



LEGAL SERVICES  
BOARD

## **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 permit barristers to practice as managers and employees of Alternative Business Structures (ABS) regulated by other Approved Regulators when Part 5 of the Legal Services Act 2007 comes into force. The BSB has not yet applied to become a Licensing Authority so cannot regulate ABS.

The Legal Services Board (LSB) has approved the BSB’s amendments to its Code of Conduct. 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 below<sup>1</sup>). 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

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<sup>1</sup> 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 NOTICE**

6. The BSB application for changes to its regulatory arrangements will allow barristers to become owners and managers in ABS regulated by other Approved Regulators when Part 5 of the Act comes into force. There is no restriction in the existing Code of Conduct on barristers holding an ownership interest in an ABS but the changes will allow barristers to become owner-managers in the same way that they are currently permitted for Legal Disciplinary Practices (LDPs). Barristers will also be able to practice as non-owner managers and employees of an ABS.
7. 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**

8. Barristers are currently permitted to practise as managers or employees of LDPs. They are also permitted to have ownership interests subject to putting in place certain safeguards (specified in rule 209 of the Code of Conduct) which seek to manage any potential conflicts of interest arising from self employed barristers having a financial interest in an LDP. There are no restrictions in the Code of Conduct on barristers having an ownership interest in ABS. The approval of this application will allow barristers to become managers and employees of ABS when Part 5 of the Act is switched on.
9. We note that this application marks a continuation of the current position regarding ownership, i.e. there is no prohibition on ownership of ABS. The BSB is considering whether specific rules or guidance need to be developed to manage any resulting conflicts of interest.
10. In the meantime, the BSB will advise barristers to have regard to the guidance in relation to potential conflicts arising out of ownership interests in LDPs. We encourage the BSB to see how the regulatory arrangements work in practice before they decide whether additional rules or guidance are needed.
11. Before making further alterations to its regulatory arrangements, the BSB would need to be satisfied that these are needed and do not duplicate existing conflict provisions in its Code of Conduct. The BSB would also need to consider any potential conflicts with other

regulators, particularly the licensing authorities that will identify and address potential conflicts of interest as part of the licensing regime.

**Chronology**

- The LSB confirmed receipt of an application from the BSB on 1 August 2011
- The 28 day initial decision period for considering the application ends on 28 August 2011
- This Decision Notice is effective from 24 August 2011 is being published on our website on 25 August 2011.

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**

**24 August 2011**

## **Annex 1 - List of rules in the code of conduct that contain the term recognised body and proposed amendments**

### **Section 1 Arrangement of Sections**

#### **1) Part 1 – Preliminary**

##### 104((b)(i)

104. The general purpose of this Code is to provide the requirements for practice as a barrister and the rules and standards of conduct applicable to barristers which are appropriate in the interests of justice and in particular:

(b) to make appropriate provision for:

- (i) barrister managers, employees and owners of Authorised Bodies; and

##### 105 C.2

105C.2 <sup>2</sup>In so applying, rule 606.1 is to be read as if it referred to a barrister or the Authorised Body being retained rather than receiving instructions.

#### **2) Part 2 - Practising Requirements**

##### 201(b)

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

(b) he acts as a manager of an Authorised 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;

##### 202(d)(i)

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

(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:-

(ii) if he is a manager or employee or owner of an Authorised 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.<sup>1</sup>

204(b)(ii)

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

(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:

(ii) a barrister practising as a manager or employee of an Authorised Body)

205(b)

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

(b) a manager or employee of an Authorised Body, subject to the rules of the Approved Regulator of that body;

206.1 (a)(i)(2) 206.1 (ii) and 206.1(b)

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 an Authorised Body, the name, address, email address, telephone number and the name of the Authorised Body and its Approved Regulator

(ii) Unless he is employed only to offer services to his employer or to the Authorised Body of which he is an employee he (or, if he is supplying legal services to clients of his employer or an Authorised 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) Before supplying legal services to any person, employer or Authorised 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.

