

Amendments to the new BSB Handbook: Entity Regulation

For approval by the Legal Services Board

This application is made in accordance with the requirements set out in the Legal Services Board's (LSB) Rules for Rule Change applications. The Bar Standards Board (BSB) wishes to provide the information below to support its application.

Any queries about this application should be made to:

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1. Introduction and background

1. The BSB is seeking approval of rules in the Handbook which will allow the BSB to establish an entity regulation regime, which will offer both barristers and consumers additional choice in the marketplace, including for one stop advocacy and litigation services, without seeking to replicate other regulators' schemes. This application relates to the regulation of non-ABS entities only¹. A Licensing Authority designation application in relation to ABSs will be submitted separately following approval of this application.
2. The BSB believes there is a public interest in the BSB offering an alternative regulator for different types of entity. The overall policy objectives of the BSB are that:
 - a. The market should have the opportunity to develop, with authorised persons being able to innovate in ways that are compatible with the regulatory objectives and the associated risks;
 - b. As business models change, the specialist skills and expertise associated with the Bar should be preserved and standards of advocacy should be maintained, thereby safeguarding the public interest;
 - c. Individual responsibility (in particular the accountability of the individual advocate or other authorised individual to the Court and the client) should be at the heart of the regulation of advocacy and related services;
 - d. Regulatory arbitrage should be minimised;
 - e. The BSB should build on its regulation of individual barristers to give entities the option of being regulated by the BSB, particularly those wanting to specialise in advocacy and litigation;
 - f. The BSB should minimise the risk of regulatory failure by regulating only those entities that fit well with its capacities and capabilities;
 - g. Risk assessment and management should be at the heart of the BSB's regulatory arrangements;
 - h. Entities which the BSB authorises should manage their own risks well and comply with their regulatory obligations;
 - i. The BSB regulatory regime should be proportionate to the risks it needs to regulate.
3. The rationale for the BSB wishing to set up a regime to regulate entities can be summed up as, specialism, choice and cost-effectiveness. Together, these factors bring increased choice to clients in the market.
4. The BSB's regime, with its emphasis on making individuals answerable for their conduct, is well suited to the regulation of advocacy. The responsibility of the individual advocate to the Court and the client should remain at the heart of regulation of advocacy regardless of whether that advocate is operating within an entity or on a self-employed basis. The BSB believes it to be in the public interest that we should maintain our influence over standards of advocacy as a specialist regulator of that service and, as far as possible, extend that influence to those types of entity whose structure, services and risks are such as to make them suitable candidates for our type of regulation, and to those higher court advocates (HCAs) who choose to work within such entities.
5. By doing so, we broaden the range of choice available to those advocates who want to work within entities (for example, because this better enables them to share the risks of providing

¹ Now called legal services bodies. Such bodies may be either barrister only entities or bodies managed and owned by any authorised individuals (previously referred to as legal disciplinary practices)

services on a CFA basis, or the burden of investment in premises, people or infrastructure or gives them the opportunity to bid for legal aid contracts or other major legal services contracts). From the perspective of the public, our proposed regime (precisely because it does not mirror the SRA's regime and does not, for example, permit the holding of client money) may encourage the Bar to come up with new business models that do not replicate what is already on offer from SRA-regulated firms, thereby broadening the public's choice as to the ways they access legal services.

6. By restricting the types of entity we will regulate, we can keep our regime simpler to run (and less burdensome for our regulated community) than if we geared up to regulate the full gamut of possible structures under the 2007 Act and the full range of services (including client money handling and commoditised, bulk services of a sort that are likely to require a very different, entity-focused regulatory approach). The objective is to offer a specialist regulatory regime which can provide an efficient and cost effective alternative for those entities that are owned and managed mainly by barristers or HCAs, whose permitted range of services is the same as those permitted to the self-employed Bar, and whose risks and regulatory requirements are similar.
7. The BSB hopes that by establishing this regime, opportunities will be available for those for whom the self-employed model is less attractive or problematic (which may include groups of barristers in which women and BME practitioners are disproportionately represented). The possibility of a more secure practising model may therefore assist in promoting retention and diversity at the Bar, in addition to facilitating innovations for consumers.
8. This application seeks to extend the BSB's regulatory remit to entities. We will apply separately to the LSB for designation as a Licensing Authority for alternative business structures. In considering this proposal, the BSB has considered the increased risks associated with regulating these types of entity over the chambers model with which the BSB is already familiar. Our proposed risk assessment of entities is discussed further in Part 3. There is also a risk that the BSB may not be familiar with the new business structures and therefore may not have the necessary capacities and capabilities to authorise and monitor them appropriately and these capacities and capabilities are discussed under Part 9 below and associated annexes).

2. The BSB approach to entity regulation

Summary

9. The BSB considers that, whether those offering litigation and advocacy services operate on a self-employed basis or from an entity, the nature of these particular services is such that the competence and ethics of the individual is central to the achievement of the regulatory objectives. The BSB's approach to regulating entities therefore takes as its starting point its approach, in the new Handbook, to regulating individual barristers, adjusting this only where the involvement of an entity necessitates a difference. The effect will be to focus more on the individual's conduct, which should lead to more effective regulation, which is lighter weight and targeted to the risks most likely to be relevant, and hence is in the consumer interest. Where systemic risks are concerned, these will, of course, be addressed at the level of the entity but in many ways this is no different from the approach the BSB has now developed to monitoring and supervising chambers, albeit a chambers is not an entity requiring its own authorisation as such. There will therefore be significant congruence in the regulatory approach taken, as between BSB regulated entities and the self-employed Bar.
10. Our aim is to operate as a specialist entity regulator, providing a regulatory regime suited to the efficient and cost effective regulation of entities whose permitted range of services is in most cases similar to those permitted to the self-employed Bar and whose risks and regulatory requirements are similar. Wherever possible we have sought to ensure that the regulations relating to BSB regulated entities are consistent with those for BSB regulated individuals. The Handbook therefore sets out the standards and requirements for BSB regulated individuals and BSB regulated entities so that, as far as possible, there is one coherent BSB regulatory regime. Because our regulatory arrangements seek to make no distinction between individuals and entities, we have set out below how they ensure that all BSB regulated persons (individuals and entities) meet the regulatory objectives and professional principles. However, where appropriate, we have identified specific requirements that have been placed on entities.
11. We are keen to regulate a range of entities, alongside regulating those barristers who choose to stick with a self-employed business model, in order to ensure that the market in legal services is strong, vibrant and open to innovation in terms of the structure used to deliver legal services and how those legal services are provided. We think that making these choices available will help to ensure that the legal profession can respond to the needs of clients and, in particular, the demand for affordable litigation and advocacy services. The BSB's proposals are premised on there being little advantage to the public in the BSB establishing a regulatory regime which simply replicates that of the SRA or other regulators. Certain types of risk which are present in the SRA's regime (client money, external ownership) are quite deliberately excluded from the BSB's regime. By adopting a different approach to that of the SRA, the BSB will broaden the range of choice available to the public and to those legal professionals who want to work in entities. The BSB aims to be a niche regulator (i.e. excluding some types of risk, operating discretionary criteria designed to identify those entities that are appropriate for BSB regulation and focusing in particular on litigation and advocacy). This will not result in any potential entity not being able to find a regulator, as there are already other regulators which are ready to authorise entities which want to offer a wider range of services, or to widen their ownership structure in ways the BSB's regime would not accommodate. However, within these boundaries, the availability of BSB regulation should encourage legal professionals to devise new business models that do not simply replicate those regulated by other regulators, and provide even greater choice for the public.
12. In line with this approach, only the minimum core requirements are specified in the rules and, once those are met, the BSB will exercise a discretion to determine, by reference to its risk

analysis, the regulatory objectives and the BSB's published policies, whether an entity is appropriate for its regulation. The relevant policies are set out in the published Entity Regulation Policy Statement (annex B). This will enable the BSB to be agile in responding to developments in the market, where appropriate, changing its approach in response to experience and developing market conditions without the need to change its rules. This is discussed further under 'Authorisation of entities' below.

Consumers

Benefits for consumers

13. The innovations permitted by the entity based regime will allow greater choice of provider in the legal market. The Legal Services Consumer Panel response to the BSB Regulating Entities consultation stated that they 'welcome them as a positive step towards opening up the market to extend choice for consumers.' This in turn promotes competition which brings further benefits of choice and accessibility for consumers.

Consumer information and education

14. To assist consumers in understanding what a BSB regulated entity means for them, the BSB proposes to prepare an information sheet setting out the kind of entities that might be established and how they differ from the self-employed bar. Thus enabling the consumer to make a more informed choice as to which legal service provider best suits their needs. This will be published on the BSB website. We will also reach out to consumer groups to help them to understand the options that may be available to clients in the market. In addition all BSB regulated persons have a duty to ensure that consumers understand the basis on which instructions are being accepted and are not misled about who is responsible for carrying out instructions.

Vires

15. The BSB has satisfied itself that it has the necessary powers to regulate and discipline entities and any non-barrister owners and managers within them. The source of these powers is summarised below. In brief, by a combination of powers derived from the Legal Services Act 2007 and powers derived from agreement with those whom we regulate, the BSB can undertake everything that is essential to its role as an entity regulator. However, as discussed in section 8 below, we have identified some additional powers that we believe would be desirable in the longer term in order to exercise our regulatory responsibilities more effectively. In the process, we would also use the s.69 order to provide a unified statutory source for all of our disciplinary and intervention powers in future, as this will simplify the position and make it easier for all involved to understand.

The Bar Council's constitution:

16. In order to enable the BSB to regulate entities and non-barrister individuals, the Bar Council has amended its constitution and the BSB's. A copy of the amended constitutions (showing tracked changes) is attached at Annex A. This amendment also gives the Bar Council an express power to delegate its disciplinary function over entities to COIC in order to ensure article 6 ECHR compliance and to comply with the decision in Re P [2005] 1 WLR 3019 (the disciplinary functions of COIC have been transferred to a company limited by guarantee for that purpose and the BSB has entered into an agreement with that company to provide disciplinary tribunals).

