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BOARD**

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Freedom of Information request

Date request received: 18 May 2015

Date of response: 02 June 2015

LSB reference: 20150518-01

Request and response:

I write in response to your email of 18 May 2015 in which you have requested information about the LSB's decision notice dated 18 August 2011 on the rule change application made by the Bar Council/Bar Standards Board.

You raised five questions as set out below, our responses to which are in bold:

1. In relation to the Decision Notice issued under Part 3 Schedule 4 to the Legal Services Act 2007 dated 18 th August 2011 and published by the LSB on 19th August 2011;-

*(a) How was the Director of Regulatory Practice at the LSB Fran Gillon satisfied approval could be given in relation to the **"cut off date proposed for barristers under the old transitional rule 1102 and 1104"** in paragraph 12 of the Decision Notice?*

(b) How was the Director of Regulatory Practice at the LSB Fran Gillon satisfied there had been proper consultation with those who would be most seriously affected, and there would be proper promulgation of the cut off date of 31st March 2012 by the Bar Council/BSB prior to the cut off date of 31st March 2012 to all those who would be most seriously affected by the Bar Council/BSB's imposition of the cut off date of 31st March 2012 in relation to 1104 of the Transitional provisions of the 8th Bar Code of Conduct?

(c) How was the Director of Regulatory Practice at the LSB Fran Gillon satisfied the Bar Council/BSB would allow all those most seriously affected by the introduction of the cut off date to 1104 of the Transitional Provisions of the 8th Code of Conduct to do anything that needed to be done prior to the cut off date, and to do anything that could be done by those who would be most seriously affected by the introduction of that cut off date of 31st March 2012?

Persons who "would be most seriously affected" by the introduction of a cut off date of 31st March 2012 to 1104 of the Transitional Provisions of the 8th Bar Code of Conduct were all barristers called before 31st July 2000 who had completed 12 months pupillage and had been employed as barrister prior to 31st July 2000.

2. How was the Director of Regulatory Practice at the LSB Fran Gillon satisfied that the introduction of the cut of date of 31 March 2012 to 1104 of the Transitional provisions of the 8th Bar Code of Conduct did not fall within para 25(3)(f) of Schedule 4 of the Legal Services Act 2007?

The LSB does not hold any information relating to the Bar Council/Bar Standards Board rule change application other than what is contained in the Decision Notice dated 18 August 2011.

3. In relation to Applications for Review of the Bar Council/BSB decision to refuse to issue a Practising Certificate (PC) why are there no:-

(a) set written Regulations and/or set written Procedures which are part of the current Bar Handbook, and

(b) proper written time limits, which are reasonable time limits in the circumstances, by which time each stage of the procedure must be completed,

(i) the time limit for an Application for Review is at present "one Month" from the decision letter contained in guidelines extraneous to the Handbook, and

(ii) reasonable time limits for considering an application for review on paper, the 10 weeks in guidelines extraneous to the Handbook is not a reasonable period of time, and

(iii) reasonable time limits for a decision to be reached by the BSB Qualifications Committee and notified to the Applicant after considering the application for Review in the Applicant's absence, the 10 days is an unreasonable time limit for notification of a decision, and

(c) facility for the Applicant to make a proper Application for an oral hearing on the Application form for Review, and

(d) facility for the Applicant to be present and/or represented at any hearing in which the BSB Qualifications Committee considers the Application.

4. Why is it necessary for any decision by the BSB Qualifications Committee in relation to an Application for Review at which the Applicant is not allowed to be present to be made by the whole BSB Qualifications Committee of 21 members?

5. Why is there no set procedure determining :-

(a) the number of members of the BSB Qualifications Committee who should be present at any Review hearing, and

(b) the composition of the members of the BSB Qualifications Committee who should be present at any Review hearing (i.e. how many; lay members, non-practising barristers, employed barristers, and barristers in independent practice) should make up the BSB Qualifications Committee determining an Application for Review?

The LSB does not hold any information in relation to the questions that you have raised in 3-5. These matters should be raised directly with the Bar Standards Board.

I hope that this has been of assistance, but if you are dissatisfied with our response to your request for information, you have the right to ask for an internal review or to submit a complaint (see LSB's Freedom of information – Complaints procedure:

http://www.legalservicesboard.org.uk/can_we_help/lbsb_policies_procedures/freedom_of_information/index.htm).

Request for internal review, received 9 June 2015

The LSB is under a Statutory Duty under Schedule 4 Part 3 of the Legal Services Act 2007 to have certain information provided to it by the Regulator in this case the BSB, when the Regulator seeks to alter any of its Regulatory Arrangements. The LSB is under a Statutory Duty to consider all the information provided to it by the Regulator and is under a duty to consult other organisations prior to making any decision whether to approve the proposed alteration to the Regulatory Arrangements.

