

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Meeting of the Bar Standards Board

**Thursday 23 February 2012, 4.30 pm
VC Room, 2nd Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ**

Agenda

Part 1 – Public

			Page
1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes – 19 January 2012	Annex A Chair	3-9
5.	Matters arising		
6.	a) Action points and progress b) Forward agendas	Annex B Annex C	11-18 19-20
	<u>Items for discussion</u>		
7.	New Code of Conduct and Entity Regulation – approval of consultation (4.40 pm)	BSB 013 (12) Patricia Robertson QC	21-357
8.	BSB Business Plan 2012/13 (5.10 pm)	BSB 014 (12) Vanessa Davies	353-354
9.	BSB Q4 Performance Report (5.25 pm)	BSB 015 (12) Matthew Nicklin	355-370
	<u>Items for noting</u>		
10.	Chair's Report on Visits and Meetings January - February 2012	BSB 016 (12) Ruth Deech	371-373

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|-----|---|--------------|-------------------|----------------|
| 11. | Director's Report
(5.40 pm) | BSB 017 (12) | Vanessa
Davies | 375-380 |
| 12. | Any other business | | | |
| 13. | Date of next meeting
Thursday 22 March 2012 | | | |
| 14. | Private Session | | | |

John Picken
Board Planning Officer
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16 February 2012

BAR STANDARDS BOARD

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting**

Thursday 19 January 2012, Video Conferencing Room
289 – 293 High Holborn, London, WC1V 7HZ

Present	Ruth Deech (Chair) Sir Geoffrey Nice QC (Vice Chair) Rolande Anderson Rob Behrens Sarah Clarke Malcolm Cohen Paula Diggle Simon Lofthouse QC Matthew Nicklin Tim Robinson Patricia Robertson QC Andrew Sanders Sam Stein QC Richard Thompson Anne Wright	
In attendance	Maura McGowan QC (Vice Chair, Bar Council) Michael Todd QC (Chair, Bar Council)	
BSB Executive in attendance	Viki Calais (Business Manager) Kuljeet Chung (Senior Policy Officer) Vanessa Davies (Director) Joanne Dixon (Qualification Regulations Manager) Sara Down (Head of Professional Conduct) Kofi Kramo (Communications Officer) Ewen Macleod (Head of Professional Practice) John Picken (Board Planning Officer) Amanda Thompson (Head of Strategy and Communications) Clare Vicary (Senior Policy Officer)	items 7-17
Bar Council Executive in attendance	Ben Denison (Chief Information Officer) Mark Hatcher (Director Representation & Policy)	items 10-17
Attending by Invitation	Sarah Brown (Special Adviser) Emily Windsor (Special Adviser)	
Observers	Elora Feiner (Weber Shandwick)	
Press	Catherine Baksi (Law Society Gazette)	

Item 1 – Welcome and introductions

1. The Chair welcomed Members and guests, in particular Maura McGowan QC who was attending her first meeting, and Sarah Brown in her new role as Special Adviser.

Item 2 – Apologies

2.
 - Oliver Delany
 - Rachel Podolak

Item 3 – Members’ interests and hospitality

3. Ruth Deech: gift (six bottles of wine) from the Criminal Bar Association received in gratitude for delivering the Kalisher lecture Oct 2011.

Item 4 – Approval of Part 1 (public) minutes – 15 December 2011

(Annex A)

4. The Board approved Part 1 of the minutes of the meeting held on Thursday 15 December 2011.

Item 5 – Matters arising

5. Min 23 (15 Dec 2011) – Litigants in Person

The Civil Justice Council recently issued a report entitled “Access to Justice for Litigants in Person (or self-represented litigants) – Nov 2011. This will be circulated electronically to Board Members for information.

JP to note

Item 6 – Action Points & Forward Agendas

6. Action points and progress (Annex C)

The Board noted progress on the action points from previous meetings. The following comments were made:

- a) Min 11 (15 Sep 2011) – Standard Letters

The Chair referred to the client care template letter, previously circulated to the profession. The Board previously agreed to review this document after a year. Sam Stein QC confirmed this will be reported to the Board as part of the Chambers Monitoring exercise.

- b) Min 20b (19 May 2011) – Annual Report

A combined Annual Report will now be produced (Jan 2012- Mar 2012).

7. Forward agendas (Annex D)

The Board noted the forward agenda list. QASA will now also be discussed at the March 2012 meeting.

JP to note

Item 7a – LSB draft strategic and business plan: BSB response

BSB 001a (12)

8. The Board considered a paper concerning the LSB’s draft strategic plan for 2012-15 and business plan for 2012-13. The closing date for the consultation is Friday 9 March 2012. Vanessa Davies highlighted the following:

- the strategic priorities for the LSB for 2012-15 are:
 - ❖ assuring and improving the performance of approved regulators.
 - ❖ helping consumers to choose and use legal services with confidence.
 - ❖ helping the changing legal sector to flourish by delivering appropriate regulation to address risks.
- LSB’s business plan objectives for 2012-13 include thematic reviews on:
 - ❖ effectiveness of regulation of immigration and conveyancing
 - ❖ appeals mechanisms and enforcement processes

- a meeting will take place between representatives of both Boards on Thursday 9 February to discuss the business plans of both organisations.

9. The following comments were made:

- the impact of the thematic reviews on BSB is difficult to assess in terms of time and resources required. We should ask LSB directly for an estimate of the work that it expects us to undertake so that we can plan effectively;
- elements of the plan hint at too much involvement in matters that should more properly concern the front line regulators e.g. developing a quality monitoring toolkit;
- the response should stress the need for proportionality and the need to avoid duplication of work. It is not clear why LSB wishes to become a licensing authority for ABSs when regulators either already are or will soon be providing this service;
- we need to ensure LSB does not off-load research work to regulators as this will simply lead to an increase in unbudgeted costs;
- the document implies that legal education has not changed with the times. This should be challenged as it is not clear why LSB considers this to be the case;
- the document is still ideologically in favour of outcomes focused regulation, though this model might now to be said to be outdated;
- BSB should look to work with other regulators in co-ordinating a response and advise the Bar Council of the BSB's intended approach as appropriate;
- we should re-visit the suggestion of inviting LSB Board Members to specific training events e.g. Keble course. This might assist in improving understanding of the Bar.

10. **AGREED**

- a) to note the LSB's strategic and business plans for 2012-15 / 2012-13 and the impacts on the BSB;
- b) that Members forward any further views to the Director by email before 31 January 2012;
- c) that BSB representatives attending the meeting with LSB on 9 February 2012 take into account the above comments;
- d) the timetable for finalising the BSB's response to the strategic / business plan set out in the paper should be followed;
- e) to invite David Edmonds and Chris Kelly to attend as day delegates at this year's South Eastern Circuit's Keble course.

**Board
Members
RD / GN / RT
/ MN / PD**

SC

Item 7b – Regulatory Standards Framework

BSB 001b (12)

11. The Board considered a paper on the LSB's decision document "Developing Regulatory Standards" published in December 2011. Vanessa Davies highlighted the following:

- the decision document requires BSB to draft a self-assessment and action plan by the end of April 2012. Final assessments are required by July and will be published by the end of September;
- active Board-level involvement will be needed for BSB to meet the initial programme of activity. It may be helpful to establish a Board-led Steering Group for this purpose. The GRA and PRP Committees should also be involved as their Terms of Reference allow;

- the LSB strongly urges the inclusion of a third party to review the required self-assessment and action plan;
- the LSB is not likely to approve any BSB submissions unless these are compliant with the new LSB regulatory standards framework.

12. The following comments were made

- the BSB has no budget provision for the appointment of a third party consultant. We now have a lay majority and Board Members are fully qualified to give the matter objective consideration;
- a Steering Group should be established and be supplemented by a Validation Panel comprising new Board Members. There may be a role for the Independent Observer in the review stage;
- we need to clarify with LSB the purpose behind the self-assessment process and seek an assurance that this will be manageable i.e. there is not the scope for LSB to successively request further and further revisions. It may also be useful to liaise with other regulators on this matter.
- BSB did respond to the original consultation but its views are not reflected in the decision document. It would be useful to check the responses of other regulators to the original consultation and the extent to which LSB has incorporated their comments.

13. **AGREED**

- a) to note the LSB decision document and consultation response summary;
- b) to agree to establish a Steering Group and Validation Panel as described above;
- c) to liaise with other regulators as appropriate in addressing this issue.
- d) investigate the extent to which the final version of the decision document has incorporated the views of the front-line regulators.

VLD

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Item 8 – Standing Orders

BSB 002 (12)

14. The Board considered the final draft of the proposed new BSB Standing Orders. The following comments were made:

- the policy proposal on waivers is to ensure a division of responsibility between the decision to make waivers available (Committee level) and the person or body applying the waiver;
- the term “Recruitment Panel” should be used throughout the Standing Orders (rather than “Nominations Committee”);
- Recruitment Panels constituted for appointments to the PCD Committee should include a Board Member who sits on that Committee and this requirement should be reflected in the Standing Orders. Paragraph 2 of Annex 3 should be amended with the addition of the following sentence: “Unless this proves impractical, all Recruitment Panels constituted for members of the PCC shall contain a [board] member who also sits on the PCC”;
- the wording of the Terms of Reference of the PCD Committee should be revised to make clear that its Chair can either be a lay or barrister member. In addition, the proviso requiring a barrister majority at all times should be removed forthwith;
- when the Terms of Reference for Committees are updated, the amendments should, where appropriate, refer to the language of the Legal Services Act i.e. risk management, targeted action and proportionality;

- the SOs should ensure that Bar Council Members are prevented from membership of the BSB Board or any of its Committees. This need not apply, however, to ad hoc Working Parties, where joint working might be mutually beneficial.

15. **AGREED**

- | | |
|--|--|
| <ul style="list-style-type: none"> a) to establish a Board Working Group to assist the Senior Management Team in considering the future structure of committees in the light of the revised Code of Conduct and regulatory standards framework; b) to approve the general principle that the same committee should not both set the policy regarding the granting of waivers and also be the decision maker on waiver applications; c) that, as an interim measure, any issues relating to which committee should be given a power to grant a waiver be considered on a case by case basis; d) that no members of the Bar Council be appointed as members of either the BSB or any of its committees or sub-committees so as to preserve regulatory independence; but to permit Bar Council members to sit on BSB ad hoc working groups; e) that the Standing Orders be brought into effect on 31 January 2012 subject to any necessary amendments described above, including adjustments to reflect the agreed position regarding waivers. | <p style="text-align: right;">AT</p> <p style="text-align: right;">Committee
Chairs to
note</p> <p style="text-align: right;">Committee
Chairs to
note</p> <p style="text-align: right;">Board
Members to
note</p> |
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Item 9 – New Code of Conduct : International Practising Rules

BSB 003 (12)

16. The Board discussed a paper concerning progress on the new Code of Conduct and policy issues relating to the International Practising Rules (IPRs). Sarah Brown highlighted the following:
- two separate consultation documents will be produced (one focusing on the new Code; the other on enforcement). They will be issued at the same time;
 - a feedback report has been prepared following BSB's earlier consultation on IPRs (Annex A);
 - key recommendations arising from the feedback report relate to the application of the cab rank rule, Public Access Rules and guidance notes / definitions;
 - as regards Public Access, the rules will apply to foreign as well as domestic work. Waivers from training requirements will be available for those barristers who already have experience of working with foreign lay clients without a professional client;
 - the new IPRs will be included in the draft Code consultation.
17. Members expressed contrasting views on the use of a waiver. The salient points were:
- Chambers cannot always anticipate when instructions from foreign clients will arrive. It should therefore be possible to apply for a waiver on receipt of an instruction providing that there is an undertaking to attend a training course thereafter;
 - a Public Access training course may not be readily available at such a time and to enable this provision would impact on current domestic arrangements on grounds of consistency;
 - the new IPRs only take effect when the new Code is introduced. During the interim period barristers who think they might receive instructions from overseas should prepare for it by attending the relevant course in advance. BSB can publicise the need to do this once the consultation period on the new Code ends.

18. **AGREED**

- a) to approve for publication the BSB's response report to the consultation paper on the new IPRs (Annex A of the report);
- b) to ensure that changes to the IPRs are fed into the communications strategy.

RP

Item 10 – ProcurCos – waiver in respect of rules 403.1 and 403.1 of the Code of Conduct

BSB 004 (12)

19. Patricia Robertson QC explained that a temporary measure was required to avoid conflicts between the current operation of ProcureCos and elements of the existing Code of Conduct. The Standards Committee has proposed a waiver process that would allow BSB to apply the same safeguards as appear in the new Code. Once the new Code comes into effect, the matter will be resolved.

20. **AGREED**

- a) to approve the proposed waiver arrangements;
- b) to approve the criteria and waiver form as set out in Annex 2 and 3 of the report subject to the amendment of a typographical error in paragraph 3.8 of Annex 2 or the report;
- c) to delegate authority to the Qualifications Committee to consider waiver requests from rules 403.1 and 403.2.

Item 11 – Code amendments – References to Authorised Body in the Code of Conduct

BSB 005 (12)

21. Patricia Robertson QC explained that the definition of “authorised body” in the existing Code and Bar Training Regulations needed clarification. This was due to a drafting error when these were documents were amended on 24 August 2011.

22. **AGREED**

to approve the code amendments and the amendments to the Bar Training Regulations set out in Annexes 1 and 2 of the report.

Item 12 – Report from the Performance & Best Value Committee

BSB 006 (12)

23. Richard Thompson presented the last formal report from the Performance & Best Value Committee (PBVC) and thanked members for their contribution. PBVC has since been disestablished and its functions transferred to the Governance, Risk & Audit (GRA) Committee and the Planning, Resources & Performance (PRP) Committee as appropriate. The Service Level Agreement reviews will be reported to the PRP in future.

24. **AGREED**

to note the report.

Item 13 – Chair’s Report on Visits and Meetings (Dec 2011 – Jan 2012)

BSB 007 (12)

25. Ruth Deech highlighted the following:
 - productive meetings on the Bar Nursery project with particular note of the new Chairman of the Bar’s intervention.
 - a number of meetings and telephone conferences on QASA.
 - discussions with COIC on advocacy training and tribunals.
 - she was unable to attend the all staff meeting on 12 January 2012. Sir Geoffrey Nice QC had substituted for her at this event.

AGREED

26. to note the report.

Item 14 - Director's Report

BSB 008 (12)

27. Vanessa Davies highlighted the pay and grading review which is taking place. A formal presentation will be made to staff in due course. Ben Denison referred to ongoing IT issues. Consultants from IRIS will be working directly with the IT team w/c 23 January 2012 to resolve outstanding problems; the Director confirmed that this risk appeared in the BSB's Corporate Risk Register. No detrimental impact on the Authorisation to Practise project is anticipated.

28. A lay Member asked about action taken following last year's staff survey. Tim Robinson confirmed that leadership training had already commenced; the pay review was in its final stages and further work was being undertaken as regards internal communications.

AGREED

29. to note the report.

Item 15 - Any other business

30. None.

Item 16 – Date of next meetings

31. Thursday 23 February 2012, 4.30 pm, BSB Offices

Item 17 – Private Session

32. The following motion, proposed by the Chair and duly seconded, was agreed.

That the BSB will go into private session to consider the next items of business:

- (1) *Approval of Part 2 (private) minutes – 15 December 2011*
- (2) *Matters Arising*
- (3) *Action points and progress – Part 2*
- (4) *Corporate Risk – QASA update*
- (5) *Entity Regulation – final approval of consultation (Part 1)*
- (6) *Ministry of Justice – Triennial Review of Legal Services Board and Office for Legal Complaints*
- (7) *Immigration Advice and Services*

This is because of the confidential nature of the discussion.

The following people (if present) are invited to remain:-

- *BSB Board members;*
- *Special Adviser;*
- *COIC representative;*
- *BSB staff;*
- *Bar Council staff;*
- *Bar Council representatives.*

The meeting closed at 5.57 pm.

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
10b (19 Jan 12)	email any further comments about the LSB Business & Strategic Plan to the Director	Board reps / Board Members	before 31 Jan 2012	09/02/12	Completed meeting held with LSB 9 Feb 2012
10c (19 Jan 12)	attend joint meeting with LSB on 9 Feb 2012 and represent the views of the Board as expressed at the Jan meeting about the LSB Business / Strategic Plan	Ruth Deech, Sir Geoffrey Nice QC, Paula Diggle, Richard Thompson, Matthew Nicklin	9 Feb 2012	09/02/12	Completed meeting held with LSB 9 Feb 2012
10e (19 Jan 12)	invite David Edmonds and Chris Kenny to attend as day delegates at this year's South Eastern Circuit's Keble course	Sarah Clarke	immediate	31/01/12	Completed David Edmonds and Chris Kenny on invitation list for Keble
13b (19 Jan 12)	establish a Steering Group and Validation Panel to manage the production and review of the self-assessment & action plan required for completion by the LSB	Vanessa Davies	before 23 Feb 2012	13/02/12	PRP briefed as Steering Group GRA being briefed as Validation Group on 14 Feb 2012
13c (19 Jan 12)	liaise with other regulators about their approach to the self-assessment / action exercise	Vanessa Davies	before 23 Feb 2012	13/02/12	in hand
13d (19 Jan 12)	investigate the extent to which the final version of the decision document has incorporated the views of the front-line regulators	Vanessa Davies	before 23 Feb 2012	13/02/12	in hand – very little was taken on board by LSB
15a (19 Jan 12)	establish a Board Working Group to assist the Senior Management Team in considering the future structure of committees in the light of the revised Code of Conduct and regulatory standards framework	Amanda Thompson	before 23 Feb 2012	14/02/12	Yet to be actioned

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
18b (19 Jan 12)	ensure that changes to the International Practising Rules (IPRs) are fed into the communications strategy	Rachel Podolak	as from date of publication of the new Code	14/02/12	awaiting publication of Code
23b (17 Nov 11)	contact Elisabeth Davies, Chair of the Legal Services Consumer Panel about activities of the Bar and events which she may be interested to attend	Sarah Clarke Matthew Nicklin	by early 2012	13/02/12	invitation extended via LSB to attend events in February. No response received as at 13/02/12.
11 (15 Sep 11)	undertake proposed actions listed in paragraph 5.1 of the report regarding the PCD User Satisfaction Survey i.e. <ul style="list-style-type: none"> review of all standard letters sent to complainants advice to complainants about the time lines involved. 	Sara Down	by 31 Dec 11	13/02/12	Main decision letters reviewed and agreed with Independent Observer. Further work to be carried out on interim/admin letters. To be completed by February 2012. and on track
11 (17 Oct 11)	trial the matrix approach for managing cross-cutting areas of work for six months and report back on outcomes after this period.	SMT (Vanessa Davies to report back on outcome)	Nov 11 – Apr 12	07/12/11 07/11/11	Cross- communication of agendas has started Teams being briefed on how to work with this approach
13b (15 Sep 11)	draft appropriate guidance notes to Justices' Clerks on the extent of legal advice they can provide in their role	Ewen Macleod	by Feb 2012	14/02/12 07/12/11 02/11/11	Completed On agenda for Standards, 7 December To be discussed at Standards Committee on 9 November
19b (15 Sep 11)	re-draft the standing orders in line with comments made by Board	Amanda Thompson	by 10 Nov 11	13/02/12	Completed and published on web

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
13e (13 Jul 11)	ensure BSB/Bar Council gathers data on its staff across the complete employment cycle as set out in the Equality and Human Rights Commission's draft statutory Code of Practice on Employment	E&D Team / Georgina Holton	immediate and ongoing	10/01/12	We are gathering data for the full employment life cycle. The Networkx recruitment system has now been updated to include the extended list of characteristics
13f (13 Jul 11)	recommend to the Bar Council that its equality monitoring of staff covers all protected characteristics, except sexual orientation and trans status, for the time being. This should also include the non-protected characteristics of caring responsibilities and working patterns.	E&D Team / Georgina Holton	for BC meeting 1 October	10/01/12 22/09/11	Completed save for current data audit which is to be undertaken in January 2012- to be commenced Equality monitoring form at offer stage and training evaluation form updated. Exit form updated. New processes live. Requirement to undertake monitoring of all current staff to ensure all records are up to date. Exercise to be undertaken as part of an employee data check by December 2011- agreed with EDAs to commence in New Year. With reference to the EDAs the updated documents have included protected and non protected characteristics and <i>have</i> included sexual orientation and trans status.
13i (13 Jul 11)	update BSB monitoring templates to include all the new protected characteristics for all other service users,	E&D Team / Georgina Holton	immediate and ongoing	7/12/11	Some HR policies still need updating. E&D to comment on templates for service users/ members of the public

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
	including members of the public				
36b (16 Jun 11)	contact relevant SBAs and arrange meetings with them	Board Members	before 13 July 2011	05/07/11	Ongoing
20a (16 Jun 11)	arrange for amended Memorandum of Understanding to be signed for BSB User Group and ensure disclosure of interests by members of the Group	Rachel Podolak	before 13 July 2011	07/12/11	The planned meeting of the User Group in September did not take place. When a revised date is agreed, this will be progressed.
15b (19 May 11)	ask for feedback from SBAs on the operation of the new first tier complaints handling scheme	Oliver Hanmer	end January 2012	03/06/11	Added to forward agenda list
20b (19 May 11)	re-draft the Annual Report in the light of comments received from Board Members and PBVC	Amanda Thompson	before end June 2011	14/02/12	Slippage – now expected late February 2012 Major report now to be combined with current year's annual report.
21a (28 Apr 11)	develop and consult upon an entity regulation framework	Vanessa Davies / Professional Practice Team	Apr 11 – Jan 2012	07/12/11 09/11/11 10/10/11	Papers before December and January Boards Update paper at 17 November Board ERPB meeting regularly; paper on progress before Board 17 October
12 (17 Mar 11)	subject to LSB approval, make the BPTC Aptitude entry test available to candidates applying in October / November 2012 to start the course in September 2013	Valerie Shrimplin	on approval from LSB	07/12/11 25/11/11	Paper before December Board The second pilot of the Test has been completed, and the consultant has finished the analysis. Further consultation is scheduled for Jan-Feb 2012. We have advertised the likely start date if approved and commenced work on the LSB

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
					submission.
23b (18 Nov 10)	MoU to be signed by BSB Chair and published on the web site	Ruth Deech	ditto	09/01/12	to be published once a composite document with all signatories included has been received from the SRA
28 (18 Nov 10)	Develop a three year high level forward plan	Matthew Nicklin / Amanda Thompson / Viki Calais	2012	07/12/11 08/06/11	Outline schedule for planning agreed internally with SMT. Full three year plan unlikely to start until 2013-16.
24c (21 Oct 10)	defer for later consideration whether or not to pay an attendance fee and / or expenses for barristers	Vanessa Davies	Sep 11	13/02/12 09/11/11 10/10/11 05/07/11 12/05/11	Completed – agreed to pay expenses for barristers attending meetings BSB budget including this provision approved in principle, awaiting BC sign-off First FAC budget meeting held; awaiting final October meeting Budget proposals include provision for payment of barrister expenses Discussed at Joint Chairman's meeting on 14 December 2010. Delegated to CEO but responsibility now moved to Director BSB. Proposals will be put forward as part of next budgeting round.

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
24d (21 Oct 10)	ensure Consumer and Communication Engagement Strategies contain measures to ensure that voices are heard of those not previously represented in BSB debates, particularly those not brought in via formal recruitment procedures	Amanda Thompson / Rachel Podolak	ongoing	08/06/11	Ongoing
6c (15 Dec 11)	Business Continuity should feature in the service level agreements with Central Services and should also be included in the corporate risk register	Vanessa Davies / Viki Calais	Feb 2012	13/02/12	Disaster recovery is stated in the Office Services SLA. BCP will also be included in the IT SLA. These issues are shown in the corporate risk register – these are mitigating actions for the IT requirements risk.
57b (22 Apr 10)	present plans for disaster recovery and business continuity to the Board	Vanessa Davies / Oliver Delany	July 11	07/12/11	Full plan now in draft. Proposals for Cloud-based email server going ahead.
				01/09/11	We have returns on impact; main issue is remote access to network server and capacity for server substitution. Being discussed with CIO. Staff telephone tree is being refreshed
				05/07/11	Action now transferred to Directors. Information being gathered from BSB

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
					senior staff to ascertain impact of various closure scenarios
17a (18 Mar 10)	review how the committee responsibility for the audit function operates within the next year and liaise with the Bar Council regarding possible changes	Amanda Thompson		13/02/12 07/12/11 28/07/11	Completed – FAC to split wef April 12. GRA / PRP Committees now in operation Proposed ToRs for FC and AC before December Board for comment Correspondence from LSB regarding IGR compliance makes it clear that BSB needs its own ability to carry out audit activities. PBVC committee agreed on 27/7 that a split of the committee was required as a result. Will be built into budget plans for 2012/13
62d (18 Feb 10)	discuss with Bar Council scope for a common policy on openness and confidentiality	Directors	Sep 11	09/11/11 10/10/11 12/05/11	Revisions to budget may remove provision for this area; pending decision from BC Capacity to deal with FOI regime has been included in budget proposals response to MoJ consultation on FOI extension sent on 6 April 2011. Publications scheme and resourcing requirements considered at April PBVC –

BSB – List of Part 1 Actions

23 February 2012

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
					will be wrapped into coming budget planning cycle.
63 a-d (18 Feb 10)	write a further report on openness and confidentiality setting out a draft publication scheme; information code for handling information requests; the basis for splitting Part 1 and Part 2 agenda items and identification of costs / training requirements as necessary	Amanda Thompson			- as above

Forward Agendas**Thursday 22 March 2012**

- E&D Rules on diversity data collection
- CPD consultation outcome and recommendations
- QASA – state of play on QASA
- Professional Conduct Performance report – 2011 (full year)
- Standards Committee report
- Aptitude test consultation report
- BSB Business Plan & Budget 2012/13 (final version)
- BSB Communications Plan 2012/13
- The BSB in five years time

Thursday 19 April 2012

- E&D Committee report
- QASA – rules and regulations
- Bar Professional Training Course Provider contracts (cf min 7 – 15/12/11)
- Planning, Resources and Performance Committee Report
- Liaison with Specialist Bar Associations

Wednesday 2 May 2012

- Board Away Day

Thursday 17 May 2012

- Undertake an impact assessment of the Code change (pupillage fees)
- HR Strategy Update report
- BSB Performance Report (includes: Business Plan Update, KPIs, Management Accounts, Corporate Risk Register) Year End
- Qualifications Committee report
- BPTC provider contract
- QA Committee report

Thursday 21 June 2012

- Professional Conduct Performance report – Q1
- Education Committee report
- Standards Committee report
- Governance, Risk and Audit Committee first annual report (includes internal audit plan and Independent Observer report)
- Governance Handbook
- New Code and Entity regulation update and summary of responses to consultation
- Complaints restructure review

Thursday 19 July 2012

- BSB Annual Report for 2011-12 (text)
- New Code and Entity regulation – approval of submissions to the LSB

Thursday 6 September 2012

- BSB draft Strategic & Business Plan and Budget bid 2013/16

Thursday 13 September 2012

- BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)
- Professional Conduct Performance report – Q2
- Standards Committee report

Thursday 4 October 2012

- Board Away Day

Thursday 18 October 2012

- E&D Committee report
- Planning, Resources and Performance Committee Report

Thursday 15 November 2012

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)
- Qualifications Committee report
- QA Committee report

Thursday 13 December 2012

- Professional Conduct Performance report – Q3
- Education Committee report
- Standards Committee report

Thursday 17 January 2013

Thursday 14 February 2013

- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)

Thursday 21 March 2013

- Complaints Committee report – 2012 (full year)
- Standards Committee report
- Qualifications Committee report

New Code of Conduct and Entity Regulation

Status

1. For decision.

Executive Summary

2. The Entity Regulation Programme Board has been considering the implications for the new Code of Conduct and our entity regulation programme, following detailed responses to the last Code consultation and subsequent discussions with the Legal Services Board (LSB) in light of its regulatory standards framework. The Board approved a response to the last Code consultation at its December meeting, whilst making a number of policy decisions in relation to the new approach in the Code and our entity regulation regime. This paper seeks the Board's approval to consult again on the new BSB Handbook, which includes the new Code of Conduct provisions and our proposals for entity regulation.
3. The consultation is in two parts. Part one outlines the BSB's approach to the new Handbook and introduces a number of changes applicable to all barristers since the last Code of Conduct consultation, including further information about our proposals in relation to the conduct of litigation. It then details the BSB's approach to entity regulation and risk assessment.
4. Part two deals with a number of issues relating to supervision and enforcement. Whilst the focus is on entities, there are a number of proposals that will extend to the whole regulated community.
5. Attached to each consultation are a set of draft rules. The Board is asked to approve these for the purposes of consultation. However, as these are very detailed and remain a 'work in progress' the Board is asked to authorise the Entity Regulation Programme Board to make further amendments prior to the launch of the consultation at the end of the month. In the meantime, the Programme Board welcomes Board members' comments on the drafting.