The Bar Council's statutory powers:

17. Section 20(6) of the LSA states “an approved regulator may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant approved regulator”. “Approved regulator” means a body which is designated as an approved regulator by Part 1 of Schedule 4 or under Part 2 of that Schedule (or both) and whose regulatory arrangements are approved for the purposes of the LSA (section 20(2)(a)). An approved regulator is a “relevant approved regulator” in relation to an activity which is a reserved legal activity if the approved regulator is designated by Part 1, or under Part 2, of Schedule 4 in relation to that reserved legal activity (section 20(3)(a)). Persons are defined as including a body of persons (corporate and unincorporated) (section 207).
18. It follows that section 20(6) provides that “[a body which is designated as an approved regulator by Part 1 of Schedule 4 or under Part 2 of that Schedule (or both) and whose regulatory arrangements are approved for the purposes of this Act] may authorise persons [including a body of persons (corporate or unincorporated)] to carry on any activity which is a reserved legal activity in respect of which it is [an approved regulator designated by Part 1, or under Part 2, of Schedule 4 in relation to that reserved legal activity].
19. Under section 176 of the LSA, a “regulated person” in relation to the Bar Council has a duty to comply with the BSB’s “regulatory arrangements” as they apply to that person. A person is a “regulated person” in relation to the Bar Council if the person is (a) authorised by the Bar Council to carry on an activity which is a reserved legal activity, or (b) not so authorised but is a manager or employee of a person who is so authorised. “Regulatory arrangements” are defined in section 21 of the LSA.
20. It therefore follows that if the BSB authorises an entity, then the entity will have a statutory duty pursuant to section 176 of the LSA to comply with the BSB’s regulatory arrangements (including the BSB’s disciplinary rules and the parts of the Handbook that apply to them, assuming this is approved by the LSB) and each of the entity’s managers and employees will have a statutory duty pursuant to section 176 of the LSA to comply with the BSB’s regulatory arrangements (including the BSB’s disciplinary rules and the parts of the Handbook that apply to them, assuming this is approved by the LSB) insofar as such regulatory arrangements are stated to apply to them, even if they are not authorised by the BSB but by another regulator, or even if they are not authorised by any regulator.
21. In considering the powers necessary to discipline entities, given the non-statutory source of the arrangements that currently apply to barristers, the BSB has established that the Bar Council has the necessary statutory power to exercise disciplinary powers (including conducting disciplinary hearings) over authorised persons as well as the managers and employees of such persons (i.e. all “regulated persons”). This can be implied from:-
 - a. the Bar Council’s express power to authorise persons to carry on reserved legal activities under s. 20(6) of the LSA;
 - b. the definition of “regulatory arrangements” in section 21 of the LSA which includes disciplinary arrangements in relation to regulated persons (including its disciplinary rules), and the Bar Council’s express power under section 20(5) and Part 3 of Schedule 4 of the LSA to make changes to its regulatory arrangements, such changes not to have effect unless they are approved by the LSB; and
 - c. a regulated person’s statutory duty under s 176 of the LSA to comply with the Bar Council’s regulatory arrangements including any disciplinary arrangements.
22. In practice, the Bar Council (via the BSB) has entered into a services agreement with COIC whereby COIC provides disciplinary tribunals. Given that the BSB is itself the investigator and

prosecutor of misconduct charges, it is required under Article 6 ECHR and Re P [2005] 1 WLR 3019 to ensure that disciplinary hearings are heard by an independent body. We therefore conclude that the implied statutory power to discipline must include an implied statutory power to delegate the hearing of disciplinary matters to an independent body given the Bar Council's duty set out in Re P and in Article 6.

Non-statutory powers

23. The discussion above relates only to the statutory duties owed by regulated persons and the statutory powers granted to the Bar Council, whether expressly or by necessary implication under the LSA. However, in addition to the powers the Bar Council derives from the statute, as an unincorporated association, it also derives its powers from agreement with its members. Similarly, it can extend its powers by agreement with those who agree to be regulated by it.
24. As stated above, the Bar Council has recently amended its constitution to allow it to authorise entities, and to regulate the conduct, practice and discipline of non-barrister persons authorised by the Bar Council (including entities) and their managers and employees, and to make arrangements, either directly or through another body, for the conduct of disciplinary hearings.
25. The Bar Council therefore is permitted by its constitution to enter into contractual arrangements with non-barristers (including entities) that are authorised by it, under which those entities and individuals agree to abide by the Handbook and submit to the jurisdiction of COIC. It is not necessary for them to become members of the Bar Council in order to be bound by that agreement for the purposes of being regulated by the BSB (and, indeed, membership of the Bar Council is entirely a matter for the Bar Council in its representative capacity).
26. We have amended our authorisation rules to require explicit consent from entities and their managers to be bound by the BSB's Handbook and disciplinary arrangements. This consent will be required as a condition of authorisation and will be evidenced as part of the initial application and in the event of any change of management. Not least, this will serve to bring home to them the nature of the statutory duty under s176 LSA.
27. We propose to exercise a power of disqualification in relation to an entity's employees but will not otherwise seek to exercise direct jurisdiction over them², relying on their employer to secure their compliance and directing action at the employer if they fail to take appropriate steps to that end. Managers will expressly consent to our jurisdiction, as noted above, including in respect of this disqualification power. We consider it would be disproportionate to require all employees to sign a document expressly agreeing to our jurisdiction. In relation to them we will rely on the statutory duty they owe under s176 LSA as regulated persons (discussed in the previous section) and the fact that the BSB authorised entities and individuals to whom any disqualification order is addressed would all be potentially subject to disciplinary sanctions if they disobeyed such an order.

Amendments to the Bar Council's powers via s69 LSA

28. The BSB has identified a number of areas where it would be useful to extend or clarify its powers and functions via an order under s69 of the Legal Services Act 2007. These fall into three categories:

² Apart from the HOFA who will be required to consent as part of the authorisation process. The HOLP will always be a manager and so have to consent

- a. In order to simplify the legal basis for the Bar Council's powers, we propose to seek to give the Bar Council an express power to authorise and discipline persons other than barristers (including entities, their owners and managers);
 - b. In order to establish a regime consistent with powers it will acquire as a Licensing Authority in due course, we propose to give the Bar Council a statutory power of intervention equivalent to Schedule 14 of the LSA in respect of non-ABS persons (which would include individuals and entities) and place on a statutory footing a power to disqualify an individual; and
 - c. In order to create consistency with other regulatory regimes, we propose to give the Bar Council a power equivalent to sections 44B, 44BB and 44BC of the Solicitors Act 1974.
29. We will detail our proposals in a separate application to the LSB following consultation. It is anticipated that the process to have a s69 order approved by Parliament could take up to a year, during which time the LSB will be considering this application and the BSB will be preparing for implementation once the new rules have been approved. It is therefore possible that the new statutory powers could be unavailable for approximately the first six months of our entity regulation regime. For reasons discussed in section 8, however, the BSB believes it has sufficient powers to proceed anyway.

3. Risk-based regulation

30. The BSB has developed a risk assessment framework, which will inform all of the work done by the BSB. This framework will continue to evolve as the BSB introduces systems to gather further evidence about the risks in the market. For the purposes of this application we have focused on the key risks that we have identified in relation to entities, which will inform both the authorisation process and the subsequent supervision arrangements, but in parallel we will be developing a more comprehensive approach to risk, which is detailed in the attached implementation plan. The key stages of the risk framework which are relevant to entities are as follows:

- a. Stage 1 – Risk identification;
- b. Stage 2 – Risk Assessment and authorisation;
- c. Stage 3 – Planning of supervision activities;
- d. Stage 4 – Implementation of supervision activities;
- e. Stage 5 – Review of risks and supervision activities.

STAGE 1 - RISK IDENTIFICATION

31. Before we can address risks we need to identify and understand them. The initial stage is the identification and understanding of appropriate risks.

32. As with our Chambers' supervision strategy, we have grouped risks into a number of categories, following an analysis of the regulatory objectives. Each category of risk has a list of indicators (the list of possible indicators below is not exhaustive):

- a. Market:
 - i. The lack of a diverse and representative legal profession in general or in area(s) of law being practised;
 - ii. The impact of the organisation's business model/structure/membership on competition and consumer choice (eg market monopoly or high market share if several experts of similar calibre form part of the entity);
 - iii. Impact of business model/structure on the professional principles (eg anything in structures);
 - iv. Lack of insurance in the event of failure to renew.
- b. Operational:
 - i. Entities provide a poor standard of service:
 - Lack of client care information;
 - Lack of explanation of nature of entity/contract to clients;
 - Lack of information provisions re status (e.g. in entity) and self-employed to public/clients and complaints routes available;
 - Undue delays;
 - Important dates missed;
 - ii. Interests of consumers not generally promoted;
 - iii. Entities do not have risk management arrangements in place;
 - iv. The absence of business continuity planning;
 - v. The absence of succession planning;

- vi. Entities are not run in a financially prudent or sustainable way;
 - vii. Entities lack of co-operation with regulator(s);
 - Failure to provide notification of criminal convictions;
 - Withholding details regarding business plans;
 - Lack of co-operation in the event of investigation or wind down;
 - viii. Confusion about scope of practice of, and nature of contractual relationship between the consumer and, an entity, particularly where operating in parallel with a chambers structure with similar names etc.
- c. Competence, fitness and propriety:
- i. Entities lack necessary legal competence;
 - ii. Entities have ineffective management, who do not comply with regulatory and legal obligations;
 - iii. Entities do not act with integrity or ethics;
 - iv. Poor compliance culture within the entity:
 - Previous history of non-compliance by entity or its managers;
 - Weak compliance culture: inadequate steps taken to identify and rectify non-compliance;
 - Poor handling of complaints;
 - CPD is not maintained by individuals in the entity;
 - Lack of whistle blowing processes;
 - Failing to report serious misconduct;
 - v. Conflicts :
 - Failure to identify and manage conflict;
 - Failure to declare conflict to client;
 - Failure to check systems or poor systems in place;
 - Entities act where conflicts of interest exist.
 - vi. Entities breach client confidentiality;
 - vii. Entities mislead the BSB or clients;
 - viii. Governance and administration:
 - Lack of proper governance structure;
 - Lack of complaints procedures;
 - Lack of proper provisions for pupillage.
 - ix. Entities do not comply with AML requirements or hold client money;
 - x. Litigation work:
 - Failure to meet deadlines;
 - Lack of systems and processes to manage litigation work;
 - Lack of capability to meet client needs;
 - Services provided stray into areas not permitted (eg multi-disciplinary or 'managing client affairs');
 - Lack of independence.
- d. Equality and diversity:
- i. Entities fail to comply with equality and diversity requirements in relation to staff:
 - Failure to have proper policies and procedures in place;
 - Failure to observe Equalities Act obligations in respect of staff;
 - Failure to address equality considerations in recruitment;
 - Unfair distribution of work/progression;

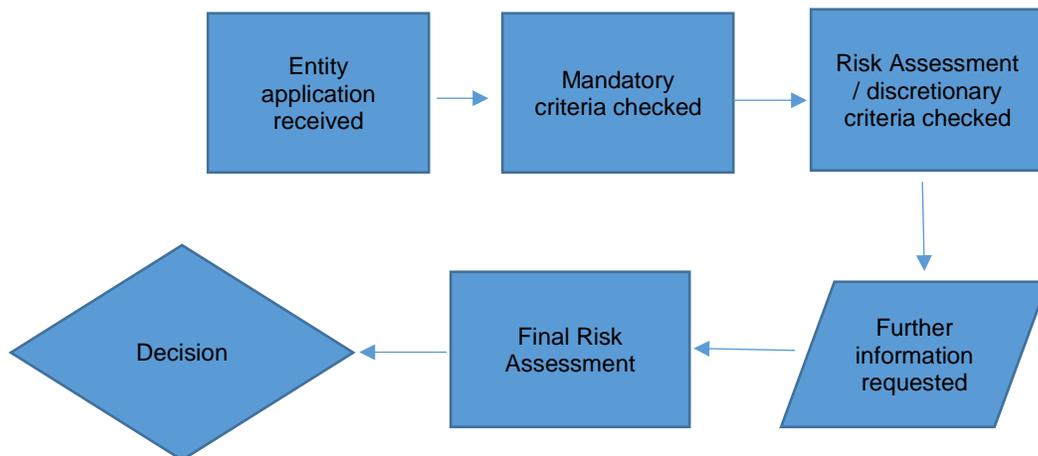
- ii. Entities discriminate against certain categories of consumer.
- e. Regulatory suitability:
- i. The entity deviates from the type we have identified as being appropriate for our regulation;
 - ii. Changes to the structure or business model following authorisation:
 - Loss of key staff and the potential impact on work is not planned for or managed;
 - High non-authorised to authorised staff ratio;
 - Rapid expansion or contraction, significant change in activities;
 - iii. Innovative business structures:
 - Lack of proper governance and risk management systems and processes;
 - Failure to provide clients with sufficient information.

