

Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Bar Standards Board application for approval of amendments to the Bar Code of Conduct – the Structure of Self Employed Practice

Introduction

The Legal Services Board (“LSB”) is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve or reject the Regulatory Arrangements of the Approved Regulators (“AR”). The Bar Council (“BC”) is an Approved Regulator and whose regulatory functions are carried out through its regulatory arm the Bar Standards Board (“BSB”).

Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub Paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.

As provided for by Paragraphs 20(1) and 23(3) of Schedule 4 the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub Paragraph 25 (3) (f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB rules.

The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub Paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.

We confirmed receipt of an application from the BSB for approval of amendments to the Bar Code of Conduct – the Structure of Self Employed Practice on Wednesday 10 February 2010. This is the decision notice in relation to that application. In the following paragraphs we explain what we were requested to consider, the concerns that we raised in relation to the approval criteria and how these have been resolved in discussion with the BSB.

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

The chronology for handling of this application can be found towards the end of this decision document.

Decision

The BSB application is for approval of alterations to the Regulatory Arrangements which will, subject to safeguards contained within the code and guidance, lift existing restrictions to allow:

1. Self Employed Barristers to share office premises and facilities with others (and entities controlled by them) subject to safeguards.
2. Self Employed Barristers to investigate and collect evidence and take witness statements.
3. Self Employed Barristers to attend at police stations to advise suspects and interviewees.
4. Self Employed Barristers to conduct correspondence provided that certain conditions are met.

Overall we agree with the BSB's assessment that the proposed alterations will facilitate and promote the Regulatory Objectives of the Act and in particular:

1. Protecting and promoting the public interest
2. Improving Access to Justice
3. Protecting and promoting the interest of consumers
4. Promoting competition
5. Encouraging an independent, strong, diverse and effective legal profession.

We are satisfied that, having considered the application in the context of Schedule 4 sub Paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application.

Process

As one of the first applications for approval of alterations to the Regulatory Arrangements, and one of three from the BSB, we have taken a pragmatic approach to processing the application and developing a mutual understanding of the approach to approving applications. We have agreed with the BSB to conduct a joint "lessons learned" exercise following completion of the first three BSB applications – "Legal Disciplinary Practices and Partnership of Barristers", "The Structure of the Self-employed Practice" and "Application of the Public Access Scheme"². We will, as a matter of routine, conduct similar exercises

² The application "Legal Disciplinary Practices and Partnership of Barristers" was granted by the LSB on 26 March 2010. "The Application of the Public Access Scheme" application is being considered alongside this application.

following the completion of applications from other Approved Regulators and communicate any generic lessons for both Approved Regulators and the LSB itself as necessary.

In addition to approving the application, there are certain areas upon which we wish to comment in this decision notice. These are the areas that raised issues in relation to the approval criteria as described in the introduction to this document and therefore further clarification was required.

Sharing of premises – Chambers model and impact upon the Regulatory Objective of promoting competition

The changes introduced by this application, through amendments to rule 403.2, will remove current restrictions on Self Employed Barristers sharing premises and facilities with other types of business or entity. Under the current rules, Barristers are not permitted to share premises with other businesses or non lawyers. The BSB consider that the changes being introduced will allow Barristers greater freedom in how they manage their practices to accompany the changes that will allow Barristers to become managers or shareholders of LDPs and to act in dual capacity as both an Employed and Self Employed Barrister³.

We note that the safeguards introduced by rule 403.3 will apply where Barristers are sharing premises with other businesses and with entities that they do not control. We also note that equivalent safeguards are not required of Barristers practising within the chambers model. In considering this application we have sought and received assurance from the BSB that the safeguards which accompany the relaxation of restrictions on Self Employed Barristers sharing premises with others are designed to address specific risks, particularly around client perception of the independence of Self Employed Barristers where offices are being shared with other professionals or businesses. Safeguards targeted at specific risks are less likely to impact negatively on the Regulatory Objective of promoting competition by favouring a certain model of practice over others.

