



## **Bar Council response to the Legal Services Board Statement of Policy: Section 15(4) of the Act**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Services Board's (LSB) statement of policy issued under section 49 of the Legal Services Act 2007 entitled Statement of policy: section 15(4) of the Act.<sup>1</sup>
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

### **Overview**

4. The Bar Council responds to this statement of policy regarding section 15(4) of the Legal Services Act (LSA) 2007 in its capacity as the representative body for barristers.
5. The Bar Council reiterates the view that it put forward in the response to the LSB discussion paper *Are Regulatory Restrictions in practising rules for in-house lawyers justified?*<sup>2</sup> that, it is ultimately for the frontline regulators to ensure that unconnected consumers of in-house lawyers providing unreserved legal services are as well-protected as clients of other regulated lawyers who are providing such services. Given the unconnected nature of this type of client, extra care will need to be taken to ensure that the client is aware of the terms on which legal services are supplied, the avenues of redress available to such clients and of how the barrister is regulated. The Bar Council notes that there is already a requirement at rC19 of the Bar

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<sup>1</sup> [Statement of Policy: section 15\(4\) of the Act \(2015\)](#).

<sup>2</sup> [Bar Council response to the Legal Services Board discussion paper "Are regulatory restrictions in practising rules for in-house lawyers justified?" \(2015\)](#)

Standards Board Handbook<sup>3</sup> which encourages the barrister to consider how matters will appear to the client and to ensure that information provided to the lay client is clear. With that in mind, the Bar Council agrees with the LSB principles for assessing regulatory arrangements that pertain to section 15(4) of the LSA 2007.

6. There should not be any disparity between regulation of self-employed and employed barristers particularly given that it is now permissible for a barrister to act in dual-capacity. As the Bar Council outlined in its earlier response, consistency should be sought with other regulators that regulate lawyers providing the same services. The Bar Council considers that the regulatory risk posed by employed barristers providing unreserved legal services to the public (un-associated with the business) is no higher than a self-employed barrister providing legal services to the public through direct access. The Bar Standards Board already has in place regulatory provisions to protect the consumer that apply regardless of the way in which these services are provided. These provisions include the duty not to mislead (rC19), a range of considerations that need to be thought through before the barrister takes on the instruction (rC21) and the requirement to have professional indemnity insurance (rC76). To reiterate, the duty to outline clearly to the client the terms upon which the barrister is acting, to provide details of their complaints procedures, and the regulatory requirement to have adequate insurance for the work to be done, apply irrespective of whether the barrister is employed or self-employed. The fact that employed barristers already have the limited capacity to supply legal services to the public on a voluntary basis in accordance with rS36.5 and rS39.9 of the Handbook is an inconsistency that needs to be remedied.

7. The Bar Council suggests that if the requirement to provide evidence relating to the restriction or relaxation of the regulatory to the Legal Services Board persists, the evidential burden should not be too onerous for the frontline regulators and that the process be as efficient as possible.

8. When these principles are applied, the LSB will need to take into account the wide range of structures and supervisory requirements that affect in-house lawyers, as well as the contextual differences between the various professions. The Bar Council reiterates that this balance can best be achieved by the frontline regulators working cooperatively with each other and with their respective regulated communities, although it does not have any fundamental objections to the principles outlined in the Legal Services Board policy statement.

**Bar Council**  
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<sup>3</sup> [BSB Handbook](#)