33. Separately the BSB will be monitoring various sources of evidence or data to see if there are changes in the market that require a response from the BSB. These are strategic, systemic, market or sector risks which may affect all entities (and Chambers) and their clients, or all entities operating in particular fields, not just an individual entity. They form part of the wider risk assessment framework. It is likely that market monitoring will include looking at issues such as the changes to the market brought about by government policy (eg legal aid changes), the impact of globalisation and changes in the regulation offered by legal regulators leading to potential gaps or overlaps in regulation of the various aspects of the legal market.

STAGE 2 - RISK ASSESSMENT

34. The risk assessment stage has 6 steps as follows:
- Step 1 – Applicant assesses own risks
 - Step 2 – BSB makes initial assessment of overall application
 - Step 3 – BSB compares own assessment and organisation’s analysis
 - Step 4 – BSB seeks more information if needed/appropriate
 - Step 5 – BSB decides whether to approve application and what overall categorisation is
 - Step 6 – Supervision set up on basis of risk categorisation given on approval

35. The steps are all explained below in more detail. Steps 1-5 relate to the entity authorisation aspects and are depicted in this flow diagram:



36. **Step 1** – The BSB will expect an applicant to assess its own risks of operation and the risks it sees in the market it will be operating in. The applicant will have to supply a description of the entity specific and market risks it sees as applicable to it and how it will be managing them. The responses will vary depending on the size and activities of the applicant. It is anticipated that a large corporate organisation will need to address all of the risks listed. A smaller, one or two person operation may only need to address some aspects in detail as some aspects will have little or no relevance to their operation. However, they will need to show why they think it reasonable to discount the others in their particular circumstances.
37. **Step 2** – When the application is received, the BSB will make an initial assessment of the overall application, reflecting initially the potential impact that each entity would have (this relates to the potential extent of the negative consequences if any risks were to materialise). The next step after the impact assessment is for the Authorisation Team to assess how well risks are going to be managed in the entity – this is the likelihood assessment, or how likely it is that identified risks will materialise in an entity. Whether a particular level of impact and likelihood is one that the BSB is prepared to accept will be influenced by the agreed risk appetite of the BSB from time to time.
38. The impact assessment will require each entity to provide information, including:
- a. Profile of anticipated work, including the number of authorised persons engaged in each area;
 - b. Volume of work anticipated, including profile of work by client type and frequency of instruction per client;
 - c. Profile of expected client type, including number of potential clients, whether direct access, effect on those clients, level of remedial action available to clients etc;
 - d. Whether the entity expects to undertake work within the Money Laundering Regulations;
 - e. Whether it will use Barco (or similar service) to process client money; and
 - f. The extent to which the entity fits with the regulatory regime established by the BSB.
39. The Authorisation Team will also consider the effect of each entity on wider market risks. In particular, this will include consideration of:
- a. The effect of the entity business model, structure, size or membership on competition and consumer choice;
 - b. The effect of business models and structures on the professional principles;
 - c. Risks posed by particular client bases and the size of client base;
 - d. Risks to the maintenance of a diverse and representative legal profession.
40. The Authorisation Team will establish an impact assessment (which will be communicated with the entity but not published) and then go on to complete a likelihood assessment.
41. The likelihood indicators to be assessed include:

- a. Proposed business model;
- b. Governance arrangements;
- c. Adequacy of resources;
- d. Financial and business planning;
- e. Risk management;
- f. Equality and diversity management;
- g. Compliance arrangements;
- h. Prior regulatory history of individuals involved in the entity.

42. Assessment of each of the above groupings of Likelihood and Impact considerations will lead to an overall risk placement within one of four categorisations which will determine the initial rating of the Application.

43. This overall risk placement will be carried out alongside the assessment of all discretionary aspects of the application. Before this assessment takes place, we will have assessed the mandatory requirements as the first stage of the application process – the whole process is discussed in the Authorisation section below (Failure to meet the mandatory requirements, if not rectified, would be regarded as an automatic rejection and such entities would not proceed to risk assessment).

44. **Step 3** – Having made its own assessment of the risks presented by the organisation, the BSB will consider the applicant’s own risk analysis, systematically considering both specific and market risks. Differences between the BSB’s and applicant’s assessments will be considered to assess whether this raises fundamental concerns about the entity’s awareness of its risks or whether there are additional mitigation factors that need to be in place. High impact entities will have an opportunity to manage their risk rating by showing that they have mitigating systems in place.

Impact ↑

Low-Likelihood/High Impact	High Likelihood/High Impact
SEEK FURTHER INFORMATION AS APPROPRIATE	LIKELY REJECTION SEEK FURTHER INFORMATION IN EXCEPTIONAL CIRCUMSTANCES
Low-Likelihood/Low Impact	High Likelihood/Low Impact
SUBJECT TO “FIT” WITH POLICY STATEMENT, ACCEPT	SEEK FURTHER INFORMATION AS APPROPRIATE

Likelihood →

45. **Step 4** – Following the gap analysis undertaken in Step 3, further information may be sought from the applicant if needed or appropriate in the circumstances of both Steps 2 and 3.
46. **Step 5** – Following receipt and analysis of any additional information requested the initial application will be further assessed with a view to establishing whether or not it will be **Accepted or Rejected**. Applications that result in a high likelihood/high impact assessment are unlikely to be authorised. Rejection is likely in those situations, especially if additional information has been sought but has not resulted in the risk level being reduced. Generally speaking it would be expected that an organisation could and should manage the likelihood down before progressing its application and if this is not possible it is unlikely to be appropriate for the BSB to authorise the entity. High impact is more likely to be related to an issue that cannot be reduced or is unavoidable (eg vulnerability of clients). The BSB will look to see whether the high impact is paired with satisfactory steps to manage likelihood downward, in making its overall assessment.
47. If approved, the BSB will also decide whether an applicant carries a high, medium or low risk as an approved entity since this will help to identify the likely level of resources required for regulatory supervision. A high impact and medium to high likelihood applicant could possibly continue with high intensity monitoring or conditions attached but this would need to be very carefully considered, with reference to the regulatory objectives and the BSB's policy. The applicant will be informed of its risk categorisation. The BSB may require arrangements to be put in place to better manage the entity's risks as part of the application process or as a condition of authorisation.
48. The BSBs approach to authorisation also provides a mechanism to assess and address any potential concerns that negatively impact consumers. For example, assessing compliance arrangements at the outset enables the BSB to address gaps and ensure that better arrangements are in place so that consumer interests are better protected.

STAGES 3 AND 4 - PLANNING AND IMPLEMENTATION OF SUPERVISION ACTIVITIES

49. The risk assessment at authorisation stage will be key to establishing the initial level of supervision that is appropriate for an entity. The BSB's approach to supervision is discussed in more detail below, in section 6.

STAGE 5 - REVIEW OF RISKS AND SUPERVISION ACTIVITIES

50. Monitoring and assessment of supervision activity against the risk assessment framework will be an important means of refining the approach to authorisation and supervision of entities, Systems and processes will be established that will enable monitoring of activity against both individual risks and entities (drawing also on chambers risk evidence) so that trends can be identified. In addition to BSB supervision led evidence gathering, protocols are in place with external agencies such as the Legal Ombudsman, and internally with other departments of the BSB (to capture enforcement outcomes for example). This means that the risk rating of an entity can be influenced by information received from a variety of sources and thereby allows for a more rounded view of the risk profile of the entity. Staff within the Supervision Department will assess any information that is received and make a decision on its impact on the risk profile of an entity and what subsequent supervision action is required as a result. This feedback loop promotes continuous re-assessment of the application of the risk assessment framework and enables supervision to remain targeted where there is evidence of the greatest risk.

51. This risk monitoring will be implemented in accordance with the normal BSB management procedures and all identified supervision activities will be reviewed on a regular basis at appropriate project and departmental management meetings.
52. However, there will also be a section dedicated to risk management issues in each Board or Executive paper which will ensure that relevant risk issues are considered at the heart of all operational and policy deliberations as an integral part of the decision making process.
53. The Risk function will also review the profiles of all regulated organisations, normally on an annual basis, to analyse all the relevant evidence.
54. Following this analysis the risk assessment and risk categorisation will be revised where necessary. This in turn will inform whether any changes should be made to the level and type of supervisory activity to be carried out. This will be performed by a review of the initial entity application and the annual data return and any other relevant information obtained.
55. In view of the lack of existing historical data, it will be necessary to obtain information on many of the potential risks involved from the initial application for entity authorisation and subsequent supervision. This will enable the BSB to build up a comprehensive regulatory database of regulated organisations and gain additional information about consumers.
56. The BSB will also seek clarification or further information on any specific potential risks which are deemed to require potential further action.

4. Authorisation of entities

57. The application and authorisation rules set out the general criteria that BSB authorised bodies will need to meet in order to be authorised by the BSB.

Mandatory requirements for authorisation

58. rS83 sets out the general criteria that apply to all entities. To be eligible for authorisation, the entity must:

- a. have arrangements in place to ensure at all times that any obligations imposed from time to time on the entity and its managers, owners or employees by the BSB's regulatory arrangements (including its rules and disciplinary arrangements) are complied with and provide explicit consent by the entity, its managers and HOFA to be bound by these arrangements;
- b. have arrangements in place to ensure that at all times any other statutory obligations imposed on the entity or its owners, managers or employees, in relation to the activities it carries on, are complied with;
- c. confirm they will have in place at all times, a Head of Legal Practice (HOLP.), who must also be a manager, and a Head of Finance and Administration (HOFA);
- d. confirm that they have appropriate insurance arrangements in place and be able to provide evidence of those insurance arrangements;
- e. confirm that there will be no direct or indirect holding of client money;
- f. confirm that any individuals appointed as HOLPs, HOFAs, managers or employees have not been disqualified from acting as such by the BSB or any other approved regulator;
- g. confirm that it will at all times have a practising address in England and Wales;
- h. confirm that if an LLP or a company, it is appropriately incorporated;
- i. confirm that at least one manager or employee is an authorised individual in respect of each reserved legal activity that the entity proposes to provide; and
- j. confirm that annual fees will be paid when due.

59. The requirement that there must be at least one manager or employee who is an authorised individual in respect of each reserved legal activity the entity wishes to provide ensures that the entity is legally able to undertake the activities for which it is authorised. This is a minimum requirement and the BSB would judge on a case by case basis whether each entity had the necessary expertise.

The discretionary decision to authorise an entity

Appropriateness of the entity for BSB regulation

60. If the mandatory requirements have been satisfied, the BSB will then consider whether an entity is an appropriate one for it to regulate. The factors that will be considered by the BSB are set

out in the Policy Statement (attached at Annex B) and the relevant rules in the Handbook. In exercising its discretion in this matter, the BSB will be sensitive to developments in the market and innovative practices that might differ from the types of entity described in the Policy Statement. In such cases the BSB will assess the risks posed by the entity and decide whether it is in the public interest for the BSB rather than another Approved Regulator to authorise such an entity. The policy statement itself will evolve over time as the BSB gets more familiar with the risks associated with regulating entities and responds to developments in the market.

61. The BSB has decided to limit the types of entity it regulates in order to operate effectively as a specialist entity regulator. By imposing such restrictions, the BSB will be able to maintain its specialist focus on our distinct capacities and capabilities as a regulator; encourage the market to develop businesses that add to the range of choices available to the public, without diluting the Bar's expertise or duplicating the regimes of other regulators; avoid disproportionate cost and reduce the risk of regulatory failure because we are operating in areas we lack sufficient know how and resource to regulate well. Even with a limitation on the types of entity the BSB is prepared to regulate, there are additional capacities and capabilities needed in order to authorise and monitor such entities, which are explored further in the attached action plan.
62. Discretion will be exercised for defined, legitimate purposes and in accordance with guidance set out in the policy statement. As the BSB's regime will be best suited to entities where the work is predominantly in the hands of individuals who are themselves subject to regulation as authorised persons and less well suited to pyramidal structures in which small numbers of authorised persons supervise large numbers of non-lawyers, the BSB will want to consider the ratio of managers and employees and is likely to take this into account as a discretionary factor on which we decide whether to regulate the entity (if the BSB is happy to authorise an entity with a high employee to manager ratio, this is likely to affect the likelihood assessment under 'governance' in the risk assessment section above).
63. The expectation that any owner with a significant stake should normally also be a manager (i.e. no external owners) stems from the fact that the BSB is designing a relatively simple and low cost regime for entities that are relatively low risk and/ or where the risks posed are similar to those in regulating chambers of self-employed barristers. The risks posed by external ownership are potentially significantly different in nature, especially in the context of advocacy and litigation services, where the duty to the court may run counter to the profit principle and has to be safeguarded. Those wanting external investment have the option of establishing a SRA regulated ABS. Our policy statement makes clear that we would only depart from the policy in exceptional circumstances and where it was clearly in the public interest to do so. In such circumstances, as above, this is likely to affect the entity's risk rating as a governance indicator.
64. The scope of services to be offered will also play an important part in deciding whether or not to regulate the entity (this will in any case affect the risk assessment of an entity – see impact assessment above). For the time being the BSB would normally only authorise an entity that undertakes solely legal work as we are trying to keep the regime for entities appropriate to the market segment we have identified for ourselves and as closely as possible linked to the existing capacities and capabilities of the BSB (although as discussed in the policy statement there may be exceptional circumstances where this is not the case but the BSB decides that the risks are similar to entities that do meet this requirement). An important factor in determining the balance between bright line rules and a more flexible policy statement and guidance has been the extent to which we feel our regime should have the flexibility to adapt to innovation in the market. We therefore would envisage that we might seek to regulate more multi-disciplinary practices in the future as the market develops, subject to appropriate risk assessment and our own capacities and capabilities. In that case, we would amend the Policy Statement. The BSB

will however regulate non-reserved legal services that are provided by those whom we regulate (entities or individuals).

65. The policy statement sets out further factors that will be taken into account when assessing the risks associated with the entity, and highlights some factors which, when present, would indicate that an entity would be appropriate for BSB regulation. The following factors would tend to suggest that the entity did not deviate significantly from the BSB's policy objectives:
- a. All owners and managers are individuals: It would be unlikely that we would approve an entity that has non-natural owners or managers. However, we could be persuaded to approve such an entity (e.g. where all barristers in an entity have previously incorporated themselves into one person companies) subject to our risk assessment;
 - b. Most owners and managers are entitled to exercise rights of audience in the higher courts: This is a mechanism for matching entities to our specialist niche and avoiding regulatory arbitrage on the part of those entities whose natural home is the SRA or another approved regulator, and also for ensuring that the business is to a significant degree advocacy focused. The expectation of a majority of people with higher court rights, leaves enough flexibility for involving lawyers who are not higher court advocates, for example, solicitors whose role would be to provide or supervise litigation services;
 - c. A substantial part of the services provided to be advocacy, litigation and expert legal advice and not high volume, standardised legal transactional services: As mentioned already in the application the aim of the entity regulation regime is to be as consistent as possible with the regime for self-employed barristers and the BSB's existing expertise, so it follows that the scope of services provided should also be similar. The services the self-employed Bar presently offers include the reserved legal activities of advocacy, litigation, oath taking, probate, reserved instrument activities as well as non-reserved legal services, such as specialist advice, mediation and arbitration. The breadth of this range has not precluded individuals from developing and maintaining specialist expertise in advocacy, as not all barristers choose to offer all these services. Our proposed restrictions mean we can cater for those who want to offer litigation as an add-on to advocacy, but are unlikely to make us attractive to those whose focus is the other way round;
 - d. A substantial proportion of employees are going to be authorised individuals and each manager supervises only a small number of employees: As the BSB's regime will be best suited to entities where the work is predominantly in the hands of individuals who are themselves subject to regulation as authorised persons and less well suited to pyramidal structures in which small numbers of authorised persons supervise large numbers of non-lawyers.

These factors are not exhaustive and in each case the BSB will retain a discretion to grant or refuse authorisation in the light of its overall consideration of the risks posed by the entity. Even if the factors listed above are present the BSB may refuse authorisation if its analysis of the risks suggests it is unsuitable for BSB regulation. The risk assessment process is based on the approach as set out in section 3 above.

Management and compliance

66. Rule rS101 sets out the aspects of management, control and compliance about which the BSB must be satisfied before granting authorisation. In exercising its discretion under these rules, the BSB will consider whether the arrangements are satisfactory for the nature and type of business which the applicant intends to provide. If the BSB concludes that the minimum requirements are satisfied and that it should therefore authorise the applicant, it will take account of its conclusions about the strength of the controls and management in its assessment

of the risks posed by the entity (specifically in relation to the likelihood of risks materialising) and hence the future monitoring and supervision arrangements which would be appropriate.

Suitability criteria for HOLPs, HOFAs, owners and managers

67. Section E5 of Part 3 of the new Handbook sets out the criteria for suitability of HOLPs and HOFAs. All owners and managers of legal services bodies will be authorised persons so will not have to demonstrate their individual suitability to be owners and managers. However, rS90 will require any new HOLP, HOFA or manager to consent to the jurisdiction of the BSB, and to be bound by the BSB's regulatory arrangements. rS110 will specifically enable the BSB to reject HOLPs, HOFAs and managers if they have not consented in this way.

Mechanics of the authorisation process

68. A licensing and authorisation team is in the process of being established within the BSB. For more detail of the authorisation process please see Annex C.

Appeals

69. Applicants unhappy with decisions about the authorisation of entities will be able in the first instance to ask the BSB's Qualifications Committee to review the decision. This includes where the entity considers that:
- a. An application for an authorisation was wrongly refused;
 - b. A condition on an authorisation was wrongly imposed;
 - c. A term of an authorisation was wrongly modified;
 - d. The BSB wrongly refused to modify the terms of an authorisation;
 - e. The BSB has done any of the above in relation to the litigation extension on an authorisation;
 - f. The BSB has failed to provide a decision notice;
 - g. The BSB has wrongly concluded that a non-authorised, manager, HOLP or HOFA does not meet the relevant suitability criteria for their proposed position within the entity.
70. If the applicant or entity remains dissatisfied following the review by the Qualifications Committee, there will be a further right of appeal to the General Regulatory Chamber of the First Tier Tribunal. HM Courts and Tribunals Service have agreed to take responsibility for appeals arising from entity authorisation decisions and the BSB will sign a Memorandum of Understanding with HMCTS to ensure that this facility is in place in sufficient time.

5. Regulatory regime for entities and amendments to the BSB Handbook

71. The Handbook has been submitted in its entirety with the provisions relevant to non-ABS entities highlighted. Additional parts of the Handbook, which in due course we intend to be added following our Licensing Authority application are included for information with a line through the relevant text (we are not asking the LSB to approve these provisions now). The new rules, which we are asking the LSB to approve, are highlighted in bold.
72. The general approach we have taken is to apply the same requirements to all BSB regulated persons except where differences are unavoidable, for example there are different authorisation procedures. The Handbook will apply to all BSB regulated persons, that is to say barristers, BSB authorised bodies, their managers and those employees who are authorised by another Approved Regulator. It will not apply directly to other employees but they will be under a duty not to cause authorised persons to breach the rules, and the authorised body will be required to have systems in place to ensure that they are familiar with, and observe the rules, where relevant to their work (rC94.c and .d).
73. In addition to consequential changes to the Handbook that are required to apply it to entities as well as to individuals, the main changes to the Handbook are highlighted below. Some of these changes have been introduced specifically to compensate for the (temporary) absence of statutory intervention powers – see in particular rC22, rC64 and rC70). As these go beyond the powers on which we originally consulted, we will include these rules in the s69 consultation. We do not propose to apply these additional powers in practice to individual barristers, because there is insufficient evidence that they are needed. The introduction of entities, however, has introduced some new risks for which the BSB will need a wider range of powers.

Part 1, section B – Application

74. The application of the Handbook is extended to include BSB authorised bodies, managers and owners of BSB authorised bodies, and individuals authorised by another Approved Regulator who are employed by BSB authorised bodies.

rC22 – defining the terms or basis on which instructions are accepted

75. This rule will be amended to ensure that the standard terms under which an entity accepts instructions from clients includes consent from clients to disclose and give control over files to the BSB or its agent in certain circumstances. This power will only be necessary until the BSB has intervention powers via a s69 order. These circumstances would be set out in rS113.5:
- a. one or more of the terms of the entity's authorisation have not been complied with;
 - b. that a person has been appointed receiver or manager of property of the entity;
 - c. that a relevant insolvency event has occurred in relation to the entity;
 - d. that the BSB has reason to suspect dishonesty on the part of any manager or employee of the entity in connection with:
 - i. that entity's business; or
 - ii. the business of another entity in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;
76. If the BSB considers that one or more of the conditions are satisfied, it will then consider whether in all the known circumstances it is in the public interest to act. Such an assessment will take into account not only the need to protect the public and safeguard public confidence in the profession of regulated legal services but also the inevitably serious consequences of intervention for the authorised body.

rC64 – provision of information to the BSB

77. This rule has been amended to introduce a duty (when the circumstances above are satisfied) on the entity and its owners/managers/employees to give the BSB whatever co-operation is necessary, including delivering all documents under its control to the BSB or its agent and assisting with the redirection of communications.

rC70 – access to premises

78. This rule has been amended to introduce a duty (when the circumstances outlined above are satisfied) to permit the BSB or its agent to enter an entity's premises and operate from those premises for the purpose of taking such action as is necessary to protect the interests of clients.

rC29 – the cab rank rule

79. The rule has been extended to apply to all BSB authorised bodies and authorised individuals working in them where instructions are given on a referral basis and seek the services of a named authorised individual. It should be noted that this obligation would apply to any authorised individual within the entity, not just barristers. The BSB has considered whether it would be appropriate to bind the entity as a whole to the cab rank obligations. We believe the effect of that would be to extend the scope of the cab rank rule as it applied to entities, as the exemptions (designed with individual practitioners in mind) would not apply and the overall regulatory impact is likely to be more burdensome, which could not be justified given the lack of evidence about the possible economic impact. In practice, it would be possible for clients to obtain a list of advocates from the entity so that they could seek to instruct an alternative authorised person, so the client will be able to make use of the cab rank rule in the same way as in a chambers structure.

