

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

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Legal Services Board
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28 October 2009

Dear Mr Grant

Response to Consultation – Oral and written representations and evidence and the alteration of reserved legal activities

1. The BSB is broadly supportive of the approach taken by the LSB to the making of oral and written representations and the giving of oral and written evidence when changes to the scope of reserved legal activities are contemplated.
2. The BSB has made comments regarding the hearings in previous consultation responses. A similar approach is advocated in relation to hearings for alterations of reserved legal activities. The previous comments are repeated here for ease of reference.
3. In its response to the *Designating new approved regulators and approving rule changes* consultation the BSB submitted (in paragraph 10) that:

The BSB believes that flexibility in the approval process is crucial. The LSB (or the Approved Regulator) should not be fettered by overly prescriptive or restrictive rules. The BSB therefore fully agrees that oral representations should be permissible as required. There may be occasions when in person explanations of applications will speed up the approval process by providing an opportunity for the LSB to question the (prospective) Approved Regulator or to explore and seek clarification on a technical aspect of the application.

4. In relation to the Compliance and Enforcement – Statement of Policy consultation, the BSB submitted (in paragraph 32) that:

In circumstances where there are no further non-statutory appeals the BSB submits that a party should be entitled to have an oral hearing where this is requested. The same should equally apply in the case of a fine, because of the serious impact, despite the existence of a statutory appeal. The BSB thinks that there is

considerable value in dealing with things face to face. Oral hearings can have a useful role in dispelling misapprehensions on either side as to the nature of the issues. Removing this as an option may be both counter-productive and prove to be a false economy in the longer term if, for example, mistaken decisions are arrived at that have to be corrected by way of an appeal. It is not as if the numbers of such sanctions are likely to be so great as to make oral hearings an impractical and overly burdensome measure. Sanctions not only impact on the Approved Regulator but also affect the interests of those regulated and the credibility of the regime as a whole. In these respects the position is not comparable to that of, say, individual lawyers whose regulator is considering a reprimand, where it is well established that there is no requirement for oral hearings, and this justifies adopting a different approach and treating oral hearings as the norm unless the parties agree this to be unnecessary in the given case.

5. A flexible approach to dealing with the alteration of reserved legal activities is supported. The effect of a change in reserved legal activities could be quite profound. The BSB sees considerable value in dealing with matters face to face in order to ensure that all issues are fully explored before taking such a decision. Given the likely significance of the change, the presumption should be in favour of oral hearings rather than oral hearings being the exception. This should not prove to be overly burdensome as these changes are unlikely to be frequent.
6. The BSB also notes that the impact assessment identifies that the policy will have no direct or indirect effect on “race, disability or gender equalities”. It is not clear to us whether an equality impact assessment has been completed in relation to this policy. In our view this is an important and necessary step given the obvious impact the policy could have on equality areas such as disability. If this is the full extent of the LSB’s equality impact assessment then it is submitted that additional work is required to assess both the positive and possible negative effects on equality that these rules may have.

As always, we are happy to discuss any aspect of this response if that would be helpful.

Yours sincerely

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