



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Bar Council (“BC”) is an Approved Regulator whose regulatory functions are carried out through its regulatory arm the Bar Standards Board (“BSB”). The BSB has made an application under the Legal Services Act 2007 (“the Act”) to change its regulatory arrangements to alter the regime for granting and renewing barristers’ permission to practise. The change will bring together the annual renewal of practising certificates and the authorisation of barristers to undertake reserved legal activities.

The Legal Services Board (LSB) has approved the BSB’s amendments to its Code of Conduct and Practising Certificate Rules. This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve or reject alterations to the regulatory arrangements of the Approved Regulators.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. The chronology for handling of this application can be found towards the end of this Decision Notice.

Decision

6. The BSB application for changes to its regulatory arrangements in relation to its authorisation to practise procedures will
 - a. Make changes to both its Rules and its Code of Conduct
 - b. Allow for 5 types of practising certificate;
 - c. bring together the annual renewal of practising certificates and the authorisation of barristers to undertake reserved legal activities by requiring the provision of information
 - d. harmonise the treatment of different types of barrister; and
 - e. address transitional arrangements
7. Overall we agree that although the application does not make fundamental alteration to the BSB's regulatory arrangements it will facilitate and promote the Regulatory Objectives of the Legal Services Act 2007
8. We are satisfied that, having considered the application in the context of Schedule 4 sub Paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application.

Commentary

9. The Practising Certificate Rules will replace the Practising Certificate Regulations currently found at Annex D of the BSB Code of Conduct. The changes to rules also require changes to the Code of Conduct.
10. The changes that BSB are seeking to make to their Rules and Code of Conduct are largely the same as existing regulations. They will facilitate BSB linking internal arrangements for compliance and do not significantly change the requirements on barristers. In particular it will strengthen the process for annual renewal of practising certificates since barristers will be required to demonstrate that they in compliance with the practising requirements by providing information which verifies their current contact details, status and entitlement to exercise reserved legal activities; confirm that they have completed the requisite amount of CPD; declare that they have obtained and paid for adequate indemnity insurance and sign a declaration of truth.

11. Having properly completed the annual information requirements, a barrister will be issued with a practising certificate of which there are five types; full; provisional; limited; registered European lawyer's and temporary practising certificates. The practising certificate will specify the reserved legal activities for which the barrister is authorised. This information will be available to the public via a register which will be available on line and elsewhere.
12. One other group of changes is to incorporate a cut off date (31 March 2012) for barristers called before July 2000 who are currently registered under paragraph 206 of the Code of Conduct. These are barristers who are able to hold themselves out as barristers even though pupillage has not been completed. The changes will close down this registration route. However barristers currently registered in this manner will continue to be able to function as previously, providing that they provide an annual notification to the BSB. A similar cut off date is proposed for barristers under old transitional rules 1102 and 1104.
13. We raised with the BSB the risk that work to develop the IT and change the practices of the BSB's Records Office and Qualifications Committee, which is described in the application as "considerable," would not be delivered on time. We have been assured by the BSB that the project is running to plan and that they have in place sufficient resources to manage and deliver the work required from this rule change.
14. During the assessment of the application we explored with the BSB the steps they would take to ensure that those who do not renew their practising certificate do not continue to practice. In particular we were concerned about the risk of consumers suffering detriment as a consequence of being represented by barristers who no longer had a practising certificate. The BSB have described to us the steps that they will take and how they will target their efforts at the areas of greatest risk (where barristers continue to exercise reserved legal activities). This will include contacting barristers' chambers and employers and are considering other steps they might take. Importantly they confirmed that professional indemnity insurance for barristers would continue to provide cover where a barrister did not have a practising certificate.

Chronology

- The LSB confirmed receipt of an application from the BSB on 21 July 2011. Further information was received on 11 August 2011.
- The 28 day initial decision period for considering the application ends on 18 August 2011
- This Decision Notice is effective from 18 August 2011 and will be published on our website on 19 August 2011.

FRAN GILLON

Director of Regulatory Practice (in the absence of the Chief Executive exercising powers according to the Rule 4.10 of the LSB Scheme of Delegations)²

THE LEGAL SERVICES BOARD

Thursday, 18 August 2011

2

[http://www.legalservicesboard.org.uk/about us/our board/board code of practice/pdf/lbs scheme of delegations.pdf](http://www.legalservicesboard.org.uk/about_us/our_board/board_code_of_practice/pdf/lbs_scheme_of_delegations.pdf)

PRACTISING CERTIFICATE RULES

The Practising Certificate Year

1. In these rules, “practising certificate year” refers to the period from 1 April in any calendar year to 31 March in the next calendar year.

Eligibility for Practising Certificates

2. You are eligible for a practising certificate if:
 - 2.1 you are a barrister or a registered European lawyer and you are not currently suspended from practice and have not been disbarred;
 - 2.2 you meet the requirements of rule 3.1, 3.2, 3.3 or 3.4 below; and
 - 2.3 if you are a barrister and 5 or more years have elapsed since:
 - (a) you last held a practising certificate; or
 - (b) you satisfactorily completed (or were exempted from the requirement to complete) either the non-practising period of 6 months of pupillage or 12 months of pupillage

you have complied with such training requirements as may be imposed by the Bar Standards Board.

3. You are eligible for:
 - 3.1 a full practising certificate if either:
 - (a) you have satisfactorily completed 12 months pupillage; or
 - (b) you have been exempted from the requirement to complete 12 months of pupillage; or
 - (c) on 30 July 2000, you were entitled to exercise full rights of audience by reason of being a barrister; or

- (d) you were called to the Bar before 1 January 2002 and you complied with subparagraphs 1102(a) and (b) of the 8th Edition of this Code before 31 March 2012;
- 3.2 a provisional practising certificate if you have satisfactorily completed (or have been exempted from the requirement to complete) the non-practising period of 6 months of pupillage and at the time when you apply for a practising certificate you are registered as a pupil;
- 3.3 a limited practising certificate if:
- (a) you have not completed (or been exempted from the requirement to complete) 12 months of pupillage; but
- (b) you were called to the Bar before 1 January 2002; or
- 3.4 a registered European lawyer's practising certificate if you are a registered European lawyer.

Applications for Practising Certificates

4. You may apply for a practising certificate by:
- 4.1 completing the application form supplied by the Bar Council (acting by the Bar Standards Board) and submitting it to the Bar Council (acting by the Bar Standards Board); and
- 4.2 submitting such information in support of the application as may be prescribed by the Bar Council (acting by the Bar Standards Board); and
- 4.3 paying (or undertaking to pay in a manner determined by the Bar Council) the appropriate practising certificate fee in the amount determined in accordance with rule [9] below (subject to any reduction pursuant to rule [8] below).

before the practising certificate is issued.

5. An application will only have been made once the Bar Council (acting by the Bar Standards Board) has received the application form in full, together with all the information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.

6. On receipt of the application, the Bar Council (acting by the Bar Standards Board) may require, from you or a third party, such additional information, documents or references as it considers appropriate to the consideration of your application.
7. You are personally responsible for the contents of your application and any information submitted to the Bar Council (acting by the Bar Standards Board) by you or on your behalf and you must not submit (or cause or permit to be submitted on your behalf) information to the Bar Council (acting by the Bar Standards Board) which you do not believe is full and accurate information.
8. When applying for the renewal of a practising certificate, you may, by completing the form supplied for that purpose by the Bar Council, apply to the Bar Council for a reduction in the practising certificate fee payable by you if your gross fee income or salary is less than such amount as the Bar Council may decide from time to time.

Practising Certificate Fees

9. The practising certificate fee shall be the amount or amounts prescribed in the Schedule of Practising Certificate Fees issued by the Bar Council from time to time, and any reference in these Rules to the “appropriate practising certificate fee” or the “practising certificate fee payable by you” shall refer to the amount payable by you pursuant to that Schedule, having regard, inter alia, to:
 - 9.1 the different annual practising certificate fees which may be prescribed by the Bar Council for different categories of barristers, e.g. for Queen’s Counsel and junior counsel, for barristers of different levels of seniority, and/or for barristers practising in different capacities (i.e. self-employed barristers, employed barristers, managers or employees of recognised bodies or barristers practising with dual capacity);
 - 9.2 any reductions in the annual practising certificate fees which may be permitted by the Bar Council in the case of practising certificates which are valid for only part of a practising certificate year;
 - 9.3 any discounts from the practising certificate fee which may be permitted by the Bar Council in the event of payment by specified methods;
 - 9.4 any reduction in or rebate from the practising certificate fee which may be permitted by the Bar Council on the grounds of low income, change of category or otherwise; and

- 9.5 any surcharge or surcharges to the practising certificate fee which may be prescribed by the Bar Council in the event of application for renewal of a practising certificate being made after the end of the practising certificate year.
10. If you have given an undertaking to pay the practising certificate fee, you must comply with that undertaking in accordance with its terms.