Insurance

80. Any BSB authorised person, BSB authorised body or manager of a BSB authorised body must carry a reasonable level of insurance which meets the minimum terms of insurance from time to time stipulated by the BSB.
81. The rules on which the BSB consulted envisaged setting a minimum level, as well as minimum terms, in guidance, however these terms would not be enshrined in rules in the Handbook. The entities that we authorise will range from substantial entities with numerous fee-earners to one person companies or firms. We have therefore provisionally concluded that it makes sense for the guidance to require a minimum level of insurance cover per claim, but with a requirement for entities to have adequate insurance in the light of the legal services that they provide. This is subject to further assessment and expert advice. We would accompany the rule with guidance on the types of consideration that should be borne in mind when setting the level of cover. We are considering whether to set a minimum level of aggregate cover for all claims or whether to refuse any aggregation limit. We will consult separately on this and other elements of the minimum terms guidance prior to launching the entity regulation regime.
82. We have considered the terms on which the self-employed Bar is currently insured and compared these terms with the requirements of other regulators of entities in determining the minimum terms on which we propose to consult. The BSB has obtained evidence that at least one provider will be prepared to insure entities on these terms, albeit this decision will be made on a case-by-case basis. The insurer is the Bar Mutual Indemnity Fund. We are in discussions

with other insurers and brokers with a view to establishing whether additional providers will be prepared to enter the market for BSB authorised entities.

83. There will also be a requirement on entities to undertake an annual risk assessment and confirm that they have undertaken such an assessment and continue to have reasonable insurance for all their legal services which takes account of that assessment and meets the minimum terms. The BSB will require annual evidence of the level of cover and the terms of insurance, either in the form of a certificate from the insurance company or a broker's letter of undertaking. The BSB will have a power to revoke authorisation if adequate insurance is not in place.

rC91-rC98 – Administration of BSB authorised bodies

84. This is a new section which imposes duties on BSB authorised entities and their managers and authorised employees in relation to the administration of the authorised bodies. These requirements largely mirror those which apply to Chambers but with several additions which are relevant only to entities:

- a. Requirement to appoint a HOLP (who must be a manager) and a HOFA with specified duties
- b. Requirement on the HOLP to take all reasonable steps to secure compliance, to record failures by the entity or its employees to comply with their statutory duties, and to report any serious failures to the BSB

rC105-106 – Complaints and record keeping

85. Consequential amendments have been made to ensure entities are under the same duties as chambers when dealing with complaints and keeping records.

Definition of chambers

86. The definition of chambers has been amended to include the possibility that a member of chambers might be an entity.

Part 3 sections B4 and B5 – Scope of practice

87. These are new sections which set out the scope of practice of BSB authorised bodies and their managers and employed barristers. The provisions relating to the scope of practice for BSB authorised bodies are similar to those for self-employed barristers except in relation to licensed and public access. The detailed public and licensed access rules which apply to self-employed barristers are not applied to BSB authorised bodies, although the guidance draws attention to them as a statement of good practice. To do public access work, BSB authorised bodies will have to be authorised to do litigation or to employ at least one person who is entitled to do public access work. The Core Duties and relevant Code of Conduct rules about the best interests of the client, having the necessary competence to do the work, and keeping proper records will apply and the guidance draws attention to them. It would be disproportionate to apply more detailed rules and to do so would restrict the ways in which the entities organise their business. In the forthcoming review of the public and licensed access rules, the BSB will consider whether a similar, more outcomes-focused approach should be adopted in relation to self-employed barristers.

88. The provisions relating to managers and employed barristers mirror those for employed barristers generally ie they may, with only limited exceptions, supply services only to their employer or to clients of their employer.

Part 3 – Scope of practice rules

89. There will be no rule specifically preventing a BSB authorised entity supplying unreserved legal services in a separate business (reserved legal activities can only be provided in an entity if it is also authorised). However, all entities will be required to inform the BSB if they propose to operate a separate business so this information can be built into their overall risk profile.

Part 3 - Entity application and authorisation

90. The effect of these rules is discussed above in section 4. The rules themselves provide only for the minimum, mandatory criteria that must be satisfied by an entity. The decision over whether to authorise an entity will be largely discretionary, based on the BSB's entity policy in force at the time (see Annex B).

91. Once authorised, the BSB will have a power to modify or revoke authorisations using rS116 or rS117. This may be done urgently if a number of conditions are satisfied:

- a. one or more of the terms of the entity's authorisation have not been complied with;
- b. that a person has been appointed receiver or manager of property of the entity;
- c. that a relevant insolvency event has occurred in relation to the entity;
- d. that the BSB has reason to suspect dishonesty on the part of any manager or employee of the entity in connection with:
 - i. that entity's business; or
 - ii. the business of another entity in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;
- e. If the BSB considers that one or more of the conditions are satisfied, it will then consider whether in all the known circumstances it is in the public interest to act. Such an assessment will take into account not only the need to protect the public and safeguard public confidence in the profession of regulated legal services but also the inevitably serious consequences of intervention for the authorised body.

92. Guidance will also be provided on what is expected of an entity or those BSB regulated individuals working within it in order to satisfy Core Duty 9 (co-operation with the regulator) in the situations described above.

Entities and litigation

93. All BSB entities will normally, like individual barristers, be authorised to exercise rights of audience, to carry on reserved instrument activities, probate activities, the administration of oaths and immigration (although the BSB may apply restrictions to the authorisation). We expect that many will also choose to seek authorisation to do litigation.

94. BSB authorised bodies will be able to apply for authorisation to conduct litigation in addition to the other activities for which they are authorised. This could either be done as part of their general authorisation, or subsequently.
95. Entities wishing to conduct litigation will need to complete a questionnaire, confirming:
- a. That they have a sufficient number of people authorised to conduct litigation to provide guidance to anyone not authorised who is assisting with litigation tasks and an adequate number of qualified persons to provide guidance to anyone of less than three years' standing if they are authorised to undertake litigation;
 - b. That they have appropriate administrative systems and have employees and/or managers who have the skills to use these effectively in order to manage litigation, including appropriate client-facing skills;
 - c. That they have appropriate insurance.
96. Where an entity and any individual employees or managers in it are applying for authorisation to conduct litigation together, including where it is newly established, the applications can be submitted together.

Part 4 Training

97. The only changes to Part 4 relate to the advertising of pupillages by BSB authorised bodies (rQ61).

Part 5 Enforcement

98. Our arrangements relating to enforcement are discussed further at section 7, below. Specific amendments are being made to include entities and their managers in our enforcement regime, but this does not include updating the Fitness to Practise rules so that they apply to managers of entities. Entities will be expected to manage the fitness to practise of any non-authorised individuals, whilst reporting any authorised individuals to their regulator if appropriate.

6. Supervision of entities

99. The BSB commenced its new approach to supervision in line with the introduction of the new Handbook. This approach will align supervision to the risks associated with particular chambers or entities. This allows resources to be targeted where they are most required and introduces greater agility and flexibility into the approach to regulation. It encourages more proactive supervision and a closer more constructive relationship between the regulator and its regulated community. The objective being less use of enforcement action and only where supervision has failed to address particular concerns, or where the concern is such that enforcement is the proportionate option, would formal enforcement action be taken.
100. Consistent with outcomes focussed regulation, the emphasis will be less on supervision of chambers and entities against compliance with a prescriptive set of rules and more on how each chambers and entity is mitigating the risks to the regulatory objectives in the Legal Services Act.
101. Once an entity is authorised, it will become subject to risk-based supervision, the approach for which is informed by the overarching Supervision Strategy for the BSB. By the time the BSB starts authorising entities the supervision strategy for chambers will have been in operation for several months (this strategy itself being a development from the previous chambers monitoring regime). The supervision of entities therefore represents a further evolution of this capability in the BSB. The Authorisation Team and the Supervision Team will both be within the Supervision Department and resources will be shared. This will encourage collaborative working and sharing of expertise and knowledge and will facilitate an informed and closely managed handover once an entity has been authorised.
102. The results of all assessments undertaken at the authorisation stage will be recorded on the entity's profile and this will be available to the Supervision Team. For example, the authorisation process may identify concerns in relation to a particular risk or indicator but the entity may have been authorised on the basis of commitments to mitigate the risk through specific measures. This would be clear on the entity's record so that the Supervision Team would be prompted to monitor the situation and assess how effective the mitigation is. The risk profile of the authorised entity, as established through the authorisation process, would also inform the level of on-going supervision that the entity would be subject to.
103. Once an entity becomes subject to supervision, the Supervision Team will immediately review the assessments made by the Authorisation Team in order to determine what form of follow up is required and when this should occur. Follow up could include either evidence gathering or specific measures to address a particular risk or issue.

Gathering evidence

104. Supervision of entities will involve a number of different methods of gathering evidence in order to assess how effectively entities are managing risk and to identify issues that need to be addressed.
105. The frequency with which evidence is gathered for each entity will be informed by how effectively the entity is managing risk; those that are not managing risks effectively will be higher priority for supervision and will be supervised more closely and subject to more intensive and comprehensive evidence gathering than those who are managing risks effectively. Part 3, above, discusses risk categories in more detail.

