



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 set out the LSB's decision to grant the application in full from the Bar Standards Board around new reporting requirements for barristers
Alterations that are being approved by this decision
There are four main changes to the reporting requirements of barristers as part of the annual renewal of practicing certificates: <ol style="list-style-type: none">1) Declaration of areas of practice and the percentage of income attributable to each area for the last full calendar year.2) Registration of work in the Youth Court and confirmation that barristers are competent against the Youth Proceedings Competences. Also applies to students applying for provisional practising certificate.3) Declarations in order to comply with 'Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017'4) Registration of a unique email address.

Decision notice

The Bar Standards Board application for approval of changes to reporting requirements as part of its regulatory arrangements around Authorisation to Practice.

The Legal Services Board (“LSB”) has granted an application from the Bar Standards Board (BSB) for approval of amendments to its regulatory arrangements set out in its Handbook section which concerns reasons why the BSB may refuse to issue a practising certificate or to grant a litigation extension, or may revoke a practising certificate or a litigation extension. This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

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. The notes at page 8 of this notice explain the statutory basis for the decision.

This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB’s handling of this application is also set out at the end of this decision notice.

Proposed changes

1. The BSB has applied to the LSB for approval of the proposed amendments to section rS59 of its handbook which states:

“The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate or to grant a litigation extension, or may revoke a practising certificate or a litigation extension in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the practising certificate or litigation extension (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant barrister or registered European lawyer”

2. The changes introduce new reporting requirements in support of the above rule. A summary of the changes and the BSB’s rationale for them is set out in the table below:

New rule	Rationale – as presented by the BSB
<p>1. Barristers who are renewing their practising certificates will have to declare their areas of practice and the percentage of income attributable to each area for the last full calendar year.</p>	<p>Having this information will help the BSB to:</p> <ul style="list-style-type: none"> • deliver risk based regulation • better understand diversity at practice area level • more effectively review the continuing professional development (CPD) undertaken by barristers against barristers’ learning objectives and activities
<p>2. Register work in the Youth Court. Four key elements:</p> <p>a) Barristers who are completing Authorisation to Practice (AtP) and students applying for their provisional practising certificate would need to register if they are undertaking, or in the last 12 months have undertaken work in the Youth Court.</p> <p>b) Requirement for barristers who did not register when completing AtP to do so within 28 days after undertaking the work (when this is outside of the AtP period).</p> <p>c) During the above processes, barristers also register that they are competent against the Youth Proceedings Competences.</p>	<p>Requiring registration will ensure that the BSB is able to:</p> <ul style="list-style-type: none"> • supervise these practitioners effectively • ensure that all practitioners doing work at the Youth Court are competent. • tailor CPD monitoring to ensure that barristers who have registered are maintaining their competence in this area. <p>BSB anticipates the declaration of competency against the Youth Proceedings Competences (at the point of registration) will help the standards of advocacy to increase as it requires barristers to declare they have the specialist skills needed for advocacy in the Youth Court.</p> <p>BSB intends to produce guidance for youth court users which will include some information about the registration requirement to ensure it is understood by clients.</p> <p>Registration, and the publication of this on BSB’s register, will also enable solicitors, clients and third parties in the youth justice system to know whether the barrister is registered, and to report instances of poor advocacy or non-registration to the BSB, supporting targeted engagement with barristers to improve their competency and ensure compliance.</p>

New rule	Rationale – as presented by the BSB
<p>3. Barristers who are renewing their practising certificate will need to make declarations in order to comply with 'Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017'</p>	<p>BSB compliance with new regulations are contingent on the BSB knowing which barristers are undertaking work which engages the regulations and that they meet the requirements. BSB has an obligation to:</p> <ul style="list-style-type: none"> • prepare risk profiles for relevant persons; • provide HMRC with a list of Trust and Company Service Providers; and • ensure that only those who are fit and proper persons are carrying out this work. <p>Collecting data about how many barristers are engaged in relevant work will enable the BSB to ensure that the costs for new Office for Professional Body Anti-Money Laundering Supervision are allocated to the Bar proportionately.</p>
<p>4. A rule that would require barristers to register their My Bar account with a unique email address so that only they can view and edit their information.</p>	<ul style="list-style-type: none"> • To ensure the new My Bar portal is secure, BSB considers it important that all barristers use a unique email address to access the system so that they have control over their information. • Having this information will also mean that BSB can contact barristers more efficiently as we will have a direct email address, rather than a generic one.

Key issues considered in the assessment of the application

Declaration of areas of practice

3. We welcome the BSB's continued commitment to gather evidence to deliver risk based regulation, improve practice diversity information and to better monitor CPD. We also note that the BSB considers that using income apportioned to practice areas, in the format that self-employed barristers have to submit to the Bar Mutual Indemnity Form (BMIF), is the least burdensome method for gathering the relevant data. However, we trust that the BSB will include in its planned review of its Risk Outlook in 2019, an assessment of whether the particular methodologies deployed to collect data produce statistically consistent and reliable information.
4. We sought reassurance from the BSB around enforcement of self-declarations. The BSB expressed the view that the risk of incorrect self-declaration of practice area information is low. The self-employed Bar will provide the same information it

already gives to the BMIF. Therefore the BSB said it expects this information to be equally easy to maintain and present to the BSB. In addition the BSB undertakes an insurance audit on an annual basis, by cross checking BSB records against those of the BMIF. The BSB says it may explore the possibility of including practice area information within this audit.

