 2009, the ABS Working Group will be recommending that the Board makes the following decisions at the 19th November meeting of the BSB Board:</p> <ol style="list-style-type: none"> 1. Self-employed barristers should be permitted to share office facilities with others provided that: <ul style="list-style-type: none"> • There is complete separation between the provision of services by the barrister and the business of any other person with whom he/she shares the office facilities of premises. • Nothing is done that might reasonably create the impression that there is any sharing of work, income or profits of the business. This is to ensure that chambers and individual barristers take reasonable steps to avoid misleading clients about the nature of the relationship with other occupants of the business premises. • The barrister has effective arrangements in place to protect the confidentiality of the clients' affairs. • There is no general referral arrangement or understanding between the barrister and the person/people they are sharing office facilities with. Any referrals that do take place must be made at arm's length and in the best interests of the client. This rule ensures that referrals are only made when it is in the client's best interest and barristers may be required to demonstrate, if required to do so, the basis on which he/she reached the decision. • Prior notification, in writing of the sharing must be give to the Bar Standards Board by the barrister. 2. Current technical constraints in the Code of Conduct, concerning the premises that procurement vehicles (to facilitate block contracting) can use should be removed. Further code changes may be required in the future when detailed proposals for such organisations or vehicles are

	<p>developed.</p> <p>3. Self-employed barristers should be permitted to collect and take witness statements. However, a barrister must not conduct a case in court if he/she has investigated or collected evidence for that case, unless the barrister reasonably believes that the investigation and collection of that evidence is unlikely to be challenged.</p> <p>4. Self-employed barristers should be permitted to attend at police stations interviews, provided that they have complied with relevant training requirements imposed by the BSB in respect of such work. However, a self-employed barrister must not conduct in court any criminal proceedings if he/she has attended at a police station for any defendant in connection with those proceedings or associated proceedings.</p> <p>5. Self-employed barristers should be permitted to conduct correspondence provided that the barrister:</p> <ul style="list-style-type: none"> • is satisfied that it is in the lay client's that he/she does so and that he/she has adequate systems, experience and resources in place to appropriately manage the correspondence • has adequate insurance cover in the event that the lay client suffers loss <p>In addition to the above, where a barrister conducts correspondence and he/she is aware that another party has a solicitor or barrister representing them, the barrister must not correspond directly with that party.</p> <p>6. It is not appropriate to apply different provisions to civil and criminal work, standards should be the same for both. Different examples for different specialisms will be provided in the guidance accompanying the code amendments.</p>
<p>Aim/Purpose of Policy</p>	<p>These issues were a result of those raised in February 2008 BSB consultation paper on the implications of the Legal Services Act 2007. Part V of that paper was concerned with questions regarding the structure of self-employed practice. It was considered appropriate to take a view on whether current restrictions relating to the supply of such services by the self-employed Bar should also be relaxed given the other relaxations regarding the supply of legal services encouraged by the Act. Such liberalisation should complement that envisaged by the drafters of the Act.</p> <p>Relaxation of such arrangements are seen as having the following potential advantages:</p> <p>(a) they would enable barristers and those working with</p>

<p>Sharing Premises</p>	<p>them, particularly in specialist fields, to provide a wider range of services to the public;</p> <p>(b) they would enable barristers to compete more effectively with other organisations providing similar advice;</p> <p>(c) these arrangements could provide the services considerably more cheaply.</p> <p>Paragraph 403.1 of the Bar’s Code of Conduct currently prohibits a self-employed barrister from practising from the office of or in any unincorporated association involving sharing the administration of his or her practice with any person other than a self-employed barrister and a limited number of other, mostly foreign lawyers. Relaxing this rule would enable barristers and those working with them, particularly in specialist fields, to provide a wider range of services to the public, and enable barristers to compete more effectively with other organisations providing similar advice.</p> <p>In addition to the conditions at point 1 above, the group proposes a new rule, 403.2 which requires a barrister who is sharing premises with other people to keep a record of any work or clients referred to (and from) the barrister. This rule will enable the Bar Standards Board to monitor any referrals that do take place to ensure that the referrals are made at arm’s length and in the best interests of the client.</p>
<p>Special Purpose Vehicles</p>	<p>The Board has recognised that there is currently discussion among members of the Bar of the possibility of facilitating block contracting or other procurement with purchasers of legal services.</p> <p>In addition to point 2 above, it is suggested that as well as creating a new rules 403.3, special purpose vehicles will need to be carefully monitored to ensure that they do not:</p> <ul style="list-style-type: none"> a) Create contractual obligations which restrict a barrister’s ability to accept instructions from other clients. This would be particularly acute in specialist areas where there are few barristers. b) Create contractual allegiances or alliances which undermine the independence of the barristers.
<p>Collecting Evidence and taking witness statements</p>	<p>In addition to point 3 above, the group have ensured that the propose Code amendments (401(b)9iii)) more restrictive than existing Written Standards, which enable barristers to take witness statements and then act as the junior barrister in the case. The amended rule accompanying the consultation paper prohibits the provision of “advocacy services” (defined very widely in Part X of the Code and s119 of the Courts and Legal Services Act 1990). The</p>