106. The Supervision Team will be able to gather evidence from the following sources:
- a. Evidence from the Professional Conduct Department: Evidence will be collated from the BSB's Professional Conduct Department concerning enforcement action taken against individual members of an entity.
 - b. Evidence from the Legal Ombudsman: Evidence will be gathered from the LeO concerning complaints accepted about entities. This will include reviewing decision letters. It is hoped that LeO will also provide evidence of premature complaints, which will help to identify entities that may not be operating or signposting effective first-tier complaints handling.
 - c. Information gathering: The Supervision team will receive information from members of the public, barristers, other legal professionals, pupils and other sources. The Supervision Team has developed a model for assessing the reliability of sources and evidence and its relevance to supervision.
 - d. Market intelligence: The Supervision Team will, in connection with the BSB's risk assessment function, assess changes in the legal services market to establish whether certain business models present a risk that warrants closer regulatory attention. This means that an entity, which at the point of authorisation, presents a low risk business model, may, because of a change in the profile of the market, become high risk and therefore subject to closer supervision.
 - e. Requesting specific evidence: The Supervision Team will be able to request specific information from an entity; this is likely to be in order to follow up on a concern or intelligence received. For example, if concerns are raised about an entity's financial situation a request may be made to view and discuss the entity's accounts.
 - f. Supervision returns: The Supervision Team will require entities to complete supervision returns; these will be intended to test whether entities are compliant with regulatory requirements and are managing risk effectively. In addition, entities will be obliged, in accordance with the terms of their authorisation, to inform the BSB of any major changes to their business model.
 - g. Visits: The Supervision Team will periodically visit entities in order to assess in more detail how effectively entities are managing risks and what systems and procedures they have in place to ensure that they are complying with all regulatory requirements. A visit will allow the Supervision Team to assess how policies and procedures are implemented in practice and how risks are actively managed within the entity, including seeking examples of mitigating actions and evidence that the effectiveness of these has been monitored.
 - h. Supervision inspections: In addition to general visits, the Supervision Team will also be able to visit entities as part of a triggered supervision investigation. This will be in response to specific concerns about a particular issue at that entity; for example, if credible intelligence has been received about a pupil being mistreated. The purpose of a supervision inspection would be to determine whether there has been wrongdoing, what the consequences of this were and how they should be remedied.
 - i. Thematic reviews: Through the assessment of evidence using its risk assessment framework, the BSB will identify particular types of work, practice or other areas that are high risk and require targeted supervision. Such areas will be the subject of thematic

reviews, which will be supervision projects targeted at the specific risk in question. For example, a thematic review might be undertaken for an area such as immigration advice and representation. In this case, entities offering these services might be involved in related evidence gathering alongside chambers and individual barristers.

107. The Supervision team will therefore have a range of tools that it can deploy to gather evidence. However, it will use these proportionately by reference to an entity's supervision priority. Those that can demonstrate that they are managing risks effectively are likely to be subject to low level of evidence gathering.

Assessing evidence

108. When new evidence is gathered through one or more of the above means, it will be assessed. This assessment will involve consideration of the following:
- a. The extent to which the evidence suggests that one or more risks are more or less likely to materialise;
 - b. The severity and impact of any identified issue;
 - c. Whether an entity has a poor track record of risk management;
 - d. Whether an entity has previously failed to address identified issues;
 - e. Whether an issue or issues suggest that there are systemic problems that need to be addressed.
109. This assessment will inform:
- a. Whether any changes are required to the entity's risk profile and supervision priority; and
 - b. Whether specific follow up supervision action should be undertaken to address a particular issue or risk.

Amending entities' risk profiles and supervision priorities

110. The Supervision Team will maintain a risk profile of all entities that it supervises which will detail how effectively risks are being managed and how likely they are to materialise. Each time that new evidence is assessed the Supervision Team will consider the impact on the risk profile. If the assessment of evidence results in the assessment of the likelihood of one or more risks materialising either increasing or decreasing, the entity will be informed.
111. Ultimately, an entity's risk profile will inform their supervision priority and the frequency and manner of future evidence gathering.
112. All evidence that the BSB receives and assesses through supervision will also be fed into the BSB's risk assessment framework in order to inform policy making and supervision policy. In particular, this will assist to inform the need for thematic reviews or targeted supervision on a particular area.

Supervisory responses to specific risks or issues

113. If the assessment of evidence suggests that an entity is managing risks effectively, no further specific supervisory action is likely to be needed. However, if the assessment of evidence identifies any areas of concern, it may result in one of the following actions:
- a. An issue being identified and follow up supervision (either desk based or at the premises of the entity) arranged in order to monitor the risk and ensure that it does not materialise;
 - b. Suggestions being made for best practice measures that might improve compliance or risk management;
 - c. An increased risk being identified and the entity involved being asked to provide an action plan setting out what mitigating action will be taken to address the risk;
 - d. An increased risk being identified and the entity involved being requested to take specific measures to address the risk within a period of time;
 - e. If serious, persistent or systemic non-compliance is identified, the matter may be referred to the Professional Conduct Department to consider enforcement action;
 - f. Ultimately, an assessment may suggest that the BSB should consider removal of authorisation for the entity or the imposition of conditions on its authorisation.
114. The Supervision Team will seek the most proportionate means of monitoring and addressing the issue concerned. Enforcement action or seeking to remove authorisation will be reserved for the most serious issues or instances in which there is evidence of systematic failings.
115. It is anticipated that in the majority of cases the initial supervisory response will result in the issue being satisfactorily addressed and the risk mitigated. If so the entity's risk profile and its priority for supervision will be updated accordingly. However, where the initial supervisory response fails and an entity does not adequately address the BSB's concerns, it may be necessary to pursue enforcement action or to consider removing authorisation.
116. Further information about the operation of the supervision regime is attached at Annex D (Entity supervision scenario planning).

7. Enforcement

117. As is the case now, only the most serious cases of alleged professional misconduct will be referred by the PCC to a Disciplinary Tribunal as set out in the BSB's enforcement strategy. The PCC shall only refer a matter of alleged professional misconduct to a Disciplinary Tribunal if it is satisfied that the case is not appropriate for administrative sanctions.
118. In deciding whether to refer a case to a Disciplinary Tribunal the PCC shall also consider whether a three or five person panel should be established. The PCC shall direct that a five person panel be established if it considers that:
- a. A BSB regulated person is likely to be disbarred or suspended from practice for more than 12 months; or
 - b. The relevant person would be likely to be disqualified indefinitely or for a defined term of more than twelve months; or
 - c. The BSB authorised body would be likely to have its authorisation revoked or suspended for a period of more than twelve months.
119. The procedure to be adopted by the Disciplinary Tribunal is set out in the Disciplinary Tribunal Regulations in Part 5 of the Handbook. Decisions of the Tribunal will continue to be made on the basis of the criminal standard of proof (beyond reasonable doubt). (The BSB has considered whether to change the standard of proof required but has concluded that it is important to apply the same standard as the Solicitors Disciplinary Tribunal so that if a solicitor and a barrister face charges on related matters, the same standard of proof will apply to both of them. The BSB has decided in principle to review the applicable standard of proof, but that this should be done in co-operation with the SRA given the undesirability of divergent approaches.)
120. Following conviction, a five person panel has a range of sanctions at its disposal including the power to:
- a. Disbar or suspend a BSB regulated individual;
 - b. Disqualify a BSB regulated individual, non-BSB authorised person or non-authorised manager/employee from working for a BSB regulated person;
 - c. Revoke an entity's authorisation, or place conditions on a BSB regulated person's authorisation and impose fines, issue warnings or offer rebukes or advice;
 - d. Issue fines up to the maximum £250,000 against an entity and £50,000 against a regulated individual. All fines must be imposed having proper regard to the BSB's published fines policy.
121. A three person tribunal has the same range of sanctions at its disposal except it does not have the power to disbar an individual, suspend an individual for more than twelve months, disqualify an individual or remove an entity's authorisation. Where a three person tribunal considers that the sanction warranted is beyond its powers, it may refer the case to a five person tribunal for sentencing.
122. It will be a breach of the Handbook for any regulated person to employ someone who is disqualified without gaining our prior approval. Disqualified persons may apply to us to have the disqualification lifted or amended.

Other changes to the Disciplinary Tribunal Regulations

123. Some other relatively straightforward changes have been made to the DTRs to expand the category of 'defendant' to include entities as well as individuals.
124. In recognition that disciplinary cases involving entities may present slightly different factual scenarios than cases involving individual barristers (particularly around management of the entity), the rules around the composition of the Disciplinary Tribunal have been amended. Expanding the possible composition of the Tribunal will ensure that cases are presided over by people with the appropriate experience and knowledge.
125. Sentencing powers have also been slightly amended with respect to entities. Where a finding of professional misconduct has been made, Disciplinary Tribunals will have additional sentencing powers. Aside from all of the ordinary sentencing options, the Tribunal will have additional powers to revoke or suspend an entity's authorisation, place restrictions or conditions on the entity's authorisation, fine the entity or an authorised individual within the entity up to the prescribed maximum (see section on level of fines for details), and to disqualify a manager or employee from working for a BSB authorised person.

Disciplinary Tribunals

126. The tribunals will continue to be administered by the Council of the Inns of Court. As discussed above, the BSB has obtained constitutional changes, supplemented by rules to ensure there is a consensual basis for exercising jurisdiction, to ensure that these tribunals have the necessary powers to discipline entities and their managers.

Appeals

127. The appeal route for disciplinary matters in relation to entities will follow the same route as disciplinary appeals for individual barristers. Appeals arising out of decisions made by a Disciplinary Tribunal were previously heard by the Visitors to the Inns of Court. From January 2014 this jurisdiction was transferred to the High Court following commencement of Section 24 of the Crime and Courts Act 2013. Following commencement of this legislation, the BSB made minor and consequential changes to its Handbook.
128. The legislation to hear disciplinary appeals before the High Court closely replicates the appeal arrangements of the SRA, where appeals from SDT hearings are heard by the High Court. In future the BSB will be regulating entities composed of barristers and solicitors (and possibly other authorised persons, although our focus on higher court rights of audience means solicitors are likely to be the most common non-barrister authorised persons in these entities), and may be taking disciplinary action at both an individual and entity level. In some instances, both the BSB and the SRA may need to take disciplinary action in relation to the same or similar events. It is therefore desirable that the two processes should be broadly consistent.
129. The profession and their clients could not reasonably be expected to understand or accept the alternative, whereby appeals from a disciplinary decision went to the High Court where they concerned a solicitor or barrister in an SRA regulated entity (as is the case under the SRA's current arrangements) but went to the First Tier Tribunal (FTT) if they concerned a solicitor or barrister in a BSB regulated entity.
130. As well as hearing substantive disciplinary cases brought before it, the SDT has an independent jurisdiction to act as the final appellate body in respect of ABS licensing decisions

taken by the SRA. The BSB has assumed that it would be necessary to develop a separate appeal route via the FTT for such decisions in relation to non-ABS entities as well as ABSs if it becomes a Licensing Authority, which is why the BSB has proposed to have all disciplinary appeals from COIC Panels heard by the High Court and final appeals from BSB regulatory decisions heard by the FTT. That should provide a clear and workable divide.

Operational capability

131. In addition to the formal disciplinary processes via tribunals, the BSB will (as is the case with barristers) have a power to deal with breaches of the Handbook by an entity via administrative sanctions. The processes will essentially be the same, although the maximum fine that can be imposed administratively in respect of an entity is £1,500 (compared with £1,000 for individuals).
132. The implementation plan provides further detail about the operational changes needed to ensure that the BSB's Professional Conduct Department and COIC (acting through BTAS) have the necessary capabilities to adapt their process to entities in addition to individuals. The introduction of capacity will be done proportionately and in time to ensure that the capability exists when needed for enforcement purposes. To provide specialist advice, the BSB may establish an advisory panel that it will be able to call on when considering matters in relation to entities (containing, for example, financial or forensic accounting expertise).