Recommendations

6. The Board is asked to:
 - a. Approve the consultation document at Annex A, which addresses the new Code of Conduct and the BSB's approach to entity regulation and risk assessment; and
 - b. Approve the consultation document at Annex B, which addresses the reforms relating to our supervision and enforcement processes;
 - c. Agree that the following draft rules be attached to the consultation documents:
 - i. Part 1 of the new Handbook (Introduction and contents) at Annex C;
 - ii. Part 2 of the new Handbook (Code of Conduct) at Annex D;
 - iii. Part 3 of the new Handbook (Scope of Practice, authorisation and licensing rules) at Annex E;
 - iv. The draft Complaints rules at Annex F;
 - v. The draft Disciplinary Tribunal Rules at Annex G;
 - vi. The draft Interim Suspension Rules at Annex H; and
 - vii. Part 6 of the new Handbook (Definitions) at Annex I;
 - d. Delegate authority to the Entity Regulation Programme Board to make any necessary further amendments prior to the launch of the consultation. In particular, Annexes F, G and H have not yet been subject to detailed review by the Programme

Board or BSB staff and are therefore subject to change, but are attached for information in the meantime.

Background

7. At the end of 2010 and the beginning of 2011, the BSB consulted separately on its initial proposals in relation to entity regulation and its new Code of Conduct. Since then the Entity Regulation Programme Board has been considering further changes to the Code and further developing our entity regulation regime in the light of the LSB's regulatory standards framework, which will form the basis of the LSB's consideration of the new Code and our application to become a licensing authority under the Legal Services Act (LSA) 2007. This has led to substantial changes to the Code of Conduct (now renamed the BSB Handbook) which means that it is necessary to consult again alongside our updated entity regulation plans.
8. The consultation is in two parts. Part one outlines the BSB's approach to the new Handbook and introduces a number of changes applicable to all barristers since the last Code of Conduct consultation, including further information about our proposals in relation to the conduct of litigation. It then details the BSB's approach to entity regulation and risk assessment.
9. Part two deals with a number of issues relating to supervision and enforcement. Whilst the focus is on entities, there are a number of proposals that will extend to the whole regulated community.

Part 1: The new Handbook / Code of Conduct

10. The Programme Board has made some changes since the last Board discussion. The key issues relevant to the consultation are highlighted below.

Associations

11. In devising the rules and guidance on associations with others and outsourcing the Programme Board has had a clear policy objective in mind. Forming novel business arrangements (including the use of ProcureCos or other outsourcing models) must not enable barristers to circumvent regulatory requirements, nor must it create confusion in the eyes of clients as to which services are regulated by the BSB and/or other regulators and those which are not. We have therefore proposed new outcomes focused provisions in the Handbook. Subject to meeting the requirements set out in the Handbook, barristers and BSB authorised bodies will be able to share premises or practise in association with anyone (including non-lawyers) subject only to notification to the BSB. The key requirements are that:
 - a. Barristers must not mislead clients about the nature of their services or the extent to which they are regulated;
 - b. If they refer a client to someone who is not regulated then they must ensure that the client is aware of that fact;
 - c. They must not associate with anyone whose behavior might reasonably be expected to undermine the professional principles in the Legal Services Act 2007 and/or the BSB's Core Duties; and
 - d. They must continue to comply with other provisions in the Code, including (but not limited to) the duty not to do anything that could reasonably be seen to undermine the public's trust in their independence, integrity and freedom from outside pressure.

Separate businesses

12. The Programme Board has considered whether it is necessary to introduce a 'separate business rule' in order to ensure that clients are protected when accessing services provided by another business owned by BSB regulated persons but not itself regulated by the BSB or another approved regulator. The Solicitors Regulation Authority, for example, in Chapter 12 of its Handbook regulates the separate businesses connected with SRA regulated firms.
13. We believe that the key risks are:
 - a. That clients may be confused or misled about the extent to which an activity is regulated;
 - b. That BSB regulated persons might seek to hive off into separate businesses certain activities that would be regulated by the BSB if performed in the business regulated by the BSB. This could include handling client money.;
 - c. That clients might therefore be offered less protection;
 - d. That integrity, independence or client confidentiality might be compromised.
14. In the light of our proposals in relation to criteria for authorisation, associations with others and outsourcing, discussed above, we believe that the new Handbook includes sufficient safeguards to mitigate these risks.

Management of chambers and entities

15. As proposed in previous consultations, all members of Chambers will have some responsibility for the management of Chambers. What those responsibilities are will depend on the position of individuals in Chambers and whether they have any specific duties, for example in relation to pupillage. The Head of Chambers and members of management committees will normally be expected to be able to ensure that all requirements are met, while junior members of Chambers may only be required to draw attention to concerns and not obstruct the implementation of suitable arrangements.
16. For entities, the entity itself, its managers and all authorised persons working in it will be responsible for ensuring that proper arrangements are in place for the management of the entity and compliance with applicable rules. Again the responsibilities of each individual will depend on their personal role.
17. The proposed rules for the management of Chambers and of entities list the systems and arrangements which they will need to have in place but do not seek to prescribe how those systems and arrangements should work. That will be a matter for decision by those responsible in the Chambers and entity to suit their own particular circumstances. The BSB will need to be satisfied that adequate systems and arrangements are in place. It will produce some good practice guidance but Chambers and entities will be free to develop alternative arrangements provided they manage the relevant risks effectively.
18. In relation to both entities and Chambers, there will be a duty to ensure that all employees are appointed under a contract of employment which requires them to comply with the requirements of the Code insofar as it is applicable to them and do nothing which causes or substantially contributes to a breach of the Code. We will also consult (in the enforcement part of the consultation) on acquiring a power to disqualify employees from working for BSB regulated persons if they have been responsible for serious breaches.

Litigation requirements

19. The Programme Board has expanded on the requirements for a self-certification checklist in relation to authorisation to conduct litigation. It is proposed that barristers should confirm that they have adequate knowledge and experience of litigation procedure. Subject to this, barristers of over three years' standing will not be required to have an initial period of supervision; less experienced barristers will need to work with a qualified person. The checklists will include confirmation of having completed:
- a. Relevant components of the BPTC, BVC, or in the case of individuals who have transferred to the Bar, other vocational courses that contain litigation components;
 - b. Relevant CPD;
 - c. Any relevant experience (including during pupillage, in practice, or prior to qualification);
 - d. Public Access training.
20. Confirmation that they have appropriate systems in place will include:
- a. Diary management;
 - b. Systems to deal with holidays and absences from practice;
 - c. Case management and recording systems;
 - d. Filing systems;
 - e. Appropriate software and IT systems; and
 - f. Financial management systems.

Client money / escrow account

21. The consultation begins to set out the regulatory requirements of any third party escrow service. We have previously referred to this as a 'custodian' service. A custodian service is in fact the safe-keeping and processing of the world's securities trades and servicing the associated portfolios. Our proposal is more accurately referred to as an escrow, which is an arrangement made under contractual provisions between transacting parties, whereby an independent trusted third party receives and disburses money and/or documents for the transacting parties, with the timing of such disbursement by the third party dependent on the fulfillment of contractually-agreed conditions by the transacting parties.
22. Given that any such scheme will have to be regulated by the Financial Services Authority (FSA) under the Payment Services Regulations 2009 and they have a quite different regime for custodians, the attached documentation now refers to an escrow service throughout to avoid confusion.
23. The BSB's role in relation to any such scheme will be to set the criteria with which suppliers must comply and then monitor compliance. It would not be our role to design the scheme (operationally, that will fall to the prospective supplier).
24. It is envisaged that any third party (whether the Bar Council or another provider) wishing to provide an escrow account service authorised by the BSB will be required to meet the following criteria:
- a. The provider will be required properly to account to the BSB for the escrow funds and ensure that usage of funds is explicitly for the purpose intended;
 - b. The provider will be required to keep adequate records of all transactions handled including itemisation of all receipts and disbursements of each transaction. The records shall be maintained for a period of six years from completion of the

- transaction. These records shall be open to inspection by the BSB or its authorised representatives;
- c. Background checks: All officers, directors, managers and employees must have background checks performed by the BSB. These background checks will include, among other things, CRB checks and civil court checks for activities that would indicate previous involvement in fraud, embezzlement, fraudulent conversion, or misappropriation of property or client money;
 - d. The provider will be required to keep a separate escrow fund account or accounts in a high street bank authorised to receive funds, which shall be kept separate and apart and segregated from the provider's own funds, for all funds or moneys of clients which are being held pending the closing of a transaction;
 - e. The provider will need to have insurance in place to protect against negligence and crime. This is likely to include professional indemnity insurance, fidelity insurance and vicarious liability insurance. The costs of insurance will need to be factored into the overall costs of the service, to be covered by those taking part in the scheme, and ultimately passed on to the client. However, insurance may be relatively inexpensive, provided that the scheme has a robust cash handling structure, which is properly audited and risk-managed;
 - f. The BSB will need to be satisfied that the fund holder has properly considered the checks that will need to be made about the funds it intends to hold, before the funds are received. For example the provider should have regard to anti-money laundering requirements and should also consider whether it would be appropriate to conduct Customer Due Diligence measures on all those on whose behalf it is holding the funds;
 - g. The BSB will need to be satisfied that the fund holder has appropriate systems and checks in place to verify instructions to release funds and to deal with instructions relating to the custodian account;
 - h. The provider should not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. The provider shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made;
 - i. The fund should be audited annually by an auditor approved by the BSB, who would also need to have access to the accounts of the barristers and entities using the facility.

Managing client affairs

25. In the context of broadening the scope of practice of barristers potentially to include litigation, the Programme Board has considered whether it should also withdraw the current prohibition on managing clients' affairs. The risks of doing so are that:
 - a. A barrister's independence might be compromised;
 - b. There might be a greater risk of conflicts of interest;
 - c. There is a greater risk that the barrister might undertake work for which he is neither trained nor competent; and
 - d. The scope of practice of the barrister might go beyond what the BSB had the capacity to regulate.
26. For these reasons, the Programme Board is not convinced that the prohibition should be relaxed, however the consultation seeks views on whether this continues to be appropriate and the extent to which any risks are mitigated by other requirements in the Handbook.

Duty to disclose clients' previous convictions

27. Section D1 of the new Code of Conduct outlines a barrister's duty to the Court, and the accompanying guidance deals with situations where there may be a conflict between the barrister's duty to the Court and their duty to the client. In particular, if a client informs the barrister that he has a previous conviction of which the prosecution is not aware, the barrister must not disclose this without the client's consent. However, the court will have been misled if it sentences on the basis of an incomplete record of previous convictions. The barrister should therefore advise the client in these circumstances that if consent is refused he will have to cease to act.
28. This is a change from current BSB guidance on disclosure of previous convictions, which suggests that a barrister may continue to act even if the convictions are not disclosed, subject to not saying anything to the court implying that the client has no other convictions. The Programme Board's view is that in these circumstances the public interest in an appropriate sentence being passed outweighs the interests of the client and the barrister should not personally be a party to a failure to disclose relevant information.
29. This differs from a situation where a client has confessed guilt to his barrister but the barrister can continue to act as long as he says nothing which is misleading. There, irrespective of the confession, the barrister is doing no more than is proper in putting the prosecution to proof of its case. In contrast, once the Court reaches the point of sentencing, if the barrister is silent as to the correct position in respect of previous convictions (all of which have been established against the client after allowing him the presumption of innocence) the Court will be misled as to the basis for sentencing, whether or not the barrister actually says something implying there are no other convictions. Silence in such a situation brings the system of justice into disrepute.

Part 2: Promoting compliance

30. In proposing a new entity regulation framework the Programme Board has sought to develop a supervision and enforcement regime that will both help entities comply with their obligations and take proportionate enforcement action where appropriate. It has also taken this opportunity to review certain arrangements which apply to individual barristers.
31. The Programme Board has been guided by a series of overarching principles:
 - a. Our energy and resources should be targeted at the greatest areas of risk;
 - b. We should have a number of tools at our disposal to ensure that our regulatory response is flexible and proportionate;
 - c. Wherever possible regulatory issues should be resolved through an enhanced use of supervision and monitoring, with only the most serious cases being dealt with by way of disciplinary action; and
 - d. As far as possible the BSB should strive for continuity with the existing supervision and enforcement mechanisms applicable to individual barristers.
32. Because some of the proposed changes affect both entities and individual barristers, it is important that the scope of the proposed changes are clearly understood from the outset. The focus of this consultation is on entity regulation. Supervision of entities will build on chambers monitoring and we will consult later this year on the implications of our risk-based approach for those processes.

33. The BSB's proposals around enforcement will be applicable to the entire regulated community, including individual barristers. This means that proposed changes to areas such as administrative sanctions, the Interim Suspension Rules, determinations by consent, fines and the Disciplinary Tribunal Rules will apply equally to entities and individual barristers

Supervision

34. The BSB is currently reviewing its monitoring strategy in order to maximise compliance with the LSB's regulatory standards framework. The intention will be to set up a central Monitoring Unit which will be responsible for monitoring chambers and entities. There will be a targeted consultation on the development of the risk-based monitoring strategy later this year.
35. In relation to entities, the new risk-based monitoring strategy will see the Monitoring Unit taking a more active role in the identification and resolution of any regulatory issues that may emerge post authorisation. The Monitoring Unit will endeavour to resolve any regulatory issues through non-disciplinary measures by working constructively with the entity in question. The Monitoring Unit would of course refer any matter to PCD for disciplinary investigation if reasonable supervisory measures have failed (or if they become aware of a serious alleged breach of the Handbook that may justify immediate disciplinary action). Particularly during the early days of entity regulation, some non-compliance may be due to the novelty of the regime and be better addressed by supervision towards compliance than by enforcement measures. In this way, the Monitoring Unit will build up knowledge of the areas that are causing particular difficulty for entities, and of where there is a risk of adverse impact on their clients, and can use this knowledge to focus monitoring resources appropriately.
36. In relation to specific complaints about barristers or entities, the PCD would retain responsibility for undertaking an initial assessment of all information received. After investigation, there would be a number of options for disposal (at each stage the outcome would be recorded as intelligence for the Monitoring Unit):
- a. PCD dismiss the complaint;
 - b. If there is sufficient evidence of a breach, PCD investigate with a view to disciplinary disposal via the PCC;
 - c. PCC dismiss;
 - d. PCC to dispose of administratively;
 - e. PCC to refer the matter to a disciplinary tribunal.
37. In determining what action to take the PCD/PCC will take into account all of the factors identified in the Enforcement Policy (see below).

Enforcement policy

38. In the first instance, it is important that the BSB clearly identifies why enforcement action is necessary. The primary reasons for taking enforcement action are to protect the public interest and to protect the interests of consumers (and indirectly the other regulatory objectives). Aligned to this is the need for the BSB to offer a credible deterrence and to encourage compliance with the Handbook.
39. It is suggested that the hallmarks of the BSB's new enforcement policy will be:
- a. Proportionality;

- b. Individual responsibility - Individual responsibility is at the heart of the BSB's regulatory regime.
 - c. Flexibility; and
 - d. Disciplinary charges - Although charges will be brought with specific reference to breaches of core duties and/or rules, the enforcement policy will take into account the outcomes that each section of the Code is trying to achieve.
40. If all supervisory options have been exhausted, or if supervision is not appropriate in the particular circumstances, the BSB will consider taking disciplinary action against the entity. In deciding whether or not to take disciplinary action on a particular case of breach of the Handbook, the Programme Board proposes to include the following criteria in its new enforcement policy:
- a. Whether one or more of the outcomes has been negatively affected;
 - b. The seriousness of the act or omission;
 - c. The number of clients affected and the seriousness of the adverse impact (or potential adverse impact) on those clients (particularly if the clients are vulnerable);
 - d. Evidence of insufficient care being taken over compliance or of recklessness, deliberate breaches, or dishonest behaviour;
 - e. The period of time over which the act or omission took place;
 - f. Whether the breach is accepted by the defendant and what has been done to correct the breach and to provide any appropriate redress;
 - g. The extent to which the act is a one off or part of series of similar matters;
 - h. The impact on clients of the BSB's taking action compared with the impact of not taking action;
 - i. Impact on public confidence in the profession and the administration of justice;
 - j. Whether enforcement action is necessary to deter others;
 - k. The impact of the act or omission taking into account the BSB's regulatory priorities as stated from time to time.

Disciplinary action

41. The proposals in this section apply to individual barristers and entities. Where disciplinary action is deemed necessary, the BSB will have a number of options available to it. Depending on the seriousness of the breach, the disposal options available to the PCC will include:
- a. Impose an administrative warning or fine;
 - b. Resolve via the determination by consent; or
 - c. Referral to a three or five person Disciplinary Tribunal.

Administrative sanctions:

42. Presently there are only limited sections within the 8th Edition of the Code that are capable of being dealt with administratively by the BSB (see rule 901.1). Every other breach falling outside rule 901.1 is construed as professional misconduct (see rule 901.7) and is therefore not capable of being disposed of administratively. Unlike other Approved Regulators, the BSB does not currently have the power to impose internal disciplinary findings (other than through the determination by consent procedure).
43. It is proposed that administrative sanctions should be available, where appropriate, to the entire Handbook. The BSB would have to consider for every breach of the Handbook, whether a proportionate outcome in the public interest would be the imposition of a warning or fine. If so, it could be dealt with administratively, applying the civil standard of proof.

44. An alleged breach of the Handbook would then be elevated to an allegation of professional misconduct if certain aggravating factors are identified by the PCC. Relevant factors that may justify an alleged breach being treated as an allegation of professional misconduct would include:
- a. The seriousness of the allegation and its impact having regard to all of the factors set out in paragraph 47 above;
 - b. Whether the barrister has a poor disciplinary record;
 - c. Whether the appropriate sentence is likely to be a fine above the administrative limits, disbarment, suspension, disqualification or revocation of licence;
 - d. Whether the breach involves non compliance with previous orders or directions of the BSB;
 - e. Whether there is a substantial dispute of fact; and/or
 - f. For any other good reason.
45. The power to impose administrative sanctions would rest exclusively with the PCC who, in accordance with existing arrangements, will be able to delegate the power to senior PCD staff in appropriate cases.
46. Currently the BSB can impose a fixed financial penalty of up to £300 (or such other amount as agreed by the BSB from time to time). The Programme Board considers that the existing fixed level of fine is too low and too rigid. Instead it proposes to move to a new maximum level of up to £3,000 for an individual or up to £5,000 for an entity. When deciding what level of fine is most appropriate the BSB will have regard to the various factors set out in the fines policy. The BSB will also continue to be able to issue warnings.

Determination by consent:

47. In appropriate cases, and with the consent of the defendant, the BSB currently has the power to dispose of complaints that disclose a prima facie case of professional misconduct without the need to refer the matter to a Disciplinary Tribunal, by way of the determination by consent process.
48. The proposal is that the determination by consent process (currently found at schedule 1 of Annex J) should be expanded to include entities and all authorised individuals and non-authorised managers within an entity.
49. If a finding is made, the PCC currently has the power to impose a variety of sanctions, including:
- a. Fine up to £15,000;
 - b. Issuing advice as to future conduct;
 - c. Reprimand and/or a warning;
 - d. Ordered to complete CPD;
 - e. Ordered to take and pass a test in professional conduct and ethics.
50. Importantly the PCC has no power to disbar or suspend under this procedure. The proposal is that the PCC will retain all of the existing powers (although the level of available fine would be much higher at £1,000,000 – see fines section) with an additional power to impose conditions on a practising certificate, licence or authorisation.

Disciplinary Tribunals:

51. The PCC will continue to refer the most serious breaches to three or five person Disciplinary Panels for disposal. The process of bringing charges to a Disciplinary Tribunal will be broadly similar for individual barristers, entities and those who work in entities and will be based on current procedures apart from some widening of sanctions to make them more appropriate to entities.

Interim suspension and disqualification rules

52. The BSB currently has powers to interim suspend a barrister from practice pending disposal of a matter before a Disciplinary Tribunal. These powers will need to be widened so that they may apply to barristers (self employed or otherwise), an entity, non-BSB authorised individuals and lay managers/employees.
53. A further extension is proposed that would permit the Chairman of the PCC to impose an immediate interim suspension in the most serious cases, provided that he is satisfied that the risk to the public interest or to the interests of clients is such as to justify immediate suspension, rather than waiting until the matter can be heard by the Interim Panel.
54. The Programme Board proposes to amend the rules to expand the triggers for referral, so that it may refer a matter to an Interim Panel if:
- a. There is reason to suspect dishonesty on the part of any authorised person or non-authorised manager or employee;
 - b. There is reason to consider interim suspension/disqualification is necessary and proportionate to protect the public interest or to protect the interests of clients (or former or potential clients);
 - c. An authorised person or non-authorised manager or employee has been convicted of, or charged with, an offence other than a minor criminal offence as defined by the Handbook;
 - d. An authorised person or non-authorised manager or employee has been convicted by another Approved Regulator of misconduct, for which they have been sentenced to a suspension or termination of the right to practise;
 - e. The entity has been intervened into by the BSB.

Powers over lay persons and disqualification

55. Under s176 of the Legal Services Act 2007 an Approved Regulator will acquire a regulatory hold over any lay persons who are managers or employees of a BSB authorised person (whether an individual or an entity). Such persons will have a duty to comply with the BSB's rules. This will apply, equally, to those who are managers or employees in entities that are authorised or licensed by the BSB and to the employees of self-employed barristers who are authorised by the BSB. In addition to this:
- a. Section 90 of the Legal Services Act 2007 obliges non-authorised persons who are employees or managers of an ABS not to cause the ABS or authorised persons within it to breach their duties; and
 - b. Section 99 of The Legal Services Act 2007 will give the BSB a statutory power to disqualify a person from being a manager or employee of an ABS or acting as Head of Legal Practice or Head of Finance in an ABS if they breach the duties that the LSA 2007 places on them or cause or contribute to breaches of the body's licence and the BSB is satisfied that it is undesirable for the person to be a manager, employee, HOLP or HOFA, as the case may be.

56. The Programme Board believes its powers over lay people should be consistent, regardless of the type of business structure within which the person works. It is not sufficient for the BSB to rely on these statutory provisions alone, since these would leave anomalous gaps. For example, there would be no power to disqualify a lay person who worked in an LDP, BoE or chambers, as opposed to in an ABS. This is inconsistent and illogical. Equally, where clerks were employed by the Head of Chambers they would come under a duty under s176 to comply with the BSB's rules so far as they applied to them, but where they were employed through a management company (which is not an authorised person) they would not.
57. It is proposed that all entities, together with all authorised persons and lay managers working in entities, will be subject to a full range of disciplinary sanctions (including disbarment or disqualification or revocation, imposition of practising conditions, warnings, fines and rebukes). The Programme Board believes that it would be disproportionate to impose that full range of disciplinary sanctions on lay employees. They will therefore be subject only to a power of disqualification. It will generally be the employer's responsibility to ensure that non-authorised employees observe the rules and to take disciplinary action as necessary. The BSB's power to disqualify will be reserved for cases where it is necessary in the public interest to prevent the person concerned from being able to continue to work for BSB authorised persons. Such cases should be exceptional.
58. Any information which discloses serious misconduct on behalf of a lay employee will be investigated by the PCD and referred to the PCC in the ordinary way. In appropriate cases the PCC will then refer matters to a Disciplinary Tribunal for consideration whether to disqualify them.
59. Disqualification will also be available in respect of non-BSB authorised individuals and non-authorised managers who are brought before a Disciplinary Tribunal on a charge of professional misconduct.
60. The person sought to be disqualified will have an opportunity to put their case, to be represented and to call evidence at an oral hearing. In determining whether the criterion of a breach of a relevant duty is established, the Disciplinary Tribunal will apply the criminal standard of proof. If a breach is found proved to that standard, the Disciplinary Tribunal must then go on to consider whether it is undesirable for that person to be allowed to act in any of the relevant capacities in future. This is a matter for discretion, to be exercised in the public interest.
61. At this stage, draft disqualification rules have not been annexed to this paper. It is likely that they will form a separate section of the Code, but in practice they will almost entirely mirror the rules that are in place to discipline barristers and entities – the process of investigating and referring the person to the tribunal will be the same, but it will be done by application for disqualification rather than a disciplinary charge.

Divestiture

62. Pursuant to Part 5 of Schedule 13 of the LSA 2007 the BSB may make an application to the High Court to have an ownership interest of a non-authorised person divested. Any such application will be made by the BSB on the recommendation of the PCC. The "divestiture" provisions enable the court to order the sale of shares held by a person who holds an interest in an ABS, where that ABS is a company with shares.

Interventions

63. In broad terms, intervention is the process by which the regulator is able to take control of client money and client files in the public interest. Schedule 14 to the LSA 2007 provides a statutory power of intervention in relation to licensed bodies (ABSs), which the BSB will acquire if it becomes a licensing authority. The grounds for intervention under the LSA 2007 can be broadly summarised as:
- a. Failure to comply with one or more terms of the licence;
 - b. The appointment of a receiver or another defined insolvency event;
 - c. Suspected dishonesty by a manager or employee;
 - d. Undue delay in dealing with a matter;
 - e. It is necessary to exercise the power for the benefit of clients.
64. Currently the Bar's regulatory scheme does not include an intervention power and there is to date no evidence to suggest that such a power is necessary in relation to individual barristers.
65. If the BSB becomes a licensing authority for ABSs under the LSA 2007 it will in any event acquire the "off the shelf" intervention power contained in Schedule 14 to the LSA 2007. However, this statutory power of intervention would not be available to the BSB when regulating LDPs or BoEs, and primary legislation would be needed in order to obtain such a power. The Board provisionally decided that such a power of intervention would not be necessary in relation to these entities for the reasons discussed in the consultation.
66. Any decision to intervene would be authorised by the Office Holders of the PCC (made up of the Chair, two barrister vice-chairs and two non-barrister vice-chairs) on recommendation from BSB staff. In urgent cases the Chair of the PCC may authorise an intervention. Schedule 14 of the LSA 2007 provides that applications may be made to the High Court in order to challenge a notice to intervene.

Fines

67. Section 95(1) of the Legal Services Act 2007 provides a statutory framework for levying fines in relation to ABSs. The LSB is required to prescribe the maximum amounts that a licensing authority may fine entities in its rules. The prescribed maxima set by the LSB are £250,000,000 with respect to the licensed body and £50,000,000 for a manager or employee within a licensed body. The LSB will expect the BSB to provide for these maxima in its rules. The maximum fine currently available after a Disciplinary Tribunal or determination by consent against an individual barrister is £15,000.
68. The Programme Board has considered two options in relation to fines:
- a. Adopt the statutory limits set by the LSB for licensed bodies (ABSs), but impose a lower limit for BoEs, LDPs and individual barristers. The proposed lower limit is £1,000,000; or
 - b. Adopt the ABS upper limits for all BSB regulated entities and individual barristers.
69. On balance the Programme Board believes that option (a) is preferable. This option ensures compliance with the LSB's approach to ABSs, whilst at the same time recognising that the BSB will regulate broadly lower risk entities that are very unlikely to require extremely high level of fines. The approach is also consistent with that adopted by the Council for Licensed Conveyancers, which uses the legislative maxima for ABSs but impose a lower £1,000,000 maximum for recognised bodies and for individual licensed conveyancers.

70. This does lead to inconsistencies between the maximum levels of fines that are available for ABSs as compared to LDPs, BoEs and individual barristers. Because the ABS maximums are determined by the LSA 2007 and the LSB, it is not open to the BSB to adopt lower maximums. The decision to adopt a £1,000,000 limit for non-ABS fines, although somewhat arbitrary in itself, more fairly reflects the nature of the risks posed by the BSB's regulated community.
71. However, before imposing any fine, the BSB or a Disciplinary Tribunal will be obliged to consider the factors set out in a Fines Policy, and also refer to any appropriate sentencing guidance to ensure like cases are dealt with consistently. For individual barristers, this proposal represents a very significant increase in the level of fine that may be imposed (from £15,000 up to £1,000,000). In recommending the proposed increase the Programme Board has had in mind the desirability of being able to impose fines of a comparable amount to those available to other Approved Regulators in comparable circumstances. But historic sentencing guidance will still be relevant, and no fine may be imposed without proper regard to the fines policy. This will ensure the level of fines imposed on an individual barrister will remain appropriate to the circumstances, despite the very high maximum that is nevertheless available.