Conduct of Correspondence	<p>current Written Standards only state that it is not appropriate for a witness statement taker “to act as counsel unless he is a junior member of the team of Counsel and will not be examining the witness”. The drafting of 401(b)(iii) which now uses the words ‘conduct the case in court’ rather than ‘provide advocacy services’.</p> <p>In formulating rule 401(b) (iii) the group also took into account the fact that solicitors are currently not subject to a similar provision in the Solicitor’s Code of Conduct but that the rules concerning professional embarrassment would apply if this issue arises at trial.</p> <p>In reaching the recommendation at point 5 above, the Group tried to ensure barristers’ actions, so far as possible, do not create any threat to either their actual or their perceived independence, or any risk of subsequent professional embarrassment. For example, they should not appear personally to endorse statements by clients or witnesses, since that might appear to conflict with arguments or evidence which they subsequently laid before the Court.</p> <p>The Group recognises that it will not always be in the best interests for barristers to conduct correspondence. There is a danger of confusions where some letters are written by a barrister and some by a solicitor. In addition, there will need to be appropriate systems in place to deal with responses, if, for example, the barrister is on holiday. Whilst there may be some circumstances where barristers conducting correspondence will give rise to an increase in claims, it is difficult to justify a complete ban when a large number of barristers have indicated that they would like to be able to do this.</p>
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Do you consider the policy to have an adverse impact on equality?

Gender equality	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Race equality	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Disability equality	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

If yes, is there any evidence to support this?	<p>Race</p> <p>There is no evidence to suggest there will either be a positive or negative impact in terms of race through the proposed reforms suggested as a consequence of this consultation.</p> <p>However, it has been suggested that this type of work might,</p>
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	<p>in the future, most typically be conducted by members of the Junior Bar in particular. Statistics have shown that BME practitioners are disproportionately represented amongst junior practitioners so it is possible that a disproportionate effect could be felt by those BME practitioners.</p>
	<p>Gender</p> <p>There is no actual evidence to suggest there will either be a positive or negative impact in terms of race through the proposed reforms suggested as a consequence of this consultation.</p> <p>However, respondents have suggested that the proposal to permit attendance at police station interviews may be disproportionately disadvantageous to female barristers or those with young children who are unable to obtain childcare at short notice in order to attend a police station in the middle of the night or those who have ongoing carer responsibilities. The proposal is also likely to affect the young Bar disproportionately because it will be more junior barristers who are asked to do this sort of work.</p>
	<p>Disability</p> <p>There is no evidence to suggest there will either be a positive or negative impact in terms of race through the proposed reforms suggested as a consequence of this consultation.</p> <p>However, as referred to above, the proposal to permit attendance at police station interviews may also be disproportionately disadvantageous to those with disabilities.</p>
<p>If no, are your reasons for this?</p>	

POLICY ANALYSIS

<p>What are the (potential) barriers to equality arising from this policy?</p> <p>What evidence supports the existence of such barriers?</p>	<p>Race</p> <p>There is no evidence to suggest there will either be a positive or negative impact in terms of race through the proposed reforms suggested as a consequence of this consultation.</p>
	<p>Gender</p> <p>It has been suggested that the proposal to permit attendance at police station interviews may be disproportionately disadvantageous to female barristers or those with young children who are unable to obtain childcare at short notice in order to attend a police station in the middle of the night. The proposal is also likely to affect the young Bar is proportionately because it will be more junior barristers who are asked to do this sort of work.</p>
	<p>Disability</p> <p>There is no evidence to suggest there will either be a positive or negative impact in terms of race through the proposed reforms suggested as a consequence of this consultation.</p>
	<p>Generally</p> <p>As the consultation response of the Legal Services Ombudsman said:</p> <p><i>'I do not consider that any of the amendments and relaxations canvassed in the course of this consultation paper are likely to impact, either positively or otherwise, on the Bar Standard Board's continuing efforts to promote equality and diversity in recruitment to and advancement within the Bar.'</i></p>

Action Planning

Recommendations and actions required to reduce/remove barrier	Person Responsible	Deadline
<p>Race:</p> <ol style="list-style-type: none"> 1. Monitor and review the actual impact on women of the proposed reforms. 2. Analyse the evidence and, if necessary, re-consider the policy. 		
<p>Disability:</p> <ol style="list-style-type: none"> 1. Monitor and review the actual impact on women of the proposed reforms. 2. Analyse the evidence and, if necessary, re-consider the policy. 		
<p>Gender:</p> <ol style="list-style-type: none"> 3. Monitor and review the actual impact on women of the proposed reforms. 4. Analyse the evidence and, if necessary, re-consider the policy. 	Head of Professional Practice	During 2010