



Decision notice

The Bar Standards Board's application for approval of changes to the regulatory arrangements relating to the Cab Rank Rule

The Legal Services Board (LSB) has granted an application from the Bar Standards Board (BSB) for approval of alterations to the Cab Rank Rule.

The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which The Bar Council has delegated its regulatory functions.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is also set out at the end of this decision notice.

Purpose of notice
To grant an application from the BSB approving alterations to its regulatory arrangements, specifically the exemptions to the cab rank rule.
Main changes being made by the Bar Standards Board
To amend rule C30 of the Code of Conduct to remove specific reference to the List of Defaulting Solicitors and replace it with a provisions that allow a barrister to refuse instructions from a professional client who, in the reasonable opinion of the barrister, represents an unacceptable credit risk.
Why the LSB is granting the application in full
Having fully assessed the application against the refusal criteria in the Act, the LSB sees no reason to refuse this application. The LSB welcomes the removal of the List of Defaulting solicitors from the regulatory arrangements of the BSB, but also notes that the new provision will result in a further widening of the circumstances in which the cab rank rule will not apply

Proposed changes

1. The current rule C30 of the Code of Conduct sets out the circumstances in which the BSB's cab rank rule does not apply and includes a provision that a barrister is not required to accept instructions from a professional client whose name appears on the List of Defaulting Solicitors, a list produced and maintained by the Bar Council.
2. The proposed revised rule C30 7b removes reference to the List of Defaulting Solicitors from the regulatory arrangements of the BSB and introduces a more general provision that the cab rank rule does not apply if the professional client, in the reasonable opinion of the barrister, represents "an unacceptable credit risk". Guidance to supplement Rule C30.7.b has been revised to include examples of when a barrister might conclude that a professional client represents an unacceptable credit risk, this will include where a solicitor appears in the Bar Council's List of Defaulting Solicitors.

Key issues considered in the assessment of the application

3. No substantive issues were raised in our assessment.
4. The LSB notes the introduction of a more general provision by the BSB, in the form of revised rule C30 7b. The BSB's approach may widen the circumstances in which barristers can refuse a client. The LSB, however, welcomes the removal of the List of Defaulting Solicitors from the BSB's regulatory arrangements. The LSB's view is that including such a list, produced by the representative arm of the Bar Council, within the regulatory arrangements risks compromising the regulatory independence of the BSB. Section 30 of the Act requires regulators to separate representative functions from regulatory functions. This principle of separation within approved regulators is regarded as key to achieving the regulatory objective of protecting and promoting the public interest. The LSB has made Internal Governance Rules 2009 (IGR)¹ concerning the ways this may be done.

Decision

5. The LSB has considered the BSB application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.
6. The alteration is as described in paragraphs 1 and 2 of this decision notice.

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http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf

Chronology

- The LSB confirmed receipt of an application from the BSB on 29 July 2015.
- The 28 day initial decision period for considering the application ends on 25 August 2015.
- This decision notice is effective from 24 August 2015.
- The decision notice will be published on our website on 25 August 2015.

Richard Moriarty, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
24 August 2015**

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

² Rules for Rule Change Applications – Version 2 (November 2010)