Miscellaneous changes to the Disciplinary Tribunal Regulations

72. Some further amendments to the Disciplinary Tribunal Regulations are recommended in the consultation. The key changes relate to Directions Hearings and are designed to speed up the process.

Disciplinary appeals

73. Appeals arising out of decisions of the Disciplinary Tribunal are currently heard by the Visitors, pursuant to Rule 25 of the Disciplinary Tribunal Regulations. The Visitors are High Court Judges exercising their powers as Visitors to the Inns of Court. Annex M of the 8th Edition sets out the procedures for appeals before the Visitors, which are administered by the office of the Lord Chief Justice and not by COIC.
74. The Board has previously agreed that appeals arising from disciplinary proceedings involving entities, and individuals within entities, should also be heard before the Visitors. BSB staff are currently holding discussions with the Lord Chief Justice about expanding the jurisdiction and making the necessary constitutional amendments.
75. Whilst the BSB is working to expand the Visitors' jurisdiction, it should also be noted that the Ministry of Justice and HM Courts and Tribunals Service are seeking to abolish the jurisdiction and transfer it to the High Court. It is hoped that (subject to the Parliamentary timetable) a legislative vehicle will be available to transfer the jurisdiction to the High Court in advance of the BSB beginning to regulate entities. This will mean that, like appeals from the Solicitors Disciplinary Tribunal, all appeals from BSB Disciplinary Tribunals (either from an individual barrister or an entity) will lie in the High Court and not with the Visitors.

Next Steps

76. Following the Board's approval (and any final amendment of the rules by the Programme Board) the consultation will be launched at the end of the month.

Financial implications

77. None at this stage. Provision has already been made for the set up costs of the entity regulation scheme.

Equality Impact Assessment

78. Draft equality analysis has been produced in relation to the specific changes proposed in this consultation exercise, seeking the views of consultees. During the consultation period we will produce a more extensive equality analysis covering the new Code of Conduct as a whole.

Risk implications

79. The consultation makes clear the risks that the BSB is seeking to address through regulation and its overall strategic approach to risk based regulation.

Impacts on other teams / departments or projects

80. These proposals have major implications across the organisation. As plans are developed all relevant departments and Committees will continue to be involved. A detailed project plan is being developed to ensure the necessary processes and plans are in place prior to an application to the LSB to become a licensing authority.

Consultation

81. There has already been extensive consultation on the Code of Conduct and entity regulation. It is expected that this will be the final consultation prior to submitting an application to the LSB.

Regulatory objectives

82. Our approach to the Code of Conduct and entity regulation is key to meeting the regulatory objectives and the Entity Regulation Programme Board has had these in mind when formulating the consultation.

Publicity

83. A detailed communications plan has been developed, to ensure there are sufficient events and publicity to encourage responses from the profession and other key stakeholders.

Lead responsibility:

Patricia Robertson QC
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Table of Contents

Executive summary 4

PART A: Introduction..... 10

 The risks in the market..... 11

 Outcomes focused regulation..... 11

 Removal of unnecessary restrictions 12

PART B: The New Bar Standards Board Handbook..... 13

 Introduction 13

 The Code of Conduct: overview..... 13

 Substantive changes since the last consultation 14

 Core Duties..... 14

 Unregistered Barristers..... 15

 Associations with others and outsourcing (Rules 46 – 53, section D5.1) 16

 Separate businesses..... 17

 Managing client affairs..... 18

 Reporting misconduct (Rules 34-35, Section D4) 18

 Dual authorisation 19

 Insurance (Rule 44, Section D5.1) 20

 International Practising Rules 21

 Application of the cab rank rule to entities 23

 Management of Chambers and entities 24

 Public Access Rules and Licensed Access Rules 24

 Duty to disclose clients’ previous convictions 25

 Other consultations 26

 Other issues 27

PART C: Conduct of litigation 28

 Background 28

Part 1 – Public

Permitting entities to conduct litigation.....	28
Removing the prohibition on self-employed barristers conducting litigation	28
Summary of the BSB’s policy position	29
Authorisation to conduct litigation.....	30
Self-certification checklist.....	32
Supervision by a qualified person.....	33
Status of a qualified person	34
No supervision prior to authorisation.....	34
Second six pupils.....	35
When to introduce authorisation to conduct litigation.....	35
Fees for the conduct of litigation.....	36
Client money.....	36
Escrow Account.....	37
Criteria for Approval	38
Interest payments.....	40
Introduction:	41
Scope of permitted services:	42
Management of entities:	43
Authorisation and structure of entities:	43
Supervision of entities:	46
Appeal processes:	47
Special Bodies	48
The fee structure for regulating entities:.....	48
Set up costs	49
Application fees for the authorisation of entities.....	49
Annual fees for entities.....	49
PART E: The BSB’s approach to risk assessment.....	51

Part 1 – Public

Introduction: 51

Assessing the potential **impact** on the regulatory objectives: 51

Assessing the **probability** of the impact occurring: 52

Other considerations for the BSB risk framework: 54

PART F: Equality and diversity impact of the proposals in this consultation..... 56

Executive summary

Part A: Introduction

1. This consultation paper draws together a number of strands of the Bar Standards Board's (BSB) regulatory reform agenda. We have consulted previously on a number of separate, but related, issues:
 - a. The review of the BSB's Code of Conduct;
 - b. The introduction of an entity regulation regime; and
 - c. The relaxation of the current prohibition on the conduct of litigation by barristers.
2. This consultation draws these different elements together into one piece of work (the BSB Handbook) because we believe that there is a public interest in having one clear publication that summarises our new approach across the board. We have prepared a separate consultation addressing the compliance and enforcement aspects of our proposed entity regulation regime.

Part B: The new BSB Handbook

3. The overall approach to the new Handbook is summarised in the introduction to that document. Part 2 (the Code of Conduct) in particular has changed significantly in structure and presentation since the January 2011 consultation. It has also been extended to apply to all BSB regulated persons, wherever appropriate adopting the same approach as is applied to barristers.
4. The Code of Conduct has been broken down into the following sections:
 - a. You and the court;
 - b. Your behaviour towards others;
 - c. You and your client;
 - d. You and your regulator; and
 - e. You and your practice.
5. This part also specifies the outcomes that we are seeking to achieve. The outcomes are intended to be descriptive rather than mandatory. They explain the rationale for and aid the understanding of the rules. We do not propose to bring misconduct charges against barristers, or to impose administrative fines, for breach of outcomes alone (these will continue to be for breaches of core duties or rules).
6. We have reviewed all the rules in the Code of Conduct, retaining only those we consider to be necessary to achieve the regulatory objectives. Where appropriate, more detailed rules have been converted into guidance, leaving more freedom for barristers and authorised entities to determine how best to comply with the higher level rules and Core Duties.

7. The main substantive changes since the last consultation relate to:
- a. Core Duties: The new Handbook contains two additional core duties: CD9 – You must be open and co-operate with your regulators; and CD10 – You must manage your business effectively and in such a way as to achieve compliance with your legal and regulatory obligations.
 - b. Unregistered Barristers: It is proposed that all Core Duties be applied to unregistered barristers in order to increase protection for clients.
 - c. Associations with others and outsourcing: The current prohibition on barristers practising in association with non-barristers has been removed. In devising the new rules and guidance on associations with others and outsourcing the BSB has had a clear policy objective in mind. Forming novel business arrangements (including the use of ProcureCos or other outsourcing models) should be allowed but must not enable barristers to circumvent regulatory requirements, nor must it create confusion in the eyes of clients as to which services are regulated by the BSB and/or other regulators and which are not. We have therefore proposed new outcomes focused provisions in the Handbook. Subject to meeting the requirements set out in the Handbook, barristers and BSB authorised bodies will be able to share premises or practise in association with anyone (including non-lawyers) subject only to notification to the BSB.
 - d. Reporting misconduct: The BSB has previously decided that the new Code will include a positive duty on barristers to report serious misconduct. This duty has been retained in the new Handbook, but it is proposed that the duty should be extended to place a duty on barristers to report any personal failure to comply with the rules applicable to them.
 - e. Dual authorisation: The BSB has reconsidered the necessity for the current prohibition on barristers practising with dual authorisation (eg as a solicitor as well as a barrister) in the context of entity regulation and the widening and flexibility of the legal services market brought about by the 2007 Act. The BSB considers that this prohibition is no longer justified.
 - f. Insurance: The new Handbook contains a general provision stating that a practising barrister or BSB authorised body must ensure they have adequate insurance in place covering all their regulated activities. Having such insurance will be a condition for continued authorisation. Guidance explains that an employed barrister supplying legal services to people other than their employer should consider whether they need insurance themselves, having regard to the arrangements made by their employers for insuring against claims in respect of the barrister's services.
 - g. International Practising Rules: The International Practising Rules were consulted on in May 2011. Since the publication of the consultation, further revisions have been made to the rules. The main changes are that the public access rules will apply to foreign work as well as to domestic work and that

Part 1 – Public

the cab rank rule will not apply to instructions on non-contentious work from foreign professional clients apart from instructions from professional clients in the EU, Scotland or Northern Ireland.

- h. Application of the cab rank rule to entities: For entities and authorised persons working for them, it is proposed that the cab rank rule would mirror the rule as it applies to self-employed barristers as far as possible. The normal exclusions will apply and those relating to conflicts of interest will sometimes mean that instructions have to be refused.
- i. Management of Chambers and entities: As proposed in the earlier consultation, all members of Chambers will have some responsibility for the management of Chambers. What those responsibilities are will depend on the position of individuals in Chambers. For entities, the entity itself, its managers and all authorised persons working in it will be responsible for ensuring that proper arrangements are in place for the management of the entity and compliance with applicable rules. Again the responsibilities of each individual will depend on their personal role.

Part C: Conduct of litigation

- 8. Following consultation during 2010, the BSB took the policy decision in principle to permit self-employed barristers and BSB regulated entities to conduct litigation, provided that they apply for and meet the criteria for an extension to their practising certificates or authorisation. This consultation sets out the BSB's key proposals for authorisation to conduct litigation, and for ongoing BSB supervision of litigation services.
- 9. The BSB is considering carefully whether or not this new permission can, and should, be brought into effect prior to the intended introduction of the regulation of entities (possibly with other non-entity elements of the Handbook). If the BSB went down this route, it might be in a position to authorise the conduct of litigation by January 2013.

Client money and escrow account

- 10. The BSB proposes that it should continue to prohibit all barristers (except those who are practising as managers of recognised bodies regulated by other approved regulators) from holding client money. It will, however, consider authorising a third party to provide an escrow account facility for self-employed barristers and BSB regulated entities, subject to being satisfied about the proposed arrangements. The BSB's role in this scheme will involve setting criteria with which suppliers will need to comply and then monitoring compliance. It would not be our role to design the scheme (operationally, that will fall to the prospective supplier). Any scheme would be monitored by the BSB via a contractual relationship with the supplier(s).

Part D: The BSB approach to entity regulation

- 11. The proposition behind the BSB approach to regulating entities is that the public interest and the wider regulatory objectives of the Legal Services Act 2007 are best

served by the BSB offering regulation for some types of entity. The BSB's policy is to operate as a specialist entity regulator. The scope of services that a BSB regulated entity can offer should be similar to the scope of service that the self-employed Bar offers.

12. The draft Handbook introduces duties for BSB regulated entities and the managers and BSB regulated persons who work in them. In addition there are specific duties provided for in relation to the Head of Legal Practice (HOLP) and/or the Head of Finance and Administration (HOFA)¹. We will also impose a duty on the entity to ensure that all employees are appointed under a contract of employment which requires them to comply with the requirements of the Code insofar as it is applicable to them and do nothing which causes or substantially contributes to a breach of the Code by the entity, its managers or the BSB regulated persons employed by it. We propose that the same requirement should apply to self-employed barristers.
13. The BSB envisages regulating a variety of entity structures, including for example partnerships, limited liability partnerships or companies, all of which would be able to employ other authorised persons and non-lawyers. The three types of entity that the BSB proposes to regulate are:
 - a. Barrister only entities, which are entirely owned and managed by barristers (including single person entities);
 - b. Legal disciplinary practices, all of whose owners and managers are authorised persons; and
 - c. Alternative business structures, which must have at least one manager who is an authorised person, an authorised person as Head of Legal Practice and at least one non-lawyer manager. Otherwise, they can have any proportion of lawyers and non-lawyers as owners and managers (subject to the BSB's approval criteria).
14. The BSB's policy is that there must be at least one barrister manager in a BSB regulated entity, who is also an owner. The BSB will not regulate entities that have owners with a material interest who are not also managers and will require all owners and managers to be natural (i.e. not corporate) persons. This is because we are designing a relatively simple and efficient regime for entities that are relatively low risk and/or where the risks posed are similar to those posed in regulating chambers of self-employed barristers. For similar reasons, we propose (subject to the exercise of our discretion) to limit non-lawyer management of a BSB regulated entity. We also propose that a majority of the managers of a BSB regulated entity would normally be qualified to exercise rights of audience in the higher courts (whether as barristers or as HCAs).
15. The BSB therefore proposes (subject to threshold criteria determining eligibility to be considered for BSB regulation) to have a power to exercise discretion over whether

¹ The duties of a HoLP and HoFA are specified in ss 91 and 92 of the Legal Services Act 2007

to approve entities, based on whether the entity is one which would, having regard to a number of factors, be appropriate for regulation by the BSB.

16. Building on our current chambers monitoring regime, we propose to move towards a risk-based supervision system for entities. In addition to requiring entities to submit information annually (and requiring them to do so in answer to ad hoc BSB requests), we propose to risk assess each entity by reference to the likelihood and impact of any risk to the regulatory objectives that the entity presents.
17. An appeals process will be established for all decisions made in relation to the authorisation and ongoing licensing of entities. For all entities, it is proposed that all decisions be subject initially to an internal review (perhaps by the BSB's Qualifications Committee in the first instance). It is proposed that there would be a further appeal to the General Regulatory Chamber of the First Tier Tribunal in relation to authorisation and licensing decisions (however, we propose that appeals on disciplinary matters should be heard via the process that currently exists for self-employed barristers).
18. We are consulting separately on the disciplinary arrangements and related appeal processes for entities and those within them. Our intention is that broadly these should mesh coherently with our arrangements for self-employed barristers.
19. This consultation sets out the principles that we expect to apply in determining the fees for entity regulation. Entities will pay a one off fee for authorisation and will remain authorised unless and until the BSB removes their authorisation, but will need to supply specified information and pay a fee annually. The method of calculation of annual fees should be simple to use and based on reliable information. We therefore propose that the annual fee for entities should be calculated on a banded turnover model.

Part E: The BSB's approach to risk assessment

20. Our approach to risk is fundamental to our work as a regulator. Not only will it inform decisions about who we regulate and the standards we expect them to meet, it will also directly influence our approach to supervision and enforcement. Our general approach to risk assessment consists of two stages. In the first instance we need to analyse the potential impact of a risk on the regulatory objectives if that risk materialised and then go on to consider the probability of that impact occurring. That means the level of supervision of an entity will be directly linked both to the potential impact if something goes wrong and to the likelihood that it will go wrong.
21. It is proposed that the potential impact on the regulatory objectives will be measured through an assessment of the following factors:
 - a. Size;
 - b. Services offered to the public;
 - c. Vulnerability of client base; and

- d. Availability of other (non-regulatory) remedies for clients.
22. Once the potential impact has been measured consideration turns to how likely it is that the impact will occur. In large part, this is a measure of what steps entities have taken to mitigate the risks. An assessment of probability will determine the intensity of the supervision that is adopted. In assessing probability of failure we will take into account the following general factors:
- a. Systems that assist in the delivery of services;
 - b. Governance and business model;
 - c. First tier complaints;
 - d. People and training;
 - e. Regulatory history;
 - f. Novelty of the work undertaken or the business model;
 - g. The availability of outside assistance;
 - h. Client satisfaction; and
 - i. Quality accreditation.

PART A: Introduction

- A1. This consultation paper draws together a number of strands of the Bar Standards Board's (BSB) regulatory reform agenda. We have consulted previously on a number of separate, but related, issues:
- a. The review of the BSB's Code of Conduct;
 - b. The introduction of an entity regulation regime; and
 - c. The relaxation of the current prohibition on the conduct of litigation by barristers.
- A2. Over the last year, a number of developments (in addition to many detailed responses to the aforementioned consultations) have influenced our thinking. The Board has been considering its strategic approach to regulation. At the same time, the Legal Services Board (LSB) has published its regulatory standards framework. The LSB believes that there are four constituent parts to good regulatory practice²:
- a. An outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market;
 - b. A robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk;
 - c. Supervision of the regulated community at entity and individual level according to the risk presented;
 - d. A compliance and enforcement approach that deters and punishes appropriately.
- A3. These developments are relevant to all three of the work strands outlined above. The BSB has therefore taken the opportunity to draw these different elements together into one piece of work (the BSB handbook), because we believe that there is a public interest in having one clear publication that summarises our new approach across the board. This will enable consumers to better understand what to expect from barristers within the full range of business structures that will be possible in the future and there will be greater clarity for barristers about the regulatory regime with which they must comply.
- A4. We have issued a separate consultation alongside this one addressing the compliance and enforcement aspects of our proposed entity regulation regime. In the meantime, this consultation invites views on our new Bar Standards Board Handbook and the principles that we propose to apply to the authorisation and supervision of entities. It also provides further proposals in relation to the

² Developing Regulatory Standards: Summary of responses to the consultation on developing regulatory standards and decision document, Legal Services Board

authorisation and supervision of barristers to conduct litigation. We have summarised our proposals and highlighted those areas where the Board's thinking has changed since we last consulted on these matters. Our responses to the previous consultations have been published separately and we do not propose to re-consult on those areas where policy is settled. We do, however, welcome comments on the draft rules giving effect to these policies.

The risks in the market

A5. This is an opportunity for the Board to begin to articulate its approach to risk-based regulation, which will be at the core of our approach to regulating entities and the wider regulated community. In redrafting the Handbook we have re-examined the justifications for each rule to ensure that the rule remains necessary in the light of the risks that the BSB is seeking to address and the outcomes that it is seeking to achieve. We have also considered the available evidence relating to the legal services market more generally and will continue to do so as we develop our proposals³. The key types of risk that we are seeking to address are:

- a. Risks that the legal services market does not function efficiently or effectively, to the detriment of clients; and
- b. That the public interest is not served because the justice system does not have all the information before it that is necessary to reach correct decisions.

A6. We believe that the approach taken to each of these categories of risk should be slightly different. The former group lends itself to a more outcomes based approach, however the latter arguably requires a more prescriptive approach, not least because it restricts the rights of clients and it is therefore essential that they have absolute clarity about where they stand.

Outcomes focused regulation

A7. This version of the Code moves further in the direction of outcomes focused regulation, by clearly articulating the outcomes we are seeking to achieve in each section (these outcomes are derived from the regulatory objectives and the risks that we are seeking to address in the legal services market). However, the Board considers that it remains necessary to retain an element of prescription in the rules. This is because many of the provisions in the Handbook relate to the conduct of barristers towards the courts, or situations where they must take action which would be potentially contrary to the interests of their client. These are rules designed to address low probability / high impact scenarios (such as a potential miscarriage of justice) or to balance access to justice and other principles. Barristers need clarity about the conduct required of them, so that decisions can if need be made in tight timeframes, and clients need to be clear about what they can and cannot expect of their barrister. This justifies retaining a prescriptive approach in a number of areas,

³ See for example the Oxera Report 'A framework to monitor the legal services sector' prepared for the Legal Services Board, September 20th 2011

in particular where a barrister's conduct in court is concerned or as to the circumstances where a barrister is obliged to act or return instructions.

A8. In this version of the Code, the outcomes are intended as justifications for and aids to purposive construction of the rules but not the basis for charges of misconduct – the intention is that charges would continue to be for breaches of Core Duties and/or rules (albeit that the outcomes will have a significant role in our future enforcement strategy). We expand on this further in our enforcement consultation.

Removal of unnecessary restrictions

A9. The BSB has already removed some of the traditional restrictions on the way barristers conduct their practice. It has permitted barristers to work as managers and employees of authorised bodies regulated by other Approved Regulators; it has relaxed some of the restrictions on what self-employed barristers can do; it has widened the scope of the public access rules and it is consulting on a further extension of the rules. This version of the Code seeks to go further and to move away from some of the remaining traditional restrictions on the way barristers conduct their practice, where these restrictions are no longer in the interests of clients or the wider regulatory objectives. Examples of where we seek to do this are:

- a. Liberalising the outdated rules on sharing premises, moving instead to an outcomes-based approach where barristers can work with others to deliver services in innovative ways (including via outsourcing arrangements) as long as clients' interests are protected;
- b. Removing the restrictions on dual authorisation, allowing individuals to practise as a barrister and as a solicitor at the same time if they wish to do so;
- c. Removing the prohibition on self-employed barristers conducting litigation, in order to open up the market and provide greater choice for consumers;
- d. Whilst maintaining the prohibition on holding client money, allowing for the development of an escrow service provided this can be done in a way that protects clients' interests; and
- e. Establishing a BSB entity regulation regime, which will offer both barristers and consumers additional choice in the marketplace, including for one stop advocacy and litigation services, without seeking to replicate other regulators' schemes.

PART B: The New Bar Standards Board Handbook

Introduction

- B1. The overall approach to the new Handbook is summarised in the introduction to that document. The intention is to include in the Handbook all the rules which will apply to barristers, to BSB authorised entities and to those who work in such entities. We have not included the rules relating to QASA at this stage, as these are still under development. We have also not included the section on the Bar Training Requirements in this document as these will be amended when the CPD review concludes.
- B2. This section of the consultation document summarises the approach taken to the Code of Conduct section in particular, which has changed significantly in structure and presentation since the January 2011 consultation. In addition, this section highlights a number of substantive changes in policy since the last consultation, on which we are seeking views.

The Code of Conduct: overview

- B3. The structure of the Code of Conduct (Part 2 of the Handbook) has been amended in order to make it more user friendly and to specify more clearly the regulatory outcomes that the BSB is seeking to achieve. The Code of Conduct will apply not only to individual barristers but also to BSB authorised bodies, their managers (whether authorised persons or not) and all authorised persons (barristers or others) working in them (whether as managers or as employees). This has required some amendment to the rules but the basic approach has been to apply the same rules with only the minimum necessary differences to all those the BSB regulates. This approach is intended to achieve regulatory consistency and provide clients with the same degree of protection irrespective of whether their legal adviser is an individual or an entity
- B4. The Code of Conduct has been broken down into the following sections:
- a. You and the court;
 - b. Your behaviour towards others;
 - c. You and your client;
 - d. You and your regulator; and
 - e. You and your practice.

To simplify the structure of the Handbook, the Code of Conduct now incorporates both the conduct and the practising rules sections of the previous draft

- B5. This section also specifies the outcomes that we are seeking to achieve. As discussed above, the outcomes are intended to be descriptive rather than mandatory. They explain the rationale for and aid the understanding of the rules. As such, barristers, BSB authorised entities and their clients should have the outcomes

in mind when interpreting the rules, but we do not propose to bring misconduct charges, or to impose administrative fines, for breach of outcomes alone. Charges and fines will continue to be for breaches of core duties or rules, as this will provide greater clarity for barristers, entities and clients, especially in situations where the barrister or entity owes conflicting duties. Our consultation on enforcement issues specifies the role that the outcomes will play in our enforcement policy.

- B6. Since the previous consultations, the Board has critically examined the balance between core duties, rules and guidance. Core duties continue to underpin the entirety of the BSB's regulatory framework and pervade the whole Handbook. As before, compliance with the core duties will be mandatory and they define the core elements of professional conduct. Rules are intended to supplement core duties where a core duty alone is considered insufficient to address the perceived risk or where experience suggests that additional, but mandatory, rules are needed to achieve the required end. In some cases rules are necessary in order to clarify the nature of competing duties owed by barristers. Our general approach has been to express all requirements that are genuinely mandatory as rules, whilst providing further information or examples of behaviour that would breach rules in guidance. We have endeavoured to use prescription in rules only where this is necessary to achieve a desired outcome. In general, we have sought to remove or minimise rules which seek to dictate how barristers or entities organise their business. That should normally be a matter for them unless any of the regulatory objectives, especially the interests of clients, might be adversely affected.

QUESTION 1: Do you have any comments on the presentation of the new Handbook?

QUESTION 2: Is the relationship between outcomes, core duties, rules and guidance sufficiently clear?

QUESTION 3: Is the balance between rules and guidance about right?

QUESTION 4: Are any of the rules unnecessarily prescriptive (please give details)?

Substantive changes since the last consultation

Core Duties

- B7. The new Handbook contains two additional core duties:
- a. CD9 – You must be open and co-operate with your regulators; and
 - b. CD10 – You must manage your business effectively and in such a way as to achieve compliance with your legal and regulatory obligations.
- B8. The Core Duties were included in the previous consultation, however with the introduction of entity regulation the duties have been re-examined. Core Duties 1-8 remain the same.
- B9. The BSB considers that an additional Core Duty is required in relation to running or managing a business. The last version of the Code that was consulted on in January

2011, contained rules on the administration of Chambers. The BSB is of the view that similar provisions would be required for managers of BSB authorised bodies. Furthermore, it is desirable that the BSB should in appropriate cases be able to take regulatory action against those who fail to manage their businesses in such a way as to comply with other legal and regulatory obligations that apply to them. To underpin these provisions a new Core Duty has been introduced (CD10) which provides that you must manage your business effectively and in such a way as to achieve compliance with your legal and regulatory obligations. The wording of this Core Duty means it will equally apply to the management of an individual's professional practice, the management of Chambers and of entities.

B10. Similarly a new section is included in the Code of Conduct, entitled 'you and your regulator' (section D4 of the Handbook) and CD9 will underpin this section.

QUESTION 5: Do you agree with the addition and purpose of the two new Core Duties?

Unregistered Barristers

B11. Unregistered barristers are barristers who do not have practising certificates and hence are not allowed to practise as barristers and do not appear in the Register of practising barristers. As they may not practise as barristers, they are not subject to the rules which apply only to practising barristers. But as barristers, they have a duty to uphold professional standards. The BSB previously decided to apply Core Duty 4 to all unregistered barristers ('you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession'). The January 2011 Code Review consultation further proposed that Core Duty 2 ('you must act with integrity and honesty') should also apply. It was thought that this was necessary to ensure that appropriate standards would be maintained when unregistered barristers were working for employers or clients. Making them subject to this Core Duty would mean that they would be liable to disbarment in the event of serious breach.

B12. Respondents to the last consultation broadly agreed with this approach, however two consultees⁴ expressed strong disagreement, feeling that unregistered barristers should be subject to full BSB regulation. In the context of developing the new entity regulation regime and the changing legal services market, in which there are ever greater numbers of unregistered barristers, we have reviewed the application of Core Duties to unregistered barristers.

B13. The BSB has concluded that it would be disproportionate to apply the entire Code of Conduct to unregistered barristers but that, especially as the numbers of those providing legal services in that capacity have grown and this seems likely to continue, the public should have the protection of knowing that fundamental standards apply to unregistered barristers and that individuals who fall seriously short of meeting these standards will have sanctions imposed on them. It is therefore now proposed that all the Core Duties should apply to unregistered barristers. We believe that applying all

⁴ The Bar Association for Commerce, Finance and Industry and an individual, unregistered barrister

Core Duties to unregistered barristers will increase protection for their clients. Unregistered barristers will also be subject to rules about not misleading their clients about their status and co-operating with the regulator. They will be subject to disciplinary action if they breach the core duties or the rules which apply to them.

QUESTION 6: Do you agree that all Core Duties should be applied to unregistered barristers?

