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[Consultee]

25 January 2012

Salutation

**Request for advice: proposed changes to the operation of the Bar Standard's Board Code of Practice – the Cab Rank Rule**

The Legal Services Board (“the LSB”) has received an application from the Bar Standards Board (“the BSB”) to make certain changes to the operation of the Cab Rank Rule. Having considered the proposed changes and further information provided by the BSB, the Board is considering whether to refuse the application. It therefore issued a warning notice to that effect on 20 January 2012.

I am writing to formally request your advice (under paragraph 22(1) of Schedule 4 to the Legal Services Act 2007 (“the Act”)) about whether the application should be granted. We are requesting advice from a number of consultees; a list of them is on our website within the ‘further information and next steps’ document, which can be found within the BSB Cab Rank Rule application within the table on our website (link in footnote below)<sup>1</sup>.

The attached synopsis (Annex A) sets out at a high level the main aspects of the application and the LSB’s concerns. The LSB has published the warning notice together with further information and next steps on its website (see link in footnote). The actual application, which includes additional information from the BSB received during the course of our consideration of the changes and a summary of legal advice to the LSB about barristers’ ability to contract and recover fees currently and under the proposed arrangements is in the same place on the website. I should make clear that we are not seeking your views on the desirability or otherwise of the Cab Rank Rule itself, just on the proposed changes in its operation.

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<sup>1</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/applications.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm)

You should feel free to comment on any aspect of the application, but we invite your views in particular on the following:

- 1) The New Contract Terms – the original proposed terms and revised terms received from the BSB are on the LSB's website (see link in footnote). We would be interested in your views on whether it is appropriate for such Terms to be included in regulatory arrangements. Is there anything in particular (either in the terms themselves or the proposed way in which they would be applied) that the LSB should consider in relation to the impact on consumers, solicitors, other lawyers and alternative business structures of introducing such terms in conjunction with the Cab Rank Rule?
- 2) Bearing in mind the regulatory objective to promote competition in the provision of legal services, are there any competition concerns raised by the principle of having standard terms and/or the way in which these particular terms are drafted and/or their application in conjunction with the Cab Rank Rule?
- 3) The impact on individual solicitors and their clients of being put on the List of Defaulting Solicitors and whether that impact is proportionate. Are there any issues concerning the process for putting solicitors on, and removing them from, the List of Defaulting Solicitors that we should take into consideration?
- 4) Whether, and how, the proposed change improves barristers' ability to resolve disputes about payment taking account of the existing mechanisms for resolving such disputes that are currently available to barristers, and whether it is a proportionate way to achieve this outcome.
- 5) Whether there are any particular aspects of the proposed change in addition to those highlighted above that the LSB should consider.

The Act (paragraph 22(2) of Schedule 4) allows you to request further information from the applicant or any other person. We would be happy to facilitate any such requests for information or they may be made directly to Clare Vicary, Senior Policy Officer, BSB, [cvicary@barstandardsboard.org.uk](mailto:cvicary@barstandardsboard.org.uk). Should you seek and receive further information directly from the BSB, we would be grateful if you could provide copies to us when submitting your advice. This is to ensure that, for the purpose of transparency, all such information is published alongside the application.

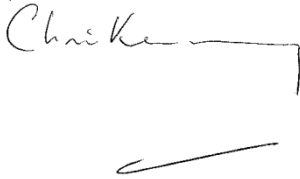
The Act requires us to publish the advice we receive and to allow the BSB to make representations to us in relation to such advice. Once we have received your advice, and in accordance with our rules, we will send it to the BSB.

The Act does not specify a period of time within which your advice can be given. In order to give you sufficient time to consider the issues, we ask that you send your advice to us by 21 March 2012. I realise that you are very busy with your own priorities and there is no

obligation to provide advice, but if you choose not to do so it would be very helpful if you would let us know before that date.

Should you have any queries or need any further information regarding the content of this letter, or if you would like us to send you hard copies of the relevant documentation, please do not hesitate to contact my colleague Dawn Reid, [dawn.reid@legalservicesboard.org.uk](mailto:dawn.reid@legalservicesboard.org.uk) 020 7271 0063.

Yours sincerely

A handwritten signature in black ink, appearing to read "Chris Kenny", with a long horizontal stroke extending to the right.

**Chris Kenny**  
Chief Executive

Enclosures

## Annex A – synopsis of rule change

1. The BSB has explained that the intention of the Cab Rank Rule is to require barristers to take instruction from a solicitor regardless of the nature of the case, or the conduct, opinions, beliefs of the prospective client or if the client is being financially supported in order to guarantee that lay clients will always be able to find an advocate willing to represent them, so maintaining access to justice. The current issue is about altering the operation of the rule.
2. The BSB submitted an application on 26 October 2011 to alter the Cab Rank Rule. The application itself can be found at the LSB website at [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/applications.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm). Please get in touch with [paul.greening@legalservicesboard.org.uk](mailto:paul.greening@legalservicesboard.org.uk) 020 7271 0075 if you have any problems accessing the website/documents or would like to receive hard copies.
3. There are two principle proposed alterations which the BSB considers are necessary in order to ensure that barristers have a firm basis for pursuing payment from instructing solicitors:
  - a. A change that provides that the Cab Rank Rule is not to apply to any work other than work under proposed binding New Contractual Terms (NCT) or on terms on which the barrister holds himself out as willing to contract. At present, in default of other arrangements, barristers are instructed by solicitors on a non-contractual basis set out in the Code of Conduct;
  - b. A change which provides that the Cab Rank Rule is not to apply when the solicitor is named in the proposed List of Defaulting Solicitors which would replace the existing Withdrawal of Credit Scheme. The main difference is that the current scheme can mean that all barristers are prevented from accepting instructions from the solicitor, whereas the proposed list is merely advisory and barristers have the discretion whether to accept instructions from the solicitor.
4. The LSB's concerns can be summarised as:
  - a) in a number of aspects, the changes appear inconsistent with the regulatory objectives and better regulation principles in the Act;
  - b) there appears to be potential regulatory conflict arising from the proposed binding contract terms that both appear to favour barristers over solicitors, but also have the effect of excluding the clients of in-house barristers and other authorised persons from the benefits of the rule. The further information provided by the BSB (also included within the rules application page of our website) also seeks to exclude Alternative Business Structures (ABS) from the benefits of the Cab Rank Rule. The BSB appears not to have undertaken the appropriate and targeted consultation with interested stakeholders necessary to address these issues; and

c) throughout the application, there is insufficient argument and evidence to justify the stance the BSB is taking in the light of these substantive concerns.