



## **Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The Bar Standards Board (BSB) application for approval of changes to the regulatory arrangements relating to the practising certificate fee allocation methodology**

The Legal Services Board (LSB) has granted an application from BSB for approval of changes to the methodology for the allocation of the Bar practising certificate fee.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

#### **Introduction**

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below<sup>1</sup>) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>2</sup> about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made

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<sup>1</sup> The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

<sup>2</sup> Rules for Rule Change Applications – Version 2 (November 2010)

or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

### **Background**

5. The Bar practising certificate fee is currently determined by the number of years since an individual's year of call. This works on a series of bands with recent entrants to the profession (4 years' call and under) paying the least and those with the most experience (13 years' call and over) paying the most. The BSB argues that this method is outdated and does not recognise that many relatively new entrants can be earning more than some more experienced members. It also states that the current system disadvantages those who take a career break (predominately women), those working in publicly funded areas and older members.

### **Proposed changes**

6. The proposal is to move to a system of determining the fee to be paid based on earnings. The treatment of employed and self-employed practitioners will be harmonised with six rates of practising certificate fee related to earnings/salary bands; those employed paying by reference to gross income and the self-employed by reference to gross fees received within the previous twelve months.

### **Assessment of the application**

7. The BSB has proposed changes on the grounds of fairness, equality and diversity. However, the BSB has not made the proposed changes on the ground that they are risk based.
8. In the application the BSB states that it currently does not hold sufficiently comprehensive data either on risk or demand, from across all of the profession, for either regulatory services or those other services that fall within the 'permitted purposes', to accurately allocate overhead to any particular grouping on a risk-based premise. In the medium term, the LSB would encourage the BSB to explore a move towards an approach to practising fee certificate allocation that is more closely related to risk and the cost of regulating different types of activity.
9. The LSB would expect in the future that practising certificate fee consultations be transparent on the number of people in each band so that fee payers can see that the contributions are distributed fairly.

### **Decision**

10. The LSB has considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.

### **Chronology**

- The LSB confirmed receipt of an application from the BSB on 27 September 2013.
- The 28 day initial decision period for considering the application ends on 24 October 2013.
- This decision notice is effective from 14 October 2013.
- The decision notice will be published on the LSB's website on 15 October 2013.

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**14 October 2013**