

Amendments to the Bar Code of Conduct – Barrister Participation in Alternative Business Structures

For approval by the Legal Services Board

In accordance with the requirements set out in the LSB's consultation paper, "Designating new approved regulators and approving rule changes", the BSB wishes to provide the information below to support its application to revise the Code of Conduct.

Any queries about this application should be made to:

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1. The proposed Alteration

1.1 In April 2011, the Board decided that barristers should be permitted to practice as managers or employees of Alternative Business Structures (ABSs) regulated by other Approved Regulators when Part 5 of the Legal Services Act 2007 comes into force. The Board also decided that barristers will be permitted to hold ownership interests in Alternative Business Structures subject to the development of rules and guidance on managing any resulting conflicts of interest. The rules and guidance in relation to ownership interests will be considered by the Board later this year and will form the subject of a separate application. We hope to make a separate application regarding ownership interests to the LSB prior to December 2011.

1.2 This paper sets out proposed amendments to the code of conduct that are required in order to permit barristers to become managers and employees of ABSs (the current definition of "recognised body" in the code of conduct excludes ABSs). Part 5 of the Legal Services Act 2007 is currently scheduled to come into force in the autumn, so depending on when Part V is commenced, the amendments may need to be made to the current code, rather than the proposed new code, that has not yet been submitted to the LSB.

1.3 Amendments need to be made to the definitions section in Part X of the Code to include ABSs. Recognised body is currently defined in Part X of the code as follows:

"Recognised Body" means a partnership, LLP, company or sole principal authorised to provide reserved legal services by an Approved Regulator other than the Bar Standards Board other than a licensable body as defined in s.72 of the Act of 2007 but does not include a body which is deemed to be authorised by reason of s.18(3) of the Act of 2007;^[16]

1.4 It is proposed that two new definitions, *authorised body* and *licensed body*, should be added to Part X of the Code and that the term *recognised body* should be replaced by the term *authorised body* wherever it appears in the main body of the code. The definition of recognised body in Part X of the code of conduct will stay the same. The proposed new definitions are as follows:

authorised body means a body that has been authorised by an approved regulator to practise as a *licensed body* or a *recognised body*.

licensed body means a body licensed by a licensing authority, other than the Bar Standards Board, under Part 5 of the *LSA*.

- 1.5 Annex 1 to this paper lists all of the rules in the code of conduct that contain the term recognised body or bodies and the relevant amendments (“recognised” has been amended to “authorised”). Annex 2 sets out amendments to guidance previously issued when code amendments were made to permit barristers to become managers of recognised bodies.

2. Details of Existing Regulatory Arrangements

- 2.1 At present, all barristers are prevented from practising as managers or employees of bodies licensed by a licensing authority under Part 5 of the Act:

205. A practising barrister may supply legal services to the public as:-

(a) a self-employed barrister;

(b) a manager or employee of a Recognised Body, subject to the rules of the Approved Regulator of that body;

(c) an employed barrister to the extent permitted by paragraph 502.

- 2.2 Barristers are currently permitted to practise as managers or employees of Legal Disciplinary Practices (“LDPs”) regulated by the SRA or the CLC. Barristers are also permitted to hold ownership interests in LDPs but are required by rule 209 of the Code to put certain safeguards in place if they are instructed by a client of an LDP, or if they refer a client to an LDP, in which they have an ownership interest, unless they are a manager or employee of that LDP. These safeguards seek to manage the conflicts of interest which would otherwise arise if a self employed barrister received work from or sent work to an entity in which he had a personal financial interest. The rules are supplemented by more detailed guidance. As mentioned in paragraph 3 above, the current definition of recognised body the code of conduct specifically excludes ABSs.

3. Nature and effect of the proposed alteration

- 3.1 The proposed amendments to the code of conduct will enable barristers to practise as managers or employees of ABSs when Part 5 of the Act is commenced.

4. Why we wish to make the alterations

- 4.1 The proposed code amendments facilitate and promote the regulatory objectives enshrined in the Act. See section 5 below.

5. The regulatory objectives

- 5.1 Whilst the various regulatory objectives have to be considered as a whole, the BSB particularly views the objectives of protecting and promoting the public interest, *improving* access to justice, protecting and *promoting* the interest of consumers, *promoting* competition in the provision of legal services, and encouraging an independent, strong, diverse and effective legal profession as being more effectively and appropriately achieved by amending rule 205 and permitting barristers to practise as managers or employees of licensed bodies.

Protecting and promoting the public interest

5.2 Safeguarding the public interest has been one of the primary concerns of the BSB as it seeks to facilitate the objectives of the Act. Promoting the public interest has also been a priority and it is the Board's belief that permitting barristers to work in different business arrangements will enhance the access to those services by consumers and that this is very much in the public interest. These new business arrangements also have the capacity to make the market for the provision of legal services more competitive which, in turn, could be reflected in more competitive pricing in that market and lower prices for consumers.

Supporting the constitutional principles of the rule of law

5.3 The proposed Code amendments do not have any adverse impact on this regulatory objective. Both the Code changes themselves and the accompanying guidance seek to maintain the high standards of professional conduct traditionally associated with the Bar which seek to protect and support the constitutional principles of the rule of law.

Improving access to justice

5.4 The proposed Code amendments have the capacity to improve access to justice because they enable a greater diversity of routes for consumers to gain access to barristers' services and for those services to be offered in combination with other complimentary legal and non-legal services.

