

Equality Analysis (EA) – Litigation

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| Date of Assessment | April 2013 |
| Assessor Name & Job Title | Ewen Macleod, Head of Professional Practice |
| Name of Policy/Function to be Assessed | Authorisation of self employed barristers to conduct litigation. |
| Aim/Purpose of Policy | <p>To facilitate the authorisation of self-employed barristers to undertake the reserved legal activity of litigation.</p> <p>These proposals are intended to help open up the market for litigation services and provide greater consumer choice, whilst ensuring that safeguards are in place to protect clients.</p> <p>Conduct of litigation will require separate authorisation. This can then be linked to appropriate training and ongoing CPD. The focus for individuals undertaking litigation will be to provide the BSB with evidence that they have both appropriate knowledge and appropriate systems in place to manage the conduct of litigation. After being authorised to conduct litigation, barristers under three years' standing will be required to have a 'qualified person' in place, who can provide guidance where necessary.</p> |

1. Evidence

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| What evidence will you use to assess impact on equality? |
| <p>The main sources of evidence used to assess the equality impact are as follows:</p> <ul style="list-style-type: none"> • Bar Barometer • Biennial survey 2011 • Bar Council statistics |

2. Impact on Equality

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| Consider whether the evidence listed above shows the potential for differential impact, either adverse or positive, for different groups. If there are negative impacts, explain how you will attempt to mitigate these. Mitigating actions can be described in more detail in your Action Plan (Section 4). | |
| Race | The Biennial Survey shows that 9% of the self-employed Bar are BME. As BME barristers are disproportionately overrepresented in sole practitioner numbers the introduction of litigation could provide additional opportunities for this group. |

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| | <p>Like women barristers, many BME barristers work primarily in areas of practice which are predominantly publicly funded. According to the survey, criminal law is the main area of practice for 8% of BME self-employed barristers and family law is 10%. Litigation services may therefore offer the possibility of increasing public access via competition in the legal services market at a time where legal aid is being cut; thereby presenting consumers with increased choice and the option of consulting a barrister direct as a 'one stop shop' and cutting out the intermediary solicitor. The option of developing new ways of working may also assist barristers to obtain legal aid contracts. This would be a positive impact.</p> <p>Many BME barristers cited independence and control over working patterns as being their reason for being self-employed in the Biennial Survey. The BSB believes that facilitating the introduction of litigation services provides additional opportunities and constitutes a positive benefit for this group.</p> |
| Gender | <p>The Biennial Survey states that the small amount of part time working that takes place in the self-employed Bar is predominantly undertaken by women. A more flexible working arrangement is potentially more attractive to female managers and employees, who traditionally have greater family responsibilities. A wider variety of permitted services could therefore contribute to greater flexibility for female barristers.</p> |
| Disability | <p>The 2011 biennial survey of the Bar shows disabled barristers are more likely to work as sole practitioners (23% compared to 9% of non-disabled barristers).</p> <p><u>Financial Implications</u></p> <p>The cost of the additional authorisation to do litigation may have an adverse effect upon sole practitioners who may work reduced hours or on a part-time basis. However, these costs will be minimal and directly related to the additional cost incurred by the BSB – equality issues will be further considered when the fees are set.</p> <p><u>Access to Justice</u></p> <p>Disabled consumers could benefit from increased litigation services due to the convenience offered by accessing services from a "one stop shop". The new changes could also lead to an increased choice of providers.</p> |
| Age | <p>The Biennial Survey shows that almost 40% of the self-employed bar is below the age of 40 and 21% of the self-employed bar is of less than 8 years' call. The BSB feels that broadening the scope of permitted services could have a positive impact on younger members of the Bar, who could benefit from being given litigation tasks. It could allow barristers and others regulated individuals to gain broader, valuable skills during training or the early stages of their careers. This could in turn help to widen access to the Bar, potentially contributing to a greater numbers of pupillages or other training opportunities.</p> |

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| Sexual Orientation | We have identified no specific impact relating to sexual orientation. |
| Religion/Belief | Litigation practises tend to require some constancy in terms of client contact (litigation events can occur and change rapidly). This has the potential to require practitioners to be available for clients on a more continual basis than other areas of practice, this may have an impact on people of particular religion / belief. However, this can be mitigated by arranging appropriate business support or cover – ensuring appropriate systems are in place to cover these issues will be part of the litigation authorisation process. |
| Gender Reassignment | We have identified no specific impact relating to gender reassignment. |
| Pregnancy/ Maternity | As discussed above, the addition of a new area of practise has the potential to increase the flexibility of an individual's practise, which could be an advantage in the event of a pregnancy or maternity. |
| Marriage and Civil Partnership | We have identified no specific impact relating to gender reassignment. |
| Other Identified Groups | Vulnerable clients may find it easier and more attractive to instruct individual barristers who are able to focus on their litigation problem as a whole, and who are specialists in their field, without necessarily first instructing a traditional law firm. Reductions in cost and increases in ease of access are likely to impact positively across most of the equalities strands, especially in relation to those in lower socioeconomic groups. |

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| How does the policy advance equality of opportunity? |
| As discussed above, the new permission for self-employed barristers to provide litigation services introduces the possibility of providing a more comprehensive 'one stop shop' style service to clients. The underlying purpose behind this is to broaden access to justice and provide a greater range of opportunities for clients to instruct professionals who are best suited to their needs. Therefore, this change has the potential to open up opportunities across client groups, including vulnerable clients who have traditionally found it more difficult to access legal advice services. |

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| How does the policy promote good relations between different groups? |
| N/A |

3. Summary of Analysis

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| Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision) | | |
| a. No change to the policy (no impacts identified) | Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups. | |
| b. Continue the policy (impacts identified) | Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified. | X |
| c. Adjust the policy and continue | Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy. | |
| d. Stop and remove the policy | There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory. | |
| Reason for decision: The potential impact of widening the range of legal services which self-employed barristers can provide is to promote access to justice for consumers and to create greater flexibility of practise for barristers. As identified above, the impact on those professionals with some of the protected characteristics is likely to be a positive one; and for the remainder it is likely to be either positive or neutral. | | |

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.

| Action required to reduce/remove barrier | Person Responsible | Deadline |
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| <p>The introduction of a new permission to conduct litigation for self-employed barristers will be singled out as a specific risk area and addressed as part of the BSB's new supervision and monitoring strategy. The strategy has the capacity to incorporate specific evidence which Chambers will need to provide as part of the general monitoring return; as well as requesting specific evidence or monitoring visits or discussions on an ad hoc basis, according to risk assessment.</p> | <p>Supervision and monitoring staff (currently in the Quality Team)</p> | <p>Introduced as part of the wider supervision and monitoring scheme through the course of 2014</p> |
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