207 (ii)

207. A barrister may practise or be involved with the supply of legal services in more than one capacity only in the following circumstances:

(b) after:-

(ii) having agreed with each employer or Authorised 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 (b) and (e)

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

(b) maintain (and make available to the Bar Standards Board on request) a record of referrals by the barrister to the employer or Authorised Body and of instructions received by the barrister from the employer or Authorised Body.

(e) disclose (or procure the disclosure by the Authorised Body of) the interest to the client in writing before the barrister refers a client to the employer or Authorised Body or before accepting instructions from the employer or Authorised Body.

### **3) Part III – Fundamental Principles**

#### 303(a)

303. A barrister:

(a) must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any colleague, professional client or other intermediary or another barrister, the barrister's employer or any Authorised Body of which the barrister may be an owner or manager);<sup>1</sup>

### **4) Part V – Employed Barristers**

#### **Section 1: Barristers employed other than by Recognised Bodies**

#### 503(c)

503. A barrister employed to supply legal services under a contract for services may be treated as an employed barrister for the purpose of this Code provided that the contract is:

(c) not a contract with an Authorised Body.

#### **Section 2: Barristers employed by and/or managers of Authorised Bodies**

#### Rules 506, 507 and 508

506. A barrister who is a manager of or employed by an Authorised Body shall have a right to conduct litigation in relation to every Court and to all proceedings before a Court and may exercise that right provided that the barrister complies with the Employed Barristers (Conduct of Litigation) Rules (reproduced in Annex I) and with the rules of the Approved Regulator of the Authorised Body.

507. A barrister who is employed by an Authorised Body but is not a manager of that body must not receive or handle client money securities or other assets other than by receiving payment of remuneration or where the money or other asset belongs to that body.

508. <sup>1</sup>A barrister employed by an Authorised Body to supply legal services under a contract for services may be treated as an employee of a Authorised Body for the purposes of this Code provided that the contract is in writing.

## 5) Part VIII - Miscellaneous

### Rule 803.2

803.2 A barrister who is a pupil of an employed barrister or of a barrister who is a manager or employee of a Recognised Body, or who pursuant to Regulation 42 of the Bar Training Regulations<sup>1</sup> spends any period of external training with such a barrister or with a solicitor shall be treated for the purpose of the Code as if he were during that period employed by the barrister's employer or by the Recognised Body or by the solicitor's firm as the case may be.

## 6) Part IX - Compliance

905. A barrister must:

b. report promptly to the Bar Standards Board<sup>1</sup> if:

i. he is a manager of an Authorised Body which is the subject of an intervention by the Approved Regulator of that body;<sup>6</sup>

## 7) Part X definitions

***authorised body*** means a body that has been authorised by an approved regulator to practise as a *licensed body* or a *recognised body*.

"Director" means a director of a company, and includes the director of an Authorised Body which is a company, and in relation to a *societas Europaea* includes:<sup>[6]</sup>

- (a) in a two-tier system, a member of the management organ and a member of the supervisory organ; and
- (b) in a one-tier system, a member of the administrative organ;

**licensed body** means a body licensed by a licensing authority, other than the Bar Standards Board, under Part 5 of the *LSA*.

“Manager” means a barrister who is:

- (a) a partner in a partnership;
- (b) a member of an LLP; or
- (c) a director of a company which is an Authorised Body

"professional client" means a solicitor or other professional person by whom a self-employed barrister is instructed that is to say:

- (a) An Authorised Body regulated by the Solicitors Regulation Authority or other approved regulator, authorised litigator, Parliamentary agent, patent agent, European Patent Attorney, trade mark agent, Notary or a European lawyer registered with the Law Society of

England and Wales;

"self-employed barrister" means a practising barrister other than:-

- (a) a barrister who is a manager or employee of a Authorised Body; and
- (b) an employed barrister acting in the course of his employment;

#### Annex N – Interim Suspension Rules

##### **Referral to a Suspension Panel**

1. Upon the Bar Standards Board receiving notification that a barrister (“the Defendant”) has been:
  - (a) convicted of or charged with a Indictable Offence, or
  - (b) convicted by an Approved Regulator for misconduct of any sort, for which conviction he has been sentenced to suspension or termination of his right to practise in an Authorised Body, whether on an interim or final basis and whether or not such sentence is subject to conditions,