

The Right Honourable Michael Gove MP  
Lord Chancellor and Secretary of State for Justice  
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17 May 2016

Dear Lord Chancellor,

**Recommendation that the General Council of the Bar be designated as a licensing authority**

I am writing on behalf of the Legal Services Board (the Board) with its formal recommendation that the General Council of the Bar (the Bar Council) be designated as a licensing authority for its existing reserved legal activities.

Part 1 to Schedule 10 to the Legal Services Act 2007 (the Act) contains provisions for the Board to recommend that an order be made by the Lord Chancellor designating bodies as licensing authorities in respect of identified reserved legal activities.

Under part 1 of Schedule 10 to the Act, the Bar Standards Board (BSB), on behalf of the Bar Council, made an application to the Board seeking a recommendation to the Lord Chancellor that an order be made designating the Bar Council as a licensing authority for:

- (i) the same reserved legal activities for which it is currently an approved regulator; and
- (ii) the provision of immigration advice and services for which the General Council of the Bar is already a qualifying regulator under Part 1 of Schedule 18 to the Act.

The Board's Rules for Licensing Authority Designation Applications<sup>1</sup>, giving effect to paragraphs 11(2) and 11(3) of Schedule 10 to the Act, set out the matters on which the Board must be satisfied when granting an application for designation as a licensing authority. The Board has considered the application and is satisfied that the criteria for granting a licensing authority designation application have been met.

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<sup>1</sup> The Board's rules for applications to be designated as a licensing authority are published on the LSB website at: [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/designating\\_la\\_rules\\_v2\\_june\\_2011\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf)

Therefore, the Board agreed at its meeting on 23 March 2016 to recommend to the Lord Chancellor that the Bar Council be designated under paragraph 14(2) of Schedule 10 to the Act, as a licensing authority for the provision of immigration advice and services, and the following reserved legal activities:

- the exercise of a right of audience
- the conduct of litigation
- reserved instrument activities
- probate activities
- the administration of oaths.

Furthermore, the Board agreed that the licensing rules be approved for use by the licensing authority when the Lord Chancellor exercises his authority under paragraph 16(1) of Schedule 10. I enclose the Board's formal recommendation.

One of the matters on which the Board had to be satisfied in making its decision was that if the recommendation were accepted and an order made, then there would be a body with a power to determine appeals against decisions made by the proposed licensing authority (Schedule 10, paragraph 11(2)(b)). The existing appeal arrangements (which allow for such appeals to be determined by the High Court) can be extended to decisions made as a licensing authority so the Board was satisfied that if you accept this recommendation an order could be made.

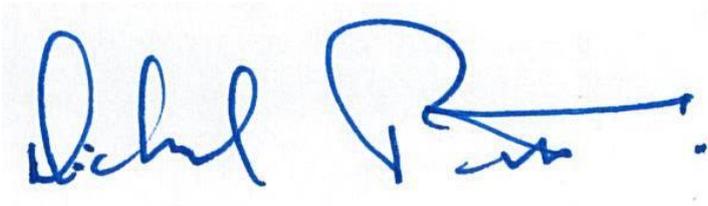
However, the BSB's preferred approach is that appeals about licensing decisions should be considered by the First Tier Tribunal (General Regulatory Chamber) (FTT). This is in line with the approach taken by most other licensing authorities. To achieve this, an order is necessary under section 80 of the Act and I have today submitted a separate recommendation that such an order be made. In addition, it is necessary for the powers of the General Council of the Bar to be modified (using an order under section 69 of the Act) so that it has the power to make regulations and rules for appeals to be made to the FTT. Teams from the Legal Services Board and the BSB have been working with your officials on such an order for some time and the drafting is nearing completion after which the formal consultation process under section 70 of the Act can begin.

While our (and the BSB) preference is that all of the orders come into force at the same time, should it become necessary, the designation order could be made at a different time as the existing arrangements include appropriate appeal arrangements.

There are a number of documents in support of this recommendation. Due to the volume, only electronic copies of the following documents have been provided to your officials but paper copies can be provided if they are needed:

- the BSB's application which sets out the proposals and how they comply with the requirements of the Act and our rules and guidance;
- the BSB's Handbook which includes the licensing rules a licensed body must adhere to;
- the advice from the Mandatory Consultees and the BSB's response to that advice; and
- the Board's decision notice.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Pitt', written in a cursive style.

Sir Mike Pitt  
Chair, Legal Services Board

## **RECOMMENDATION TO THE LORD CHANCELLOR UNDER SCHEDULE 10, PART 1 OF THE LEGAL SERVICES ACT 2007**

1. This is a recommendation from the Legal Services Board (the Board) to the Lord Chancellor that the General Council of the Bar (the Bar Council) be designated as a licensing authority for the following reserved legal activities:
  - the exercise of a right of audience
  - the conduct of litigation
  - reserved instrument activities
  - probate activities
  - the administration of oaths.
2. The Board also recommends to the Lord Chancellor that the Bar Council be designated as a licensing authority for the provision of immigration advice and services in its capacity as a qualifying regulator under paragraph 2(c) to Schedule 18 of the Legal Services Act 2007 (the Act).
3. On 29 April 2015, the Bar Standards Board (BSB), on behalf of the Bar Council, formally made an application to the Board under Part 1 of Schedule 10 to the Act. The application was seeking a recommendation from the Board to the Lord Chancellor, that an order be made designating the Bar Council as a licensing authority for its existing reserved legal activities, as set out in paragraph 1 above.
4. The Bar Council has delegated its authorisation and regulatory functions to the BSB. The effect of the application if granted would be to allow the BSB to authorise and regulate entities as alternative business structures (ABS) on behalf of the Bar Council.
5. This represents the final stage in the BSB's development as a regulator of entities. The BSB has authorised non-ABS entities since April 2015 (the owners and managers of non-ABS entities must be authorised individuals but do not need to be barristers).
6. The BSB's overall strategy is to be a "niche" regulator and it has developed licensing rules under which it will authorise ABS whose business activities are low risk and advocacy focused, as well as being broadly similar to those of self-employed barristers.
7. At its meeting on 23 March 2016, the Board resolved to grant the application seeking a recommendation to the Lord Chancellor for an order to be made designating the Bar Council as a licensing authority for its existing reserved legal activities, together with the provision of immigration and advice services. The Board also agreed that in making the recommendation to the Lord Chancellor, it would include a recommendation that the licensing rules be approved for use by the licensing authority when the Lord Chancellor exercises his authority in making an order.

8. In making its decision, set out in the Decision Notice sent to you with this recommendation, the Board considered the criteria in paragraphs 11(2) and 11(3) of Schedule 10 to the Act. The Rules for Licensing Authority Designation Applications<sup>1</sup> provide the mechanism through which the Board carries out its assessment against these requirements and the Board has therefore satisfied itself of compliance with the requirements of paragraphs 11(2) and 11(3) by an assessment of the application and proposed regulatory arrangements against these rules.
9. In accordance with paragraph 14(2) of Schedule 10 to the Act, the Board recommends to the Lord Chancellor that the Bar Council be designated as a licensing authority and that the BSB's proposed licensing rules are at the same time treated as having been approved by the Board (under paragraph 16(1) of Schedule 10).
10. A copy of this recommendation has been published on the Board's website (paragraph 14(3) of Schedule 10).

**Sir Mike Pitt**  
**Chairman, Legal Services Board**  
**17 May 2016**

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<sup>1</sup> The Board's rules for applications to be designated as an licensing authority are published on the Board's website at:  
[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/designating\\_la\\_rules\\_v2\\_june\\_2011\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf)