

The Rt Hon David Lidington MP
Lord Chancellor and Secretary of State for Justice
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**LEGAL SERVICES
BOARD**

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28 September 2017

Dear Lord Chancellor

Recommendation by the Legal Services Board to the Lord Chancellor under section 69 of the Legal Services Act 2007

Proposed recommendation for the Bar Council

1. On 11 September 2017 the Legal Services Board decided to make a recommendation to the Lord Chancellor that you make an order under section 69 of the Legal Services Act 2007 (the Act) which would modify the functions of the Bar Council to allow it to:
 - i. make regulations or rules allowing for appeals to the General Regulatory Chamber of the First-tier Tribunal (FTT) against decisions by the Bar Council (including arrangements enabling the FTT to suspend decisions where an appeal has been brought but not yet determined by the FTT)
 - ii. apply (with some amendments) the provisions of Schedule 14 to the Act to the Bar Council as an approved regulator of individual barristers and entities
 - iii. make rules to allow for gathering of information from individual barristers and entities for the purposes of assessing compliance with rules or regulations, or any code issued in its capacity as an approved regulator, with the ability to seek enforcement through the High Court
 - iv. make disciplinary arrangements to apply to all persons regulated by the Bar Council that, among other things, may include the revocation or suspension of authorisation or imposition of conditions on them, financial penalties and disbarment or disqualification from specified activities
 - v. make rules to apply to individual barristers and entities regulated by the Bar Council to allow controls on the use of persons that it has disqualified from specified activities under its disciplinary arrangements
 - vi. make compensation arrangements that would apply to individual barristers and entities, and to administer those arrangements.

2. A draft of the order is attached to this recommendation.
3. In accordance with the requirements of section 70(2) of the Act, the Board published a draft of the proposed recommendation and draft order on 30 August 2016 and invited representations about the proposals to be made to the Board by 22 November 2016. The Board has had regard to the representations duly made.
4. In accordance with section 70(1) of the Act, the recommendation is made with the consent of the Bar Council.

Yours sincerely,

A handwritten signature in black ink that reads "Helen Phillips". The signature is written in a cursive, flowing style.

Dr Helen Phillips
Interim Chair

D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No.

LEGAL SERVICES, ENGLAND AND WALES

**The Legal Services Act 2007 (General Council of the Bar)
(Modification of Functions) Order 2017**

Made - - - - *****

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 64(2), (3) and (4), section 69(1), (4) and (6), and section 204(3) of the Legal Services Act 2007^(a).

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (5) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2017 and comes into force on 6th April 2018.

Interpretation

2. In this Order—
“the Act” means the Legal Services Act 2007;

“relevant authorised person” means a person authorised by the General Council of the Bar (other than by the grant of a licence under Part 5 of the Act) to carry on an activity which is a reserved legal activity^(a).

Power to make regulations or rules providing for appeals to the First-tier Tribunal

3.—(1) The General Council of the Bar may make regulations or rules providing for appeals to the First-tier Tribunal against decisions made by the General Council of the Bar in its capacity as an approved regulator, including in its role as a licensing authority.

(2) The regulations or rules made under paragraph (1) may provide for the First-tier Tribunal to suspend the effect of a decision of the General Council of the Bar (whether or not the decision has already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

Power of intervention

4.—(1) Subject to the modifications in paragraphs (2) to (4), Schedule 14 to the Act (licensing authority’s powers of intervention)^(b) applies in relation to—

- (a) the General Council of the Bar in its capacity as an approved regulator (other than in its role as a licensing authority);
- (b) a relevant authorised person;
- (c) in the case of a relevant authorised person which is a body, a manager of the body, and
- (d) an employee of a relevant authorised person,

as it applies in relation to a licensing authority, a licensed body and a manager or employee of such a body.

(2) Schedule 14 to the Act is to be read as if each reference to—

- (a) a “licence” were a reference to an “authorisation”;
- (b) a “licensed body” were a reference to a “relevant authorised person”;
- (c) “the licensing authority” or “the relevant licensing authority” were a reference to “the General Council of the Bar”, and
- (d) a manager of a licensed body were a reference to, in the case of a relevant authorised person which is a body, a manager of the body.

(3) Paragraph 1 of Schedule 14 to the Act has effect as if—

- (a) for sub-paragraph (3) there were substituted—

“**(3)** For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a relevant authorised person if—

- (a) in the case of a relevant authorised person who is an individual, the person has been made bankrupt or has made a composition or arrangement with the person’s creditors in England or Wales;
- (b) in the case of a relevant authorised person which is a body, in England or Wales—
 - (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986 (statutory declaration of solvency)^(c);
 - (ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act (administration)^(d);

(a) “Reserved legal activity” is defined in section 12(1) of the Act.

(b) Paragraph 1(3)(d) of Schedule 14 was amended by S.I. 2017/540 and paragraph 11(9) of Schedule 14 was amended by section 91 of, and Schedule 12, Part 3, paragraph 189 to, the Postal Services Act 2011 (c. 5).

(c) 1986 c. 45.

(d) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c. 40).

- (iii) an administrative receiver within the meaning of section 251 of that Act (interpretation) is appointed;
 - (iv) a winding up becomes a creditors' voluntary winding up under section 96 of that Act (conversion to creditors' voluntary winding up)(a);
 - (v) an order for the winding up of the body is made, or
 - (vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force;
- (c) in the case of a relevant authorised person which is a body, established outside the jurisdiction of England and Wales, the body is—
- (i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v), or
 - (ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).”, and
- (b) for sub-paragraphs (5) and (6) there were substituted—
- “(5) Where this Schedule applies in relation to a relevant authorised person by virtue of sub-paragraph (1)(a) it continues to apply—
- (a) in the case of a relevant authorised person who is an individual—
 - (i) after the individual's death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a relevant authorised person);
 - (ii) after the individual's authorisation has been revoked or the individual's authorisation has otherwise ceased to have effect;
 - (b) in the case of a relevant authorised person which is a body, after the body's authorisation has been revoked or the body's authorisation has otherwise ceased to have effect.
- (6) For the purposes of this Schedule “relevant authorised person” includes—
- (a) a person whose authorisation is suspended;
 - (b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);
 - (c) except in this paragraph, a person whose authorisation has been revoked or whose authorisation has otherwise ceased to have effect.”.

(4) Paragraph 18 of Schedule 14 to the Act has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—

“(za) if the relevant authorised person is an individual who is or was a partner in a partnership, any of the individual's partners or former partners,”.

Power to gather information

5.—(1) The General Council of the Bar may make rules requiring a relevant authorised person to produce documents and provide information for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code issued, by the General Council of the Bar in its capacity as an approved regulator (other than in its role as a licensing authority) are being complied with.

(2) Rules made under paragraph (1) may include provision that—

- (a) the General Council of the Bar may, by notice, require a relevant authorised person to produce documents, or documents of a description, specified in the notice;

(a) Section 96 was substituted by section 126 of, and Schedule 9, paragraphs 1 and 20 to, the Small Business, Enterprise and Employment Act 2015 (c. 26).

- (b) the General Council of the Bar may, by notice, require a relevant authorised person to provide information, or information of a description, specified in the notice;
 - (c) the General Council of the Bar may, by notice, require a relevant authorised person to attend at a time and place specified in the notice to provide an explanation of any document produced or information provided by virtue of the rules;
 - (d) the General Council of the Bar, or a person appointed by it, may take copies of or extracts from a document produced by virtue of the rules;
 - (e) the General Council of the Bar may pay to a relevant authorised person such reasonable costs as may be incurred by that person in complying with a requirement imposed by virtue of the rules.
- (3) A notice given to a relevant authorised person by virtue of rules made under paragraph (1)—
- (a) may specify the manner and form in which any documents are to be produced or information is to be provided;
 - (b) must specify the period within which the documents are to be produced or information is to be provided;
 - (c) may require documents to be produced or information to be provided to the General Council of the Bar or to a person specified by it.
- (4) If a relevant authorised person refuses or otherwise fails to comply with a requirement imposed by virtue of rules made under paragraph (1) to produce documents, provide information, or comply with a notice under paragraph (2)(c), the General Council of the Bar may apply to the High Court for an order requiring the person to comply with that requirement.

Disciplinary arrangements: sanctions

6.—(1) The General Council of the Bar may make disciplinary arrangements, including disciplinary rules, in relation to—

- (a) a relevant authorised person;
- (b) in the case of a relevant authorised person which is a body, a manager of the body, and
- (c) an employee of a relevant authorised person.