I find it implausible that no information is held by the BSB at least in relation to 1(a) and 2 of my original Request for Information made on 18th May 2015 (a copy of which is incorporated in the Reply from the LSB received on Tuesday 2nd June), a copy of which is attached herewith.

In relation to, 1(a) and 2, I would like a Review of the statement/decision made on behalf of the BSB that:

"The LSB does not hold any information relating to the Bar Council/Bar Standards Board rule change application other than what is contained in the Decision Notice dated 18 August 2011."

1. If the LSB claims the information in relation to 1(a) and 2, is not held under the FOIA by the LSB please confirm whether the information was ever held by the LSB at any time prior to this Request.
2. If the LSB claims the information in relation to 1(a) and 2, is not held under the FOIA please confirm where the information is now held, and which individual and/or, entity and/or, Public Authority, and/or Statutory Body now holds the information.
3. Please confirm whether any third party has been consulted about this Request for Information.
4. Please note that I wish to be notified before you transfer my Request for Information to another Public Authority

I accept that the Requests for Information under 3, 4, and 5 should not have been included as part of a FOIA Request for Information. The issues raised in 3,4 and 5 need to be addressed in another forum by other means. Please accept my apologies for having included them as part of a Request for Information under the FOIA.

Response to internal review

I write in response to your emails of 9 June 2015, in which you have asked for an internal review of the LSB's responses to your requests for information under the freedom of Information Act 2000 (FoIA). The requests in question were sent on 5 and 18 May, and were responded to on 21 May and 2 June respectively. I will deal with each request in turn.

In summary, your information request of 5 May asked that the LSB provide details of all individual amendments to the 5th, 6th, 7th and 8th editions of the Bar Codes of Conduct, and it went on to ask that details be provided of the dates and methods by

which these amendments were communicated, how they affected different types of barristers, and consultations that may have been carried out by the Bar Council. In response to the sixteen individual questions raised, the LSB responded that it did not hold the relevant information. You have asked for a review of this response in relation to questions 1 and 2.

Having considered the matter again, in the light of clarification provided in your review request, I am now able to provide you with details, summarised in the table below, of dates and descriptions of decisions that the LSB made in relation to the 8th Code of Conduct, in the period between 1 January 2010 when the LSB assumed its powers under the Legal Services Act, and 6 January 2014 when the Code of Conduct was replaced by the BSB Handbook. Details of these applications can be found on the [closed applications](#) page of the LSB website.

Application Date	Application
15.11.2013	Changes related to Fitness to Practice Regulations
27.09.2013	Approval of allocation of Practising Certificate Fee methodology
14.05.2013	Regulatory arrangements for Quality Assurance Scheme for Advocates
26.04.2012	Amendments to the Bar Training Regulations to require all students additionally to have achieved a required minimum score in the Bar Course Aptitude Test (BCAT), for the entry onto the Bar Professional Training Course (BPTC).
26.04.2012	Amendments to the Bar Code of Conduct – Equality and Diversity provisions
27.10.2011	Changes to the Code of Conduct in relation to the Cab Rank Rule
01.08.2011	Amendments the Bar Code of Conduct – Barrister Participation in Alternative Business Structures
22.07.2011	Amendments to the Bar Code of Conduct - Authorisation to Practise
23.03.2011	Amendments relating to Pupillage
15.01.2011	Amendments to the Bar Training Regulations – International English Language Test
23.07.2010	Amendments to the Bar Training Regulations
05.03.2010	Amendments to the Bar Code of Conduct – application of the Public Access Scheme
10.02.2010	Amendments to the Bar Code of Conduct– The Structure of Self Employed Practice
01.02.2010	Amendments to the Bar Code of Conduct – Legal Disciplinary Practices & Partnerships of Barristers

Please note, in addition, that fourteen [exemption directions](#) were issued to the 8th Code of Conduct. These are numbers 5, 6, 9, 13, 17, 18, 21, 22, 27, 33, 35, 36, 37 and 51, and they can be found by clicking on the above link to our website.

With regard to your question 2, our position remains that we do not hold the information you require, and that this request ought properly to be directed to the Bar Council.

Your request of 18 May relates to the LSB's Decision Notice of 18 August 2011 on the rule change application made by the Bar Council/Bar Standards Board. You raised five questions in response to which the LSB indicated that it did not hold the relevant information. You have asked that this response be reviewed in respect of

your questions 1(a) and 2. I can confirm that we do not hold any information relating to the issue of the introduction of cut off dates for barristers.

This concludes my internal review of the LSB's response to your information requests dated 5 and 18 May 2015. If you remain dissatisfied with this response, you may refer the matter to the Information Commissioner's Office. Information on how to do this may be obtained from their website at: <https://ico.org.uk/concerns/getting/>

Yours sincerely

Richard Moriarty
Chief Executive