

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

**BSB Consumer Panel**

***Response to LSB's Consultation paper on "Regulatory Independence"***

1. The BSB Consumer Panel welcomes the Legal Services Board's consultation paper<sup>1</sup> on its proposals to make effective the Legal Services Act's intention that the Regulatory Arm (such as the BSB) should be operationally independent of the Approved Regular (such as the Bar Council). As the paper rightly says: "regulatory independence is not a matter of prescribing details ... it is about ensuring that the public has confidence that the best professional standards are developed .. and .. entrenching a regulatory agenda that is in the public and consumer interest".<sup>2</sup>
2. The paper deals with two main issues which, in our case, are: the internal governance required to ensure independence of the regulatory arm (the BSB), and the control of practicing fees paid by barristers to the Bar Council. Whilst the Panel accepts that the latter is important for operational independence, there is not a specific consumer (as opposed to public interest) dimension to this, and therefore the Panel's response concentrates on the former.
3. Our responses to the relevant questions are as follows.
4. *Question 1 – How might an independent regulatory arm best be "ring-fenced" from a representative-controlled approved regulator in the way we describe (i.e. requiring a delegation of the power to regulate processes and procedures; and the power to determine strategic direction)?* The Panel would like the LSB to consider making it a requirement for each Regulatory Arm to include in their standing orders a provision (or even a requirement) that it should meet in the absence of Approved Regulator's Council member from time to time; this might be akin to Audit Committees which, under the FRC's Guidance, should meet external auditors without management as least annually.<sup>3</sup>
5. *Question 2 – What do you think of our proposals relating to regulatory board appointees, set out under paragraph 3.15?* The Panel supports all of these proposals.

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<sup>1</sup> *Regulatory Independence: Consultation on proposed rules to be made under sections 30 and 51 of the Legal Services Act 2007*, LSB, 25 March 2009

<sup>2</sup> p. 4

<sup>3</sup> *Guidance on Audit Committees*, Financial Reporting Council, October 2008

6. *Question 3 – Is it necessary to go further than our proposals, for example by making it an explicit requirement for the chair of independent regulatory boards to be non-lawyers?* The BSB Consumer Panel would urge the LSB to make it a requirement that such Chairs are not from the branch of the profession being regulated by that Board. We can see no reason to depart from the Act's clear intention that the Chair of the overarching Board, the LSB, be a lay person by allowing a profession to continue to Chair the front-line regulator which, as intended by the Act and welcomed by lawyers, will undertake the vast majority of the Act's remit. This position should be implemented as soon as possible, as without this degree of obvious, independent lay oversight to the ARs, the whole process of delegated regulation away from self-regulation will lack public credibility.
  
7. *Question 4 – Do you agree with our proposals in respect of the management of resources, including those covering 'shared services' models that approved regulators might adopt?* Whilst we agree that such careful management of shared services is vital, we would urge that special attention is paid to any such services with a "public facing" dimension (such as public affairs, communications, publications) to ensure operational and content independence for the regulatory arm.
  
8. *Question 7- In principle, what do you think about the concept of dual self-certification? Question 8 – If a dual self-certification model were adopted, how should it work in practice? Question 14 – Should there be a requirement on approved regulators to consult prior to the submission of their application each year – and if so, who should be consulted, and on what?* The BSB Consumer Panel considers that requiring both the Approved Regulator itself, and also its Regulatory Arm, to assess and then certify that the latter has operated with complete independence (whilst open to the views of the former) is a proportional and effective way of ensuring the desired outcome. However, given that the larger Approved Regulators are likely to have Consumer Panels which follow closely their work and monitor the extent to which this appears independent of the profession's particular stance, we recommend that each such Consumer Panel is asked to comment on the regulatory arm's draft certification and that such an input is attached as an annex to the submission sent to the Legal Services Board.

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