(2) The disciplinary arrangements made under paragraph (1) may, amongst other things, make provision for—

- (a) the revocation or suspension of a relevant authorised person's authorisation;
- (b) the imposition of conditions on a relevant authorised person's authorisation;
- (c) ordering the disbarment by the relevant Inn of Court of a relevant authorised person who is a barrister;
- (d) the imposition of a fine not exceeding £250 million in relation to a relevant authorised person which is a body and £50 million in relation to an individual;
- (e) the giving of a notice that an individual must complete such continuing development activities as may be specified;
- (f) the giving of a warning, a reprimand or advice in relation to future conduct.

Disciplinary arrangements: disqualification

7.—(1) The disciplinary arrangements made under article 6(1) may include provisions enabling the General Council of the Bar to disqualify those individuals set out in paragraph (2) from one or more of the activities in paragraph (3) if the disqualification condition is satisfied.

(2) The persons are—

- (a) a relevant authorised person who is an individual;
- (b) in the case of a relevant authorised person which is a body, a manager of the body, and
- (c) an employee of a relevant authorised person.

- (3) The activities are—
- (a) acting as HOLP or HOFA of a relevant authorised person which is a body;
 - (b) being a manager of, or being employed or remunerated by, a relevant authorised person which is a body;
 - (c) being employed or remunerated by a manager or employee of a relevant authorised person which is a body, in connection with that body’s business of carrying on a legal activity^(a);
 - (d) being employed or remunerated by a relevant authorised person who is an individual, in so far as the employment or remuneration relates to that individual’s practice of a legal activity;
 - (e) being employed or remunerated by an employee of a relevant authorised person who is an individual, in connection with that relevant authorised person’s business of carrying on a legal activity;
 - (f) undertaking work in the name of, or under the direction or supervision of, a relevant authorised person, in so far as the work relates to that relevant authorised person’s practice of a legal activity, and
 - (g) being employed or remunerated by a body (corporate or unincorporate) in which one or more relevant authorised person holds a material interest, in so far as the employment or remuneration relates to that relevant authorised person’s practice of a legal activity.
- (4) The disqualification condition is satisfied in relation to an individual if—
- (a) that individual has (intentionally or through neglect)—
 - (i) breached obligations placed upon that individual by the General Council of the Bar, or
 - (ii) caused or substantially contributed to a breach of obligations imposed by the General Council of the Bar by a relevant authorised person, or a manager or employee of a relevant authorised person, and
 - (b) the General Council of the Bar is of the view that it is undesirable for that individual to continue to carry out one or more of the activities set out in paragraph (3).
- (5) The General Council of the Bar must keep a list of individuals who are disqualified by virtue of disciplinary arrangements made by virtue of this article and the activities from which they are disqualified.
- (6) In this article—
- (a) “HOFA” means an individual who is appointed Head of Finance and Administration for a relevant authorised person which is a body in accordance with rules made by the General Council of the Bar;
 - (b) “HOLP” means an individual who is appointed Head of Legal Practice for a relevant authorised person which is a body in accordance with rules made by the General Council of the Bar;
 - (c) “material interest” has the same meaning given in paragraph 3(1) of Schedule 13 to the Act.

Practice rules: engaging persons disqualified under disciplinary arrangements

- 8.—**(1) The General Council of the Bar may make rules requiring a relevant authorised person to—
- (a) consider the list referred to in article 7(5) before engaging an individual to carry out any of the activities referred to in article 7(3), and

(a) “Legal activity” is defined in section 12(3) of the Act.

- (b) seek its permission before engaging an individual to carry out any activity from which that individual is disqualified by virtue of disciplinary arrangements made by virtue of article 7.

(2) The General Council of the Bar may make rules as to the effect that any permission given under rules made under paragraph (1)(b) is to have upon the disqualification of the individual the relevant authorised person is seeking to engage.

Compensation arrangements

9.—(1) The General Council of the Bar may make compensation arrangements^(a).