8. Interventions

133. Currently the Bar's regulatory scheme does not include an intervention power and there is not, as far as the BSB is aware, any evidence to suggest that such a power is necessary in relation to individual barristers. If the BSB becomes a Licensing Authority for ABS entities it will in any case acquire a statutory power of intervention. In developing this application, the BSB has considered whether it needs a power of intervention in relation to the non-ABS entities it regulates. It has concluded that a statutory power of intervention is not an essential prerequisite before the BSB begins authorising entities (there are adequate tools available to it in the short term, as described below, such that the public will not be at risk) but that this would be a desirable addition to the BSB's powers in the longer term, not least in order to ensure consistency in the powers available, both as regards their scope and their statutory basis, so that these do not vary depending on whether or not an entity happens to be structured as an ABS. The BSB therefore proposes to add intervention powers to the s69 order discussed elsewhere in this application. However, for the reasons outlined below, we believe that we have built sufficient safeguards into our regulatory regime to proceed in the meantime without these statutory powers.

Contextualising the risk

134. The BSB assesses the risk of needing to intervene into a non-ABS entity as low. Risk management has been built into the entity regulation regime designed by the BSB to attract those entities which present a relatively low risk and the BSB intends to limit the types of entity it regulates in order to operate as a specialist entity regulator. The checks and balances inherent in the proposed entity regime are described elsewhere in this application. It is worth however highlighting that non-ABS entities will not hold client money, they are unlikely to have external owners, the substantial part of their offering will be advocacy, litigation and legal advice and not high volume, standardised transactional services and a substantial proportion of employees are likely to be authorised individuals. Further the likelihood of needing to exercise intervention powers in respect of an entity is one of the very factors which would lead the BSB not to authorise an entity as a non-ABS entity (rS101.8).

135. To contextualise the risk of the BSB needing to exercise intervention powers in relation to a non-ABS entity, it is worth comparing the operation of the SRA's intervention regime. The SRA's regulated community is over eight times the size of the BSB's with 130,612 practising solicitors and 10,589 entities at January 2014. The SRA carried out only 47 interventions in 2013; the majority of which were into practices run by a sole practitioner (accounting for 34 of the interventions). Put another way, in 2013 the SRA intervened into 1 in approximately every 225 entities. As BSB regulated entities do not hold client money the incidence is likely to be significantly lower. Therefore it is likely that a need to intervene will arise only in highly exceptional circumstances. Nevertheless, there are a small number of high impact, low likelihood scenarios in which a power of intervention (or the threat of it) is likely to be useful. This may be increasingly the case as the market develops and entities adopt more innovative business models. Therefore in the (temporary) absence of statutory intervention powers, we set out below the arrangements that the BSB proposes to adopt in the interim (subject to further consultation as discussed below).

Handbook provisions dealing with intervention-style scenarios

136. The rules in the Handbook relating to authorisation define when the BSB will modify or revoke authorisation. In addition, the BSB has revised the rules to allow it to exercise a number of specific powers, including to enter premises and take control of client files, in circumstances

where this is in the public interest. First, the BSB would need to be satisfied that at least one of the conditions for the exercise of the powers was met. These conditions track section 102 of the LSA 2007 and the intervention conditions set out in paragraph 1, Schedule 14 of the LSA 2007 and are that:

- a. one or more of the terms of the entity's authorisation have not been complied with;
- b. that a person has been appointed receiver or manager of property of the entity;
- c. that a relevant insolvency event has occurred in relation to the entity;
- d. that the BSB has reason to suspect dishonesty on the part of any manager or employee of the entity in connection with:
 - i. that entity's business; or
 - ii. the business of another entity in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;
- e. If the BSB considers that one or more of the conditions are satisfied, it will then consider whether in all the known circumstances it is in the public interest to act. Such an assessment will take into account not only the need to protect the public and safeguard public confidence in the profession of regulated legal services but also the inevitably serious consequences of intervention for the authorised body.

137. These conditions are set out in rS113.5 and relate to the exercise of powers under rC22, rC64 and rC70, which are discussed in more detail in part 5. In essence, those powers spell out what the duty of cooperation with the regulator requires in such circumstances. However, by tracking the statutory regime for ABSs, these rules ensure that such powers are not exercised in circumstances where that would be disproportionate.

138. In most circumstances, it should be unnecessary to resort to these powers. The imposition of conditions on an entity's authorisation will be the main tool that the BSB has for ensuring that appropriate action is taken preemptively, so as to avoid situations developing where the BSB has to resort to intervention-like powers.

139. Since this is a development of the rules on which the BSB consulted, the BSB proposes to allow a short consultation period, in parallel with the s69 consultation. It is not thought this will be controversial, since the proposed rules serve as a stop gap pending the s69 order, which will provide a unified statutory source for intervention powers irrespective of the type of entity and merely correct what will otherwise be a temporary discrepancy as between ABS entities and others.

9. Capacity and capability

140. Ensuring that the BSB has the necessary capacities and capabilities to regulate entities is the key part of our implementation plan. This builds on the significant investment that has been put in place by the BSB in response to the LSB's regulatory standards framework. The BSB has been working with a pilot group of interested stakeholders to discuss possible business models, in order to inform the processes and procedures that the BSB will put in place to authorise and supervise entities. Further piloting work has been included in the implementation plan. The draft process is summarised at Annex C and the capacities and capabilities needed are attached at Annex E.

10. Implementation

141. A high level plan showing the key implementation work streams is attached at Annex F. The plan highlights a number of key milestones or gateways, successful completion of which

will be essential to launching the entity authorisation regime. The intention is for the regime to be approved by September 2014. The implementation plan shows subsequent milestones for the operationalisation of new processes, with contingency plans in place if any of the key milestones are not met. The BSB will not launch its entity regulation regime until it is satisfied that it has all the necessary capacities and capabilities to do so without substantial risk to the regulatory objectives.

11. Regulatory objectives

Protecting and promoting the public interest

142. The standards of professional conduct required of barristers will also be required of BSB entities and their managers and employees. All entities will be required to appoint a Head of Legal Practice (HOLP) who in turn will be required to record any failings to comply with our regulatory arrangements and to report significant failures to the BSB.
143. We will risk assess each entity against a transparent set of criteria related to the likelihood and impact of any risk to the regulatory objectives that the entity presents. The risk factors for supervision will be linked to those used to conduct risk assessment at authorisation stage and will aim to ensure that the entities have sufficient systems in place to manage risk, given the nature of the work undertaken. This analysis will determine the appropriate level of supervision by the BSB.
144. BSB regulation of certain kinds of entity will enable barristers to practise in different ways and provide more choice to consumers while still focusing on individual responsibility and the core skills of advocacy, advice and the conduct of litigation.

Supporting the constitutional principle of the rule of law

145. Entities will be subject to broadly the same duties as barristers and other entities. This development will therefore be neutral in relation to supporting the constitutional principle of the rule of law. Furthermore, the entities which the Board proposes to regulate will be different from those regulated by other approved regulators, which will help to promote choice for consumers. For example, BSB regulated entities will not involve material external ownership and they will not be able to hold client money, thus helping to avoid the associated risks to the rule of law and other regulatory objectives.

Improving access to justice

146. Similarly, by seeking to become a regulator of entities, the BSB believes that the development of a range of advocacy focused entities will provide regulated persons with access to an alternative regulatory system which, in turn, will allow the development of differing models and approaches. Consequently, as individuals and entities operating under differing regulatory regimes compete to provide services, we believe that this will provide consumers with greater choice. Those individuals and entities that provide the best services and customer care, and ensure that costs are kept to a minimum, should flourish. Such developments will be beneficial to customers and should improve access to justice.
147. The non-discrimination principle will apply to entities, helping to ensure that the public has a fair chance of representation by the barrister or entity of their choice. Similarly, the Cab-rank Rule will be preserved in like-for-like scenarios, reflecting the application of the rule to self-employed practice. This will help to maintain the nature of the Bar as an independent profession, whose services are open to all.

Protecting and promoting the interests of consumers

148. Entities will be subject to the same Core Duties and rules relating to clients. A key outcome, relevant to regulated entities, is that clients must not be misled as to who is legally responsible for the work done for them and whether and by whom that work is regulated. BSB regulated entities must not allow their structure to confuse the client. There is also a requirement for the appointment of a Head of Legal Practice to ensure that the required standards of professional conduct are maintained and that any significant breaches are reported to us.
149. As well as setting out the standards of conduct for BSB regulated entities, we will be setting in place arrangements to monitor entities to ensure that clients and the public are protected. We are developing a risk based supervisory approach which will determine the appropriate level of supervision that each entity should be subjected to. Entities will be required to submit information on an annual basis so that we can continue to review the level of risk that they pose and adjust our supervisory arrangements accordingly. Our aim is to ensure adherence to the standards that we have set and we will work closely with BSB regulated persons to ensure that they continue to meet these standards. We have set out our approach to regulation and the sanctions that are in place to ensure compliance. Enforcement action will be taken where necessary but only if the misconduct is serious or other steps to ensure compliance have failed.

Promoting competition in the provision of services

150. The BSB believes that by regulating entities it will provide barristers with a more attractive option to form entities. The evidence obtained from surveying and consulting with the profession suggests a significant demand for entities and a high level of demand for the BSB as the entity regulator of choice. If the BSB does not offer an alternative, barristers might be less likely to set up entities if it means moving to another regulator, such as the SRA, in order to do so.
151. The fact that the market will therefore be more open should ensure that providers seeking to maximise their market share innovate in terms of the type of structure and entities used to deliver services and in the way that those services are provided, for example through greater use of IT systems to interact with consumers and more transparent pricing structures.

Encouraging an independent, strong, diverse and effective legal profession

152. The BSB's regulatory arrangements are designed to foster a range of providers of legal services, while ensuring that they conduct business in an appropriate manner and adhere to the standards of professional conduct that we have set out. We believe that the core duties, outcomes and rules set out in the Code, together with the requirements relating to scope of practice and our supervision and enforcement approach, mean that BSB regulated entities will be robust and will provide high quality services to consumers. We therefore believe that BSB persons will offer a viable alternative to other providers of legal services and ensure that this market is dynamic and competitive.
153. The steps which the BSB has previously taken have already allowed barristers to work in new ways, in particular as managers of entities regulated by other Approved Regulators. The introduction of BSB regulated entities will provide further opportunities for barristers to work in different roles while still remaining subject to BSB regulation. For example, they will be able to work as employees with a fixed salary. This may help junior barristers and those who want to work part-time. Barristers will also be able to work partly on a self-employed and partly as a manager or employee of a BSB authorised body. This may facilitate entering into contracts for

blocks of work and tendering for legal aid work. These new opportunities should help those finding it increasingly difficult to make a living in the traditional Chambers model, especially those at the criminal and family Bar who are dependent on legal aid work. This is a group in which barristers from ethnic minorities and women are over-represented.