However, it is arguable that the perceived risks may be no greater than with the chambers model, where in practice Barristers are permitted to act on opposing sides of the same case whilst sharing premises, facilities and staff, without such safeguards in place. Although the BSB has asserted that there is a greater risk in sharing premises with other businesses than exists in chambers, we have not seen evidence to this effect. In line with the Better Regulation principle of consistency, we tend to believe that the differing requirements may be cause for concern in future.

As overall these changes reflect progress towards the Regulatory Objective of promoting competition by facilitating premise sharing arrangements and hence different models of provision, we would not want to refuse this part of the application on the grounds of introducing greater restrictions for one mode of practice over another.

However, we consider that, as part of an evaluation of the effectiveness of these changes, the BSB should explicitly consider the subject of premise sharing, including within chambers, in order to ensure that any restrictions are targeted to specific risks posed. The BSB might consider the desirability of a common set of controls or principles, with any variations

³ As introduced by amendments to the Code of Conduct in respect of Legal Disciplinary Practices.

objectively justified between types of entities in which Barristers work. We would expect that this review would take place in the next 24 months and may be aligned to wider discussions, for example consideration of entity regulation or moves to outcomes based regulation.

Training

We note the recommendation in the Public Access application that training in letter writing and systems for keeping files should be required to support the relaxation of restriction on Barristers conducting correspondence. Although the risks identified were in relation to the Public Access scheme, before decisions on the Structure of Self Employed practice had been made, it is likely that the issues considered apply equally to Barristers doing this work in any context. Following discussions on this matter, the BSB have confirmed that they will give consideration to whether additional training is needed to support the relaxation, for example through alterations to the Bar Professional Training Course.

Connections with the Public Access Application

An extension notice was issued to allow us to consider this application alongside the Public Access Application. Following discussions with the BSB, a revised version of the amendments to section IV of the Code has been provided which incorporates all changes in relation to both applications.

Chronology

- The LSB confirmed receipt of an application from the BSB for approval of amendments to the Bar Code of Conduct in respect of the Structure of Self Employed Practice on Wednesday 10 February 2010.
- The 28 day initial decision period for considering the application originally ended on 9 March 2010, 28 calendar days following confirmation of receipt of the application.
- An extension notice was issued by the LSB on Tuesday 9 March (in accordance with paragraphs 21(5), (6) and (7) of Schedule 4 to the Act) to enable the LSB to consider the Self Employed Practice application alongside the Public Access application which the LSB confirmed receipt of on 5 March 2010.
- Following discussions with the BSB, a revised version of section IV of the Code was provided on Thursday 18 March for consideration alongside the original application. This version will also incorporate amendments relating to the Public Access application.
- The revised documentation was published on the LSB website on Friday 19 March 2010 and has not attracted comment.

- This Decision Notice is being published on the LSB website on Wednesday 31 March 2010.