(2) For the purpose of giving effect to paragraph (1) the General Council of the Bar may make rules which authorise or require it to make particular arrangements and such rules may include—

- (a) establishing and maintaining one or more funds;
- (b) requiring a relevant authorised person or a relevant authorised person of a description specified by the rules to contribute to any fund established and maintained by virtue of sub-paragraph (a) by making periodical payments as specified by the rules to the General Council of the Bar;
- (c) provision as to the investment of any money that forms part of any fund established and maintained by sub-paragraph (a) and otherwise as to the management, administration, insurance or protection of such fund;
- (d) provision as to the taking out and maintaining of insurance with authorised insurers by the General Council of the Bar;
- (e) requiring a relevant authorised person or a relevant authorised person of a description specified in the rules to contribute to the premium payable on any insurance policy maintained by virtue of sub-paragraph (d) by making periodical payments as specified by the rules;
- (f) provision as to the management and administration of any insurance policy taken out and maintained by virtue of sub-paragraph (d);
- (g) requiring a relevant authorised person or a relevant authorised person of a description specified in the rules to take out and maintain insurance with authorised insurers;
- (h) prescribing the conditions which an insurance policy taken out and maintained by virtue of sub-paragraph (g) must satisfy;
- (i) the circumstances in which a compensation claim may and may not be made;
- (j) the form and manner in which a compensation claim is to be made;
- (k) the procedure for determining a compensation claim;
- (l) the extent to which discretion may be exercised by the General Council of the Bar in determining whether payment in respect of a compensation claim should be made, and
- (m) the minimum and maximum amounts payable in respect of a compensation claim or a compensation claim of a description specified in the rules.

(3) In this article “compensation claim” means a claim for a grant or other payment under compensation arrangements made by the General Council of the Bar.

[DRAFT -NOT FOR SIGNATURE]

Date

Name
Minister of State
Ministry of Justice

(a) “Compensation arrangements” is defined in section 21(2) of the Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the functions of the General Council of the Bar in respect of its regulatory arrangements as an approved regulator under the Legal Services Act 2007 (c. 29) (“2007 Act”).

The regulation of legal services in England and Wales is governed by the 2007 Act. Under that Act only a person who is authorised or who is exempt from the requirement to be authorised may carry on a reserved legal activity (as defined in section 12 of the 2007 Act). Authorisation can be given only by an approved regulator or, in relation to a licensable body, by a licensing authority.

Article 3 enables the General Council of the Bar to make regulations or rules providing for appeals to the First-tier Tribunal against decisions made by the General Council of the Bar in its role as an approved regulator, including in its capacity as a licensing authority.

Article 4 applies Schedule 14 (licensing authority’s power of intervention) to the 2007 Act to the General Council of the Bar in its capacity as an approved regulator only and to those listed in article 4(1)(b) to (d) as it applies to a licensing authority and licensed bodies (or managers or employees of such bodies) subject to the modifications in article 4(2) to (4).

Article 5 enables the General Council of the Bar to make rules enabling it to serve a notice requiring a relevant authorised person to produce documents and to provide information for the purpose of ascertaining whether or not the provisions of any rules, regulations or code made or issued by the General Council of the Bar are being complied with. If a relevant authorised person refuses or fails to comply with a requirement set out in the rules the General Council of the Bar may apply to the High Court for an order requiring the person to comply with the requirement.

Article 6 enables the General Council of the Bar to make disciplinary arrangements, including disciplinary rules, in relation to a relevant authorised person or a manager or employee of a relevant authorised person.

Article 7 enables the General Council of the Bar to include in any disciplinary arrangements the power to disqualify those listed in article 7(2) from the activities referred to in article 7(3) if the disqualification condition referred to in article 7(4) is satisfied. It also requires the General Council of the Bar to maintain a list of individuals disqualified under its disciplinary arrangements and the activities from which such individuals are disqualified.

Article 8 enables the General Council of the Bar to make practice rules requiring a relevant authorised person to consider the list of disqualified persons referred to in article 7 before engaging an individual to carry out any of the activities referred to in article 7(3) and to seek the permission of the General Council of the Bar before engaging an individual to perform any activity from which that individual is disqualified. The General Council of the Bar may also make rules as to the effect of any permission given upon the disqualification of the individual the relevant authorised person is seeking to engage.

Article 9 enables the General Council of the Bar to make compensation arrangements. To give effect to such arrangements the General Council of the Bar may make rules which may include, amongst other things, the power to establish and maintain a compensation fund, to require relevant authorised persons to contribute to that fund, to take out and maintain insurance or to require relevant authorised persons to contribute to the premium payable for that insurance or to require relevant authorised persons to take out and maintain insurance with an authorised insurer.

A Regulatory Triage Assessment has been prepared for this instrument and can be found at www.legislation.gov.uk or obtained from the Head of Legal Services Policy, International and Legal Services Division, Judicial, Rights and International Directorate, Ministry of Justice, 102 Petty France, London, SW1H 9AJ.