

**BAR  
STANDARDS  
BOARD**

**REGULATING BARRISTERS**

**Supplementary Submission to the Legal Services Board  
Consultation on Regulatory Independence**

## 1. Introduction

The Bar Standards Board (BSB) has already submitted a substantive response to the Legal Standards Board's (LSB) 'Consultation on Regulatory Independence'. However, through its on-going review of the Code of Conduct, the BSB has identified a potential problem in relation to the 'permitted purposes'<sup>1</sup> which determine the purposes for which monies raised through practising certificates may be used<sup>2</sup>. This paper invites the LSB to consider the situation.

## 2. The Issue

The Consultation proposes that the LSB rules under section 51 should permit funds from practising fees only to be used for the permitted purposes which are mandated by Section 51, subject to one addition, arguing that the list is based on the purposes for which practising fees could be used under previous legislation. Further study has now shown that in one important respect the proposed list is more restrictive than the purposes for which the Bar Council may currently use practising fees.

The problem arises because the mandatory purposes listed in Section 51(4) are confined to authorised persons, while the current purposes cover all barristers.

Section 51(4) refers to the following permitted purposes:

*(a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including...*

*(d) the provision by relevant authorised persons,<sup>3</sup> and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;*

Authorised persons are those who are authorised to carry out reserved legal services. The term does not include other lawyers who provide legal services which

---

<sup>1</sup> Section 51, Legal Services Act

<sup>2</sup> Page 29, LSB consultation document

<sup>3</sup> Emphasis added.

are not reserved. The BSB, on the other hand, has regulatory reach over anyone who is a barrister. This includes non-practising barristers. Section 46 (2)(b) of the Access to Justice Act 1999 allows practising fees to be used to fund the regulation of barristers and the provision of free legal services by barristers, irrespective of whether those barristers have the right to provide reserved legal services and of whether the services provided are reserved ones.

This issue may also be a problem for other Approved Regulators but it creates particular problems for the Bar Council and the BSB because of the large numbers of people who are entitled to call themselves barristers but who do not have, and are not entitled to obtain, a right of audience as they have never completed pupillage. All such barristers are subject to certain provisions of the Code of Conduct, in particular the provisions concerning dishonesty and conduct likely to diminish confidence in the legal profession and the administration of justice<sup>4</sup>.

Many of the barristers who do not have the right to provide reserved legal services do not provide any legal services, but some do. The Code permits them to provide such services subject to not holding themselves out as barristers<sup>5</sup>. A small group of barristers has reserved rights to continue to call themselves barristers subject to certain conditions<sup>6</sup>. At present such barristers are not subject to the rules which apply to practising barristers. This involves significant regulatory risks and the BSB is currently undertaking a review of the regulation of these barristers.

If the BSB is to be able to comply with the regulatory objectives, it is important that it should continue to be able to fund its work in relation to the regulation of non-practising barristers from funds derived from practising fees. It therefore urges the LSB to include the regulation of all barristers within the purposes permitted by the rules it makes under Section 51.

---

<sup>4</sup> Paragraph 301

<sup>5</sup> Paragraph 201

<sup>6</sup> Paragraph 206.1

Answer to Question 10

The BSB's revised answer to Question 10 is:

*The permitted purposes should include the regulation, accreditation etc of all barristers, and the provision of all legal services by barristers and those wishing to become barristers to the public free of charge.*