Associations with others and outsourcing (Rules 46 – 53, section D5.1)

- B14. The current Code, and the version consulted on in January 2011, contain prohibitions on sharing premises and practising in associations with others along with a detailed list of exemptions. The BSB has concluded that these prohibitions impose unnecessary restrictions on how barristers structure their business and they have therefore not been replicated in the new Handbook. We have instead adopted a more outcomes focused approach on associations with others and added a provision to deal with outsourcing.
- B15. With the introduction of Alternative Business Structures, legal service providers are becoming more innovative in their working arrangements, which could potentially include novel ways of working and more outsourcing of any operational functions that are necessary for the delivery of legal services.
- B16. In devising the rules and guidance on associations with others and outsourcing the BSB has had a clear policy objective in mind. Forming novel business arrangements (including the use of ProcureCos or other outsourcing models) must not enable barristers to circumvent regulatory requirements, nor must it create confusion in the eyes of clients as to which services are regulated by the BSB and/or other regulators and those which are not. Therefore, the new outcomes focused provisions in the Handbook require barristers to ensure that any involvement in other businesses, or associations with others, must not:
- a. Cause confusion about the extent to which activity is regulated by the BSB or by another regulator;
 - b. Cause confusion as to who is responsible for the service provided;
 - c. Compromise integrity or independence or involve referral fees;
 - d. Compromise client confidentiality;
 - e. Risk a breach of Core Duty 4;
 - f. Participate in any activity that would constitute a breach of the Legal Services Act; or
 - g. Circumvent the ban on BSB regulated persons holding client money.

Subject to meeting these requirements, barristers and BSB authorised bodies will be able to share premises or practise in association with anyone (including non lawyers) subject only to notification to the BSB.

B17. When functions are being outsourced, it will be necessary to ensure that the outsourcing:

- a. Does not adversely affect the ability to comply with any obligations in the Handbook; and
- b. Is subject to contractual arrangements to ensure that all obligations in the Handbook are complied with and that the BSB will have the right to obtain information from or inspect the provider of the services where necessary.

QUESTION 7: Do you agree with replacing the current prohibitions on sharing premises and associations with a more outcomes focused rule and guidance?

QUESTION 8: Do you think the rules and guidance on sharing premises, associations and outsourcing will provide adequate protections for clients and users of legal services?

Separate businesses

B18. We have considered whether it is necessary to introduce a ‘separate business rule’ in order to ensure that clients are protected when accessing services provided by another business owned by BSB regulated persons but not itself regulated by the BSB or another approved regulator. The Solicitors Regulation Authority, for example, in Chapter 12 of its Handbook, regulates the separate businesses connected with SRA regulated firms.

B19. We believe that the key risks are:

- a. That clients may be confused or misled about the extent to which an activity is regulated;
- b. That BSB regulated persons might seek to hive off into separate businesses certain activities that would be regulated by the BSB if performed in the business regulated by the BSB. These separate businesses could involve handling client money;
- c. That clients might therefore be offered less protection;
- d. That integrity, independence or client confidentiality might be compromised.

B20. In the light of our proposals in relation to criteria for authorisation, associations with others and outsourcing, we believe that the new Handbook includes sufficient safeguards to mitigate these risks. We welcome views, however, on whether this is sufficient.

QUESTION 9: Do you think we need to include a ;separate business rule in the Handbook?

Managing client affairs

B21. In the context of broadening the scope of practice of barristers potentially to include litigation, the BSB has considered whether it should also withdraw the current prohibition on managing clients' affairs. The risks of doing so are that:

- a. A barrister's independence might be compromised;
- b. There might be a greater risk of conflicts of interest;
- c. There is a greater risk that the barrister might undertake work for which he is neither trained nor competent; and
- d. The scope of practice of the barrister might go beyond what the BSB had the capacity to regulate.

B22. For these reasons, we are not convinced that the prohibition should be relaxed, however we welcome views on whether this continues to be appropriate.

QUESTION 10: Do you agree that the current prohibition on managing clients' affairs should be retained? If not, how do you think the risks could be mitigated?

Referral fees

B23. The BSB has reviewed the prohibition on referral fees in its current Code of Conduct and concluded that a prohibition continues to be in the public interest. We believe that relaxing the prohibition would lead to the following risks:

- a. That referrals will be made on the basis of willingness to pay a referral fee rather than the best interests of clients;
- b. That client choice will be correspondingly reduced; and
- c. That the independence of the barrister will be compromised.

B24. We therefore propose to maintain a prohibition on referral fees, but we welcome any views on whether this remains appropriate.

QUESTION 11: Are there any situations in which you think it would be in clients' best interests to allow referral fees?

Reporting misconduct (Rules 34-35, Section D4)

B25. The BSB has previously decided that the new Code will include a positive duty on barristers to report serious misconduct. This duty has been retained in the new Handbook, but it is proposed that the duty should be extended to place a duty on barristers to report any personal failure to comply with the rules applicable to them. The duty to report will now therefore arise in the following circumstances:

- a. Where the barrister himself has failed to comply with applicable rules;

- b. Where the barrister is reporting serious misconduct in relation to another barrister; or
- c. Where a Head of Legal Practice or Head of Chambers becomes aware of serious misconduct in his entity or chambers.

B26. The 2007 Act imposes a requirement on the Head of Legal Practice (HoLP) of an ABS to report any failings to comply as are specified in the Licensing Authority's Rules. In devising our rules, the BSB is proposing that a barrister should be responsible for reporting his own non-compliance with rules to the HoLP. As the BSB is aiming to create a consistent regime of regulation, the BSB is also proposing that rule apply to all practising barristers, including those in self-employed practice. It is therefore proposed that any failure to comply should be reported to the HoLP or Head of Chambers in the first instance, who will have responsibility for informing the regulator (unless client confidentiality requires the matter to be reported direct to the regulator). If the matter is serious, the HoLP or Head of Chambers will be required to report to the BSB immediately. In less serious matters, it will be adequate to keep a record to be shown to the BSB on request or at the next monitoring visit. In the case of an employed barrister who does not work for a BSB authorised body or a sole practitioner, their duty will be to report the Bar Standards Board of the failure to comply.

B27. The BSB realises that this is an extension of what was previously proposed but guidance will define what amounts to serious misconduct and the circumstances in which a barrister is obliged to report such conduct by another barrister. There will also be a rule that barristers must only report serious misconduct by another barrister where it is in the public interest to do so and such reporting (or the threat to do so) should never be used as a litigation tactic or to please a client or other person.

B28. This subject is one that has provoked strong views in previous consultations, however, the BSB believes that such provisions are now a normal part of regulatory regimes and are necessary to achieve the regulatory objectives. The interests of clients and the public can only be protected effectively if breaches of the rules are brought to the attention of the regulator.

QUESTION 12: Do you think that a barrister should be obliged to report his own failure to comply with applicable rules?

QUESTION 13: Do you agree that failure to comply with rules should be reported to the Head of Legal Practice or Head of Chambers in the first instance with an obligation on them to report material breaches to the BSB (with the exception that barristers employed other than in BSB authorised bodies and sole practitioners should report any failure to comply to the Board)?

Dual authorisation

B29. The BSB previously proposed that the prohibition on dual authorisation should remain, meaning those qualified, for example, as both a solicitor and barrister would not be able to practise in both capacities at the same time. The BSB has

reconsidered the necessity of this provision in the context of entity regulation and the widening and flexibility of the legal services market brought about by the 2007 Act. The BSB considers that this prohibition is no longer justified.

- B30. Such individuals would in fact be regulated by both the SRA and BSB, which could arguably increase protections for clients. Barristers are already permitted to become managers or employees of entities regulated by the SRA and would therefore already be subject to the SRA's rules as well as those of the BSB (with the SRA in effect becoming the lead regulator, as the entity's regulator). Therefore the impact would be minimal if such individuals also choose to practise as a solicitor.
- B31. The situation for self-employed barristers is rather different. If they wanted to practise also as solicitors, they would have to be insured as both a barrister and a solicitor and would be subject to monitoring by both the SRA and the BSB and make returns to both organisations. There would no doubt also be complications as regards internal Chambers administration. Dual authorised barristers would be allowed to undertake litigation but that will be an option for all practising barristers in future. For these reasons we believe that, in practice, it is unlikely that self-employed barristers would want to incur the additional costs and administrative burdens of dual authorisation, but the BSB is of the view that that is not a justification for retaining the prohibition.
- B32. In proposing to remove the prohibition the BSB has considered whether this would pose any risk to clients or cause confusion. The BSB is of the view that clients would be protected by the various rules and enforcement regimes and the removal of the prohibition would not affect their right to complain to the Legal Ombudsman if there was a problem. As clients would be able to approach the Legal Ombudsman in the normal way this is likely to minimise any confusion as the complainant would not have to ascertain which regulator to approach.

QUESTION 14: Do you agree that the prohibition on dual authorisation should be removed?

QUESTION 15: Do you think that the removal of the prohibition is likely to pose any risk to clients?

Insurance (Rule 44, Section D5.1)

- B33. The current Code and the version of the Code consulted on in January 2011 contain provisions stating that a practising barrister may supply legal services to the public provided that 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.
- B34. In the case of employed barristers who provide legal services to the public or a barrister practising as a manager or employee of an authorised body the employer or body needs to be covered by insurance in such amount and upon such terms as are required by the Approved Regulator of the employer or body, or in the absence of a Approved Regulator, in such amount and on such terms as are currently required by

the Bar Council⁵. The requirement to have insurance in place does not apply to employed barristers who are providing legal services to their employer only.

- B35. The new Handbook contains a general provision stating that a practising barrister or BSB authorised body must ensure they have adequate insurance in place covering all the legal services they provide to the public. Having such insurance will be a condition for continued authorisation. Guidance explains that an employed barrister supplying legal services to people other than their employer should consider whether they need insurance themselves, having regard to the arrangements made by their employers for insuring against claims in respect of the barrister's services. This is akin to previous Bar Council guidance issued on the subject. Although employed barristers are not eligible for cover by the BMIF, they should consider whether they need to take up appropriate cover available on the open market.
- B36. Guidance also replaces the current rule for those working in an authorised body regulated by another Approved Regulator.

QUESTION 16: Do you agree that rules on insurance for employed barristers should be replaced by guidance as historically no requirements have been set in relation to this?

International Practising Rules

- B37. The International Practising Rules were consulted on in May 2011. Since the publication of the consultation, further revisions have been made to the rules. The main changes are that:
- a. The public access rules will apply to foreign work as well as to domestic work. but with waivers from the training requirement being available for those barristers who already have experience of working with foreign lay clients without a professional client
 - b. The cab rank rule will not apply to instructions on non-contentious work from foreign professional clients⁶ apart from instructions from professional clients in the European Economic Area, Scotland or Northern Ireland.
- B38. The consultation issued in May 2011 proposed certain work which was previously prohibited under the Code would become permissible under the new rules. Respondents identified some areas where such work would sit unhappily with the Public Access Rules. On examining the rules and responses to the consultation the BSB has reached the view that the proposed rules did in fact create inconsistencies with the Public Access Rules, making protections for clients inconsistent. The policy and rules as proposed would have implied that protections which are considered necessary for clients in England and Wales in relation to legal services provided in England and Wales are not necessary for either foreign clients or clients in England

⁵ The Bar Council has not currently set any amounts or terms for insurance of employed barristers or barristers working for bodies authorised by another Approved Regulator

⁶ For adversarial work, a professional client in England and Wales will have to be appointed and instructions from that client will have to be accepted under the cab rank rule

and Wales in relation to foreign work. The BSB considers that such a policy would be difficult to justify. In particular because it might cause confusion for clients in England and Wales, if they were required to use a solicitor when employing a particular barrister to carry out certain types of work but not for other types. The BSB therefore proposes that the public access rules should apply to foreign work.

- B39. We have considered the impact this proposal would have on barristers carrying out foreign work, and have concluded it would be relatively small, with little additional burden being placed on such barristers. Some 60% of practising barristers are already qualified to do public access work. For the others, in the majority of cases, only a one day public access training course would be necessary to qualify. Those who already have experience of working directly with foreign lay clients may be eligible for a waiver.
- B40. The application of the cab rank rule was the subject of much debate in previous consultation responses. The May 2011 consultation proposed that the application of the cab-rank rule should be extended to all proceedings in England and Wales, whether instructions come from English, Welsh or foreign lawyers in order to ensure access to justice for all, including any foreigners who may seek it in our legal system. Conversely it was proposed that the rule should not apply to matters outside England and Wales, which ought logically to be governed by the professional rules of the country administering the local justice system, where the cab rank rule is largely unknown and its application is therefore not expected.
- B41. On considering the responses the BSB has concluded, that on balance, it would be a step too far to apply the rule to instructions from any foreign lawyer. It will, of course, still be open to a barrister to take on the work if he so wishes. In forming this view the BSB understood and shared concerns expressed by respondents that requiring barristers to act for foreign lawyers about whom nothing may be known and who may be subject to regulatory regimes of varying standards, could place barristers in difficult situations were they to be obliged to accept the work under the cab rank rule. Barristers in such circumstances might not be able to obtain reliable information on which to base their advice or might come under pressure to act in unprofessional ways. The cab rank rule restricts a barrister's normal commercial freedom to decide for whom they are prepared to act, and should apply only where such a restriction is reasonable..
- B42. However, not all foreign lawyers are unknown quantities. In particular, foreign lawyers who are authorised by other Member States of the European Economic Area or who practise in Scotland or Northern Ireland, are subject to familiar regulatory regimes of an appropriate standard. Indeed, it would be incompatible with EU law for the BSB to distinguish between instructions from lawyers authorised in different Member States. The BSB therefore proposes to disapply the cab rank rule from instructions from foreign lawyers except where the lawyers are authorised in another Member State of the European Economic Area, Scotland or Northern Ireland.
- B43. The Bar Council is a signatory of the Code of Conduct for European Lawyers. This Code is a statement of common rules which apply to all lawyers within the European

Economic Area when conducting cross-border activities within that Area. This Code is incorporated into the Bar's current Code of Conduct by virtue of being included as Annex Q of the Code. The Bar Council is required to continue to implement the Code's provisions. The new Code of Conduct will anyway incorporate most of those provisions but there are a few additional points, primarily concerning recovery of fees, which are not of general application. An additional section will therefore be incorporated into the final version of section D of the Code of Conduct dealing with these additional requirements.

QUESTION 17: Do you agree that the public access rules should apply to foreign as well as domestic work?

QUESTION 18: If so, do you agree that the impact of this proposal would be minimal?

QUESTION 19: Do you agree that the cab rank rule should not apply to instructions on non-contentious work from foreign professional clients apart from instructions from professional clients in the European Economic Area, Scotland or Northern Ireland?

Application of the cab rank rule to entities

B44. It is proposed that there should continue to be a 'non-discrimination rule', that a barrister must not withhold his services on the ground that:

- a. The nature of the case is objectionable to him or any member of the public;
- b. The conduct, opinions or beliefs of the prospective client are unacceptable to him or any section of the public; or
- c. On any ground relating to the source of financial support which may properly be given to the prospective client for the proceedings in question.

B45. Currently this rule applies only to advocacy services but there is no obvious justification for excluding other legal services. It is therefore proposed that in future this rule should apply to the provision of all legal services provided by practising barristers or BSB authorised bodies.

B46. The 'cab-rank' rule would apply to self-employed barristers in the normal way, including in relation to litigation if the barrister is authorised to do it, but only on a referral basis. For entities and authorised persons working for them, it is proposed that the cab rank rule would mirror the rule as it applies to self-employed barristers as far as possible. That is to say, it would apply only to referral work and only to instructions naming a particular authorised person who is to do the work. The normal exclusions would apply and that relating to conflicts of interest would sometimes mean that instructions had to be refused.

B47. Even with these restrictions, there may still be opportunities for those giving instructions to seek to conflict out an entity by instructing it to act on some minor aspect of a major case thus preventing it from providing the major advocacy services. It is therefore proposed to put in place provisions to prevent deliberate misuse of the cab rank rule, given that if this is not controlled it could be highly detrimental to

access to justice. We would envisage allowing entities to apply for a waiver in such circumstances.

QUESTION 20: Do you agree with our proposals for the application of the cab rank rule to entities?

QUESTION 21: Do you agree that there should be a waiver process?

Management of Chambers and entities

- B48. As proposed in the earlier consultation, all members of Chambers will have some responsibility for the management of Chambers. What those responsibilities are will depend on the position of individuals in Chambers and whether they have any specific duties, for example in relation to pupillage. The Head of Chambers and members of management committees will normally be expected to be able to ensure that all requirements are met, while junior members of Chambers may only be required to draw attention to concerns and not obstruct the implementation of suitable arrangements.
- B49. For entities, the entity itself, its managers and all authorised persons working in it will be responsible for ensuring that proper arrangements are in place for the management of the entity and compliance with applicable rules. Again the responsibilities of each individual will depend on their personal role.
- B50. The proposed rules for the management of Chambers and of entities list the systems and arrangements which they will need to have in place but do not seek to prescribe how those systems and arrangements should work. That will be a matter for decision by those responsible in the Chambers and entity to suit their own particular circumstances. The BSB will need to be satisfied that adequate systems and arrangements are in place. It will produce some good practice guidance but Chambers and entities will be free to develop alternative arrangements provided they manage the relevant risks effectively.
- B51. As with entities, we will expect Chambers to ensure that all employees are appointed under a contract of employment which requires them to comply with the requirements of the Code insofar as it is applicable to them and do nothing which causes or substantially contributes to a breach of the Code. We are consulting separately on acquiring a power to disqualify named individuals whose behaviour has shown them to be a potential risk to clients from working for BSB regulated persons without first seeking BSB approval.

QUESTION 22: Do you have any comments on the proposed arrangements for the management of Chambers and entities?

Public Access Rules and Licensed Access Rules

- B52. Section E2 of the Code of Conduct incorporates the rules on public and licensed access in their current form apart from including the proposed changes to the former on which the BSB is currently consulting. The Licensed Access regulations will not be

included in the Handbook as they apply to clients not to regulated persons but they will continue to appear on the BSB website

B53. The Public and Licensed Access rules are more detailed than the rest of the new Code of Conduct. The BSB will be reviewing these rules as part of the next stage of its work on modernising the rules. When these rules were introduced, public access was new and the necessary administrative and other arrangements which needed to be put in place were unfamiliar to barristers. Now that there have been several years' experience of public access without evidence of detriment to clients or any significant problems, it may well be that less detailed rules are needed.

B54. A more radical step would be to abolish the concept of Licensed Access Clients and to treat all clients who have not also instructed a solicitor or other professional client as public access clients.

QUESTION 23: Do you consider that the Public and Licensed Access rules could in principle be made less detailed without detriment to clients?

QUESTION 24: Do you consider that the BSB should review whether the category of Licensed Access client should be retained?

Duty to disclose clients' previous convictions

B55. Section D1 of the new Code of Conduct outlines a barrister's duty to the Court, and the accompanying guidance deals with situations where there may be a conflict between the barrister's duty to the Court and their duty to the client. In particular, if a client informs the barrister that he has a previous conviction of which the prosecution is not aware, the barrister must not disclose this without the client's consent. However, the court will have been misled if it sentences on the basis of an incomplete record of previous convictions. The barrister should therefore advise the client in these circumstances that if consent is refused he will have to cease to act. This is a change from current BSB guidance on disclosure of previous convictions, which suggests that a barrister may continue to act even if the convictions are not disclosed subject to not saying anything to the court implying that the client has no other convictions. The BSB's view is that in these circumstances the public interest in an appropriate sentence being passed outweighs the interests of the client and the barrister should not personally be a party to a failure to disclose relevant information (much as he also cannot disclose the information to the Court without his client's consent). This situation differs from that where a client has confessed guilt to his barrister but the barrister can continue to act as long as he says nothing which is misleading. There, irrespective of the confession, the barrister is doing no more than is proper in putting the prosecution to proof of its case. In contrast, once the Court reaches the point of sentencing, if the barrister is silent as to the correct position in respect of previous convictions (all of which have been established against the client after allowing him the presumption of innocence) the Court will be misled as to the basis for sentencing, whether or not the barrister actually says something implying there are no other convictions. Silence in such a situation brings the system of justice into disrepute.

QUESTION 25: Do you agree that this revised guidance is appropriate, in order to ensure that the court is not misled?

Acceptance of instructions

B56. The new Handbook proposes that when a barrister accepts new instructions, they must be accepted in writing (although email confirmation would be sufficient to meet this requirement) setting out the terms on which the barrister will be acting. We believe that it would be disproportionate to require written confirmation in every case of subsequent or supplementary instructions in the same matter, therefore the barrister will be deemed to have accepted further instructions once the work has been commenced. Guidance will, however, require the barrister to consider whether written communication with the client is appropriate in order to avoid a lack of clarity about whether subsequent or supplementary instructions have been accepted. We do not consider it necessary to be prescriptive about the content of the written communication informing clients of terms at the point of first accepting instructions. However, we specify as an outcome that clients must be adequately informed as to the terms on which work is to be done and Guidance draws attention to the requirements imposed by the Provision of Services Regulations 2009.

QUESTION 26: Are the proposals for when and how acceptance of instructions are to be confirmed and for informing clients of terms appropriate and proportionate or are there changes you would suggest?

Other consultations

- B57. The BSB is currently consulting on, or considering the results of consultations on, several subjects which will affect the final version of the Code of Conduct:
- a. Equality and diversity: We have recently consulted on changes to the equality and diversity duties in the Code of Conduct. Alongside the diversity data collection requirement introduced by the LSB's statutory guidance in July 2011, we propose to introduce these amendments into the current Code from September 2012. The proposed changes, apart from those required by the LSB's guidance, are included in the Code;
 - b. Standard contractual terms: We have applied to the LSB for approval of standard contractual terms, which would form the basis of a barrister's obligation to accept instructions under the cab-rank rule. These proposed changes have been incorporated into the Code but at the time of publication, the application has not yet been approved by the LSB;
 - c. Public access rules: We are currently consulting on changes to the public access rules, which would allow public access authorised barristers to represent lay clients directly in cases where they were entitled to (but had chosen not to accept) public funding. We are also consulting on removing the requirement that a barrister must have practised for at least three years before being allowed to undertake public access work. If these changes are approved, they will be replicated in the new Handbook, however we

propose to undertake a fuller review of public and licensed access in due course;

- d. Chambers monitoring: Following this consultation there will be a separate consultation on the development of the BSB's wider risk-based monitoring strategy, focusing on how that will apply to barristers' chambers.

Other issues

B58. We would welcome any other comments on the draft Code of Conduct.

QUESTION 27: Do you have any other comments on the draft Code of Conduct?

PART C: Conduct of litigation

C1. Following consultation during 2010, the BSB took the policy decision in principle to permit self-employed barristers and BSB regulated entities to conduct litigation, provided that they apply for and meet the criteria for an extension to their practising certificates or authorisation. This chapter sets out the BSB's key proposals for authorisation to conduct litigation, and for ongoing BSB supervision of litigation services. The BSB is therefore now inviting comment only on the detail of its proposed regulatory framework and not on the question of principle.

Background

C2. By way of background, the following paragraphs [numbers] briefly summarise the BSB's main reasoning behind permitting entities and self-employed barristers to conduct litigation, however respondents should look at the following sources for more detailed discussion:

- The 'Regulating Entities' (September 2010) consultation paper explored the regulatory issues involved in the conduct of litigation, at pages 22-35 [link].
- The Consultation Report [link] discussed the arguments contained in responses received to the consultation, and the BSB's responses to those, at pages 15-23.

Permitting entities to conduct litigation

C3. The BSB believes that the regulatory risks posed by entities conducting litigation are not sufficient to justify a prohibition. The BSB already faces a number of challenges in beginning to regulate businesses as well as individuals, but it believes that permitting businesses to conduct litigation in addition to other legal services will be manageable in that context.

C4. The BSB has also been persuaded by arguments that BSB entities must be competitive in what is a strongly competitive market for legal services, so as to promote choice for consumers of legal services, and effective access to justice for the public more widely. In order to be competitive, they should be allowed some flexibility in the combination of legal services they can provide. It is likely that some clients will benefit from a 'one stop shop' which includes advice, advocacy and litigation services. This sort of service could be a cost-effective and easy to use alternative to the services provided by traditional law firms.

C5. Furthermore, the BSB would not require any entities to conduct litigation – this would be a permissive, rather than mandatory, addition to practice. Entities would be free to make commercial choices about which services they decide to provide, and how they provide them. They need not decide to make litigation a significant, or any, part of their practice.

Removing the prohibition on self-employed barristers conducting litigation

C6. The BSB believes that self-employed barristers should also be permitted to conduct litigation where they are able to meet its authorisation requirements. This would be consistent from a regulatory perspective, and also in terms of allowing the self-employed

Bar to compete effectively with entities and enhancing consumer choice. Many will no doubt choose to continue to provide only advocacy services, on a referral basis, but those who wish to do so should be able to expand their services in this way.

- C7. Some of the greatest risks to the client arising from litigation relate to the management of client money. The BSB proposes to mitigate these risks by maintaining a prohibition on holding client funds, subject to arrangements below. Apart from these, risks also arise from a litigator’s administrative practices and knowledge of litigation procedure. In practice, however, there are comparatively few remaining litigation-related tasks which self-employed barristers are prohibited from undertaking. Such tasks include: issuing any claim, process or application note; signing off on a list of disclosure; and any other ‘formal steps’ in litigation of a sort currently required to be undertaken by the client personally or by the solicitor on the record. The BSB has little reason to think that barristers would be unable to undertake these relatively straightforward tasks. Indeed they are already often closely involved in them albeit without taking the final responsibility for them. It believes that any risks arising can be met satisfactorily by ensuring that barristers have an appropriate level of training in procedure, appropriate administrative systems in their place of practice, and appropriate insurance.

Summary of the BSB’s policy position

- C8. Employed barristers have for some time been allowed to conduct litigation subject to complying with the requirements in Annexe I of the current Code, the Employed Barristers (Conduct of Litigation) Rules. The BSB’s provisional position in its Regulating Entities consultation paper was that protections for conducting litigation would include at least the same requirements and that it might in addition impose further training or accreditation requirements. On further consideration, the BSB now proposes to remove and alter some of the requirements in *Annexe I* and also to impose further requirements.

Current requirements for employed barristers

- C9. The current requirements for employed barristers in *Annexe I* can be summarised as follows:

Pre-authorisation:

- 12 weeks supervision by a qualified person (all employed barristers)

Post-authorisation (for barristers less than 3 years’ standing with litigation rights):

- Guidance from a qualified person in place of practice
- 6 hours of CPD annually on ‘an approved litigation course’

Proposed requirements for all practising barristers

- C10. The BSB proposes to introduce the following requirements for authorising individual barristers:

Pre-authorisation:

- Self-certification that a barrister has appropriate level of training and knowledge of litigation procedure and dealing direct with clients.
- Self-certification that a barrister has in his place of practice appropriate systems to manage the conduct of litigation, and appropriate insurance

Post-authorisation (barristers less than 3 years' standing only):

- Guidance from a qualified person in place of practice

Post authorisation (general)

- Paragraph 1(d) of the current Employed Barristers (Conduct of Litigation) Rules requires employed barristers of less than three years' standing to complete at least six hours of CPD on 'an approved litigation course'. However, this requirement will become redundant because the BSB no longer proposes to approve courses
- Under current proposals for the new CPD regime, barristers will be expected to identify CPD which is appropriate to their practice. It follows that a barrister, who is planning to or has newly taken up a litigation practice, should consider undertaking relevant CPD in litigation in the same way that they should arrange CPD relating to other relevant practice areas. Therefore, the obligation to undertake compulsory CPD in litigation will not be carried into the new rules

Proposed requirements for BSB entities

Pre-authorisation:

- (Mandatory) at least one employee or manager who is individually authorised to conduct litigation
- (Discretionary) assessment of the proportion of employees and managers who are individually authorised to conduct litigation and act as qualified persons, and overall levels of experience
- Self-certification that entity has appropriate systems to manage the conduct of litigation, and appropriate insurance

Post-authorisation

- Provision of adequate supervision and systems

Authorisation to conduct litigation

Appropriate knowledge of litigation procedure

C11. The BSB has considered pre-authorisation training and has concluded that barristers at the point of qualification as barristers already have a level of procedural knowledge which is broadly comparable to that of newly qualified solicitors (all of whom are authorised to conduct litigation). Knowledge of civil and criminal procedure is a compulsory part of the Bar Professional Training Course. The Education and Training

Department will keep under review whether there is a sufficient component of litigation procedure in barristers' current training, or whether this component should be reviewed and possibly altered. In many cases, a barrister's initial training will have been supplemented by years of experience of advising on issues concerning litigation.

C12. Barristers are under a duty not to undertake work for which they do not have the necessary training and experience. This applies equally to litigation. Before applying to be authorised, they will need to review whether their knowledge is adequate and up-to-date before signing the self-certification which the BSB will require (see paragraph C20 below).