Guidance – version submitted with original application

Part V Code Amendments, draft guidance

Investigating or collecting evidence and taking witness statements

1. There is no longer a rule which prohibits a self-employed barrister from investigating or collecting evidence generally or therefore from taking statements from potential witnesses (which is treated for these purposes as investigating or collecting evidence). By taking witness statements is meant interviewing the potential witness with a view to preparing a statement or taking a proof of evidence. A barrister has always been entitled to settle a witness statement taken by another person, and this is not investigating or collecting evidence. However, rule 401(b)(iii) provides that a self-employed barrister must not in the course of his practice conduct a case in court if the barrister has previously investigated or collected evidence for that case unless the barrister reasonably believes that the investigation and collection of that evidence is unlikely to be challenged.
2. It follows that if the nature of the evidence or the circumstances in which it was investigated or collected are such that there is likely to be an issue about that in court, where the barrister might be needed to give evidence, the barrister can properly be involved in the preparations for a case but cannot accept a brief to conduct the case in court, even as the junior member of a team of barristers. Only if the barrister reasonably believes that the investigation and collection of that evidence (as distinct from the evidence itself) is unlikely to be challenged can the barrister properly conduct the case in court. Nothing in the rule is intended to apply to the case where a barrister properly accepts a brief and then, as part of his conduct of the case at court, has urgently to take a statement from his client or a potential witness (see rule 707 of the Code). The rule applies where a barrister has investigated or collected evidence before arriving at court at the start of the case.
3. In this regard, barristers should note that rule 401(b)(iii) is in one respect more restrictive in its effect than the previous Written Standards (which are being revised to reflect the new rules) relating to witnesses, which enabled barristers to take witness statements and then act as the junior barrister in the case. The Written Standards stated that it was not appropriate for a witness statement taker “to act as counsel unless he is a junior member of the team of Counsel and will not be examining the witness”. The Bar Standards Board considers that it is a key function of a junior member of a team of Counsel that s/he should be in a position to conduct the case in court if and when required, and that it is unacceptable to have briefed as junior counsel in a case someone who may not be in a position to take on the full advocacy role in that case by reason of professional embarrassment should it become necessary. The risks to the client’s interests and to the due administration of justice generally are too great to allow a barrister to conduct a case in court, even as a junior in a team of barristers, if there is a real risk that the circumstances of the taking of the evidence that barrister has collected will be challenged in the case. If a junior member of the team is called upon to conduct the case and the circumstances of his investigation and collection of evidence is an issue in the case,, the barrister might have to stand down, damaging the client’s interests (the client having then been deprived of each member of his/her chosen team) and the due administration of justice (through the inconvenience and delay in the conduct of the case).
4. When investigating or collecting evidence, barristers should bear carefully in mind the dangers of unconsciously affecting or contaminating the evidence that a witness is able to give. These are discussed in detail in the Written Standards at paragraphs

6.2.1 – 6.2.7. Barristers should also be aware of the risks of professional embarrassment as a result of becoming involved in investigating or collecting evidence, and take these risks into account when deciding:-

- a. whether to undertake such work in the first place; and
 - b. if they have done, whether or not they can properly accept a brief at a subsequent trial.
5. The rules place the onus squarely on the barrister who has investigated or collected evidence prior to accepting a brief to consider and reach a reasonable conclusion whether or not his/her involvement is likely to be challenged.
 6. In assessing whether to accept a brief in these circumstances, the barrister should be mindful of the dangers of professional embarrassment where s/he has been involved in the collection or investigation of evidence. The barrister's duty is to reach a reasonable decision on the risk of embarrassment before accepting a brief. The brief can only properly be accepted if it is reasonable for the barrister to conclude that the circumstances of his investigation or collection of evidence are unlikely to be challenged. If the barrister's decision is not a reasonable one, and the trial is subsequently adjourned as a result of his professional embarrassment, the barrister risks being exposed to an order for wasted costs as well as prosecution for a breach of the Code.
 7. Even where a brief is properly accepted, the question of whether the barrister is professionally embarrassed is a matter that s/he must keep under review during the case in light of any later developments.
 8. Investigation or collection of evidence (save for taking proofs of evidence or preparing witness statements urgently as part of the barrister's conduct of the case at court) is not subject to the cab-rank rule: see rule 604(i). If barristers wish to concentrate on advice and advocacy services and do not wish to undertake other types of activity (especially ones which may reduce their opportunity to undertake an advocacy role), that should be their choice and it is in the public interest that they cannot be forced to accept such work.

Conduct of correspondence

9. The extent to which self-employed barristers are permitted to conduct correspondence is addressed in rule 401A of the Code. These provisions are separate from the provisions under the Public Access Rules and apply generally. Conducting correspondence under rule 401A does not extend to the conduct of litigation, as explained by the Court of Appeal in [Agassi v Robinson \(Inspector of Taxes\) \(Bar Council intervening\) \[2005\] EWCA Civ 1507, \[2006\] 1 All ER 900](#). Barristers should be mindful of the inherent risks (including of negligence claims) involved in the conduct of correspondence on behalf of lay clients.
10. It will not always be in the best interests of the client for barristers to conduct correspondence. It may be better for the barrister to draft a letter for the solicitor or other professional client to send. There is a danger of confusion where some letters are written by a barrister and some by a solicitor.
11. If the barrister is instructed to write a letter, addressees of letters written by the barrister must be made aware to whom any response should be addressed (and, for example, that it is unnecessary to reply to both the barrister and any solicitor or other professional who is also instructed). The barrister must keep the client and any professional client apprised promptly of any response, and seek further instructions at that juncture.

