

By Email under s.203

Baroness Ruth Deech
Chair
Bar Standards Board
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20 January 2012

Dear Ruth

Warning Notice pursuant to paragraph 21(1)(b) of Part 3 of Schedule 4 to the Legal Services Act 2007

This warning notice is to inform the Bar Standards Board (the “BSB”) that the Legal Services Board (the “Board”) is considering whether to refuse its rule change application submitted on 26 October 2011 concerning changes to the operation of the Cab Rank Rule. The words used in this notice have the meanings given to them in the Legal Services Act 2007 (the “Act”).

On 26 October 2011, we received the BSB’s application to alter its regulatory arrangements: “Amendment to the “Cab Rank Rule” in paragraph 604(g) and insertion of new paragraph 604(h) of the Code of Conduct of the Bar of England and Wales”. Paragraph 21(4) of Part 3 of Schedule 4 to the Act requires the Board to make a decision about the application within 28 days of receiving the application (the “initial decision period”) unless the Board uses its powers in paragraph 21(5) of Part 3 of Schedule 4 to the Act to extend the initial decision period. On 22 November 2011 the Board extended the initial decision period by up to 90 days to 23 January 2012 due to the complexity of the issues raised in the application and the additional time required to assess it. If the Board does not grant the application and does not issue a warning notice by 23 January, the rule change will come into effect.

In accordance with Paragraph 21(1)(b) of Part 3 of Schedule 4 to the Act, the Board is issuing this warning notice because it is considering whether to refuse the application. Having had regard to the statutory criteria set out in paragraph 25(3) of Schedule 4 to the Act, the Board remains concerned with important aspects of the proposed changes including, but not limited to, the proportionality of the proposed change, the impact of potentially restricting the availability of the cab rank rule and/or the terms on which solicitors instruct barristers, and the process by which the proposals have been developed.

Although the BSB provided additional information to the Board on 18 January 2012, there is insufficient time to consider it in detail before 23 January.


Now that this warning notice has been given to the BSB, paragraph 22(1) of Part 3 of Schedule 4 to the Act and paragraph 19 of our Rules for rule change applications¹ allow the Board to obtain advice about whether the application should be granted. Paragraphs 22-27 of Part 3 of Schedule 4 to the Act and our rules explain the next steps that we and other relevant parties can and must now take.

Paragraph 26(3) of Part 3 of Schedule 4 to the Act provides that the Board has a period of 12 months from the date of your receipt of this warning notice to continue considering the BSB's proposed rule change. The Board may, in accordance with paragraphs 26(4), (5) and (6) of Part 3 of Schedule 4 to the Act, issue an Extension Notice or Notices before the end of the 12 month period to extend the decision period by up to six months.

This warning notice has been transmitted by email and so has been given on 20 January 2012. The decision period will therefore expire (unless extended on the basis explained above) on 19 January 2013. A copy of the warning notice will be placed on the Board's website on the day following your receipt of it in order for the Board to comply with the requirements of Paragraph 21(2) of Part 3 of Schedule 4 to the Act.

I am sending a copy of this letter to Mark Hatcher, Director of Representation and Policy at the Bar Council in accordance with the protocol for sending and receiving electronic documents dated 29 April 2010.

Yours sincerely



Chris Kenny

Chief Executive

cc: Vanessa Davies, Director, Bar Standards Board

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