Appropriate systems to manage the conduct of litigation

C13. The BSB will require all barristers to self-certify that their practice has in place adequate administrative procedures, when applying for authorisation to conduct litigation. The BSB will develop guidance on best practice and a checklist to assist the self-certification process. This will be an 'add on' to the general authorisation requirements for entities seeking BSB authorisation. A description of what might be included in the checklist is discussed below.

Discretion to authorise an entity to conduct litigation

C14. The BSB proposes that entities must have a manager or employee who is an authorised individual in respect of each reserved legal activity that the entity proposes to undertake. Therefore an entity wishing to conduct litigation would need at least one manager or employee who is individually authorised to conduct litigation. There will be no absolute rule on the composition of managers and employees in respect of litigation, but in granting authorisation the BSB will take into account the:

- Proportion of managers and employees who are already authorised to conduct litigation
- Proportion of managers and employees who could act as qualified persons (if necessary)
- Overall level of experience of managers and employees

C15. In theory the BSB would have the discretion to authorise an entity where the relevant individual, or individuals, are newly authorised to conduct litigation. In these circumstances, the BSB would consider the general circumstances and factors including the robustness of the systems put in place to manage litigation and the wider experience of managers and staff. In addition, there will be a number of general authorisation checks that are relevant, including the quantity and proportions of activities that the entity intends to undertake.

C16. The BSB will have in place as part of its wider authorisation scheme, powers of revocation, suspension and subsequent restrictions on practice (with appeal processes), which will apply to conducting litigation as well as other permissions.

Practising certificate

C17. An individual barrister's authorisation to conduct litigation will be additional to their existing authorisation to practice and will be separate from rights of audience. Their practising certificate and entry in the register will show that they are entitled to conduct litigation.

Self-certification checklist

C18. In order to be authorised all individual barristers will have to self-certify that they have:

- Appropriate knowledge of litigation procedure
- Appropriate systems in place to manage the conduct of litigation
- Appropriate insurance

C19. The BSB will develop guidance and a checklist to assist barristers in returning relevant information for the BSB to assess.

Knowledge of litigation procedure

C20. Barristers will be asked to confirm that they have adequate knowledge and experience of litigation procedure. This will include confirmation of having completed:

- Relevant components of the BPTC, BVC, or in the case of individuals who have transferred to the Bar, other vocational courses that contain litigation components
- Relevant CPD
- Any relevant experience (including during pupillage, in practice, or prior to qualification)
- Public Access training

C21. The BSB would normally expect barristers seeking authorisation to conduct litigation to have undertaken the training requirements for Public Access and to be registered with the Bar Council as being ready to undertake such work.

Appropriate systems in place (individuals)

C22. Individual barristers will be asked to confirm that they have available in their place of practice appropriate systems to manage the conduct of litigation. Information on the checklist will include details of:

- Diary management –

One of the main risks to clients stems from deadlines missed by those responsible for conducting litigation, for example where the Court has set a date for submitting a specific document. The consequences of poor diary management can often be of very serious detriment to clients. Barristers will therefore need to confirm that they have put in place

appropriate systems for diary management and the giving, monitoring and discharge of undertakings.

- Holidays and absence from practice

Holidays and absences are important to manage in any practice, but they may give rise to greater risks to the client where the responsibilities of conducting litigation include more continuous project management and client contact. This risk may be heightened where a self-employed or individual barrister is working alone on a piece of litigation. Barristers will need to confirm that cover for holidays and other absences is in place.

- Case management and recording systems

Barristers will need to confirm that they have procedures for recording the progress of litigation cases in which they are instructed. This may include procedures for: identifying and dealing with conflicts of interest; issuing and acknowledging proceedings; track allocation and case management; disclosure, and processes to check files for inactivity.

- Filing systems

Barristers will need to confirm that they have effective filing system in their place of practice, including procedures for archiving and for destroying files.

- Available software and IT systems

Barristers will need to confirm that they have appropriate chambers or practice management software to manage litigation casework.

- Financial systems

Barristers will need to ensure that they have appropriate financial management systems in place.

- Accepting instructions, litigation costs and client money

Rules will apply as they do in relation to other work. In the light of the Provision of Services Regulations barristers will have to make clear their terms, in particular as they relate to fees and client money.

QUESTION 28: Do you have any comments on the proposed self-certification procedure?

Supervision by a qualified person

C23. Under the present rules for employed barristers, a barrister has to work from the same place as a qualified person until he has had three years' experience of conducting litigation as well as practising as a barrister. As very few barristers are currently authorised to conduct litigation, it would be very difficult for self-employed barristers to comply with such a rule. More importantly, the BSB does not consider that this degree of supervision is necessary for experienced barristers who will anyway have considerable experience of litigation related matters. More recently called barristers will not have

equivalent experience. It is therefore proposed that a barrister of less than three years' standing as a practising barrister will be authorised to conduct litigation only if any place of practice where he intends to conduct litigation is also the principal place of practice of a 'qualified person' who is able to provide guidance to the barrister. This will allow barristers in the early years of practice to undertake a full range of work, whilst still keeping some further protection in place to ensure that clients can rely on receiving a high standard of service.

Status of a qualified person

- C24. The BSB has reviewed the current status of a qualified person for employed barristers. It proposes that most of the conditions that currently have to be met should be applied to qualified persons for self-employed barristers. That means that a qualified person will have to be a practising barrister, or a person authorised by another approved regulator, who has practised for a period of at least six years in the previous eight years; for the previous two years has made such practice his primary occupation; and is personally authorised to conduct litigation.
- C25. Unlike the current position, however, the BSB proposes that a qualified person will not have to have had several years previous years' experience of conducting litigation. Otherwise, barristers of less than three years' standing would effectively have to wait for more senior colleagues to gain experience in conducting litigation before seeking authorisation, or would need another authorised person such as a solicitor to be part of the practice. The relaxation of the rule will provide greater scope for self-employed barristers to find a qualified person within chambers or a barrister only entity.
- C26. The BSB believes that a barrister or other authorised person who has practised six years out of the previous eight, and has personally met the requirements to be authorised to conduct litigation, will have a sufficiently high level of understanding of how litigation is conducted to be able to provide appropriate guidance to a barrister of less than three years' standing.

QUESTION 29: Do you agree with the proposed requirements for qualified persons to supervise barristers under three years' standing?

No supervision prior to authorisation

- C27. Current conduct of litigation requirements for employed barristers of all years' standing include a period of twelve weeks during which they are supervised by a qualified person before they can be authorised. The BSB requires the Employed Barristers (Conduct of Litigation) Rules Checklist for Supervised Practice to be completed during the period of supervision and returned to the BSB. The BSB proposes to remove this requirement.
- C28. Since 2002, when the checklist was introduced, 75% of employed barristers who have applied for authorisation have been granted a waiver from the period of supervision, on grounds of relevant experience. The checklist is not assessed and to date no applications for authorisation to conduct litigation have been refused. The BSB believes that this procedure should be replaced by the general self-certification process discussed above which will be subject to a greater level of assessment prior to authorisation.

QUESTION 30: Do you agree that a period of supervision prior to authorisation is not necessary given the other proposed safeguards?Second six pupils

C29. The BSB proposes that pupils in the second six months of pupillage will be authorised to conduct litigation where their pupil supervisor is authorised to conduct litigation. Provided that 'second six' pupils conduct litigation under the guidance of an authorised supervisor, there is no reason to suppose that litigation should pose a greater regulatory risk than advocacy work. Although there is potentially a greater client-facing aspect to litigation, which could lead to greater risks than those arising from the simpler advocacy, research and drafting tasks which currently form the staple diet of pupils, these risks can be mitigated by ensuring that pupils are supervised appropriately, and that due regard is paid to the obligation only to take on work that is within a pupil's competency. If the proposals in current consultation on public access are accepted, clients will also have the protection of a professional client as the BSB has proposed that pupils should not be allowed to do public access work.

C30. There is also a possible risk that pupillage providers could exploit pupils by tasking them to undertake routine litigation tasks at the expense of gaining experience in advocacy. However pupils will still have to satisfactorily complete the required advocacy courses and satisfy any relevant quality assurance requirements for the cases they do. Furthermore, the client contact and procedural experience that pupils would gain could lead to a better holistic understanding of litigation which would be valuable in future advocacy practice.

QUESTION 31: Do you agree that pupils in the second six months should be able to apply to be authorised to conduct litigation provided that their pupil supervisor is also authorised to conduct litigation?When to introduce authorisation to conduct litigation

C31. The BSB has already taken the decision in principle to permit individual self-employed barristers to apply to be authorised to conduct litigation. It is therefore considering carefully whether or not this new permission can, and should, be brought into effect prior to the intended introduction of the regulation of entities (possibly with other non-entity elements of the Handbook). The process for obtaining approval for the BSB to become a licensing authority for ABSs is a long one. It is unlikely that approval could be obtained before mid-2013 at the earliest so we are considering asking the LSB to approve other elements of the new Handbook in a shorter timescale. If the BSB went down this route, it might be in a position to authorise the conduct of litigation by January 2013.

QUESTION 32: Do you think the BSB should authorise barristers to conduct litigation and introduce other elements of the new handbook for individual barristers prior to the regulation of entities?

Fees for the conduct of litigation

C32. Allowing barristers to apply to be authorised to conduct litigation will incur additional cost in the BSB's regulation of the Bar, both in relation to the administration of the approval process and the additional regulatory risks associated with regulating litigation. The BSB believes that these additional costs should be recovered from those seeking to undertake litigation. This would be done via a fee for initial application and/or a continuing higher annual fee once authorised.

QUESTION 33: Would it be appropriate to charge an additional fee for the litigation extension to the Practising Certificate fee to take account of (a) the additional administrative costs and (b) the additional risks associated with regulating litigation?

QUESTION 34: Should there be an ongoing annual fee for those authorised to undertake litigation?

Client money

C33. The BSB proposes to regulate entities and self-employed barristers that are permitted, subject to authorisation, to conduct litigation. In order to conduct litigation, it is necessary to have arrangements in place to allow for the payment of fees and disbursements, as well as for managing settlements and court awards.

C34. The BSB wishes to ensure that the regulatory framework allows barristers and BSB regulated entities sufficient scope to provide services that are competitive with those legal services offered by other providers. It is in the interests of consumers, and the public more widely; to ensure that BSB regulated entities and barristers authorised to conduct litigation can provide competitive services. This includes ensuring that the means to pay for litigation is attractive to clients.

C35. Other Approved Regulators permit the persons they authorise to hold client money. This facilitates payments but introduces risks that the money will be dishonestly used or handled incompetently with resultant risks to clients. To mitigate these risks, the regulator has to implement and enforce detailed handling rules, and operate a proactive monitoring system. Self-employed barristers have never been allowed to hold client money and this has permitted the Bar Standards Board to adopt a less interventionist approach.

C36. The previous consultation paper set out a number of different options not involving BSB authorised persons holding client money for payments associated with litigation which included:

- a. reimbursement and payment in arrears;
- b. fixed fees in advance (the public access scheme currently provides model contractual terms which enable barristers to receive fees in advance of their performance of the contract) and;
- c. escrow or third party arrangements.

C37. Respondents to the previous consultation generally supported the BSB's proposition that it should continue to prevent all barristers (except those who are practising as managers of recognised bodies regulated by other approved regulators) from holding client money. A number of respondents agreed that an escrow account service that could be used for holding court awards and settlements would be a sufficient alternative to permitting entities to hold client money.

QUESTION 35: Do you agree that the BSB should continue to prevent all barristers (except those who are practising in authorised bodies regulated by other approved regulators) from holding client money?

Escrow Account

C38. The BSB proposes to consider authorising a third party to provide an escrow account facility for self-employed barristers and BSB regulated entities, subject to being satisfied about the proposed arrangements. The BSB's role in this scheme will involve setting criteria suppliers will need to comply with and then monitoring compliance, it would not be our role to design the scheme (operationally, that will fall to the prospective supplier). Any scheme would have to be regulated by the Financial Services Authority (FSA) under the Payment Services regulations 2009.

C39. The underlying purpose of an escrow arrangement is to remove responsibility for the management of money from barristers or entities and to give that responsibility to a third party which could be the subject of close regulatory control. This would transfer most of the risks associated with money holding, and concentrate those risks in one place, with those acting as trustees and managers of the accounts. This arrangement should make it easier to ensure effective oversight of financial transactions, minimising the risk of funds being lost or stolen.

C40. It is likely to be cost-effective for those running the escrow arrangement to purchase a banking product and related software designed to manage litigation payments. A number of relevant products already exist and are used by solicitors' firms and the Paris Bar.

C41. The situations where an entity or a self-employed barrister may want to be able to manage client money are as follows:

- a. Payment of Fees;
- b. Payment of Disbursements;
- c. Settlement Monies.

C42. It is anticipated that the escrow account provider would create a team that would be responsible for liaising with the entities/chambers and the banks/financial institutions in respect of the handling of client money. For example, a bank might operate a pooled bank account in the name of the service. Entities or self-employed barristers would then instruct clients or the courts to pay funds into that bank account and when funds were required to be released from that account, the entity or the self-employed barrister would liaise with the escrow service to organise that transfer.

- C43. One or a series of banks might be engaged by the service to operate a pooled account. Individual entities/chambers would be given an individual reference number and clients of that entity/chambers would be given a similar sub-reference number. The banks could then provide a statement to the escrow service at agreed intervals which sets out details of the funds held by the bank on behalf of each entity and each client within that entity. The escrow service would then be responsible for delivering those statements to the individual entities/chambers.
- C44. In the previous consultation paper, we mentioned that we were in discussions with the Bar Council as to whether it would be possible for the Bar Council to provide an escrow account for BSB regulated entities and barristers authorised to conduct litigation. The BSB understands that the Bar Council is considering whether to seek to develop such a scheme.
- C45. There are a number of potential advantages of having a single (not-for profit) escrow account run by an organisation such as the Bar Council. Numerous smaller schemes may not be cost effective and may prove difficult and costly to monitor. Additional costs involved in running a number of smaller schemes may be passed on to the client. However, it could also be argued that competition amongst *providers* may drive down costs for users of the service and improve the quality of the service. The draft handbook does not limit the number of third parties that could provide such a service but we would be interested to hear views on whether we should only authorise one provider.

QUESTION 36: Would you find a custodian account scheme useful?

QUESTION 37: Are there any risks associated with such a service that we have not identified?

QUESTION 38: Should there be just one custodian account or should the BSB be prepared to approve a number of schemes?

Criteria for Approval

- C46. It is proposed that any third party (whether the Bar Council or another provider) wishing to provide an escrow account service would require approval by the BSB. The BSB believes that the following are the key requirements to address the regulatory risks:
- a. The provider will be required to properly account to the BSB for the escrow funds and ensure that usage of funds is explicitly for the purpose intended.
 - b. The provider will be required to keep adequate records of all transactions handled including itemisation of all receipts and disbursements of each transaction. The records shall be maintained for a period of six years from completion of the transaction. These records shall be open to inspection by the BSB or its authorised representatives.
 - c. Background checks. All officers, directors, managers and employees must have background checks performed by the BSB. These background checks will include, among other things, CRB checks and civil court checks for

activities that would indicate previous involvement in fraud, embezzlement, fraudulent conversion, or misappropriation of property or client money.

- d. The provider will be required to keep a separate escrow fund account or accounts in a high street bank authorised to receive funds, which shall be kept separate and apart and segregated from the provider's own funds, for all funds or moneys of clients which are being held pending the closing of a transaction.
- e. The provider will need insurance in place to protect against negligence and crime. This is likely to include professional indemnity insurance, fidelity insurance and vicarious liability insurance. The costs of insurance will need to be factored into the overall costs of the service, to be covered by the entities taking part in the scheme, and ultimately passed on to the client. However, insurance may be relatively inexpensive, provided that the scheme has a robust cash handling structure, which is properly audited and risk-managed.
- f. The BSB will need to be satisfied that the fund holder has properly considered the checks that will need to be made about the funds it intends to hold, before the funds are received. For example the provider should have regard to anti-money laundering requirements and should also consider whether it would be appropriate to conduct Customer Due Diligence measures on all those on whose behalf it is holding the funds.
- g. The BSB will need to be satisfied that the fund holder has appropriate systems and checks in place to verify instructions to release funds and to deal with instructions relating to the escrow account.
- h. The provider should not make disbursements without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. The provider shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made.
- i. The fund should be audited annually by an auditor approved by the BSB, who would also need to have access to the accounts of the barristers and entities using the facility.

QUESTION 39: Do you have any comments about the criteria for approval?

QUESTION 40: What further authorisation criteria should the BSB consider including?

C47. In the light of our continued prohibition on holding client money and the proposed approval criteria (in particular the insurance requirements) for any escrow service, we do not believe that there is sufficient risk in the proposed regulatory arrangements to necessitate a compensation fund, since all money would have to be paid direct to the escrow service rather than via the entity or barrister.

QUESTION 41: Are there any risks not addressed by the arrangements described above that would require us to establish a compensation fund?

Interest payments

C48. Any escrow service will earn interest on the money that is held on behalf of clients. In approving any scheme we may have to consider what will be done with the interest.

There are broadly three options:

- a. Interest earned should be retained by the provider in order to subsidise the costs of operating the scheme, which otherwise would be passed to clients;
- b. All interest should be returned to the client;
- c. A 'commercial' rate of interest should be paid to the client, using any surplus to go towards providing the scheme (assuming the rate of interest earned by the whole fund would be greater than the rate that an individual would normally expect to receive).

C49. The BSB could set a requirement as part of the approval process, or simply judge each application for approval on its merits.

QUESTION 42: Do you have any views as to how interest should be treated within the custodian scheme?

PART D: The BSB approach to entity regulationIntroduction:

- D1. The proposition behind the BSB approach to regulating entities is that the public interest and the wider regulatory objectives of the Legal Services Act 2007 are best served by the BSB offering regulation for some types of entity. The BSB has concluded, in the light of the responses to the last consultation in entity regulation **[add link]**, that doing so better serves the public interest than the alternative, whereby barristers and others are left to look to other regulators if they want to form entities in order to provide the same services that the self employed Bar can provide. The BSB approach is firmly grounded in its assessment of the risks in the marketplace and the capacities and capabilities of the BSB to regulate those risks:
- a. The BSB's regime, with its emphasis on making individuals answerable for their conduct, is well suited to regulation of advocacy and litigation. The responsibility of the individual advocate to the Court and to the client should remain at the heart of regulation of advocacy regardless of whether that advocate is operating within an entity or on a self-employed basis. We believe it to be in the public interest that we should maintain our influence over standards of advocacy as a specialist regulator of that service and, as far as possible, extend that influence to those types of entity whose structure, services and risks are such as to make them suitable candidates for our type of regulation, and to those who choose to work within such entities.
 - b. By doing so, we broaden the range of choice available to those barristers who want to work within entities (for example, because this better enables them to share the risks of providing services on a CFA basis, or the burden of investment in premises, people or infrastructure). From the perspective of the public, our proposed regime (precisely because it does not mirror the SRA's regime and does not, for example, permit the holding of client money) may encourage the Bar to come up with new business models that do not replicate what is already on offer from SRA-regulated firms, thereby broadening the public's choice as to the ways they access legal services.
 - c. By restricting the types of entity we will regulate (whilst still permitting individuals regulated by us to work in the full range of entities regulated by other Approved Regulators), we can keep our regime more streamlined (and less burdensome for our regulated community) than if we were to regulate all possible structures under the LSA and the full range of services (including client money handling and commoditised, bulk services of a sort that are likely to require a very different regulatory approach).
 - d. The existing regime puts at its centre the duty the individual advocate owes the Court and the client. That should not and will not change just because the advocate (or, in future, other authorised person) happens to be operating within an entity. The BSB's regulatory regime for entities will remain, to a significant

degree, focused on holding the individuals (not just authorised bodies) within them to account for their conduct.

- D2. The BSB's policy is therefore to operate as a specialist entity regulator. Imposing restrictions on the types of entities we will regulate enables us to:
- a. maintain our specialist focus on our distinct capacities and capabilities as a regulator;
 - b. encourage the Bar to develop businesses that add to the range of choices available to the public, without diluting the Bar's expertise or duplicating the regimes of other regulators;
 - c. avoid disproportionate cost; and
 - d. reduce the risk of a regulatory failure because we are operating in areas where we lack sufficient know how and resource to regulate well.

Scope of permitted services:

- D3. The BSB's policy is that the scope of services that a BSB regulated entity can offer should be similar to the scope of service that the self-employed Bar offers:
- a. The maintenance of an advocacy focus will come, not from a narrow definition of permitted services, but from the fact that the other restrictions we propose are likely to be compatible with that type of business and incompatible with the needs of businesses that lack that focus.
 - b. We will regulate non-reserved legal services that are provided by those whom we regulate (individuals or entities).
 - c. We do not propose to let BSB regulated entities operate as multi-disciplinary practices (for example combining accountancy and legal services, or patent agent work and legal services).
- D4. The BSB's policy is that BSB regulated entities and the self-employed Bar may not hold client money. We will (if this is confirmed as a feasible solution) facilitate and regulate a central escrow service for the Bar and for BSB regulated entities but that service should be provided as a business service by others but not by the BSB itself. This issue is discussed fully in the previous chapter.
- D5. The BSB's policy is to permit self-employed barristers and BSB regulated entities to conduct litigation, provided that they apply for, and meet the criteria for, a litigation extension to their practising certificate or entity authorisation for advocacy. It is proposed that entities will be authorised to conduct litigation provided they employ at least one authorised litigator and the BSB is satisfied that the risks are manageable, given its discretionary authorisation factors. A condition specifying the level required could be included in their licence or authorisation if they intend conducting litigation. These proposals are intended to help open up the market for litigation services and provide greater consumer choice, whilst ensuring that safeguards are in place to

protect clients. Our proposals in relation to authorisation to conduct litigation are discussed more fully in the previous chapter.

- D6. BSB regulated entities will also be authorised to carry on the other reserved legal activities which practising barristers may undertake (reserved instrument activities, probate activities and the administration of oaths) but the BSB will expect such activities normally to be ancillary to advocacy, advice and litigation and not to form a major part of the entity's activities. If the BSB is concerned that the focus of an entity's business is on such activities, and that it might not be an appropriate regulator for that entity, it will have a discretion to refuse to authorise it (see paragraph D13 below)

Management of entities:

- D7. The draft Code of Conduct introduces duties for BSB regulated entities and the managers and BSB regulated persons who work in them. In addition there are specific duties provided for in relation to the Head of Legal Practice (HOLP) and/or the Head of Finance and Administration (HOFA). The Legal Services Act requires ABSs to appoint a HOLP and HOFA and we have decided that a similar requirement should apply to other BSB authorised bodies. The HOLP will in particular be required to take all reasonable steps to:
- a. Ensure compliance with the terms of the entity's authorisation (and report to the BSB any failure to do so);
 - b. Ensure that the entity and all of the employees and managers who are BSB regulated persons comply with duties imposed by s176 of the LSA and that any non-authorised persons comply with their duties under s90 (and report any failure to do so to the BSB)
- D8. We will also impose a duty on the entity to ensure that all employees are appointed under a contract of employment which requires them to comply with the requirements of the Code insofar as it is applicable to them and do nothing which causes or substantially contributes to a breach of the Code by the entity, its managers or the BSB regulated persons employed by it. The enforcement consultation explores in more depth how the enforcement regime will apply to entities, their owners and managers and the authorised and non-authorised persons employed by them.

Authorisation and structure of entities:

- D9. The BSB envisages regulating a variety of entity structures, including for example partnerships, limited liability partnerships or companies, all of which would be able to employ other authorised persons and non-lawyers. The three types of entity that the BSB proposes to regulate are:
- a. Barrister only entities, which are entirely owned and managed by barristers
 - b. Legal disciplinary practices, all of whose owners and managers are authorised persons and

- c. Alternative business structures, which must have at least one authorised person as Head of Legal Practice and at least one non-lawyer manager. Otherwise, they can have any proportion of lawyers and non-lawyers as owners and managers (subject to the BSB's approval criteria)

D10. In relation to each of the above, the BSB proposes that they can only undertake predominantly “legal activities” as defined by Part 6 of the Handbook. This means any activity which is a reserved legal activity and any other activity which consists any of the following:

- a. The provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
- b. The provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes;
- c. Activities of a judicial or quasi-judicial nature (including acting as a mediator); and
- d. Undertaking legal academic work, such as lecturing, where this is ancillary to other legal activities.

QUESTION 43: Is this definition of legal activities sufficiently broad to encompass all the main activities that a BSB-regulated entity is likely to undertake?

D11. The BSB's policy is that there must be at least one barrister manager in a BSB regulated entity, who is also an owner. There can be, but there are not required to be, other managers and owners. This structure would permit a self-employed barrister to incorporate a company wholly owned by them as a vehicle through which to supply their own services. The BSB will not regulate entities that have owners with a material interest who are not also managers and will require all owners and managers to be natural (i.e. not corporate) persons. This is because we are designing a relatively simple and efficient regime for entities that are relatively low risk and/or where the risks posed are similar to those posed in regulating chambers of self-employed barristers. Complex ownership arrangements which lack transparency impose greater demands on the regulator and therefore impose greater cost on the regulated community as a whole. The risks posed by external ownership are significantly different in nature, especially in the context of advocacy and litigation services, where the duty to the Court may run counter to the profit principle and has to be safeguarded. For similar reasons, we propose (subject to the exercise of our discretion) to limit non-lawyer management of a BSB regulated entity. The strength of our regulatory regime lies in its strong hold over individuals whose ability to practise their professional calling depends on remaining in good standing. Entities predominantly owned and managed by non-lawyers present regulatory challenges which are different. We also propose that a majority of the managers of a BSB regulated entity would normally be qualified to exercise rights of audience in the higher courts (whether as barristers or as HCAs). This is a mechanism for matching entities to our specialist niche.

- D12. Our approach, as a relatively small specialist regulator, is to concentrate on managing efficiently risks that are similar to those we are familiar with, and are suited to managing, rather than attempting to be a jack of all trades. There are other available regulators for those whose business plans cannot be accommodated within our proposals.
- D13. The BSB therefore proposes to have a power to exercise discretion over whether to approve entities, based on whether the entity is one which would be appropriate for regulation by the BSB (subject to some minimum threshold criteria). Guidance would then detail the types of entity that the BSB was likely to be prepared to regulate, considering the following factors:
- a. The services that the entity intends to provide and the nature and extent of any non-reserved activities;
 - b. The proposed proportion of managers to employees;
 - c. The extent to which managers are involved in advocacy and litigation services; and
 - d. Whether the entity intends to undertake legal transactional services direct to lay clients and the extent to which this represents a significant part of the business.
- D14. This discretion will enable exclusion of entities unsuited for BSB regulation, dealing with possible regulatory arbitrage and preserving the BSB's specialist remit.
- D15. Proposed limits on structure will not be operated as rigid limits but rather as indicative factors, as part of an overall assessment of risk and suitability for BSB regulation. For example, the following factors would indicate that BSB regulation would be appropriate (with the converse suggesting that BSB regulation might not be appropriate):
- a. 50% or more of owners and managers have rights of audience in the Higher Courts;
 - b. A substantial part of the services to be provided comprise the provision of advocacy or litigation services;
 - c. At least 75% of owners and managers are authorised individuals.
- D16. It will be open to the BSB to decide to authorise an entity but to impose conditions on the activities or scale of certain kinds of activity it undertakes, or to inform it if the entity makes significant changes in its activities. All such decisions will be subject to appeal.
- D17. The decision to adopt a discretionary approach represents a change from our previous position on authorisation of entities. On reflection, the Board felt that it would be inappropriate to impose rigid criteria and that discretion exercised by reference to risk assessment guided by published risk factors would provide an

element of flexibility, whilst maintaining the safeguards needed in the BSB's niche regime.

D18. Where the BSB concludes that an entity is appropriate to be regulated by it, it may still refuse authorisation if it is not satisfied that:

- a. the managers and owners individually meet the relevant suitability criteria;
- b. the managers and owners are suitable as a group to operate or control a practice providing services regulated by the BSB;
- c. management or governance arrangements are adequate to safeguard the regulatory objectives of the Legal Services Act or the policy objectives of the Bar Standards Board;
- d. if the authorisation is granted, the entity will comply with the Bar Standards Board's regulatory arrangements;

D19. The BSB may also refuse the application for authorisation if:

- a. inaccurate or misleading information has been provided in the application or in response to any requests by the BSB for information;
- b. the application is to become a barrister only entity or a legal disciplinary practice and the BSB concludes that intervention powers that it has under the Legal Services Act in respect of ABSs would be necessary if the entity ran into difficulties (we will discuss these issues further in the second part of our consultation);
- c. for any other reason, the BSB considers that it would be against the regulatory objectives of the Legal Services Act or the policy objectives of the BSB to grant authorisation.