12. Barristers who become involved in the conduct of correspondence on behalf of lay clients will need to institute appropriate systems to deal promptly with responses and to keep records of the correspondence. Such systems should make provision to cover periods when the barrister is on holiday, or conducting a trial elsewhere, or otherwise unavailable to receive letters.
13. Barristers should consider whether it would be appropriate for them to undertake training in the conduct of inter-partes correspondence before agreeing to enter into any such correspondence.
14. It is also important for barristers embarking on the conduct of correspondence to ensure that, so far as possible, their actions do not create any threat to either their actual or their perceived independence, or any risk of subsequent professional embarrassment. For example, they should not appear personally to endorse statements by clients or witnesses, since that might appear to conflict with arguments or evidence which they subsequently present to the Court.
15. The conduct of correspondence with other parties (save where reasonably necessary as part of the barrister's conduct of the case at court) is not subject to the cab-rank rule: see rule 604(i).

Sharing premises

16. Rule 403.2 permits self-employed barristers to share office facilities and other premises with any person provided that certain conditions are met.
17. The rule relaxes a previous prohibition on the sharing of office facilities and premises with persons other than those specified in rule 403.1. The relaxation is intended to:
 - a. allow barristers to make use of any surplus space and to reduce administrative costs; and
 - b. enable a wider range of services to be provided from the same premises, and provide opportunities for reducing costs.
18. The five conditions in rule 403.2 have been imposed to address and manage risks thought to be engendered by the relaxation of the rule.
19. The first two conditions (that there must be complete separation between the provision of services by the barrister and the services provided by any other person with whom the barrister shares the premises or facilities, and that nothing be done that might reasonably create the impression that there is any sharing of work, income or profits of the businesses) are imposed to prevent informal business sharing arrangements that are not transparently regulated as such in the public interest, to address the concern that the sharing of facilities might create confusion for the public, and to mitigate the risk of a perception developing that barristers lack independence. These rules are intended to ensure that chambers and individual barristers do not allow clients to be misled into thinking that the barristers have some responsibility for, or endorse, the services provided by others (or vice versa). Barristers must operate independently and must be seen to be operating independently.
20. Thus, whilst barristers might share premises (including conference or meeting rooms), neither the signage at the premises, nor the headed paper used by any of the businesses sharing those premises, nor the marketing or promotional material (including headed paper and website pages) must convey the impression of conducting business in concert or coordination with those with whom the premises are shared.

21. Further, whilst businesses might jointly employ a telephonist, they must have separate telephone numbers, and the greeting deployed by the telephonist must be specific to the business to which any given call is made.
22. The requirement that the barrister has effective arrangements in place to protect the confidentiality of the clients' affairs is regarded as of particular importance where sharing of premises or other facilities is occurring. Those intending to share office space should give careful consideration to the need for separate telephone and computer systems, coded door locks and lockable storage cupboards, and to the identity of those supplied with keys.
23. The prohibition of any general referral arrangement or understanding between the barrister and the person/people with whom they are sharing is intended to ensure that any referrals that do take place must be made at arm's length and in the best interests of the client on a case by case basis. The prohibition is intended to address the concern that barristers might refer work (or might unfairly be perceived as referring work) to others with whom they are sharing for reasons of convenience or financial advantage, rather than because the referral is in the client's best interest. Correspondingly, the sharer might refer clients to the barrister with whom they are sharing for the same reasons. The prohibition of a general referral arrangement or understanding is intended to ensure that referrals are only made on an individual basis, when it is in the client's best interest. A 'general referral arrangement or understanding' means an arrangement or understanding that, as and when the barrister has cause to refer work or certain categories of work to someone in the profession(s) of the person(s) with whom the barrister shares office facilities and other premises, or vice versa, s/he will refer that work (or some of that work) to those with whom s/he shares facilities. What the Code requires is that, on each occasion that it becomes necessary to refer work, careful consideration must be given to the needs of the individual client in question. The barrister must in each case assess the suitability of the person to whom the referral will be made.
24. Rule 403.4 imposes a record keeping requirement which is intended to ensure that the Bar Standards Board is able to monitor the referrals which are made, to ensure that the prohibition is being observed and that it is effective to control the regulatory risks to which sharing gives rise. Records should be kept for at least 6 years. Barristers availing themselves of the opportunity to share office facilities or other premises who make referrals to those with whom they share should note that they may be required to demonstrate the basis on which any particular referral was made, and that the records maintained should, therefore, include the reasons for the decision to refer a client to the sharer
25. Before a barrister can embark upon a sharing arrangement permitted by rule 403.2, prior notification in writing of the sharing must have been given to the Bar Standards Board. No approval from the Bar Standards Board is required, but the fact that premises and office facilities are being shared will be taken into account by the Bar Standards Board in ascertaining appropriate monitoring programmes to ensure that those sharing facilities abide by the terms of the rule.