Issue of Practising Certificates

11. The Bar Council (acting by the Bar Standards Board) shall not issue a practising certificate to a barrister or a registered European lawyer:
- 11.1 who is not eligible for a practising certificate, or for a practising certificate of the relevant type;
- 11.2 who has not applied for a practising certificate; or
- 11.3 who has not paid (or undertaken to pay in a manner determined by the Bar Council) the appropriate practising certificate fee; or
- 11.4 who is not insured against claims for professional negligence as provided for in paragraph 204(b) of the Code of Conduct and, if and insofar as applicable, paragraph 6 of the International Practice Rules or paragraph 4(2) of the Registered European Lawyers Rules.
12. The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate, or may revoke a practising certificate, if it is satisfied that the information submitted in support of the application for the practising certificate is incomplete, inaccurate or incapable of verification, or that the barrister or registered European lawyer:
- 12.1 is not insured against claims for professional negligence as provided for in paragraph 204(b) of the Code of Conduct and, if and insofar as applicable, paragraph 6 of the International Practice Rules or paragraph 4(2) of the Registered European Lawyer Rules;
- 12.2 in the case of a barrister who is insured by the Bar Mutual Indemnity Fund, has failed to pay any insurance premium when due;
- 12.3 has failed and continues to fail to pay a practising certificate fee when due;

- 12.4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to him; or
 - 12.5 would be, or is, practising in breach of the provisions of paragraphs 203, 204, 205, 401, 501, 502 or 503 of the Code of Conduct.
13. When the Bar Council (acting by the Bar Standards Board) issues a practising certificate, it shall:
- 13.1 inform the barrister or registered European lawyer of that fact; ; and
 - 13.2 publish that fact, the name and address of the barrister or registered European lawyer and the other details specified in rule 14 below in the register on the Bar Standards Board's website
14. A practising certificate shall state:
- 14.1 the name of the barrister or registered European lawyer;
 - 14.2 the period for which the practising certificate is valid;
 - 14.3 the reserved legal activities which the barrister or registered European lawyer to whom it is issued is thereby authorised to carry on;
 - 14.4 the capacity (or capacities) in which the barrister or registered European lawyer practises; and
 - 14.5 whether the barrister or registered European lawyer is registered with the Bar Council as a Public Access practitioner.
15. A practising certificate may be valid for a practising certificate year or part thereof and for one month after the end of the practising certificate year.
16. A full practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.
17. A provisional practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.
18. A limited practising certificate shall not authorise a barrister to exercise a right of audience, save that it shall authorise a barrister to exercise any right of audience which he had by reason of being a barrister and was entitled to exercise on 30 July 2000.

19. A practising certificate issued to an employed barrister or to a barrister who is a manager or an employee of a recognised body (or to a registered European lawyer who is employed or who is a manager or an employee of a recognised body) shall authorise the barrister (or the registered European lawyer) to conduct litigation in relation to every court and all proceedings if the barrister:
 - 19.1 has spent a period of at least twelve weeks working under the supervision of a qualified person (as defined in rule 3 of the Employed Barristers (Conduct of Litigation Rules)); or
 - 19.2 has been exempted from this requirement by the Bar Standards Board on the grounds of his relevant experience.

20. Every practising certificate issued to a barrister shall authorise the barrister to carry on:
 - 20.1 reserved instrument activities;
 - 20.2 probate activities; and
 - 20.3 the administration of oaths.

21. A registered European lawyer's practising certificate shall authorise a registered European lawyer to carry on the same reserved activities as a full practising certificate issued to a barrister, save that:
 - 21.1 A registered European lawyer is only authorised to exercise a right of audience or a right to conduct litigation if he acts in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right.
 - 21.2 Unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia, a registered European lawyer is not authorised to prepare for remuneration any instrument creating or transferring an interest in land.

Amendment and Revocation of Practising Certificates

22. You must inform the Bar Council (acting by the Bar Standards Board) as soon as reasonably practicable, and in any event within 28 days if any of the information submitted in support of your practising certificate application form:

- 22.1 was incomplete or inaccurate when the application form was submitted; or
- 22.2 changes before the expiry of your practising certificate.
23. If you change the capacity in which you practise before the expiry of your practising certificate (e.g. if you change from being an employed barrister or a manager or employee of a recognised body to a self-employed barrister, or vice versa, or if you commence or cease practice in a dual capacity), you must within 14 days of demand by the Bar Council pay to the Bar Council the amount (if any) by which the practising certificate fee which would apply to you in your current status exceeds the practising certificate which you have already paid (or undertaken to pay) to the Bar Council.
24. The Bar Council (acting by the Bar Standards Board) may amend a practising certificate if it is satisfied that any of the information contained in the relevant application form was inaccurate or incomplete or has changed, but may not amend a practising certificate without first:
- 24.1 giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be amended; and
- 24.2 giving the barrister or registered European lawyer a reasonable opportunity to make representations.
25. The Bar Council (acting by the Bar Standards Board) shall endorse a practising certificate to reflect any qualification restriction or condition imposed on the barrister by the Bar Council (acting by the Bar Standards Board) or by a Disciplinary Tribunal, Informal Panel, Interim Suspension Panel or Fitness to Practise Panel.
26. The Bar Council (acting by the Bar Standards Board):
- 26.1 shall revoke a practising certificate:
- (a) if the barrister or registered European lawyer is disbarred or suspended from practice as a barrister or registered European lawyer;
- (b) if the barrister has notified the Bar Council or the Bar Standards Board that he no longer wishes to have a practising certificate; and
- 26.2 may revoke a practising certificate:
- (a) in the circumstances set out in rule 12 above; or

- (b) if the barrister or registered European lawyer has given an undertaking to pay the practising certificate fee and fails to comply with that undertaking in accordance with its terms;

but in either case only after:

- (i) giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be revoked; and
- (ii) giving the barrister or registered European lawyer a reasonable opportunity to make representations.

Applications for Review

27. If you contend that the Bar Council (acting by the Bar Standards Board) has:

27.1 wrongly failed or refused to issue or amend a practising certificate; or

27.2 wrongly amended or revoked a practising certificate, pursuant to these Rules

then you may lodge an application for review with the Qualifications Committee of the Bar Standards Board using the form supplied for that purpose by the Bar Standards Board. For the avoidance of doubt, this paragraph does not apply to any amendment or revocation of a practising certificate made by order of Medical or Review Panel, a Disciplinary Tribunal or the Visitors to the Inns of Court.

28. The Bar Council (acting by the Bar Standards Board) may issue a temporary practising certificate to a barrister who has lodged an application for review.

29. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to issue a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall issue such practising certificate as ought to have been issued.

30. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to amend a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall make such amendment to the practising certificate as ought to have been made.

31. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly amended a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall cancel the amendment.
32. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly revoked a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall re-issue the practising certificate.

ANNEX 2

CODE OF CONDUCT AMENDMENTS

PART II - Practising Requirements

General

201. For the purposes of this Code a barrister practises as a barrister if:

- (a) he supplies legal services and in connection with the supply of such services:
 - (i) he holds himself out or allows himself to be held out as a barrister; or
 - (ii) he exercises a right which he has by reason of being a barrister; or
- (b) he acts as a manager of a Recognised Body and as such is required by the rules of that body's Approved Regulator to hold a practising certificate issued by the Bar Council;
- (c) and any reference to the supply of legal services includes an offer to supply such services.

202. Subject to the provisions of this Code a barrister may practise as a barrister provided that:

- (a) he has complied with any applicable training requirements imposed by the Bar Training Regulations which were in force at the date of his Call to the Bar;
- (b) he has complied with any applicable requirements of the Continuing Professional Development Regulations (reproduced in Annex C);
- (c) he has a practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules (reproduced in Annex D);
- (d) he has provided in writing to the Bar Council details of the current address(es) with telephone number(s) of the chambers or office from which he supplies legal services and:-
 - (i) if he is an employed barrister, the name, address, telephone number and nature of the business of his employer;
 - (ii) if he is a manager or employee or owner of a Recognised Body the nature of his role and the name, address, email address, telephone number and name of the Recognised Body and of its Approved Regulator.¹

202 A. A barrister must not carry on any reserved legal activity unless he is authorised to do so by a practising certificate issued pursuant to the Practising Certificate Rules (reproduced in Annex D).

Rights of audience

- 203.1 A barrister may exercise any right of audience which he has by reason of being a barrister provided that:
- (a) he is entitled to practise as a barrister in accordance with paragraph 202; and
 - (b) if he is of less than three years' standing his principal place of practice (or, if he is practising in a dual capacity, each of his principal places of practice) is either
 - (i) a chambers or annexe of chambers which is also the principal place of practice of a qualified person who is readily available to provide guidance to the barrister; or
 - (ii) an office of an organisation of which an employee, partner, manager or director is a qualified person who is readily available to provide guidance to the barrister.
- 203.2 For the purpose of paragraphs 203.1(b) and 204(c)(i) a barrister shall be treated as being of a particular number of years' standing if he:
- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a member of another authorised body;
 - (b) has made such practice his primary occupation; and
 - (c) has been entitled to exercise a right of audience before every Court in relation to all proceedings for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years.
- 203.3 A person shall be a qualified person for the purpose of paragraph 203.1(b) if he:
- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a member of another authorised body for a period (which need not have been as a member of the same authorised body) of at least six years in the previous eight years;
 - (b) for the previous two years
 - (i) has made such practice his primary occupation, and
 - (ii) has been entitled to exercise a right of audience before every Court in relation to all proceedings;
 - (c) is not acting as a qualified person in relation to more than two other people; and
 - (d) has not been designated by the Bar Council or Bar Standards Board as unsuitable to be a qualified person.

203.4 This paragraph 203 is subject to the transitional provisions at paragraphs 1102 to 1105.

Supply of legal services to the public

204. ²A practising barrister may supply legal services to the public provided that:

- (a) he is practising in a way permitted by rule 205
- (b) he complies with the requirements of paragraph 203.1;
- (c) he is covered by insurance against claims for professional negligence arising out of the supply of his services in such amount and upon such terms as are currently required by the Bar Council or alternatively (in the case of:
 - (i) an employed barrister; or
 - (ii) a barrister practising as a manager or employee of a Recognised Body)

his employer or the body, as the case may be, is covered by such insurance in such amount and upon such terms as are required by the Approved Regulator of the employer or body (or if none, in such amount and on such terms as are currently required by the Bar Council); and

- (d) In the case of legal services supplied pursuant to paragraph 401(a)(iii):
 - (i) he is more than three years' standing
 - (ii) he has complied with such training requirements as may be imposed by the Bar Council or Bar Standards Board; and
 - (iii) he has notified the Bar Council that he holds himself out as willing to accept instructions from lay clients.

205. A practising barrister may supply legal services to the public as:-

- (a) a self-employed barrister;
- (b) a manager or employee of a Recognised Body, subject to the rules of the Approved Regulator of that body;
- (c) an employed barrister to the extent permitted by paragraph 502.

206.1 A barrister called before 31 July 2000 who is deemed to be practising only by virtue of paragraph 201(a)(i) in England and Wales and who does not and is not required either by the Bar Standards Board or by any other Approved Regulator to hold a practising certificate under this Code shall not be subject to the rules in this Code applying only to practising barristers provided that:

- (a) If he supplies any legal services to any person:-

- (i) He provides in writing to the Bar Council details of the current address(es) with telephone number(s) of the office or premises from which he does so, and:-
 - (1) if he is employed, the name, address, telephone number and nature of the business of his employer;
 - (2) if he is an employee or owner or manager of a Recognised Body, the name, address, email address, telephone number and the name of the Recognised Body and its Approved Regulator
- (ii) Unless he is employed only to offer services to his employer or to the Recognised Body of which he is an employee he (or, if he is supplying legal services to clients of his employer or a Recognised Body of which he is an employee) that employer or body is currently insured by insurers authorised to conduct such business against any and all claims in respect of civil liability for professional negligence arising out of or in connection with the supply of legal services for at least the first £250,000 of each and every claim, with an excess not exceeding £500.
- (b) As to the information required by sub-paragraph (a)(i) above: (1) he first provided that information on or before 31 March 2012; and (2) he provided a current version of that information in March of each succeeding year.
- (c) Before supplying legal services to any person, employer or Recognised Body, and when first dealing with any third party in the course of supplying legal services, he informs them fully and comprehensibly in writing (a) of his status and the fact that he does not hold a practising certificate under this Code, (b) of the relevant limitations under this Code on the legal services he may undertake, (c) that he is not fully regulated by the Bar Standards Board, and (d) of the absence of available compensatory powers for any inadequate professional service he may render.

206.2 A barrister whenever called who is deemed to be practising only by virtue of paragraph 201(a)(i) outside England and Wales, who does not and is not required either by the Bar Standards Board or by any Approved Regulator to hold a valid practising certificate under this Code and who is not subject to paragraph 4(e) of the International Practice Rules shall not be subject to the rules in this Code applying only to practising barristers provided that he complies with the provisions of paragraph 206.1.

Acting in a dual capacity

207. A barrister may practice or be involved with the supply of legal services in more than one capacity only in the following circumstances:
- (a) in accordance with rule 806; or
 - (b) after:-

- (i) having notified the Bar Standards Board in writing of an intention so to do and after supplying the Bar Standards Board with such information as the Bar Standards Board requires in relation thereto; and
- (ii) having agreed with each employer or Recognised Body with which the barrister is involved a protocol that enables the barrister to avoid or resolve any conflict of interests or duties arising from practice and/or involvement in those capacities.

208. A barrister who practices or is involved with the supply of legal services in more than one capacity pursuant to paragraph 207(b) above must:-

- (a) provide a copy of each protocol required by paragraph 207(b)(ii) to the Bar Standards Board on request; and
- (b) maintain (and make available to the Bar Standards Board on request) a record of referrals by the barrister to the employer or Recognised Body and of instructions received by the barrister from the employer or Recognised Body.
- (c) refuse to accept instructions in any case where so acting gives rise to a potential conflict of interest.
- (d) not work in more than one capacity in relation to the same case or issue for the same client at the same time.
- (e) disclose (or procure the disclosure by the Recognised Body of) the interest to the client in writing before the barrister refers a client to the employer or Recognised Body or before accepting instructions from the employer or Recognised Body.

Ownership of Interests in Recognised Bodies

209. If a barrister directly or indirectly has an ownership interest in a Recognised Body and is in practice other than as a manager or employee of that Recognised Body, the barrister must:-

- (a) notify the Bar Standards Board in writing of the ownership interest, at or as soon as reasonably practicable after, the time at which that interest is acquired or the barrister starts practising other than as a manager or employee of that Recognised Body, whichever is the later;
- (b) disclose (or procure the disclosure by the Recognised Body of) the interest to:-
 - (i) any client of the Recognised Body who instructs the barrister. If the barrister has the ownership interest at the time that instructions are received by him, disclosure to the client must be made prior to the barrister accepting the instructions. If the ownership interest is acquired after instructions have already been accepted, the ownership interest must be communicated at the time of, or as soon as

reasonably practicable after, the barrister's acquisition of that interest and the client must be advised of their right to instruct another barrister.

- (ii) any person that the barrister refers to the Recognised Body. If the barrister has the ownership interest at the time that the referral is made, disclosure to the client must be made prior to the barrister making the referral. If the ownership interest is acquired after the referral has already been made, the ownership interest must be communicated at the time of, or as soon as reasonably practicable after, the barrister's acquisition of that interest.
- (c) maintain (and make available to the Bar Standards Board on request) a record of referrals by the barrister to the Recognised Body and of instructions received by the barrister from the Recognised Body.

¹ paragraph 202(e) removed 11th September 2006

² paragraph 203(1)(b) amended 25th January 2011

³ amended 6th August 2010

[PART IV - Self-Employed Barristers](#) (relevant extract)

Heads of chambers

404.1 The obligations in this paragraph apply to the following members of chambers:

- (a) any barrister who is head of chambers;
- (b) any barrister who is responsible in whole or in part for the administration of chambers;
- (c) if there is no one within (a) and (b) above, all the members of the chambers.

404.2 Any person referred to in paragraph 404.1 must take all reasonable steps to ensure that:

- (a) his chambers are administered competently and efficiently and are properly staffed;
- (b) the affairs of his chambers are conducted in a manner which is fair and equitable for all barristers and pupils;
- (c) proper arrangements are made in his chambers for dealing with pupils and pupillage and, in particular,
 - (i) that all pupillage vacancies are advertised in the manner prescribed by the Bar Council;

- (ii) that such arrangements are made for the funding of pupils by chambers as the Bar Standards Board may by resolution from time to time require;
 - (iii) that in making arrangements for pupillage, regard is had to the pupillage guidelines issued from time to time by the Bar Council and Bar Standards Board and to the Equality and Diversity Code for the Bar;
- (d) Proper arrangements are made in chambers for dealing with equal opportunity issues and in particular,
 - (i) that Chambers appoint at least one Equal Opportunities Officer
 - (ii) that Chambers shall have a written Equal Opportunities Policy made available to all members of Chambers and Staff and to the Bar Council and Bar Standards Board when required, which shall set out Diversity Code for the Bar and shall have regard to the recommendations in the Code.
 - (iii) that no barrister shall take pupils until the steps set out in (i) and (ii) above have been complied with.
- (e) all barristers practising from his chambers whether they are members of the chambers or not are entered as members with BMIF and have effected insurance in accordance with paragraph 402 (other than any pupil who is covered under his pupil-master's insurance);
- (f) all barristers practising from his chambers comply with paragraph 403.5 (a)(iii);
- (g) all employees and staff in his chambers (i) are competent to carry out their duties, (ii) carry out their duties in a correct and efficient manner, (iii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties and (iv) all complaints against them are dealt with in the manner set out in paragraph 403.5(d) above;
- (h) all registered European lawyers and all foreign lawyers in his chambers comply with this Code to the extent required by the Registered European Lawyers Rules (reproduced in Annex B) and the Foreign Lawyers (Chambers) Rules (reproduced in Annex H);
- (i) fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients and in the event of non-payment within a reasonable time, pursued efficiently.
- (j) every barrister practising from his chambers has a practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules (reproduced in Annex D).

404.3 In carrying out the obligations referred to in paragraph 404.2 any person referred to in paragraph 404.1 must have regard to any relevant guidance issued by the Bar Council and Bar Standards Board including guidance as to:

- (a) the administration of chambers;
- (b) pupillage and further training; and
- (c) good equal opportunities practice in chambers in the form of the Equality and Diversity Code for the Bar

Part IX - Compliance (relevant extract)

901.1 Any failure by a barrister to comply with the provisions of paragraph 202 (a) to (d), 203(1)(a), 204(b), 402, 403.5(b)(c) and (d), 404, 405, 406, 701, 709, 801(a), 804 or 905(a)(i), (d) or (e) of this Code (to the extent that the rule or rules in question apply to him, as to which see paragraphs 105A and 105C above¹) or with the training requirements imposed by the Bar Training Regulations² in force at the date of his Call to the Bar or with the Continuing Professional Development Regulations or the Practising Certificate Rules (other than paragraph 8 thereof)³ shall render him liable to a written warning from the Bar Standards Board and/or the imposition of a fixed financial penalty of £300 (or such other sum as may be prescribed by the Bar Standards Board from time to time) or any financial penalty prescribed by the said Regulations for non-compliance therewith. Liability under this paragraph is strict.

Part XI - Transitional Provisions

1101. In respect of anything done or omitted to be done or otherwise arising before 31 October 2004:

- (a) this Code shall not apply;
- (b) the Code of Conduct in force at the relevant time shall notwithstanding paragraph 101 apply as if this Code had not been adopted by the Bar Council.

1102. Any barrister called to the Bar before 1 January 2002 but who has not completed or been exempted from 12 months' pupillage in accordance with the Bar Training Regulations¹ in force at the relevant time may practise as a barrister notwithstanding paragraph 202(a) of this Code provided that such a barrister shall not be entitled to exercise a right of audience under paragraph 203.1 unless he:

- (a) has notified the Bar Council in writing by 31 March 2012 of his wish to do so; and
- (b) either (i) has complied with any conditions as to further training which the Bar Council or Bar Standards Board may require or (ii) has been informed by the

Bar Council or Bar Standards Board that he is not required to comply with any such conditions.

1103. Any barrister who on 31 July 2000 was entitled to exercise any right of audience which he had by reason of being a barrister shall notwithstanding paragraph 203 of this Code remain entitled to exercise that right of audience.
1104. Any barrister who during any period before 31 July 2000 was entitled to exercise a right of audience as an employed barrister may for the purpose of paragraph 203.2(c) of this Code count that period as if he had been entitled during that period to exercise a right of audience before every Court in relation to all proceedings provided that he:
- (a) has notified the Bar Council in writing by 31 March 2012 of his wish to do so; and
 - (b) either (i) has complied with any conditions (including any conditions as to further training) which the Bar Council or Bar Standards Board may require or (ii) has been informed by the Bar Council or Bar Standards Board that he is not required to comply with any such conditions.

¹Bar Training Regulations effective from 1st September 2009