



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

Purpose of notice
To grant an application from the BSB to approve alterations to its regulatory arrangements in respect of its Parental Leave Rules.
Alterations that are being approved by this decision
The rule change will mean that parental leave will become available to every member of chambers who becomes a parent/carer of a child. The rule will apply to all mothers, fathers, and adoptive parents, as well as the married, civil, and de facto partners of biological or adoptive parents; Chambers must also offer flexible parental leave which enables a member of chambers to maintain their practice and support their income while on leave.

Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Bar Standards Board's application for approval of changes to its regulatory arrangements in respect of its Parental Leave Rules

The Legal Services Board (**LSB**) has granted an application from the Bar Standards Board (**BSB**) to approve alterations to the regulatory arrangements in respect of its Parental Leave Rules. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Proposed changes

1. At present the BSB Handbook ensures that parental leave is offered to the main carer of a new-born child at the self-employed Bar and is silent on the flexibility of taking that leave. The rule change will mean that parental leave will become available to every member of chambers who becomes a parent/carer of a child. The rule will therefore apply to all mothers, fathers, and adoptive parents, as well as the married, civil, and de facto partners of biological or adoptive parents. Chambers must also have a policy offering flexible parental leave which enables a member of chambers to maintain their practice and support their income while on leave.
2. The BSB applied to the LSB for approval of the proposed amendments to Part 2 Rule C110.3.k of the BSB handbook and the definition of Parental Leave in Part 6 of the handbook.
3. A summary of the changes are as follows:
 - Chambers parental leave policies must provide for the right of a member of chambers to take parental leave
 - Chambers parental leave policies must enable parental leave to be taken flexibly and allow the member of chambers to carry out fee earning work while on parental leave without giving up other parental leave rights
 - The definition of Parental Leave will be amended to extend the right of parental leave from the main carer of a child to "a carer of a child", preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex, and includes the married, civil, or de facto partner of a biological or adoptive parent.

4. The BSB said in its application that the rule change aims to encourage a cultural change at the self-employed Bar, away from the assumption that a single parent/carer should take time away from work to care for a child during his or her first year, and towards more flexible shared caring. In turn the BSB hopes that this will lead to improved retention of parents at the self-employed Bar, and improved gender diversity at the Bar, especially at the senior end of the profession.

Key issues considered in the assessment of the application

5. The LSB welcomes the BSB's approach in making these changes. We noted and welcomed the BSB's willingness to consider concerns received in consultation responses in preparing the final version of its application.
6. The LSB also noted that the BSB will conduct an evaluative exercise to determine the successful implementation and uptake of the new policy in approximately three years. The LSB welcomes this evaluation and understands that the BSB is to ensure that the assessment of the financial risks identified in the application are monitored.
7. In the course of its assessment the LSB clarified with the BSB a number of minor matters with regards to the revised rules, for example understanding the scope of the changes and who the new arrangements would apply to.

Decision

8. The LSB has considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application and accordingly, the application is granted. Guidance was also submitted with the application. The LSB does not approve guidance that does not fall within section 21 of the Act as being a regulatory arrangement.
9. The Annex to this decision notice contains the specific amendments to the BSB's regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the BSB on 8 August 2017.
- The 28 day decision period for considering the application ends on 4 September 2017.
- This decision notice is effective from 31 August 2017.
- The decision notice will be published on our website by 31 August 2017.

Neil Buckley, Chief Executive of the Legal Services Board
31 August 2017

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the proposed regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. 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.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Rule C110.3:

- .k chambers has a *parental leave* policy which, ~~in the case of chambers,~~ must cover as a minimum:
- .i **the right of a member of chambers to take parental leave;**
 - .ii the right of a member of chambers to return to chambers after a specified period, **or number of separate periods**, of parental leave, **provided the total leave taken does not exceed a specified maximum duration** (which must be at least one year);
 - .iii **a provision that enables parental leave to be taken flexibly and allows the member of chambers to maintain their practice while on parental leave, including the ability to carry out fee earning work while on parental leave without giving up other parental leave rights;**
 - .iv the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;
 - .v the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;
 - .vi where any element of rent is paid on a flat rate basis, the chambers' policy must as a minimum provide that chambers will offer members taking a period of parental leave a minimum of 6 months free of chambers' rent;
 - .vii the procedure for dealing with grievances under the policy;
 - .viii chambers' commitment to regularly review the effectiveness of the policy;

Definition of Parental Leave:

Parental leave means leave **from practice** taken by ~~the main~~ a carer of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex, **and includes the married, civil, or de facto partner of a biological or adoptive parent.**