Attendance at police stations

26. The previous rules prevented barristers from attending on clients at police stations. That absolute bar has now been removed. Rule 401(b)(iv) provides that a self-employed barrister must not (except as permitted by the Public Access Rules) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews unless the barrister has complied with such training requirements as may be imposed by the Bar Standards Board in respect of such work. Advising at police stations is specialist

- work; any barrister who performs such work must complete any relevant training imposed by the Bar Standards Board.
27. Rule 401(b)(vi) provides that a self-employed barrister must not (except as permitted by the Public Access Rules) conduct in court any criminal proceedings in which the barrister has attended at a police station for any defendant in connection with those proceedings or any associated proceedings unless the barrister reasonably believes that nothing said, done, heard or seen by the barrister at the police station might require him/her to give evidence in those proceedings.
 28. A particular difficulty facing a barrister who attends at a police station to advise suspects and interviewees or to take part in identification procedures is that the barrister may have to advise the client whether or not to answer police questions or to volunteer a statement, or may see or hear something that is material to the evidence that will be presented in court. The client's decision whether or not to answer questions, and if so which, is very likely to be a significant matter in any subsequent court hearing. So might compliance with PACE Codes of interviews or identification procedures that the barrister sees or hears. If these are significant evidential matters at trial, the barrister in question may find him or herself in serious professional difficulties if acting as advocate in the case.
 29. Advising a suspect at the police station or attending on his behalf at an interview or identification procedure always gives rise to the risk that you may become a witness at the trial or at a Newton hearing or pre-trial admissibility hearing. The fact of advising a suspect or being present in those circumstances does not of itself prevent you from appearing as an advocate for that defendant in all circumstances. If the defendant you have advised is going to enter a guilty plea which you know to be acceptable to the Crown, or has given a full comment interview which remains as his account, then the degree of risk may be relatively low. But if the defendant declined, on your advice or not, to answer all or any questions in interview (whether or not there was a prepared statement) then the risk of becoming a witness will, inevitably, be too great to allow you to deal with the case at trial or at a Newton hearing or pre-trial admissibility hearing. This guidance applies equally whether you were to appear as an advocate alone or being led or leading (see paragraph 3 above).
 30. Given the possibility that you may be required to give evidence of events at the police station, you should keep detailed, contemporaneous notes of those events.
 31. For the reasons already discussed in relation to collecting evidence (as to which, see paragraph 8 above), attending at police stations is not subject to the cab rank rule: see rule 604(i).