QUESTION 44: Do you agree that the proposed authorisation criteria are appropriate?

Supervision of entities:

D20. The BSB's policy is that authorisation, once granted to an entity, will continue unless or until revoked, suspended or subjected to conditions. However, the introduction of entity regulation provides a useful opportunity for the BSB to review its overall approach to supervision/monitoring and enforcement (enforcement issues are explored in the other consultation paper). Building on our current chambers monitoring regime, we propose to move towards a risk-based supervision system. In addition to requiring entities to submit information annually (and in answer to ad hoc BSB requests), we propose to risk assess each entity against a transparent set of criteria related to the likelihood and impact of any risk to the regulatory objectives that the entity presents. This framework is outlined in more detail in the next section.

D21. The risk factors will be linked to those being proposed for risk assessment at authorisation stage and will aim to ensure that the entities have sufficient systems in place to manage risk, given the nature of the work undertaken. This analysis will

determine the level of supervision that the BSB requires of the entity. We envisage in due course developing self-assessment in order to incentivise compliance by giving entities some control over the level of risk that they present and therefore the level of supervision by the BSB. The BSB may impose conditions when granting authorisation or subsequently. High risk entities may be subject to more regular monitoring with a request for action plans to address perceived issues. Disciplinary action against the entity or individuals working in them or the imposition of conditions on (or ultimately revoking) licences or authorisation, would only be undertaken if satisfactory progress were not made or the breaches of rules or conditions were serious. Aside from disciplinary matters, circumstances in which the BSB may need to take regulatory action include:

- a. The BSB may need to give notice if the entity is no longer considered suitable for authorisation by the BSB. There will be a period of grace where an entity whose structure and services (having been appropriate when authorised by us) later departs from our criteria. This might happen for a number of reasons, for example because the entity has decided to change its structure or business model, or because of an unpredictable event such as the death of its HOLP or its only barrister owner/manager. The BSB will allow reasonable time to rectify the position or switch to another regulator where appropriate, or it may require the entity to undergo a reauthorisation process (for example if it proposes to change from a BOE to an ABS).
- b. The BSB could impose conditions if it considers it necessary to do so in the light of the regulatory objectives, whether on initial authorisation, as a result of changed circumstances, or during a period of grace (see above).

D22. The rules on revoking, suspending and imposing conditions on authorisations will provide for an appeal process.

QUESTION 45: Do you agree with these principles and Section E of Part 3 of the Handbook?

Appeal processes:

D23. An appeals process will be established for all decisions made in relation to the authorisation and ongoing licensing or authorisation of entities. For all entities, it is proposed that all decisions be subject initially to an internal review (perhaps by the BSB's Qualifications Committee in the first instance). It is proposed that there would be a further appeal to the General Regulatory Chamber of the First Tier Tribunal.

D24. We will consult separately on the disciplinary arrangements and related appeal processes for entities and those within them. Our intention is that broadly these should mesh coherently with our arrangements for self-employed barristers.

QUESTION 46: Do you have any concerns about the proposed route of appeal?

Special Bodies

D25. Section 106 of the Legal Services Act envisages that licensing authorities for ABS entities may make rules allowing them to modify their normal licensing rules in relation to certain ‘special bodies’, which would include for example trade unions or not-for-profit bodies. Such bodies are currently benefiting from a transitional period during which they are not required to be licensed under the Act. However, once these transitional arrangements end, it is possible that some may seek to be regulated by the BSB, such as not-for-profit organisations offering pro bono services.

D26. We have reviewed our draft rules for approving and supervising entities and we do not think there likely to be a need for us to amend our rules for special bodies and it would be disproportionate to operate a special regime for these organisations alone. They would of course be able to apply to be regulated by the BSB in the normal way, providing that they fit our profile as a specialist regulator.

QUESTION 47: Do you think that any requirement in our draft rules is inappropriate for special bodies? If so, what type of modification do you think would be appropriate?

The fee structure for regulating entities:

D27. A key principle that the BSB has adopted for the development of the regulatory framework for entities is that consumers of legal services, whether from individual barristers or entities, should experience the same levels of service and regulation. The general principles that apply to the fee structure for BSB regulated entities, and also to individuals and entities who are authorised to conduct litigation, are that the fee structure should:

- a. Be fair to fee payers;
- b. Be efficient and economical to administer;
- c. Ensure a predictable income to meet the costs of regulation;
- d. Be stable - charges should not vary considerably year on year;
- e. Be as simple as possible – to enable the regulated community to predict likely fees;
- f. Be based on data that can be verified;
- g. Ensure that – wherever possible – costs of particular processes that are not of general application should be borne by those using such processes on, as far as possible, a cost recovery basis;
- h. Take some account of ability to pay, in particular, in relation to small and new businesses – fees should not be a deterrent to new entrants.

D28. Initially, uncertainties about for example the number of entities which will seek authorisation may make it difficult reliably to fulfil all these principles but this is the direction in which we would seek to move as more information becomes available

QUESTION 48: Do you agree with the general principles outlined above?

Set up costs

D29. The previous consultation paper proposed that set up costs (which are estimated to be in the range of £400k) should be borne by the Bar as a whole, as the impact on the practising certificate fee is likely to be small (less than £30 per practising barrister) and any barrister now in practice may at some time take advantage of the changes (whether in respect of entities or extending services to litigation). The process of building the BSB's capacity and capabilities in relation to entity regulation will also contribute significantly to the wider capabilities of the organisation as it works towards the LSB's regulatory standards framework across other areas. The Board and the Bar Council agreed this approach in April 2011 and it was agreed that set-up costs would be paid from current Bar Council reserves.

Application fees for the authorisation of entities

D30. Entities will pay a one off fee for authorisation and will remain authorised / licensed unless and until the BSB removes their authorisation/licence⁷, but will need to supply specified information and pay a fee annually. The BSB proposes to charge a standard application fee to entities applying for authorisation. It is proposed that fees for parts of the application process that are not of general application should be borne by those making the application on a cost recovery basis. For example the BSB will reserve the right to charge amounts in addition to the standard fee for complex applications, for data verification and if external advice on an application is required. The intention is that fees for the initial authorisation process will be fully borne by entities and will not be recovered from the rest of the regulated community.

QUESTION 49: Do you agree that there should be a standard application fee for entities subject to the right to charge more if more in depth investigations are needed? If you disagree, please specify what different basis should be used.

Annual fees for entities

D31. The costs of regulating entities will vary depending on the nature of their activities, their regulatory history and their size. Although there is an argument for basing annual fees on risk, the BSB does not have enough information, at least at this stage, to be able to relate particular kinds of risk to increased costs of regulation. An alternative approach to determining fees is therefore required. In accordance with the principles outlined above, the method of calculation should be simple to use and based on reliable information. We therefore propose that the annual fee for entities

⁷ This is an LSB requirement in respect of ABSs and we recommend taking the same approach to LDPs and BoEs rather than having differences in treatment as between different types of entity.

should be calculated on a banded turnover model. The process will involve requiring entities to notify the BSB of a turnover figure for a completed accounting year (by the end of the practising year). That turnover figure could then be used to calculate the fee payable for the next accounting year. For the first year for a new entity, the BSB would need to base the fees on estimated turnover figures. Basing fees on estimated turnover figures increases the risk of charging an inappropriate amount but there could be a power to make an adjustment, up or down, at the end of the year. However, basing the annual fee on turnover would support the principle that the fee structure takes ability to pay into account.

D32. It is also proposed to charge fees for applications to the BSB such as approvals for new managers or the appointment of HOLP or HOFA. These fees will be set a level to cover the costs of dealing with the applications. We may also charge for additional monitoring visits if these are necessary.

D33. The ongoing development of risk based regulation may in future have an impact on the fee structure for BSB regulated entities. However at present the BSB does not have sufficient data to adapt the fee structure to take risk into account and will have to learn from its experience of outcomes-focused regulation.

QUESTION 50: Do you agree that the annual fee for entities should be based on turnover? If you disagree, please specify what different basis should be used.

PART E: The BSB's approach to risk assessmentIntroduction:

- E1. Our approach to risk is fundamental to our work as a regulator and is a core requirement of the Legal Services Board's regulatory standards framework. Not only will it inform decisions about who we regulate and the standards we expect them to meet, it will also directly influence our approach to monitoring and enforcement.
- E2. The BSB is currently reviewing its monitoring strategy in the light of the LSB's regulatory standards framework. The intention is to set up a central monitoring unit, which will be responsible for monitoring chambers and entities. This will in time inform the approach to regulating individuals.
- E3. The focus of this part of the consultation is on the role that risk assessment might play in our monitoring of entities. Following this consultation there will be a separate consultation on the development of the BSB's wider risk-based monitoring strategy as it relates to chambers monitoring.
- E4. Entities will be monitored for compliance with the new Handbook. The intensity and level of monitoring activity to which they will be subjected will depend upon the level of risk that they pose. Our general approach to risk assessment consists of two stages. In the first instance we need to analyse the potential impact of non-compliance with the Handbook on the regulatory objectives and then go on to consider the probability of non-compliance occurring. That means the level of supervision of an entity will be directly linked both to the potential impact if something goes wrong and to the likelihood that it will go wrong.
- E5. It is important to emphasise that the purpose of risk assessment is to help in correctly identifying and then mitigating risks. It is not a sanction but a diagnostic tool. Entities will be expected to collaborate in assessing and addressing risks.

Assessing the potential **impact** on the regulatory objectives:

- E6. It is proposed that the potential impact on the regulatory objectives will be measured through an assessment of the following factors:
 - a. Size;
 - b. Services offered to the public;
 - c. Vulnerability of client base; and
 - d. Availability of other (non-regulatory) remedies for clients.
- E7. **Size** – This factor reflects the basic assumption that larger entities have a greater potential to affect the regulatory objectives than those of a modest size. Size will not only be measured with reference to the actual number of people working at the entity but also in terms of turnover and the number of clients.

- E8. **Services offered** – This will be a combined assessment of both the type of services offered and the method of delivery. This factor is based on the assumption that entities which offer a limited range of services via traditional referral instructions pose less risk to the regulatory objectives than those offering a wide range of services direct to the public.
- E9. Although the BSB regulated community will be prohibited from holding client funds, those entities that choose to make use of an escrow account will be assessed as posing a greater risk than those which do not.
- E10. **Vulnerability of client base** – This factor reflects the assumption that some clients are more vulnerable than others and therefore any adverse events have a greater impact. Because it is difficult to measure vulnerability directly, proxy measurements will be used depending on the area of law in question. For example entities with predominantly immigration, family, personal injury and/or criminal practices have an inherently more vulnerable client base than those which concentrate on high end civil clients like banks and other financial institutions.
- E11. **Availability of other remedies** – Potential impact will be reduced if there are other satisfactory remedies available to the client from outside the regularly regime. For example failures towards commercial clients can, in most instances, be remedied through appropriate professional indemnity cover. However, failures towards clients whose liberty, health or family life is in issue are, inherently, not likely to be adequately compensated by after the event financial redress.

QUESTION 51: Do you agree that these factors are appropriate for assessing potential impact on the regulatory objectives?

Assessing the **probability** of the impact occurring:

- E12. Once the potential impact has been measured consideration turns to how likely it is that an entity will not comply with regulatory requirements set out in the Handbook. In large part, this is a measure of what steps entities have taken to mitigate the likelihood of non-compliance. As mentioned above, an assessment of probability will determine the intensity of the supervision that is adopted.
- E13. In assessing probability of non-compliance we will take into account the following general factors:
- a. Systems that assist in the delivery of services;
 - b. Governance and business model;
 - c. First tier complaints;
 - d. People and training;
 - e. Regulatory history;
 - f. Novelty of the work undertaken or the business model;

- g. The availability of outside assistance;
 - h. Client satisfaction; and
 - i. Quality accreditation.
- E14. **Systems that assist in the delivery of services** – It is important that the entity can demonstrate it has proper systems in place to manage compliance. Failure to demonstrate proper systems are in place suggests the probability of the regulatory objectives being adversely affected is enhanced. For example, the BSB will require systems to be in place to ensure;
- a. Proper conduct of services provided,
 - b. Financial management and risk management,
 - c. Client confidentiality,
 - d. Conflicts are avoided,
 - e. Compliance with the dual capacity rules, the recruitment and supervision of pupils, the equality and diversity rules, the money laundering regulations etc.
- E15. **Governance and business model** – The entity will need to demonstrate that there are good governance structures in place and a coherent business plan. Generally, the BSB will check that these factors have been considered, and will conduct a high level review of the quality of the governance structures and business plans. However, the BSB may submit applications to more detailed review by external experts in order to cross check its own internal assessments.
- E16. **First tier complaints** – The BSB will wish to see that entity has a robust first tier complaints system and that the public is informed of their right to complain to the Legal Ombudsman. An inability to demonstrate compliance with first tier complaints requirements means the probability of the regulatory objectives being adversely affected is enhanced.
- E17. **People and training** – The probability of the regulatory objectives being adversely affected will be increased if the entity cannot demonstrate that there are properly qualified people providing the legal services and properly qualified people running the business. The BSB will want to be satisfied that there is an appropriate HoLP and HoFA (or equivalent) in place, individuals/managers have the right skills and experience for the type of services being delivered, the ratio of managers to employees is appropriate and that those offering legal services can demonstrate relevant experience, competence, CPD and general regulatory compliance.
- E18. **Regulatory history** – Where an entity has had difficulty in the past in complying with its regulatory requirements, we may treat this as an indication that it will continue to encounter difficulty in the future, potentially leading to an adverse effect on the regulatory objectives. There will, of course, be no historic information relevant to

entities because the BSB has hitherto only regulated individuals. The entity's regulatory history will therefore be assessed initially by examining the regulatory history of the owners, managers and authorised persons within it.

- E19. **Novelty** - The possibility of the regulatory objectives being adversely affected may be enhanced if the services being offered by the entity are novel (such as litigation) and/or the structure of the business and governance arrangements are new. Entities that can demonstrate a proven track record with the appropriate skills will therefore be assessed as less likely to pose risks.
- E20. **Outside assistance** – Risk to the regulatory objectives can be mitigated by demonstrating an ability to access high quality outside support. Such support could be offered by SBA's, the circuits, professional support companies or by demonstrating an ability to access the advice and assistance of respected senior advisors.
- E21. This factor may be of particular relevance to smaller entities and sole practitioners acting as an entity. Demonstrating that they have the ability to access quality outside assistance, should the need arise, demonstrates that the likelihood of the regulatory objectives being adversely affected is reduced.
- E22. **Client satisfaction** – Whilst most clients will not be in a position to give informed feedback on the accuracy and completeness of the legal services provided, they will be able to provide valuable information on some of the softer more client focused skills.
- E23. Entities that can demonstrate high levels of client satisfaction (through a properly vetted satisfaction survey or otherwise) will be assessed as less likely to negatively affect the regulatory objectives than those who cannot.
- E24. **Quality accreditation** - Assuming the criteria for judging quality marks can be aligned to what the BSB perceives to be the greatest areas of risk, then an entity with an appropriate accreditation could be given credit for demonstrating effective risk management. Appropriate use of quality accreditations would mean that the BSB's limited resources can be more effectively targeted on entities that pose the greatest risk. This would require the approval by the BSB of certain third party quality assurance processes in due course.

QUESTION 52: Do you agree that these factors are appropriate for assessing the probability of an adverse regulatory impact occurring?

Other considerations for the BSB risk framework:

- E25. **Method of assessment** – The BSB recognises that a model based heavily on mathematical algorithms, with defined scores and weightings, would likely produce more consistent risk assessment results. However, because the quality of our current data is relatively poor and because an assessment of legal services does not lend itself easily to an overly quantitative approach, the BSB will likely favour a qualitative approach to risk assessment. However, wherever possible the BSB will assess

objective factors and will seek to achieve a high level of consistency through strict adherence to the framework, appropriate training of staff and proportionate quality control. More detail on the method of assessing a risk rating is set out in the separate consultation on risk and enforcement.

- E26. **Review** – Once an entity has been given a risk score the BSB will have to keep this under review. For low and medium risk scorers an annual review following receipt of the annual return will probably be appropriate unless concerns are raised. High risk scorers might need to be reviewed more frequently.
- E27. Reviews will also need to take place on an ad hoc basis when significant changes occur to the ownership or management structure (i.e. where there has been a merger or acquisition). The new arrangements will have to be re-assessed using the above criteria and the entity may be assigned a different risk score.
- E28. **Confidentiality** – The BSB’s general approach to risk scoring and the criteria and factors it will make use of will be publicly available. However, specific risk scores will be confidential. We would, however, provide feedback to ‘high’ risk entities to enable the development of a constructive working relationship and to help them to start managing their own risk better.
- E29. **Self-assessment** – In an attempt to incentivise compliance, entities will be required to undertake a self-assessment of their business.
- E30. **Data collection and use** – The data the BSB currently holds on the regulated community is limited. However, over time the expectation is that the BSB will be able to build up a large databank that can then be analysed and used to better inform our position on all areas of risk analysis. Alongside this consultation, we are exploring further the evidence base that is currently available.
- E31. Data will be received by the BSB via four main routes:
- a. Authorisation applications;
 - b. Annual returns;
 - c. Ad hoc information;
 - d. Intelligence (complaints and other sources)
 - e. Monitoring visits.
- E32. Over time we will establish more robust and more reliable data and our regulatory approach may be adapted in light of that.

QUESTION 53: Do you have any comments on the issues raised above?

QUESTION 54: Do you have any views on the applicability of the principles outlined above to individual barristers and the chambers model?

PART F: Equality and diversity impact of the proposals in this consultation

F1. The BSB has produced an interim equality analysis, which accompanies these consultations. The focus so far has been on entity regulation and the key changes that are proposed to the Code of Conduct in the consultations, with a view to getting feedback from respondents on the likely impact on groups with protected characteristics. During the consultation period we will undertake a more extensive analysis of the new Code as a whole, which will be published following our analysis of consultation responses.

QUESTION 55: Do you have any comments on the issues raised in the attached interim equality analysis?

PROMOTING COMPLIANCE: supervision, enforcement and the new BSB handbook**Table of Contents**

INTRODUCTION AND STRUCTURE OF PAPER	3
SUPERVISION (MONITORING UNIT)	4
Existing arrangements	4
Proposed changes	5
Tools available to the Monitoring Unit.....	7
Proactive supervision of entities	8
ENFORCEMENT POLICY	10
DISCIPLINARY ACTION.....	11
Administrative sanctions	11
Determination by consent	14
Disciplinary Tribunals.....	15
INTERIM SUSPENSION (AND DISQUALIFICATION) RULES	16
POWERS OVER NON-AUTHORISED PERSONS AND THE PROPOSED POWER OF DISQUALIFICATION	19
Introduction and legislative framework.....	19
BSB’s proposals.....	19
DIVESTITURE	22
INTERVENTIONS.....	23
Introduction	23
Interventions and ABSs	25
Vesting of money in BSB	25
Intervention agents	26
Funding	26
Impact on the authorisation to practice of individuals following intervention.....	27
Individual barristers.....	27
FINES	28

Introduction	28
Fines and entity regulation.....	28
Fines Policy.....	29
CHANGES TO THE DISCIPLINARY TRIBUNAL REGULATIONS (DTRS).....	29
Proposed entity changes to the DTRs	29
Other general changes to the DTRs	30
DISCIPLINARY APPEALS.....	31

INTRODUCTION AND STRUCTURE OF PAPER

1. In proposing a new entity regulation framework the BSB needs to develop a supervision and enforcement regime that will both help entities comply with their obligations and allow the BSB to take proportionate enforcement action where appropriate. The BSB has also taken this opportunity to review the supervision and enforcement arrangements which apply to individual barristers.
2. In setting out our approach to supervision and enforcement the BSB proposes to be guided by a series of overarching principles. Firstly, our energy and resources should be targeted at the greatest areas of risk. Secondly, we should have a number of tools at our disposal to ensure that our regulatory response is flexible and proportionate. Thirdly, wherever possible regulatory issues should be resolved through an enhanced use of supervision and monitoring, with only the most serious cases being dealt with by way of disciplinary action. Finally, as far as possible the BSB will strive for continuity and consistency between the existing supervision and enforcement mechanisms applicable and those proposed for entities.
3. Because some of the proposed changes affect both entities and individual barristers, it is important that the scope of the proposed changes are clearly understood from the outset. With respect to changes around supervision, it should be noted that the BSB is reviewing generally its approach to monitoring and supervision and will be consulting on this topic in the autumn. This paper sets out current thinking on the supervision of entities but would, in the light of any developments with broader BSB monitoring, be subject to refinement where appropriate. The underlying principle is that monitoring and supervision of entities and Chambers (and, in due course, individuals) will be in accordance with a consistent risk framework.
4. The BSB's new proposals around enforcement will be applicable to the entire regulated community, including individual barristers. This means that proposed changes to areas such as administrative sanctions, the Interim Suspension Rules, determinations by consent, fines and the Disciplinary Tribunal Rules will apply equally to entities and individual barristers.
5. The consultation paper discusses a considerable amount of material and proposes a number of changes to the BSB's current supervision and enforcement regime. To assist readers with digesting the consultation the various sections, and a brief outline of what is covered by each, is set out below:
 - Supervision (Monitoring Unit) – a brief overview of the current supervision and enforcement arrangements and the proposed approach for entities, together with a detailed examination of the BSB's approach to entity supervision and the expanded role of the Monitoring Unit (paragraphs 6-31);
 - Enforcement Policy – this section details the BSB's new enforcement policy and approach to disciplinary action. (paragraphs 31-33).
 - Disciplinary Action – this sections sets out the BSB's proposed approach to administrative sanctions, use of the determination by consent procedure and bringing charges of professional misconduct before Disciplinary Tribunals(paragraphs 34-59).

- Interim Suspension and Disqualification Panels – this section examines the new proposals around the Interim Suspension (and Disqualification) Rules, including the proposal to broaden the triggers for referral to an Interim Panel and the powers available to the Panel (paragraphs 60-73).
- Non-authorized persons – this section covers the BSB's powers over non-authorized persons (i.e. lay managers and employees), including the power to disqualify them from working in BSB regulated entities (paragraphs 74-93).
- Divestiture – this section discusses the BSB's power to force an owner to divest their ownership interest in a BSB regulated ABS entity (paragraphs 94-98).
- Interventions – this section examines the BSB's powers around intervening into an entity, including limiting interventions to ABSs, the initial triggers for intervention, vesting of money, appointment of intervention agents and cost recovery (paragraphs 99-119).
- Fines – this section outlines the BSB's proposals as to the maximum levels of fines that should apply, including the proposal that the maximum level of fine applicable to individual barristers should be increased to £1,000,000 (paragraphs 120-129)
- Disciplinary Tribunal Regulations – this section discusses the proposed changes to how Disciplinary Tribunals are run. The proposed changes cover both entity specific changes and more general changes to the procedure, particularly around Directions Hearings (paragraphs 130-138).
- Appeals to the Visitors – this section covers the proposal that all entity appeals from Disciplinary Tribunals should be heard before the Visitors (paragraphs 139-141).

SUPERVISION (MONITORING UNIT)

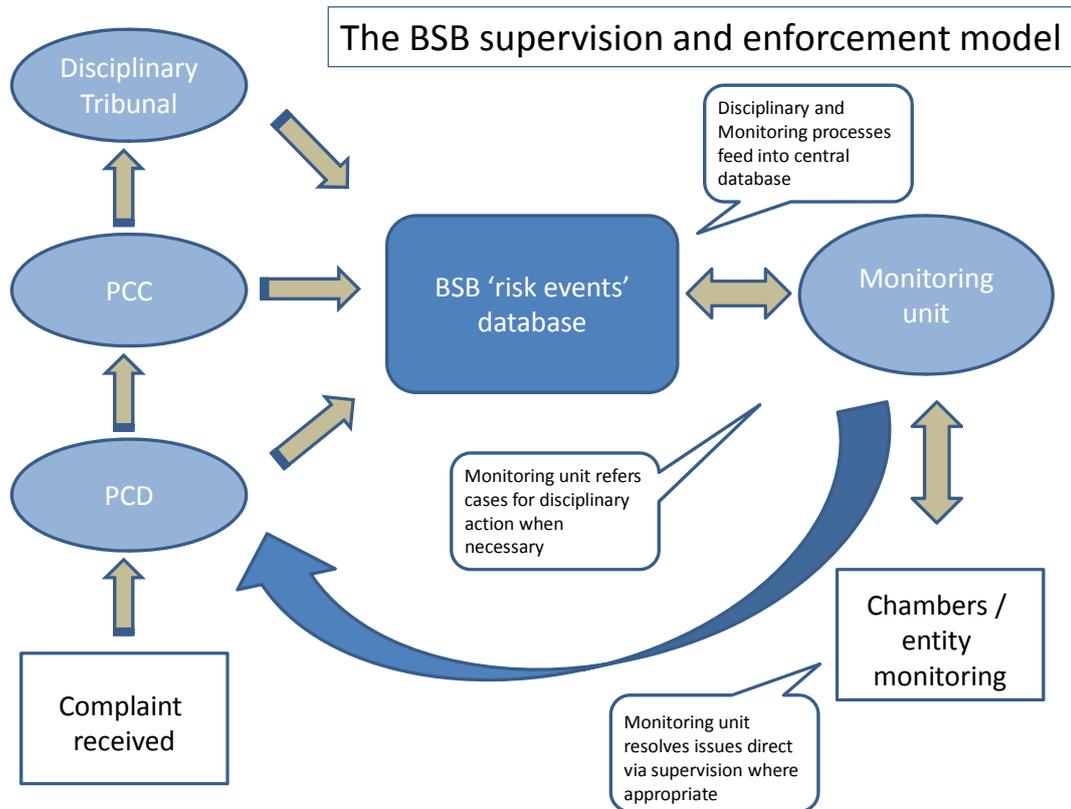
Existing arrangements

6. Historically the BSB has been a reactive regulator and the level of proactive supervision and monitoring over individual barristers and chambers has been minimal. This means that most of the BSB's regulatory effort has been focused on reacting to past events and taking appropriate disciplinary action where necessary.
7. Alleged breaches of the Code are currently dealt with by the Professional Conduct Department (PCD) and the Professional Conduct Committee (PCC). The office of the Legal Ombudsmen deals with all service related complaints against barristers. On receipt of a complaint or intelligence the PCD will first check to see whether there is evidence of potential misconduct or other breach of the rules. If there is no evidence, the matter will be dismissed with no further action. If there is evidence, the PCD will investigate and refer the matter to the PCC for disposal. The PCC has a range of options available to it including dismissing the matter, imposing an administrative sanction or directing that a barrister be charged with professional misconduct and referred to a Disciplinary Tribunal.

8. In terms of the current arrangements around proactive supervision, in 2010 the BSB's Quality Assurance Committee conducted the first round of nationwide chambers monitoring. Chambers were required to complete a monitoring form answering questions relating to compliance with pupillage, money laundering, complaints handling and equality and diversity rules. There are plans to commence the second round of chambers monitoring later in the year.