Youth Advocacy

5. We sought clarification from the BSB on the evidence base for the need to make these changes and why it had opted for the registration solution. The BSB highlighted several sources of evidence gathering, including the Youth Proceedings Advocacy Review¹ from 2015 and external reviews such as the Carlisle Report (2006)² and the Taylor Review of the Youth Justice System Justice (2016)³. All of these pointed to low standards in youth court work and a need for steps to be taken to improve standards of youth advocacy.
6. BSB explained that it considered introducing mandatory training. However, as youth court work is often poorly remunerated it was felt that such a course of action could act as a disincentive for barristers to do this work at all, and ultimately negatively impacting on access to justice. The BSB considers that registration will provide the right regulatory balance. It ensures that the BSB is aware who is doing this work and allows it to take appropriate regulatory action if needed.
7. The LSB considered whether there might be a wider impact on consumers from the additional registration requirements (for example, additional indirect costs from registration being passed on to consumers). The BSB confirmed that it does not anticipate any wider impact on consumers. Administratively, the additional registration requirement is minimal and simply requires the barrister to tick a box on the MyBar portal.
8. We sought further information from the BSB around enforcement of self-declarations with regards to this particular change. The BSB confirmed that it envisages undertaking CPD spot checks for barristers working in a Youth Court. By doing so, it says it will get an indication of whether advocates are focussing on the Youth Court related training. It has also been working to encourage third parties in court to report instances of poor advocacy.
9. The BSB further confirmed that in the future, when it receives reports of poor advocacy, it will work with the advocate in the first instance to improve performance. This is likely to consider the person's CPD against the BSB's Youth Proceedings Competences⁴. It could involve asking for specific corrective action. Enforcement

¹ <https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

² <http://howardleague.org/wp-content/uploads/2016/03/Carlisle-Report-pdf.pdf>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf

⁴ https://www.barstandardsboard.org.uk/media/1821763/bsb_youth_competencies_2017_for_website.pdf

action will be reserved for those individuals who persistently do not comply with the BSB, or who demonstrate very high risk behaviours. The BSB will take a risk-based approach, so if standards in the Youth Court do not rise, or appear to fall, it will alter its regulatory approach accordingly.

Anti-money laundering regulations

10. We sought further information from the BSB around enforcement of self-declarations in this area. The BSB has confirmed that for the anti-money laundering Regulations, it will be undertaking spot checks to ensure that those who are required to undertake basic disclosure checks have done so. It will be investing resources in ensuring its communications raise awareness of the requirements under the Regulations, particularly for Trust and Company Service Providers. It will also be using the practice area declarations to inform which chambers or sole practitioners are likely to do work which engages the Regulations and checking this during its supervision of chambers.

Decision

11. The LSB has considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application; accordingly, the application is granted.
12. **Annex A** to this decision notice contains the amendments to the regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the BSB on 6 November 2017.
- The 28 day initial decision period for considering the application ends on 3 December 2017.
- This decision notice is effective from 1 December 2017.
- The decision notice will be published on our website by 5 December 2017.

Neil Buckley, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
1 December 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 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 rules⁵ 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.

⁵ Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

The proposed amendments are included below, **in bold**, to give effect to the practice area information, the requirements under the Regulations and to provide the BSB with a unique email address:

rS59

The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate or to grant a litigation extension, or may revoke a practising certificate or a litigation extension in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the practising certificate or litigation extension (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant barrister or registered European lawyer:

- .1 does not hold adequate insurance in accordance with Rule C76;
- .2 has failed and continues to fail to pay the appropriate practising certificate fee or litigation extension fee when due;
- .3 would be, or is, practising in breach of the provisions of Section 3.B;
- .4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to them;
- .5 has not declared information on type and area of practice in a form determined by the BSB;**
- .6 has not made the declarations required by the BSB in relation to Youth Court work.**
- .7 has not made the declarations required by the BSB in relation to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;**
- .8 has not provided the BSB with a unique email address.**

We are proposing the following addition to rule rC64 (in bold) which would apply to barristers who need to register and declare they are undertaking work in proceedings involving young people outside of the AtP period:

Provision of information to the Bar Standards Board

rC64

You must:

- .1 promptly provide all such information to the Bar Standards Board as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and
- .2 comply in due time with any decision or sentence imposed by the Bar Standards Board, a Disciplinary Tribunal, the Visitors, the High Court, an interim panel, a review panel, an appeal panel or a Fitness to Practise Panel.
- .3 if you are a BSB entity or an owner or manager of a BSB entity and the conditions outlined in rS113.5 apply, give the Bar Standards Board whatever co-operation is necessary, including:
 - .a complying with a notice sent by the Bar Standards Board or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a BSB entity (such notice may require such documents to be produced at a time and place fixed by the Bar Standards Board or its agent; and
 - .b complying with a notice from the Bar Standards Board or its agent to redirect communications, including post, email, fax and telephones.