Code Amendments – final version submitted by the BSB on 18 March 2010

PROPOSED AMENDMENTS TO THE CODE OF CONDUCT

Part IV – Self-Employed Barristers

Instructions

401 A self-employed barrister whether or not he is acting for a fee:

- (a) may supply legal services only if appointed by the Court or ~~is~~if instructed:
 - (i) by a professional client; or
 - (ii) by a licensed access client, in which case he must comply with the Licensed Access Rules (reproduced in Annex F1); or
 - (iii) subject to paragraph 204(c), by or on behalf of any other lay client, in which case he must comply with the Public Access Rules (reproduced in Annex F2); or

- (b) must not in the course of his practice, except as permitted by the Public Access Rules:
 - (i) undertake the management administration or general conduct of a lay client's affairs;
 - (ii) conduct litigation ~~or inter-partes work~~ (for example ~~the conduct of correspondence with an opposite party,~~ issuing any claim or process or instructing any expert witness or other person on behalf of his lay client or accepting personal liability for the payment of any such person); and must not conduct correspondence or other work involving other parties save as permitted by rule 401A below.
 - (iii) ~~investigate~~ conduct a case in court if the barrister has previously investigated or ~~collect~~collected evidence for ~~use in any Court~~;
 - ~~(iv)~~
~~(iv) except as permitted by paragraph 707, or by the Public Access Rules, take any proof that case unless the barrister reasonably believes that the investigation and collection of that evidence in any criminal case;~~~~(v)~~ is unlikely to be challenged.
 - (iv) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews unless the

barrister has complied with such training requirements as may be imposed by the Bar Standards Board in respect of such work.

(v) ~~(vi)~~ act as a supervisor for the purposes of section 84(2) of the Immigration and Asylum Act 1999.

(vi) ~~(e)~~ Conduct in court any criminal proceedings in which the barrister has attended at a police station for any defendant in connection with those proceedings or any associated proceedings unless the barrister reasonably believes that nothing said, done, heard or seen by the barrister at the police station might require him/her to give evidence in those proceedings.

~~— must not supply legal services for reward otherwise than in the course of his practice except as permitted by paragraph 806.⁴~~

Conduct of correspondence

401A.1 If instructed to do so, a self-employed barrister may conduct correspondence with other parties (in the form of letters, faxes, emails or the like) provided that the barrister:

(a) is satisfied that it is in the lay client's best interests that the barrister does so and that he has adequate systems, experience and resources for managing appropriately such correspondence ; and;

(b) has adequate insurance cover in the event that the lay client suffers any loss arising from the conduct of the correspondence for which the barrister is responsible.

401A.2 Where a barrister conducts such correspondence and is aware that another party has a solicitor or barrister representing that party, the barrister must not correspond directly with that party.

Insurance

402.1 Every self-employed barrister (other than a pupil who is covered under his pupil supervisor's insurance) and a barrister called to the Bar under ~~Regulation 78- Part IV(E)~~ of the ~~Bar Training Regulations~~² Consolidated Regulations must be entered as a member with ~~BMIF~~³ BMIF².

402.2 Every barrister entered as a member with BMIF shall:

(a) pay immediately when due the appropriate insurance premium required by BMIF for the purpose of insurance against claims for professional negligence for such amount and upon such terms as may be approved by the Bar Council from time to time;

(b) supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its Rules.

Administration and conduct of self-employed practice

403.1 ~~A~~Except as permitted in paragraphs 403.2 and 403.3, a self-employed barrister must not ~~practise from the share~~ office ~~facilities~~ or ~~other premises and must not practise~~ in any ~~unincorporated association (including any arrangement which involves sharing the administration of his practice)~~ with any person other than a self-employed barrister or any of the following:

- (a) a registered European lawyer;
- (b) subject to compliance with the Foreign Lawyers (Chambers) Rules (reproduced in Annex H) and with the consent of the Bar Council a foreign lawyer;
- (c) a non-practising barrister
- (d) a person who is:
 - (i) ~~a~~ a lawyer from a jurisdiction other than England and Wales;
 - (ii) a retired judge; or
 - (iii) an employed ~~barrister~~⁴barrister³

to the extent that that person is practising as an arbitrator or mediator.⁵⁴

403.2 A self-employed barrister:

~~(a) must take all reasonable steps to ensure that:~~

~~(i) his practice is efficiently and properly administered having regard to the nature of his practice;~~

~~(ii) proper records are kept;~~

~~(iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.~~

~~(b) must have ready access to library~~ may share office facilities which are adequate having regard to the nature of his practice; or other premises with any person or persons (not falling

within 403.1 above) and will not be treated as thereby practising in breach of rule 403.1, provided that:

~~(c) must have regard to any relevant guidance issued by the Bar Council including guidance as to:~~

~~(i) the administration of chambers;~~

~~(ii) pupillage and further training; and~~

~~(iii) good equal opportunities practice in chambers in the form of the Equality and Diversity Code⁶ for the Bar.~~

~~(d) (i) must deal with all complaints made to him promptly, courteously and in a manner which addresses the issues raised; and~~

~~(ii) must have and comply with an effective⁷ written complaints procedure and make copies of the procedure available to a client on request; and~~

~~(iii) meet all the requirements set out in Annexe S to the Code.⁸~~

(1) there is complete separation of the services provided by the barrister and the services provided by any person with whom the barrister shares the office facilities or premises;

(2) nothing is done that might reasonably create the impression that there is any sharing of work, income or profits of the businesses;

(3) the barrister has effective arrangements in place to protect the confidentiality of clients' affairs;

(4) there is no general referral arrangement or understanding between the barrister and the person or persons with whom the barrister is sharing; and

(5) prior notification in writing of the sharing, identifying the premises in question and the names and occupations of the persons or body with whom the barrister is sharing, has been given to the Bar Standards Board by the barrister.

403.3 The restrictions in paragraphs (1), (2) and (4) in paragraph 403.2 shall not apply where barristers share premises with any entity which is controlled by them and used as permitted for the purposes of and ancillary to their practice as self-employed barristers.

403.4 Where a self-employed barrister shares premises with other persons under paragraph 403.2, the barrister must keep available for inspection by the Board a record of any work or clients referred to the barrister by any such persons or referred to any such persons by the barrister, and of the reasons for any referral made by the barrister.

403.5 A self-employed barrister:

(a) must take all reasonable steps to ensure that:

(i) his practice is efficiently and properly administered having regard to the nature of his practice;

(ii) proper records are kept;

(iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.

(b) must have ready access to library facilities which are adequate having regard to the nature of his practice;

(c) must have regard to any relevant guidance issued by the Bar Council including guidance as to:

(i) the administration of chambers;

(ii) pupillage and further training; and

(iii) good equal opportunities practice in chambers in the form of the Equality and Diversity Code⁶ for the Bar.

(d) (i) must deal with all complaints made to him promptly, courteously and in a manner which addresses the issues raised; and

(ii) must have and comply with an effective⁷ written complaints procedure and make copies of the procedure available to a client on request; and

(iii) meet all the requirements set out in Annexe S to the Code.⁸

Please note that there are no other proposed amendments to rules 404.1 onwards. They remain unchanged.

Part VI Acceptance of Instructions

Acceptance of Instructions and the Cab Rank Rule

604. Subject to paragraph 601 a self-employed barrister is not obliged to accept instructions:

- (a) requiring him to do anything other than during the course of his ordinary working year;
- (b) other than at a fee which is proper having regard to:
 - (i) the complexity length and difficulty of the case;
 - (ii) his ability experience and seniority; and
 - (iii) the expenses which he will incur;

and any instructions in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment shall for this purpose unless the Bar Council or the Bar in general meeting otherwise determines (either in a particular case or in any class or classes of case or generally) be deemed to be at a proper professional fee.^{1 2} .

- (c) to do any work under a conditional fee agreement;
- (d) save in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service:
 - (i) unless and until his fees are agreed;
 - (ii) if having required his fees to be paid before he accepts the instructions those fees are not paid;
- (e) from anyone other than a professional client who accepts liability for the barrister's fees;

(f) in a matter where the lay client is also the professional client;³

(g) to do any work under the Contractual Terms on which Barristers offer their Services to Solicitors 2001 as amended and in force from time to time (reproduced in Appendix G2) or on any other contractual terms,

(h) Where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for him to accept.⁴

(i) to investigate or collect evidence (save for taking proofs of evidence or preparing witness statements urgently as part of the barrister's conduct of the case at court), to attend at a police station with or without a solicitor, or to conduct correspondence with other parties (save where reasonably necessary as part of the barrister's conduct of the case at court).