Proposed approach

9. The BSB is currently reviewing its monitoring strategy in order to maximise compliance with the LSB's regulatory standards framework. The intention will be to set up a central Monitoring Unit which will be responsible for monitoring entities and chambers. There will be a targeted consultation on the development of the risk-based monitoring strategy later this year. The risk-based monitoring of entities and chambers will in time inform the approach to monitoring individuals, although there are no immediate plans for targeted monitoring and supervision at an individual level (aside from sole practitioners who will be included in the chambers monitoring regime).
10. In relation to entities, the new risk-based monitoring strategy will see the Monitoring Unit taking a more active role in the identification and resolution of any regulatory issues that may emerge post authorisation. The Monitoring Unit will endeavour to resolve any regulatory issues through non-disciplinary measures by working constructively with the entity in question. The PCD and PCC will therefore only become involved if all reasonable supervisory measures have failed (or if there is a serious alleged breach of the Handbook that justifies immediate disciplinary action).
11. Particularly during the early days of entity regulation, some non-compliance may be due to the novelty of the regime and be better addressed by supervision towards compliance than by enforcement measures. In this way, the Monitoring Unit will build up knowledge of the areas that are causing particular difficulty for entities, and of where there is a risk of adverse impact on their clients, and can use this knowledge to focus monitoring resources appropriately.
12. In relation to specific complaints and other intelligence that suggest a possible breach of the Handbook, we propose that the PCD remains the initial collection point for both individual barristers and entities. The PCD will also continue to be responsible for undertaking an initial assessment of all information received and investigating potential breaches of the Handbook with a view to disposal by the PCC. As a parallel work stream the Monitoring Unit will continue to work with entities and chambers to ensure compliance with the Handbook and help to resolve any regulatory issues that do not justify disciplinary action.
13. The below diagram sets out how the BSB envisages the relationship working:



14. All complaints and intelligence about potential breaches of the Handbook will go to the PCD for initial assessment (irrespective of whether they relate to an entity, chambers or individual). If there is no evidence of a breach, or if the complaint is made out of time or can be more appropriately dealt with by someone else, the complaint will be dismissed. If there is evidence of a breach then the PCD will investigate in their normal way and gather evidence.
15. Unlike some other Approved Regulators, the BSB does not propose to run all new complaints and intelligence received through a mathematical risk framework. Nor does the BSB propose to treat complainants as “informants” and keep them at arm’s length. Instead the BSB will continue to keep complainants at the centre of its procedures and keep them fully engaged and informed throughout.
16. At the end of any investigation the matter may be dismissed by the PCD for lack of evidence or referred to the PCC for disposal. The PCC will continue to have the full range of disposal options available to them. These include dismissing a matter, imposing an administrative warning or fine, referring the matter to a Determination by Consent (with the defendant’s consent) or drafting charges of professional misconduct and referring the matter to a Disciplinary Tribunal for hearing.
17. The work of the Monitoring Unit will continue in parallel with the work of the PCD and PCC. Because the Monitoring Unit’s work will be risk based, it will need access to any information that may affect the risk profile of an entity or chambers. The proposal is therefore that

information about how a complaint or intelligence has been dealt with (be it dismissed, imposition of administrative sanction, referred to DBC, referred to Disciplinary Tribunal) will be fed into the shared risk events database. The database will be a discrete part of the BSB's new core database.

18. The Monitoring Unit will be able to access information passed into the database and use this to constantly update their risk profile of the entity or chambers. The type of information passed into the database by the PCD will obviously have different weightings depending on the nature of the information. For example, information that a complaint has been received but immediately dismissed for lack of evidence will have less weight than information that an individual of entity has been convicted by a Disciplinary Tribunal of professional misconduct. The type of information and the weight attached to it will therefore directly affect the intensity of the supervision and monitoring undertaken by the Monitoring Unit. In straightforward terms, entities and chambers that are assessed as a greater risk will justify more intense supervision and monitoring.

Tools available to the Monitoring Unit

19. When working with entities and chambers to resolve regulatory issues, the options available to the Monitoring Unit will be varied and will include:
- a) Offering advice about areas of regulatory concerns and suggesting ways in which these areas might be addressed (this may include referring the entity, or chambers to assistance offered by the Bar Council, Circuits or SBAs);
 - b) Providing chambers/entities with a timeframe in which to address non-compliance and demonstrate compliance;
 - c) Working with the entity or chambers towards an agreed action plan to remedy any areas of concern;
 - d) Insisting on extra training on aspects of the Handbook (i.e. money laundering, complaints procedures, pupillage requirements etc).
20. Where possible the BSB is committed to resolving regulatory issues without bringing formal disciplinary proceedings. The clear aim will be to ensure future compliance, not to impose sanctions for past mistakes. If however the Monitoring Unit is satisfied that an entity or chambers has not complied with any of the above and further non-disciplinary measures are inappropriate, it will refer the matter to the PCD and suggest an own motion complaint be raised.
21. Whether or not an own motion complaint is pursued will be at the absolute discretion of the PCD having assessed all of the available information.

Proactive supervision of entities

22. The above sets out how the BSB generally proposes to react to complaints and intelligence. This section focuses on the likely application of proactive risk based supervision applicable to BSB regulated entities.
23. The Monitoring Unit will have an important role in the proactive supervision of entities to ensure general compliance with the Handbook. As part of the authorisation process and subsequently, each entity will be subject to a risk assessment. The BSB expects that the vast majority of entities it regulates will present a medium or low risk score and therefore will not require intensive supervision (see Part I of this consultation that explains the risk assessment process). However, there may be entities that produce a high risk score, or whose risk score increases over time, and therefore require closer supervision. Equally, the process of monitoring and feedback from complaints will, as evidence builds up over time, highlight particular areas of the activity of entities that tend to cause more frequent or more severe instances of detriment to clients. These will then warrant particular focus.
24. Before discussing the mechanics of the BSB's approach to proactive entity supervision specifically, it is worthwhile briefly examining the wider regulatory landscape and the BSB's position within it. An important aspect of the BSB's enforcement policy will be to ensure proportionate regulation.
25. The BSB will be acting as a specialist regulator of entities posing similar regulatory risks to those posed by the self-employed Bar, operating under rules that will exclude a number of sources of risk that exist in the regimes of other Approved Regulators (such as more complex ownership structures, external ownership or client money). In general, entities regulated by the BSB are likely to be small to medium size enterprises. The BSB therefore does not consider that it would be appropriate, or proportionate, to operate an intensive supervision regime, unless specific risk factors have been identified at the point of authorisation or through monitoring that justify a more intensive approach in relation to a particular entity or on a thematic basis.
26. The appropriate level of supervision will be a balancing act that is determined by a number of factors. The current chambers monitoring scheme will be the starting point for the BSB's approach to entity supervision. Currently chambers monitoring takes the form of a regular return. In previous years the BSB has monitored compliance in specific areas including first tier complaints, pupillage and money laundering. It is anticipated that there will be another round of chambers monitoring undertaken in the middle of this year. The results of this monitoring exercise will help the BSB refine the various risk factors intended to be included in its new risk-based monitoring framework, which will apply to chambers and entities.
27. Within the first 12 months of being authorised, the BSB proposes that it will conduct a monitoring visit with every entity that produces a medium or high risk score. The BSB does not consider that it would be an appropriate use of its resources to conduct these initial monitoring visits for entities that produce a low risk score, although we may decide to undertake such visits for the purposes of information gathering. The initial visit will serve to

reinforce the BSB's commitment to constructive dialogue and also ensure that the entity is complying with its obligations under the terms of its licence/authorisation.

28. For entities that produce a low or medium risk score, the BSB considers that the appropriate level of ongoing supervision would normally be to require no more than completion of a regular return (probably annually) and any other returns required in particular risk areas. The entity will be required to certify that it continues to comply with the Handbook and also answer specific questions on particular areas of regulatory concern. All returns will then be analysed by the Monitoring Unit to ensure no regulatory issues arise. If regulatory issues do arise, or new intelligence is received, then appropriate action will be taken and the risk score will be reviewed.

Q: Do you agree that this level of supervision is appropriate for low and medium risk entities?

29. Entities that produce a high risk score (at the authorisation stage or otherwise) will require something more intensive. The exact level of supervision will need to be proportionate and will of course depend on the facts of individual cases. There are a number of ways the entity and BSB can work together to mitigate those risks which the BSB is concerned may not be adequately controlled, these include:

- a) Personal monitoring visits and/or telephone conversations on areas of concerns;
- b) Requiring additional training;
- c) Requiring more frequent monitoring returns (e.g. six monthly);
- d) An undertaking to work towards an agreed action plan on particular areas of concern (e.g. no computer system in place to ensure the proper conduct of litigation or poor CPD compliance);

Q: Do you agree that this level of supervision is appropriate for high risk entities? Should the BSB do anything more by way of supervision of these entities?

30. Aside from the above, the BSB is also considering the possibility of carrying out short-notice spot inspections of randomly selected entities. All entities would potentially be subject to these spot inspections, irrespective of the risk assessment score. The BSB believes that conducting a reasonable number of short-notice inspections is a proportionate way to incentivise compliance with the Handbook and to identify any emerging problem areas which may be of more general concern. The BSB may also want to carry out thematic inspections if it has identified any cross-sector issues. Again, if areas come to light where the BSB is concerned that risks are not adequately controlled it will aim to identify in discussion with the entity ways these risks can be better mitigated.

Q: Do you agree that the BSB should adopt short-notice inspections of randomly selected entities and thematic inspections?

ENFORCEMENT POLICY

31. In the first instance, it is important that the BSB clearly identifies why enforcement action is necessary. The BSB considers that the primary reasons for taking enforcement action are to protect the public interest and to protect the interests of consumers, although this obviously meets other regulatory objectives indirectly. Aligned to this is the need for the BSB to offer a credible deterrence and to encourage compliance with the Handbook.
32. The hallmarks of the BSB's new enforcement policy will be:
- a) Proportionality - The BSB recognises that proportionate enforcement is necessary to ensure the stated outcomes are achieved and the Handbook is complied with. This means that wherever possible, matters will be resolved through supervision and engagement without the need for formal enforcement proceedings. Such an approach relies heavily on a positive and open working relationship between the BSB and the regulated community (this reflects the constructive engagement ethos that underpins our approach to supervision).
 - b) Individual responsibility - Individual responsibility is at the heart of the BSB's regulatory regime. Therefore, it is more likely that enforcement action will be targeted at an individual rather than at an entity level. However, there will be cases that justify action targeted either at the entity alone or at the entity plus certain individuals. With respect to chambers, the BSB will have no power to bring charges against the Chambers itself (unless it sets up as a BSB regulated entity). Therefore the BSB will continue to enforce the Handbook by holding individuals within chambers (particularly Head of Chambers or the senior management committee) responsible for compliance with the rules relating to the management of Chambers.
 - c) Flexibility - A range of enforcement tools will be available to the BSB including written advice or rebukes, the expanded use of administrative warnings or fines, determination by consent, or Disciplinary Tribunal and a power to intervene (applicable to ABSs only).
 - d) Disciplinary charges - Although charges will be brought with specific reference to breaches of core duties and/or rules, the enforcement policy will nevertheless take into account the outcomes that each section of the Code is trying to achieve. This means that before deciding whether or not enforcement action is required, consideration will be given to whether or not one of more of the outcomes has been adversely affected (other criteria mentioned above will also be considered). A consequence of adopting this approach is that no formal disciplinary action may be taken even where a particular breach of the Handbook has been identified, provided that breach was relatively minor, did not have a negative impact on one or more of the outcomes and appropriate steps have been taken to prevent a recurrence.
33. If all supervisory options have been exhausted, or if supervision is not appropriate in the particular circumstances, the BSB will consider taking disciplinary action against the entity.

In deciding whether or not to take disciplinary action on a particular case of breach of the Handbook, the BSB proposes to include the following criteria in its new enforcement policy:

- a) Whether one or more of the outcomes has been negatively affected;
- b) The seriousness of the act or omission;
- c) The number of clients affected and the seriousness of the adverse impact (or potential adverse impact) on those clients (particularly if the clients are vulnerable);
- d) Evidence of insufficient care being taken over compliance or of recklessness, deliberate breaches, or dishonest behaviour;
- e) The period of time over which the act or omission took place;
- f) Whether the breach is accepted by the defendant and what has been done to correct the breach and to provide any appropriate redress;
- g) The extent to which the act is a one off or part of series of similar matters;
- h) The impact on clients of the BSB's taking action compared with the impact of not taking action;
- i) Impact on public confidence in the profession and the administration of justice;
- j) Whether enforcement action is necessary to deter others;
- k) The impact of the act or omission taking into account the BSB's regulatory priorities as stated from time to time.

Q: Do you agree that the above should be included in the BSB's enforcement policy; are there any other factors that should be included?

DISCIPLINARY ACTION

34. For the avoidance of doubt, the proposals in this section apply to individual barristers and entities. Where disciplinary action is deemed necessary, the BSB will have a number of options available to it. Depending on the seriousness of the breach, the disposal options available to the PCC will include:

- a) Impose an administrative warning or fine;
- b) Resolve via the determination by consent; or
- c) Referral to a three or five person Disciplinary Tribunal.

Administrative sanctions

35. Presently there are only limited sections within the 8th Edition of the Code that are capable of being dealt with administratively by the BSB (see rule 901.1). Every other breach falling outside rule 901.1 is construed as professional misconduct (see rule 901.7) and is therefore not capable of being disposed of administratively. Unlike other Approved Regulators, the BSB does not currently have the power to impose internal disciplinary findings (other than through the determination by consent procedure).

36. The BSB now proposes to move away from limited use of administrative sanctions and instead apply them, where appropriate, to the entire Handbook. The ability to impose

administrative sanctions would apply equally to all entities, authorised individuals, non-authorised managers and individual barristers.

37. The new proposal fundamentally alters the position under the current Code and will mean that every breach of the Handbook is potentially capable of being dealt administratively. Once disciplinary action has been determined to be appropriate in respect of a breach of the Handbook, applying the factors in paragraph 33 above, the BSB will consider whether, in all the circumstances, a proportionate outcome in the public interest would be the imposition of a warning or fine. If so, the BSB will proceed to deal with the breach administratively, applying a civil standard of proof.
38. An alleged breach of the Handbook will be elevated to an allegation of professional misconduct if certain aggravating factors are identified by the PCC. Relevant factors that may justify an alleged breach being treated as an allegation of professional misconduct include:
- a) The seriousness of the allegation and its impact having regard to all of the factors set out in paragraph 27 above;
 - b) Whether the barrister has a poor disciplinary record;
 - c) Whether the appropriate sentence is likely to be a fine above the administrative limits, disbarment, suspension, disqualification or revocation of licence;
 - d) Whether the breach involves non compliance with previous orders or directions of the BSB;
 - e) Whether there is a substantial dispute of fact; and/or
 - f) For any other good reason.
39. Having identified that an allegation is to be treated as one of professional misconduct, the PCC will, as it does now, apply an evidential test and a public interest test before deciding whether or not to prosecute.
40. The BSB considered the possibility of carving out various provisions of the Handbook where breaches would always constitute professional misconduct. Obvious examples of such behaviour would be misleading the court, breaching client confidentiality, committing fraud etc. On balance it was agreed that this approach should not be adopted because too much will turn on the facts of the case and the seriousness and impact of the breach. The BSB considers that it would be better to start from a position where a breach of any given rule could potentially be dealt with administratively and then go on to apply the above criteria. Plainly, it would be exceptional for certain of the rules in the Handbook to be breached in a way that did not amount to professional misconduct, but, nevertheless, approaching the matter in this way will encourage a proportionate approach. The BSB is confident that the above approach will ensure that allegations of serious breaches of the Handbook will always be construed as allegations of professional misconduct and be dealt with accordingly.
41. The power to impose administrative sanctions will rest exclusively with the PCC who, in accordance with existing arrangements, will be able to delegate the power to senior PCD

staff in appropriate cases. This means that, following investigation, it will be possible for a member of the PCD staff to determine whether or not there has been a breach of the Handbook that is apt for administrative disposal.

42. In deciding whether or not to impose an administrative sanction, the civil standard of proof will be applied. The BSB considers that the civil standard is appropriate given the less serious nature of the breaches being considered, as compared with an allegation of professional misconduct before a Disciplinary Tribunal. The SRA, likewise, applies a civil standard in relation to administrative sanctions, whilst a quasi-criminal standard applies to allegations of professional misconduct in the SDT.
43. Currently the BSB can impose a fixed financial penalty of up to £300 (or such other amount as agreed by the BSB from time to time). The BSB considers that the existing fixed level of fine is too low and too rigid. Instead the BSB proposes to move to a new maximum level of up to £3,000 for an individual or up to £5,000 for an entity. When deciding what level of fine is most appropriate the BSB will have regard to the various factors set out in the fines policy (detailed at paragraph 106 below). The BSB will also continue to be able to issue warnings.

Q: Do you agree that the BSB should adopt this new approach to enforcement with greater use of administrative sanctions? Do you agree with the new maximum level of fines proposed?

44. As is currently the case, the BSB's decision to impose an administrative sanction can be appealed to an independent Appeal Panel that is administered by COIC (there is no further right of appeal beyond the COIC Panel).
45. In the absence of any appeal, non compliance with an administrative sanction (i.e. failing to pay the fine) is likely to be treated as professional misconduct which would result in the matter being referred to a full Disciplinary Tribunal for disposal.
46. Because administrative sanctions will only be appropriate for breaches of the Handbook that, based on the above criteria, do not constitute professional misconduct, the BSB proposes that they will be formally recorded and taken into account in future risk assessments, and in decisions as to whether to deal with a subsequent matter by way of supervision or by enforcement, but will not be made public. If they were to be published, the findings would appear on a certificate of good standing and would need to be disclosed in any future application for silk, admission to an overseas jurisdiction or on application to the judiciary.
47. The primary objective in dealing with matters administratively is to secure future compliance. Dealing with minor issues without publicity is more likely to encourage co-operation by the barristers concerned. This will be in the public interest as it will achieve better compliance with less use of the BSB's resources and therefore at lower cost. The BSB considers that public disclosure would have disproportionately serious consequences for barristers with little or no corresponding benefit to the public.

Q: Do you agree that administrative warnings and fines should not be published?

Determination by consent

48. In appropriate cases, and with the consent of the defendant, the BSB currently has the power to dispose of complaints that disclose a prima facie case of professional misconduct without the need to refer the matter to a Disciplinary Tribunal, by way of the determination by consent process.
49. The proposal is that the determination by consent process (currently found at schedule 1 of Annex J) should be expanded to include entities and all authorised individuals and non-authorised managers within an entity. Cases will only be appropriate for determination by consent if:
- a) The defendant submits to the jurisdiction;
 - b) There are no substantial disputes of fact;
 - c) If proved the sentence would not likely result in disbarment, a period of suspension, disqualification or revocation of licence or authorisation; and
 - d) There are no public interest considerations or other exceptional circumstances that warrant referral to a Disciplinary Tribunal.
50. If a finding is made, the PCC currently has the power to impose a variety of sanctions, including:
- a) Fine up to £15,000;
 - b) Issuing advice as to future conduct;
 - c) Reprimand and/or a warning;
 - d) Ordered to complete CPD;
 - e) Ordered to take and pass a test in professional conduct and ethics.
51. Importantly the PCC has no power to disbar or suspend under this procedure. The proposal is that the PCC will retain all of the existing powers (although the level of available fine would be much higher at £1,000,000 – see fines section) with an additional power to impose conditions on a practising certificate, licence or authorisation. This will, for example, allow the imposition of conditions designed to prevent a repetition of the misconduct and to promote future compliance.
52. There are no appeals from PCC decisions under the determination by consent procedure. However, if the defendant is dissatisfied with the PCC's final decision they may elect to have the matter referred to a full Disciplinary Tribunal. In those circumstances the finding of the PCC is set aside and the matter considered afresh.

Q: Do you agree that the determination by consent procedure should be extended to include entities and to allow the PCC to impose conditions on a practising certificate, licence or authorisation?

Disciplinary Tribunals

53. The PCC will continue to refer the most serious breaches to three or five person Disciplinary Panels for disposal. Subject to specific changes discussed below, the process of bringing charges to a Disciplinary Tribunal will be broadly similar for individual barristers, entities and those who work in entities.
54. In determining that a matter is apt for disposal at a Disciplinary Tribunal the PCC must be satisfied of the following:
- a) The imposition of an administrative sanction is not appropriate in all the circumstances;
 - b) The PCC considers that there is a realistic prospect of a finding of professional misconduct being made; and
 - c) The PCC considers that the regulatory objectives would be best served by pursuing the disciplinary proceedings.
55. In deciding whether a three or five person Disciplinary Tribunal is most appropriate the PCC will consider the sentence which is likely to be imposed if a finding is made. If the PCC considers that likely sentence would be one of disbarment or suspension for more than three months (in the case of a barrister defendant), disqualification or revocation of an entity's licence or authorisation, then the matter will be referred to a five person Disciplinary Tribunal.
56. As set out in Part 1 of this consultation, unlike other Approved Regulators the BSB's proposed policy is that the stated outcomes in the Handbook will not themselves be enforceable. Rather specific charges heard before Disciplinary Tribunals will be framed by reference to breaches of one or more of the core duties and/or rules.
57. Hearings before Disciplinary Tribunals will proceed in accordance with the existing rules (subject to the changes discussed below) and the rules of natural justice.
58. Following a finding of professional misconduct, a five person Disciplinary Tribunal will have the following powers:
- a) Disbar or suspend a barrister;
 - b) Disqualify a person from working in a BSB regulated entity (this power will be enforced by making it an offence for a BSB regulated entity or person to employ a disqualified individual);
 - c) Revoke an entity's licence or authorisation;
 - d) Place conditions on an entity's licence or authorisation (for example, a prohibition on undertaking certain kinds of activity);
 - e) Impose fines up to the prescribed maximum (see fines section at paragraph 111 below);
 - f) Issue a warning, rebuke or advice.

59. Following a finding of professional misconduct, a three person Disciplinary Panel will have the same powers as above except it will not be permitted to disbar a barrister or suspend him from practise for more than three months, disqualify a defendant or remove an entity's licence. If, at the conclusion of the hearing, a three person Disciplinary Tribunal considers that a case merits a sentence that is beyond their powers, they may refer the case to a five person Disciplinary Panel for sentencing.

Q: Do you agree with the proposed approach to Disciplinary Tribunals? Do you think there is still benefit in retaining five person Panels or should the BSB move to three person Panels?

INTERIM SUSPENSION (AND DISQUALIFICATION) RULES

60. The BSB currently has powers to interim suspend a barrister from practice pending disposal of a matter before a Disciplinary Tribunal. The BSB proposes to widen these powers so that, in appropriate circumstances, it may impose interim suspension and/or disqualification orders against barristers (self employed or otherwise), an entity, non-BSB authorised individuals and non-authorised managers/employees.
61. The BSB also proposes to introduce a power that will permit the Chairman of the PCC to impose an immediate interim suspension in the most serious cases, provided that he is satisfied that the risk to the public interest or to the interests of clients is such as to justify immediate suspension, rather than waiting until the matter can be heard by the Interim Panel.
62. The BSB recognises that the ability to impose interim suspensions or disqualifications pending hearing is a significant power that could have wide ranging consequences on individuals and entities. Nevertheless, the BSB also recognises that there are potentially circumstances where the power is required in order to protect the public and satisfy the regulatory objectives.
63. In broad terms the proposal would mean that, as well as being able to interim suspend a barrister's practising certificate, the BSB will also have the power to interim disqualify a non-BSB authorised person (e.g. a solicitor) or non-authorised manager/employee from being employed by a BSB regulated entity, pending disposal of a matter before a Disciplinary Tribunal. The BSB would also have the power to interim suspend an entity's licence or authorisation.
64. The BSB's power to suspend a practising certificate applies exclusively to barristers. For example, this means that while the BSB can disqualify a solicitor from working in BSB regulated entities, it has no power to suspend a solicitor's practising certificate generally. It will therefore be up to the other Approved Regulators to take any necessary action against their own authorised persons once notified by the BSB.
65. Currently, under Annex N of the Code, a barrister may be referred to an Interim Panel by the PCC if they have been:

- a) Convicted of, or charged with, an indictable criminal offence; or
 - b) Convicted by another Approved Regulator of misconduct, for which they have been sentenced to a suspension or termination of the right to practise.
66. Where a conviction (either for an indictable offence or by another Approved Regulator) has caused referral to the Panel, the Panel may decide to impose a term of interim suspension from practice, or interim prohibition of accepting public access instructions, for up to six months pending the hearing of a Disciplinary Tribunal. No interim suspension shall be imposed unless the Panel considers that it is likely a Disciplinary Tribunal would impose a sentence of disbarment or suspension for more than 12 months, and it considers it in the public interest to do so. In lieu of suspension, the Panel may also accept a written undertaking from the barrister on such terms as it thinks fit.
67. Where a criminal charge has caused referral to the Panel, the Panel may decide to direct the barrister to notify his professional and lay clients of the offence with which he is charged. The Panel may also direct that the barrister's practice be subject to any conditions they think fit. In lieu of making the above directions, the Panel may also accept a written undertaking from the barrister on such terms as it thinks fit. Importantly the Panel has no powers to suspend where the referral has been triggered by a charge.
68. The BSB proposes to amend the rules to expand the triggers for referral, so that it may refer a matter to an Interim Panel if:
- a) There is reason to suspect dishonesty on the part of any authorised person or non-authorised manager or employee;
 - b) There is reason to consider interim suspension/disqualification is necessary and proportionate to protect the public interest or to protect the interests of clients (or former or potential clients);
 - c) An authorised person or non-authorised manager or employee has been convicted of, or charged with, an offence other than a minor criminal offence as defined by the Handbook;
 - d) An authorised person or non-authorised manager or employee has been convicted by another Approved Regulator of misconduct, for which they have been sentenced to a suspension or termination of the right to practise;
 - e) The entity has been intervened into by the BSB.
69. If an individual or entity is referred to an Interim Panel by the PCC, the Chair of the PCC will also consider if an immediate interim suspension or disqualification is justified. The Chair may only impose an immediate interim suspension or disqualification if he is satisfied that the risk to the public interest or to the interests of clients is such as to justify immediate suspension or disqualification, rather than waiting until the matter can be heard by the Interim Suspension Panel. Such an order would take effect immediately and would remain in force until such time as the Interim Panel has disposed of the matter.

70. The BSB proposes that, irrespective of what initially causes the referral, at the conclusion of the hearing the Interim Panel shall have the following powers:

- a) Decide not to impose any period of interim suspension, disqualification or prohibition;
- b) Decide to impose an interim suspension, disqualification or prohibition from accepting public access instructions for up to six months pending disposal of the case by a Disciplinary Tribunal - provided that no interim suspension or disqualification shall be imposed unless:
 - i. the Interim Panel considers that it is likely a Disciplinary Tribunal would impose a sentence of disbarment or suspension (with respect to barristers), or a sentence of disqualification (with respect to non-BSB authorised persons or non authorised managers and employees), or a sentence of suspension or revocation of an entity's licence/authorisation; and
 - ii. it considers it to be necessary in the public interest to do so.
- c) In lieu of imposing a period of suspension, disqualification or prohibition, accept an undertaking from the individual or entity on any terms the Interim Panel thinks fit.
- d) Require the individual or entity to inform lay and professional clients about any conviction, charges or other matters the Interim Panel thinks fit;
- e) If the matter has not been disposed of by a Disciplinary Tribunal within 6 months, the Interim Panel will have a power to extend any interim suspension, disqualification or prohibition for a further 6 months. For clarity, the power to extend may be used more than once.

71. Currently Interim Suspension Panels are comprised of a barrister QC who Chairs, three other barristers of at least 10 years' Call and one lay person. The BSB proposes that the Interim Panel should be reduced to three people – Chaired by a barrister QC with two other members, at least one of whom must be a lay person.

72. Interim Suspension Panels will continue to be appointed and administered by COIC and proceedings shall be governed by the rules of natural justice. Appeals from decisions of Interim Panels will be heard by an independent Appeals Panel that is also administered by COIC.

73. The above amendments go further than the existing rules and widen both the triggers for referral and the powers available to an Interim Panel. Whilst the BSB considers that these powers will be used sparingly, it nevertheless thinks that the powers are necessary in order to protect the public and the other regulatory objectives.

Q. Do you agree with the amendments being proposed by the BSB to the powers and procedure relating to the Interim Panel?

POWERS OVER NON-AUTHORISED PERSONS AND THE PROPOSED POWER OF DISQUALIFICATION

Introduction and legislative framework

74. In order to understand the BSB's proposals in respect of powers over non-authorized persons it is first necessary to explain what powers the BSB will have as an Approved Regulator and as a licensing authority.
75. Under 176 of the LSA 2007 an Approved Regulator will acquire a regulatory hold over any non-authorized persons who are managers or employees of a BSB authorized person. Such persons will have a duty under the LSA 2007 to comply with the BSB's rules. This will apply, equally, to those who are managers or employees in entities that are authorized or licensed by the BSB and to the employees of self-employed barristers who are authorized by the BSB.
76. Section 90 of the LSA 2007 obliges non-authorized persons who are employees or managers of an ABS not to cause the ABS or authorized persons within it to breach their duties.
77. Section 99 of The Legal Services Act 2007 will give the BSB a statutory power to disqualify a person from being a manager or employee of an ABS or acting as Head of Legal Practice or Head of Finance and Administration in an ABS if they breach the duties that the LSA 2007 places on them or cause or contribute to breaches of the body's licence/authorisation and the BSB is satisfied that it is undesirable for the person to be a manager, employee, HOLP or HOFA, as the case may be.