Protecting and promoting the interests of consumers

5.5 These changes will enable consumers to have access to legal services through a greater diversity of providers, in a more competitive market which should ensure competitive pricing thus enhancing value for money for consumers. The Code amendments seek to permit barristers to deliver their services in new ways in this new market whilst at the same time obliging them to maintain the high professional standards of work.

Promoting competition in the provision of services

5.6 The BSB's previous consultations have identified interest from members of the profession for providing their services differently and in different business forms. Much of this interest is generated by perceived commercial advantages. It seems clear that there will be a greater variety of business vehicles in the legal services market following the Act and that competition in that market will therefore be promoted and enhanced by the increased competition between multifarious providers.

Encouraging an independent, strong, diverse and effective legal profession:

5.7 Allowing barristers to offer their services in different, innovative ways in response to changing client requirements can serve to promote competition in the supply of barristers' services and the supply of legal services more generally. This is likely to encourage an independent, strong, diverse and effective legal profession.

Increasing public understanding of the citizen's legal rights and duties

5.8 The BSB considers that the implementation of the amendments outlined above will not have any adverse effects on increasing public understanding of the citizen's legal rights and duties.

Promoting and maintaining adherence to the professional principles

5.9 The BSB considers that the implementation of the amendments outlined above will not have any adverse effects on promoting and maintaining adherence to the professional principles.

6. The better regulation principles

Proportionality

6.1 The BSB carefully considered all of the options for achieving policy objectives before developing the attached code amendments and guidance. The code amendments in relation to licensed bodies place barristers in the same position as other lawyers in relation to practising as a manager or employee of a licensed body.

Accountability

6.2 The BSB issued two consultation papers before barristers were permitted to become managers of LDPs. Specific consultation on this decision is not required because licensed bodies are permitted by statute and the issues are the same as those already consulted on. The necessary rule changes to allow barristers to be managers and employees of licensed bodies are minor and straightforward and do not need separate consultation.

Consistency

6.3 Permitting barristers to practise as employees or managers of licensed bodies will ensure that the BSB is consistent with the other approved regulators, for example solicitors and other lawyers will be permitted to practise as employees or managers licensed bodies. The proposals made in this application facilitate the implementation of Part 5 of the Legal Services Act 2007.

Transparency

6.4 Guidance has been developed to accompany the code amendments to ensure that those regulated are made aware of their obligations. The guidance and the code amendments attached to this application will be communicated to the profession and posted on the BSB website.

Targeting

6.5 The amendments to the code of conduct will be systematically reviewed to ensure that they are still necessary and effective.

7. Desired outcome

7.1 The desired outcome of this application is that the proposed amendments are accepted by the LSB and put into effect prior to the commencement of Part V of the Act. The proposals facilitate the implementation of Part 5 of the Legal Services Act 2007 and promote the regulatory objectives enshrined in the Act.

8. Other regulators

7.1 The BSB issued 2 consultation papers before barristers were permitted to become managers of LDPs. The consultations were sent to the profession, consumer groups, minority legal groups and other regulators. The responses that we received from other regulators were carefully considered and taken into account in the final version of the code changes and the guidance to permit barristers to become managers of LDPs and these code amendments naturally follow on from the previous ones.

9. Date of implementation

9.1 We would like to implement the amendments to the code of conduct prior to the commencement of Part 5 of the Act. If the code is not amended, barrister managers and employed barristers working in recognised bodies with one or more non-lawyer manager will be at risk of being in breach of the code when the ABS regime is implemented, and other barristers will be deprived of the opportunity of working in ABSs.

10. Consultation Processes Undertaken

10. The consultation papers that the BSB issued and the responses received are published on our website:

First consultation paper:

[Consultation letter - Legal Services Act 2007 - Regulation implications](#)
[Consultation paper - Legal Services Act 2007 - Regulation implications](#)
[Legal Services Act Responses](#)
[Legal Services Act 2007 - Summary of responses](#)
[Legal Services Act 2007 - Summary of responses - Appendix A](#)
[Legal Services Act 2007 - Summary of responses - Appendix B](#)
[Legal Services Act 2007 - Summary of responses - Appendix C](#)
[Legal Services Act 2007 - Summary of responses - Appendix D](#)

Second consultation paper:

[Consultation Letter - Legal Services Act 2007 - Legal Disciplinary Practices and Partnerships of Barristers](#)
[Consultation Paper - Legal Services Act 2007 - Legal Disciplinary Practices and Partnerships of Barristers](#)
[Peter Roth QC - advice](#)
[Questions for Peter Roth QC](#)
[Peter Roth QC - supplementary advice](#)
[Responses - Legal Disciplinary Practices and Partnerships](#)
[Summary of Responses](#)
[Annex A - Summary of responses](#)
[Annex B - Summary of responses](#)
[Annex C - Summary of responses](#)
[Annex D - Summary of responses](#)

11. Other explanatory material

10 An initial equality impact assessment is attached to this paper at Annex 3. It is necessarily at a relatively high level and incorporates information from the YouGov survey, responses to the consultation paper and Equality and Diversity statistics from the existing barrister managers of LDPs.

Annexes

- 1) Annex 1 - List of rules in the code of conduct that contain the term recognised body and proposed amendments
- 2) Annex 2 – Guidance accompanying the code amendments
- 3) Annex 3 – EIA