

Statement of Policy: Section 15(4) of the Act

Response to the Legal Services Board's consultation

The consultation

1. The Bar Standards Board (BSB) welcomes the opportunity to respond to the Legal Services Board's (LSB) proposed policy statement for legal services regulators wishing to amend or introduce regulatory arrangements that pertain to section 15(4) of the Legal Services Act 2007.
2. The BSB generally supports the approach that the Legal Services Board has taken in its draft policy statement. The following paragraphs contain the BSB's response to the specific principles included in the draft policy statement.

The approach taken to rules pertaining to section 15(4) is evidence based

3. The BSB agrees that any current regulatory restriction that goes beyond what is required by section 15(4) should be based on sound evidence and equally that a decision not to apply regulatory restrictions should be an active one in the light of an assessment of the need for such action. The BSB has committed to undertake a full review of its rules in this area, including restrictions on in-house lawyers providing unreserved legal services to consumers unconnected to the employers business. However, as the policy statement acknowledges, this raises a number of complex issues and approved regulators must be able to take sufficient time to assess these issues properly and take action in stages where appropriate.

Rules that pertain to section 15(4) have been considered in light of wider regulatory arrangements

4. The BSB agrees that any proposed changes should be considered in light of wider regulatory arrangements and that the regulation of employed barristers impacts more widely than can be addressed with a simple, isolated change to a definition or rule.
5. It is correct that the LSB should consider the extent to which a review has been far reaching and considered in light of wider regulatory arrangements, but it should be prepared to consider incremental changes that make more simple, isolated changes where these have no negative impact on wider regulatory arrangements. For example, whilst the BSB intends to review employed practice from first principles, it is currently consulting on a proposal that the definition of "employed barrister (non-authorized body)" be changed. This is an isolated change, but one that may be a positive first step in opening up ways of working for barristers and removing restrictions that go beyond what is required by section 15(4) of the Act. Incremental change should not be put on hold unnecessarily, simply because a fuller review has not yet been undertaken (unless of course there are wider risks or negative impacts that have not been addressed).

The impact on consumers of any rules that pertain to section 15(4) of the Act has been assessed

6. The BSB agrees that the potential impact on consumers, and communicating the regulatory approach with consumers, must be an important consideration in any alteration to regulatory arrangements.

Consistency in approach to regulating in-house lawyers has been considered

7. The BSB agrees that the principle of consistency should be a consideration in any changes to regulatory requirements. Differences of approach between regulators, or between different lawyers regulated by the same regulator, may of course be justified if different levels of risk have been identified.