12. The better regulation principles

Transparency

154. The Handbook sets out in one coherent and comprehensive document the BSB's approach to the regulation of individuals and entities. Setting the regulatory arrangements out in this way is intended to make the BSB's regulatory arrangements as transparent as possible. The BSB believes that there is a public interest in having one clear publication that establishes our new regulatory approach across the board. This will enable consumers to better understand what to expect from barristers within the full range of business structures that will be possible in the future. It is our intention to bolster public understanding of our regulatory arrangements by publishing, in due course, a document which sets out in plain English what a member of the public can expect of BSB authorised persons.
155. The Handbook will be available on line. This will facilitate access to an up-to-date version when amendments are made. The on-line version is designed to make it easy to find relevant rules, with hyperlinks to related guidance.
156. The Handbook will be supplemented by the entity regulation policy statement and published strategies on Supervision and Enforcement. Taken together, we believe that these steps will help to ensure that those who use the Handbook, clients, the general public and BSB regulated persons, understand the standards of professional conduct expected of those whom we regulate and how we will supervise and enforce these standards.
157. In operating the regulatory arrangements we will seek to ensure that matters are dealt with in a transparent way. Concerns arising from supervision will be discussed with entities which will be given an opportunity to respond to them. Regulatory and disciplinary decisions will be made known to the BSB regulated persons concerned, together with the reasoning behind those decisions, so that the basis on which they have been made is clear. Tribunal hearings are in public unless the Tribunal considers that there is good reason to hear a case, or part of it, in private (or the case concerns whether a barrister is medically fit to practise). As already stated, where any finding of professional misconduct or a disqualification order has been made, we will normally publish on the BSB's website the name of the relevant person against whom such the finding or order has been made and the terms thereof. Again, this will help to protect the public and ensure that our regulatory decisions are transparent.

Accountable

158. The new Handbook sets out in a clear and coherent way the rules of professional conduct and the approach to authorisation and disciplinary action. This will ensure that BSB regulated persons understand the regulatory arrangements and associated processes and how they can address any decisions or actions with which they disagree.
159. Supervisory concerns will be discussed with entities. Regulatory and disciplinary decisions will be made known to regulated persons, together with the reasoning behind those decisions. This will allow BSB regulated persons to understand the basis on which a decision has been made and to identify any grounds on which they disagree with the outcome. The arrangements that we have set in place allow such decisions to be reviewed and for there to be the

opportunity for independent appeals to be held. Taken together, these measures will ensure that the BSB is accountable for any decisions and actions which it takes in relation to regulated persons.

160. The BSB will publish its annual report and other reports which provide information on how the BSB has exercised its powers. As part of its annual business planning process it will also establish key performance indicators for the authorisation, supervision and enforcement processes and report on performance against these. This will ensure that transparent service standards are available, which will clarify what entities and those working in them can expect from the BSB as a regulator.

Proportionate

161. In developing the new Handbook we have sought the views of the profession and wider public through series of consultations in order to ensure that the arrangements put in place are appropriate. We have reviewed all the rules to decide whether they are still needed. We have removed unnecessarily detailed requirements, moving instead to higher level more outcomes focused rules, and we have done away with many outdated restrictions on how BSB authorised persons practice. We have sought to ensure that the requirements placed on individuals and BSB regulated entities are proportionate to the risks faced by the public seeking the provision of legal services. Hence, the Handbook sets out requirements for all BSB regulated persons while identifying specific requirements relating to their scope of practice depending, for example, on whether they are self-employed or employed barristers or work for an entity, and including the provision of legal services directly to the public.

162. Having set out the regulatory requirements expected of BSB regulated persons, we will be seeking regular annual information from authorised entities to monitor the risk they pose to clients and the public to ensure that appropriate supervisory measures can be put in place. The overriding aim of our regulatory arrangements is to ensure compliance with the standards that we have set. BSB regulated persons will be expected to resolve problems with their clients directly so that, as far as possible, issues do not need to be escalated to us or the Legal Ombudsman. We will work closely with BSB regulated persons to help them to understand and adhere to the regulatory arrangements, seeking to use an informal and collaborative approach wherever possible. Enforcement will only be resorted to if a matter is serious or other attempts to resolve problems have failed. We have identified a range of regulatory sanctions that can be applied to individuals and entities when there has been a breach of the rules and disciplinary action is appropriate. Minor breaches of the handbook will be dealt with by administrative action with sanctions of fines, warnings and reprimands. For professional misconduct the sanctions include disbarring or suspending an individual, revoking an entity's authorisation or placing conditions on an entity's authorisation as well as larger fines. This range of sanctions will allow us to ensure that proportionate action is taken to protect the public, depending on the severity of the professional misconduct and the level of risk to which clients and the public are exposed.

Consistent

163. The new Handbook contains all the regulatory arrangements relating to BSB regulated persons, be they bodies or individuals. The intention is to ensure that, as far as possible, the arrangements are coherent and consistent and afford the same level of protection to the public and clients, regardless of the type BSB regulated persons providing legal services.

Targeted

164. As already indicated, our objective is to ensure that the requirements placed on BSB regulated persons, be they individuals or entities, are proportionate and targeted in order to ensure that the same standards of professional conduct and levels of protection for clients and the public are in place. We have reviewed all our conduct and scope of practise rules and retained only those necessary to support the Core Duties. We will be developing our approach to risk to ensure that our supervision of entities is tailored to address the risks which they pose and so ensure that clients and the public are protected. We will also be assessing changes in the market which might impact on risk. As part of the authorisation process we will risk assess entities to determine the level of monitoring that they should be subjected to routinely. Entities will be expected to submit routine information on an annual basis in order to monitor their performance. We will seek to work with entities to ensure that they meet our regulatory arrangements and wherever possible address issues informally and through dialogue and support. Enforcement action, designed to ensure adherence to the regulatory arrangements, will only be taken if a matter is serious or other steps have been exhausted. The range of sanctions set out in the Handbook provides us with a sophisticated battery of measures that can be used appropriately to address differing levels of professional misconduct.

13. Desired outcome

165. Approval of the elements of the Handbook relating to the regulation of non-ABS entities.

14. Other regulators

166. All of the other regulators have been invited to contribute to our various consultations and we have been in discussions with a number of them on different aspects of our work.

15. Date of implementation

167. We aim to have the new regime approved by September 2014 – further details about the roll out of the new regime are provided in the attached implementation plan (Annex F). The BSB will ensure that it does not begin authorising entities until all the necessary capacities and capabilities are in place.

16. Consultation process undertaken

168. The BSB has conducted a series of consultations on a proposed new entity regulation regime and on the review of the Code, which can be found with accompanying reports at the links below:

Review of the Code of Conduct – issued June 2007
Legal Services Act 2007 - Regulation implications – issued February 2008
Legal Services Act 2007 - LDPS – issued December 2008
Review of the Code -conduct rules – issued March 2009
The Structure of self-employed practice – issued August 2009
Regulating Entities (third LSA 2007 consultation) – issued September 2010
Code of Conduct for the Bar – issued January 2011
BSB Handbook and Entity Regulation – issued March 2012

169. In addition to carrying out consultations the BSB has also actively sought views through road show events, surveys and by facilitating user group discussions.

170. Prior to finalising its entity regulation regime, the BSB will consult further on the insurance requirements and the additional information and co-operation powers discussed elsewhere,

alongside our consultation on the proposed s69 order and the proposed interim, non-statutory powers.

Consultation responses

171. There have been a series of consultations on the BSB's plans to regulate entities. The first of the series of consultations (Legal Services Act – Regulation implications), focused primarily on whether amendments to the Code of Conduct were necessary in order to comply with the 2007 Act. For example questions were posed as to whether barristers should be permitted to practice in ABSs, LDPs and partnerships as well as questions on whether certain restrictions should be removed. The consultation paper also posed the question of whether the BSB should become a Licensing Authority and also regulate LDPs and/or barrister partnerships.
172. Following this and other consultations, the BSB made substantial changes to the Code to allow barristers to practise in LDPs and ABSs. With regards to whether the BSB should itself become a regulator of entities, responses to this first consultation were an early indication that there was appetite for such a change. In this first consultation an overwhelming majority of respondents considered that the BSB should be the prime regulator of the professional conduct of barristers in ABS firms. A clear majority also considered that the BSB should seek to become a licensed regulator of ABS firms.
173. The second consultation focused solely on whether barristers should be permitted to practise in LDPs and as mentioned above changes to the Code facilitating this have already been made. There was indication however that practice in barrister only partnerships should be permitted.
174. The third more significant consultation which was issued in December 2010, highlighted strong support for the BSB to begin regulating entities. Approximately 75% of respondents thought it was in the public interest for the BSB to become a specialist regulator of advocacy focused entities and the majority were of the view that the BSB should begin to regulate entities.
175. The consultation which was issued in March 2012 included the BSB's detailed proposals for an entity regulation regime and introduced a redrafted Handbook. A full consultation report is at Annex G.

Survey findings

176. In June 2010 the BSB commissioned YouGov to undertake a survey of barristers and clerks to gauge opinion on new business structures and their regulation. The survey included questions on ABSs and other entities, as well questions as to whether the BSB should regulate entities and relax the rules in relation to litigation and public access. Responses were received from 1,913 barristers and 141 clerks.
177. The general feedback from the consultations is consistent with results from the survey, in which approximately two thirds of barrister respondents stated that it would be in the public interest for the BSB to be a regulator for new business structures. The survey also found that 40% of respondents were interested in one or more of the proposed new business structures, if they had the ability to conduct litigation, compared to 35% without the ability to conduct litigation.
178. A more recent survey of a sample of barristers found that around 2-8% of barristers had a clear intention to form a BSB regulated entity (and a further 30-40% may be interested in doing

so. This was supplemented by a series of questions in the recent Biennial survey of the Bar. An analysis of the barristers who responded to that is provided at Annex H. In addition to this quantitative research, the BSB has undertaken some focus group research with barristers and non-barristers who have an interest in setting up entities to be authorised by the BSB (or advising those who are interested in so doing). A summary of these discussions is attached at Annex I.

Road shows

179. The BSB has held a number of road show events, with the more recent ones taking place over the consultation period for the final Handbook and entity regulation consultation. The events were organised in conjunction with the circuits and Specialist Bar Associations. There was general interest in joining entities in most of the road shows, with a few individuals keen for the BSB to begin regulating entities more quickly than the current timetable allows. There was also some views expressed that the BSB should go further and license most kinds of ABSs and MDPs
180. In addition to the road shows the BSB has held a number of ad hoc meetings with various chambers and individual barristers to discuss possible new business structures, and participated in a number of debates where different sides of the argument have been presented by the profession. A pilot group has been assembled of stakeholders who are either interested in becoming entities regulated by the BSB or who have undergone the process via the SRA in order to test the application processes that the BSB is developing.

Consumer input

181. The Legal Services Consumer Panel has responded to the majority of BSB consultations on entity regulation. In addition to this the BSB has specifically included a number of consumer organisations as part of its consultee list and sought actively to generate responses from them. As this has not always elicited responses the BSB has sought to actively engage its own User Group with only limited success although the Group has not raised concerns about the move to entity regulation.

17. Equality and Diversity

182. An interim equality analysis is attached at Annex J. This will be updated and resubmitted to the LSB as our authorisation processes are more fully developed. We will also consider the equality impact of our consultations on insurance, fees, the interventions regime and our non-statutory interim approach.