BSB's proposals

78. The BSB believes its powers over non-authorized persons should be consistent, regardless of the type of business structure within which the person works. It is not sufficient for the BSB to rely on these statutory provisions alone, since these would leave anomalous gaps. For example, there would be no power to disqualify a non-authorized person who worked in an LDP, BoE or chambers, as opposed to in an ABS. This is inconsistent and illogical and moreover the SRA does (under s43 Solicitors Act 1974) have such a power in relation to anyone working for a solicitor or for any recognised body the SRA regulates, as well as (under s99 LSA 2007) in relation to those working within an ABS. Equally, where clerks were employed by the Head of Chambers they would come under a duty under s176 to comply with the BSB's rules so far as they applied to them, but where they were employed through a management company (which is not an authorized person) they would not.
79. The BSB is therefore proposing rules which would achieve consistency as between non-authorized persons working in different structures. Once approved, these amendments to the BSB's rules become part of the BSB's regulatory arrangements under s21 LSA 2007 and the duty in s176 extends to them. Given that there would be some exceptional cases (for example employees of an unauthorised management company) that would not be directly covered by that statutory duty, and in order to promote and underline the importance of compliance in all cases, there would in addition be a requirement that employers impose equivalent duties to those prescribed in ss90 and 176 LSA 2007 by way of the employment contract.

80. However, the BSB is also determined, as further explained below, to take a proportionate approach to the regulation of non-authorized persons. The BSB has considered and rejected the option of following the approach taken by the SRA, of imposing the entirety of its Code of Conduct on all non-authorized persons, whether managers or employees. .
81. The BSB proposes that all entities, together with all authorized persons and non-authorized managers working in entities, will be subject to a full range of disciplinary sanctions (including disbarment or disqualification or revocation, imposition of practising conditions, warnings, fines and rebukes). The BSB has decided that where a person has the status of manager or of a HOFA they should, even though a non-authorized person, still be subject to all of the obligations which the BSB's Handbook places on managers. We deal with this in the parallel consultation on the Code of Conduct. It follows that they should also be subject to the full range of the BSB's regulatory powers, in the same way as other managers who are authorized persons.
82. The BSB believes, however, that such an intrusive approach is not justified in relation to non-authorized persons who are employees (other than HOFAs). Historically, the BSB has not directly regulated the employees of barristers but has relied on their employers to manage them appropriately and impose sanctions where appropriate. That approach, on the whole, has worked. The proposal, therefore, with respect to non-authorized employees is that they will only be subject to a power of disqualification. The BSB does not consider that it would be proportionate regulation, or a good use of its limited resources, to micromanage the conduct of non-authorized employees. It will be the employer's responsibility to ensure that non-authorized employees observe the rules and to take disciplinary action as necessary. The BSB's power to disqualify will be reserved for cases where it is necessary in the public interest to prevent the person concerned from being able to continue to work for BSB authorized persons. Such cases should be exceptional.
83. To reinforce the statutory obligations of the LSA 2007, the BSB will require that all non-authorized employees are appointed under a contract of employment which obliges them to do nothing which causes or substantially contributes to a breach of the Handbook by an authorized person or which causes an authorized person to breach a condition attached to their authorisation or licence. The contract will make it clear that a significant breach of this duty will be gross misconduct and may lead to disqualification by the BSB.
84. Information leading to a decision to disqualify will come from a variety of sources. Because all authorized persons and managers are under an obligation to report serious misconduct, one important source of information will be self-reporting by the entity itself. Any information which discloses serious misconduct on behalf of a non-authorized employee will be investigated by the PCD and referred to the PCC in the ordinary way. In appropriate cases the PCC will then refer matters to a Disciplinary Tribunal for disposal.
85. Where referral involves a non-authorized employee, the Disciplinary Tribunal will not be asked to consider a charge that alleges a specific breach of the Handbook. Rather the BSB will make an application for disqualification on the basis that a) the employee has breached their duty to do nothing which causes or substantially contributes to a breach of the Handbook by an authorized person or which causes an authorized person to breach a condition attached to their authorisation or licence; and b) the BSB is satisfied that it is undesirable for the employee to be employed by or manage a BSB authorized person or entity. This formula applies to all non-authorized employees, whatever their employer, the

criteria which s99 LSA 2007 establishes for the disqualification procedure in respect of employees of ABSs

86. Disqualification will also be available in respect of non-BSB authorised individuals and non-authorised managers who are brought before a Disciplinary Tribunal on a charge of professional misconduct. In their case, the criteria for disqualification will be a) that they have breached the duties imposed on them by s 90 and/or s176 LSA 2007, as the case may be, or if they are Head of Legal Practice or Head of Finance the specific duties imposed by ss91 and 92; and b) the BSB is satisfied that it is undesirable for them to perform any such role in respect of a BSB authorised body (for BSB-authorised persons the equivalent is suspension or disbarment).
87. The person sought to be disqualified will have an opportunity to put their case, to be represented and to call evidence at an oral hearing. In determining whether the criterion of a breach of a relevant duty is established, the Disciplinary Tribunal will apply the criminal standard of proof. If a breach is found proved to that standard, the Disciplinary Tribunal must then go on to consider whether it is undesirable for that person to be allowed to act in any of the relevant capacities in future. This is a matter for discretion, to be exercised in the public interest. In reaching a decision the following factors (which are not exhaustive) may be taken into account:
- a) The nature and extent of the breach and whether it caused significant harm or loss;
 - b) If the breach was deliberate, calculated, repetitive or prolonged;
 - c) If the breach negatively affected any of the regulatory objectives;
 - d) Whether the breach has jeopardised the public confidence in the profession;
 - e) Any remorse or any remedial steps taken by the individual;
88. If the Disciplinary Tribunal reaches a decision to disqualify, it will publish the findings and place the non-authorised employee (or authorised person or non-authorised manager, as the case may be) on the disqualification list. The BSB will provide details of the disqualification to the LSB and all other Approved Regulators.
89. If dissatisfied with the decision of the Disciplinary Tribunal, an appeal may be lodged with the Visitors. Unless the Disciplinary Tribunal rules otherwise, the decision to disqualify will take immediate effect and the individual will remain disqualified pending appeal.
90. If a non-authorised individual accepts their breach and further accepts that they should be disqualified, the BSB will be able to impose the disqualification by consent without the need to refer the matter to a Disciplinary Tribunal.
91. A disqualified individual may apply to the PCC to review the disqualification, but only after 12 months have lapsed since the start of the disqualification. As above, any such application will initially be considered on the papers by the PCC with a right of appeal to an independent Appeal Panel administered by COIC. In determining the application the overriding consideration must be whether the disqualification is necessary to protect the public. There may be cases where the PCC would impose conditions on the reinstatement. The individual could apply to review those conditions after 12 months have lapsed from their imposition.
92. The BSB recognises that there may be exceptional cases where a disqualification places an entity in a difficult position regarding employment law. For example, a non-authorised employee who had not yet been dismissed by the entity might be disqualified by the BSB, which would require their employment to be terminated by the employer.

93. The BSB considers that the likelihood of legal challenge by an employee would be extremely rare because disqualification will be reserved for the most serious cases of misconduct. Such behaviour is almost always going to constitute gross misconduct under the employment contract, which would justify dismissal. Likewise, the drafters of partnership deeds or other documentation establishing the rights *inter se* of those forming the entity should be sure to cater appropriately for one of their number being disqualified and therefore unable to continue in their position in the entity.

Q: Do you agree with the BSB proposed approach to the regulation of non-authorised employees and to disqualification?

DIVESTITURE

94. Pursuant to Part 5 of Schedule 13 of the LSA 2007 the BSB may make an application to the High Court to have an ownership interest of a non-authorised person divested. Any such application will be made by the BSB on the recommendation of the PCC. The “divestiture” provisions enable the court to order the sale of shares held by a person who holds an interest in an ABS, where that ABS is a company with shares. This may be done in the following circumstances:

- a) where an investor has taken steps to obtain an interest without the regulator’s approval;
- b) where an investor holds a restricted interest in breach of conditions imposed by the regulator; and
- c) where an investor holds an interest to which the regulator has objected.

95. The court may also order the sale of shares where a non-authorised person’s shareholding exceeds any ceiling imposed by licensing rules made under Part 4 of the Schedule.

96. Where the conditions for divestiture are satisfied, the regulator may issue a restriction notice imposing certain restrictions on the shares. The restrictions which may be imposed are:

- a) any transfer of the shares or agreement to transfer them is void (including transfer of the right to receive unissued shares),
- b) the shares’ voting rights cannot be exercised,
- c) no further shares can be issued to the investor, or
- d) the investor cannot be paid any sums due on the shares (dividends etc), unless the company goes into liquidation.

97. Divestiture may not always be possible and there is an alternative mechanism for enforcement in a case where a person holds a restricted interest in breach of any conditions imposed on the holding of that interest. The regulator may apply to the High Court for an order enforcing the conditions.

98. The power to divest an ownership interest only applies to non-authorised individuals. However, there will be circumstances where the entity will need to be able to require authorised individuals to divest themselves of an ownership interest or else lose its authorisation or licence. If a manager has to stand down from their position as manager of the entity by virtue of being suspended, disbarred or disqualified from acting as such, then, given that the BSB’s rules do not permit non-manager ownership, that manager will also

need to divest him or herself of ownership or the entity will no longer meet the conditions of BSB authorisation or licence. It will therefore be important that the entity's constitution, partnership deed or governing documentation make appropriate provision for this possibility.

INTERVENTIONS

Introduction

99. In broad terms, intervention is the process by which the regulator is able to take control of client money and client files in the public interest. Schedule 14 to the LSA 2007 provides a statutory power of intervention in relation to licensed bodies (ABSs), which the BSB will acquire if it becomes a licensing authority. The grounds for intervention under the LSA 2007 can be broadly summarised as:
- a) Failure to comply with one or more terms of the licence;
 - b) The appointment of a receiver or another defined insolvency event;
 - c) Suspected dishonesty by a manager or employee;
 - d) Undue delay in dealing with a matter;
 - e) It is necessary to exercise the power for the benefit of clients.
100. The power to intervene in a solicitor's practice has existed since 1943. The power is closely linked to, and was introduced at the same time as, the Law Society's Compensation Fund. Together these two elements of the solicitors' statutory scheme are primarily directed at the protection of client money.
101. Currently the Bar's regulatory scheme does not include an intervention power and there is not, as far as the BSB is aware, any evidence to suggest that such a power is necessary in relation to individual barristers. The BSB will however need to consider interventions in relation to the entities it regulates.

Does the BSB need an intervention power in relation to entities?

102. If the BSB becomes a licensing authority for ABSs under the LSA 2007 it will in any event acquire the "off the shelf" intervention power contained in Schedule 14 to the LSA 2007. The provisions contained in that Schedule are similar to the existing powers of the Law Society (SRA) under the Solicitors Act 1974. In effect, the BSB will acquire this statutory power in respect of ABSs by virtue of becoming a licensing authority, regardless of whether there is an objective need for such a power.
103. This statutory power of intervention would not, however, be available to the BSB when regulating LDPs or BoEs, and primary legislation would be needed in order to obtain such a power. The BSB has carefully considered whether such a power of intervention would be necessary in relation to these entities and has provisionally concluded that it would not.
104. The need to take control of client money does not arise, given the prohibition proposed for BSB regulated entities. The BSB therefore needs to consider whether LDPs or BoEs represent a significantly greater risk than established chambers or individual barristers. It could be argued that entities present the following risks that are not present, or at least are less prominent, with individual barristers' practices:

- a) It would be possible for the entity to enter corporate insolvency. If one self employed barrister within a set of chambers enters into an IVA or is made bankrupt this is of less concern than if an entity becomes insolvent.
 - b) Suspected dishonesty could be more widespread throughout the entity because of its corporate nature.
 - c) As a consequence of the foregoing the entity itself is not able to resolve issues in the way a set of chambers could where the issue is limited to one member. Therefore there are likely to be regulatory issues that the BSB would not be able to address without a form of intervention power. In other words in a corporate entity the whole thing may collapse and there will be no one to take control in the interests of clients.
105. Having carefully considered the issues the BSB considers that some of these concerns might not be valid. This is because:
- a) In a corporate insolvency, an insolvency practitioner is likely to be appointed who will wind down the business in an orderly manner and realise its assets. The practitioner may seek to carry on the practice or dispose of it – the BSB would then have to consider whether it would agree to this and if so what qualifications and/or obligations the insolvency practitioner should have. If it does not agree, it could withdraw the authorisation (which may ensure the co-operation of the insolvency practitioner without the need for an intervention power);
 - b) Within any LDP or BoE there will be individual barristers who will (or may be required to) have an individual obligation to assist in resolving the difficulties. It would be truly exceptional if all BSB regulated individuals in the entity were either incapable of doing so or were dishonest;
 - c) The risk of an entire practice failing has existed with sole practitioner barristers and there is no evidence that this risk has required an intervention power;
 - d) The BSB will in any case retain a number of other tools for mitigating risks, such as monitoring the entities, imposing conditions on their authorisations and revoking authorisations where necessary. These controls are likely to be sufficient in the vast majority of cases.
106. The BSB has therefore provisionally concluded that it is not necessary to seek a statutory power of intervention in relation to LDPs and BoEs. However, the following additional safeguards might be considered if necessary:
- a) Imposing an additional requirement on BSB regulated individuals within entities that they will take all reasonable steps to inform clients and distribute files if the organisation itself is unable to do so;
 - b) A protocol as to how administrators or receivers shall react in relation to BSB entities;
 - c) Consideration of whether in an extreme scenario it may be possible to apply for a court supervised receivership in the public interest.

Q: Do you agree with the BSB assessment of the regulatory risks and the provisional view not to have statutory intervention powers over LDPs and BoEs? Are there any other safeguards that could sensibly be adopted?

Interventions and ABSs

107. Although the BSB does not anticipate obtaining intervention powers over LDPs and BoEs, it will acquire the “off the shelf” intervention power contained in Schedule 14 to the LSA 2007 in relation to licensed bodies. Some of the provisions are not apt for a BSB scheme as they are directed at the more elaborate protections required in relation to client money.
108. The BSB will therefore develop a policy paper that sets out how it proposes to use the intervention power over ABSs. We suggest that the policy paper would need to include the following points:
- a) Given client funds are not an issue, it would make clear that the primary aim of the intervention power is for the BSB to take control of documents, mail and other forms of communication;
 - b) The BSB would seek to recover its own costs from the monies held by the entity and vested in the BSB upon intervention; and
 - c) It will emphasise that the BSB would not normally expect to use the provisions relating to the vesting of monies in order to take control of those monies to which others are beneficially entitled. However, in the event that this did occur (for example in relation to client monies that were wrongly held in breach of the Handbook) then the BSB would, as far as practicable, seek to establish those entitlements and distribute the statutory trust accordingly. In such circumstances, which should arise rarely, if ever, the BSB would appoint an agent to undertake that work (see further below).
109. Any decision to intervene will be authorised by the Office Holders of the PCC (made up of the Chair, two barrister vice-chairs and two non-barrister vice-chairs) on recommendation from BSB staff. In urgent cases the Chair of the PCC may authorise an intervention. Schedule 14 of the LSA 2007 provides that applications may be made to the High Court in order to challenge a notice to intervene.

Q: Are there any other considerations that should be included in the policy paper on interventions in ABSs?

Vesting of money in BSB

110. Paragraph 3 of Schedule 14 to the LSA 2007 provides that the sums of money to which the paragraph applies, and the right to recover or receive them, vest in the licensing authority if the licensing authority decides that they should do so. The paragraph applies to all sums held by or on behalf of the licensed body in connection with its activities as a licensed body.
111. A similar provision is set out at paragraph 6 of Schedule 1 to the Solicitors Act 1974. This allows both office and client monies to vest in the SRA following an intervention into a solicitors practice. Following an intervention, the SRA identifies those persons who may have a beneficial interest in the statutory trust monies. Once a distribution has been made

to the relevant beneficiaries, the SRA may use any residual funds to offset any costs, charges or other expenses incurred in establishing the beneficial entitlements and after this to the Solicitors' Compensation Fund (see the SRA Intervention Powers (Statutory Trust) Rules 2009).

112. Because BSB entities will be prohibited from holding client funds it does not immediately seem necessary to have a power such that upon intervention, client monies vest in the BSB. However, the relevant entity may be holding office monies, or may, in breach of the Handbook, be holding client money. The BSB may wish to use office monies to offset the costs associated with the intervention and would in any event need to take control of any client money wrongly held. We therefore think it will be useful to have provision for this, much as we would expect it to be rare for the BSB to need to make use of this provision.

Q: Do you agree that the BSB should retain the full powers of office and client monies?

Intervention agents

113. The BSB does not consider that it will need an elaborate set of arrangements in relation to intervention agents. This is for two reasons. First, interventions are not likely to occur frequently, indeed they should be rare, since the main cause for interventions in other regimes is the need to protect client money. Second, if they do occur, the primary task will be to re-allocate existing files rather than account for money.
114. In so far as the work of the entity is done on a referral basis, it is likely that the instructing solicitors will deal with this. At all events, even in a situation where an ABS is working directly for lay clients, the redistribution of that work should not in general require appointment of an agent (if it did, that would be an argument for a general power of intervention, not limited to ABSs, contrary to the BSB's present view). The ABS and any authorised persons within it would have a continuing duty, by virtue of their obligation to act in the client's best interests, to facilitate clients in distributing their work to the alternate lawyer of their choice as quickly as practicable, especially if a Court hearing or other deadline is imminent. However clients can also reasonably be expected to act to protect their own interests by promptly finding alternate representation, if provided with appropriate support, explanations and information by the BSB.
115. The additional administrative functions (such as identifying files, contacting solicitors or clients, fielding telephone calls etc) could be dealt with in-house or outsourced under contract. Because the BSB anticipates that interventions in ABSs will be rare, the BSB's preference is to outsource this work on an ad hoc basis.

Q: Do you agree that the best option would be for the BSB to appoint intervention agents on an ad hoc basis?

Funding

116. There is inevitably an element of artificiality about this discussion. If the BSB thought there was a case for intervention powers for all entities or across the board, we would say so. That is not the view we take, but statute prescribes that, whether we think it is needed or not, we will acquire such a power in relation to ABSs alone. There is then the question of who should fund the capability to exercise that power, should it ever be needed. The BSB's proposal is that, although intervention powers apply exclusively to ABSs, funding for

interventions should be obtained via a percentage of the annual fee paid by all entities. The BSB regards this as the least undesirable of the available alternatives. The alternative funding options would be to recover the costs:

- a) Exclusively from ABSs on a polluter pays basis. The obvious risk with this option is that there may be low ABS uptake, making the imposition of the cost on only those entities disproportionate. Moreover the possibility of this exposure might distort choices of structure, which would be a case of the tail wagging the dog; or
- b) From the entire profession. The justification for adopting this option would be that there is a risk to the barrister brand should a BSB licensed ABS have to be intervened into and it is reasonable to expect the entire profession to cover the cost.

117. Whilst it is proposed that up front funding for intervention costs should be shared amongst all entities, rather than either of the alternatives canvassed above, those costs would wherever possible be recovered from the entity intervened into under paragraph 17 of Schedule 14 LSA 2007, which provides that costs incurred under the Schedule are to be paid by the licensed body and may be recovered from the licensed body as a debt owing to the licensing authority.

Q: Do you agree with the BSB's funding proposals? If not, what alternative funding method do you favour?

Impact on the authorisation to practice of individuals following intervention

118. The statutory scheme in respect of solicitors provides that where an intervention occurs on the grounds of suspected dishonesty or where the solicitor has been committed to prison in civil or criminal proceedings, the exercise of the power of intervention operates immediately to suspend any practising certificate of that solicitor for the time being, unless the Panel resolving the resolution specifically direct otherwise (see section 15 Solicitors Act 1974). The BSB proposes to make intervention a ground for referral to an Interim Suspension and Disqualification Panel. As part of this process the Chair of the PCC may decide to immediately suspend or disqualify an individual.

Q: Do you agree that intervention should be a ground for referral to an Interim Panel?

Individual barristers

119. As above, the BSB considers that it will not be necessary to extend the intervention scheme to individual barristers. We are not aware of any evidence to suggest that an intervention power has been previously needed, and the BSB does not consider that the regulatory objectives will be adversely affected if the current position continues.

Q: Do you agree that intervention powers are not necessary for individual barristers?

FINESIntroduction

120. Following a disciplinary finding, one sentencing option available will be to impose a fine against the entity and/or individual within the entity. The BSB therefore needs to consider the maximum level of fines available. It also needs to consider whether the maximum level of fines will be uniform across all types of entity and whether or not the existing level of fines applicable to individual barristers should be amended.
121. Pursuant to s95(1) of the LSA 2007 a licensing authority may, in accordance with its licensing rules, impose on a licensed body (or a manager or employee of a licensed body) a penalty of such amount as it considers appropriate. Subsections (2) and (3) confirm that the fine must not exceed the maximum as prescribed by the LSB.
122. The prescribed maximums set by the LSB are £250,000,000 with respect to the licensed body and £50,000,000 for a manager or employee within a licensed body. The LSB will expect the BSB to provide for these maxima in its rules. The maximum fine currently available after a Disciplinary Tribunal or determination by consent against an individual barrister is £15,000.

Fines and entity regulation

123. The factors referred to at paragraph 25 **Error! Reference source not found.** above remain relevant in determining the appropriate maximum levels to be imposed, namely that the BSB will be a specialist entity regulator regulating small and medium sized enterprises that do not handle client money. The level of fines it imposes must be proportionate having regard to this.
124. The two basic options available to the BSB are as follows:
- a) Adopt the statutory limits set by the LSB for licensed bodies (ABSs), but impose a lower limit for BoEs, LDPs and individual barristers. The proposed lower limit is £1,000,000; or
 - b) Adopt the ABS upper limits for all BSB regulated entities and individual barristers.
125. On balance the BSB believes that option one is preferable. This option ensures compliance with the LSB's approach to ABSs, whilst at the same time recognising that the BSB will regulate lower risk entities that are very unlikely to require extremely high level of fines. The approach is also consistent with that adopted by the Council for Licensed Conveyancers, which uses the legislative maximums for ABSs but impose a lower £1,000,000 maximum for recognised bodies and for individual licensed conveyancers.
126. In preferring option one the BSB acknowledges that the proposals lead to inconsistencies between the maximum levels of fines that are available for ABSs as compared to LDPs, BoEs and individual barristers. Because the ABS maximums are determined by the LSA 2007 and the LSB, it is not open to the BSB to adopt lower maximums. The decision to adopt a £1,000,000 limit for non-ABS fines, although somewhat arbitrary in itself, more fairly reflects the nature of the risks posed by the BSB's regulated community.

127. The proposal would mean that the BSB will have the power to impose fines on ABSs of up to £250,000,000 and up to £50,000,000 for an individual within the ABS. For LDPs, BoEs and individual barristers the maximum fine available will be £1,000,000. Before imposing any fine, the BSB or a Disciplinary Tribunal will be obliged to consider the factors set out in the BSB's Fines Policy (outlined below), and also refer to any appropriate sentencing guidance to ensure like cases are dealt with consistently.
128. With respect to individual barristers the BSB recognises that this proposal represents a very significant increase in the level of fine that may be imposed (£15,000 up to £1,000,000). In recommending the proposed increase the BSB has in mind the desirability of being able to impose fines of a comparable amount to those available to other Approved Regulators in comparable circumstances. But it wishes to stress that historic sentencing guidance will still be relevant, and no fine may be imposed without proper regard to the fines policy. The BSB believes that this will ensure the level of fines imposed on an individual barrister will remain appropriate to the circumstances, despite the very high maximum that is nevertheless available.

Q: Do you agree with the above proposals?

Fines Policy

129. The fines policy will form part of the wider sentencing guidelines already issued by the BSB. In deciding the appropriate level of fine to be imposed, the BSB and Disciplinary Tribunal will take into account all relevant circumstances, including that any financial penalty should:
- a) be proportionate to:
 - (i) the misconduct;
 - (ii) the harm done;
 - (iii) the means of the person directed to pay;
 - b) be of an amount that:
 - (i) is likely to deter repetition of the misconduct;
 - (ii) will remove any financial gain or other benefit obtained as a direct or indirect consequence of the misconduct;
 - c) take into account:
 - (i) the intent, recklessness or neglect that led to the misconduct;
 - (ii) any mitigating or aggravating circumstances;
 - (iii) any indicative guidance published by the BSB from time to time.

Q: Do you agree with the factors to be included in the fines policy paper? Are there any additional factors that should be included?

CHANGES TO THE DISCIPLINARY TRIBUNAL REGULATIONS (DTRS)

Proposed entity changes to the DTRs

130. The BSB's clear policy position is that, as far as possible, the procedures for disciplinary cases brought against entities, and individuals within entities, should mirror those

applicable to individual barristers. This means that the DTRs, currently found in Annex K of the 8th Edition of the Code, will need to be amended.

131. Disciplinary Tribunals are independently administered and run by the Council of the Inns of Court (COIC). In principle COIC has no objections to expanding their functions to include disciplinary cases involving entities.
132. The entity specific amendments that are proposed are relatively straightforward and in effect simply widen the category of “defendant” so that it includes the entity and individuals within the entity. Aside from a couple of specific points that are discussed below, the amendments will mean that the process of bringing a disciplinary case against an entity will essentially be the same as that involving an individual barrister.

Q: Do you agree that disciplinary cases involving entities should follow the same procedure as individual barristers? Is there anything unique to an entity that means other options would be more appropriate?

133. The BSB recognises that disciplinary cases involving entities may present slightly different factual scenarios than cases involving individual barristers (particularly around management of the entity). Because of this the BSB proposes to widen the rules around the possible composition of the Disciplinary Tribunal. Expanding the possible composition of the Tribunal will ensure that cases are presided over by people with the appropriate experience and knowledge.
134. Sentencing powers will also be slightly amended with respect to entities. Where a finding of professional misconduct has been made, Disciplinary Tribunals will have additional sentencing powers. Aside from all of the ordinary sentencing options, the Tribunal will have additional powers to revoke or suspend an entity’s licence, place restrictions or conditions on the entity’s licence, fine the entity or an individual within the entity up to the prescribed maximum (see section on level of fines for details), and to disqualify a manager or employee from working in a BSB regulated entity without the prior approval of the BSB.

Other general changes to the DTRs

135. As well as entity specific amendments, the BSB is also proposing other more substantive changes to the DTRs (particularly around the rules relating to Directions Hearings). The BSB regularly reviews the operation of its rules and regulations and having carefully considered the DTRs we have concluded that some sections should be modified to make the disciplinary process more efficient.
136. The major area of change proposed by the BSB relates to Directions Hearings. Currently it takes an unnecessarily long time to obtain directions, often in the region of three months and, in hard fought cases, substantially longer than that, because of the wording of the regulations. It is therefore proposed that the current system, allowing parties to negotiate directions, should be replaced with a system of automatic directions to take effect 28 days after service of charges. Provision has been made for a Directions Judge to consider an application, to vary or add new directions, on the papers, with an oral hearing taking place only in the event that the Directions Judge considers it necessary. Such a system should allow the majority of cases to move swiftly through the directions stage and then to a substantive hearing in a reasonable period of time.
137. A perusal of equivalent provisions within the disciplinary rules of other regulators has revealed that some have included standard directions and time-scales for complying with them in the rules themselves. Further directions may also be made during the course of

case review telephone conferences or on paper by the Chairman of the panel due to hear the case. The BSB would not therefore be out of line with other regulators in its proposals.

138. Some of the other proposed amendments of substance include the following:
- a) Power to allow evidence to be given by telephone and Skype in addition to video-link;
 - b) In cases involving disciplinary proceedings brought for criminal convictions, the certificate of conviction is to be treated, not as prima facie evidence of guilt but as conclusive evidence. The BSB would still be obliged to prove that there has been professional misconduct (i.e. a charge of bringing the profession into disrepute) but the conviction, and any facts found proved in support of the conviction, could not be challenged. This would remove a potential requirement for the BSB to adduce evidence of wrong-doing which has already been brought before the Courts and in respect of which a finding has already been made;
 - c) Setting out in the rules the extent of the BSB's duty in respect of disclosure of relevant documents as this can be the subject of protracted argument leading to lengthy delays;

Q: Do you agree that the proposed changes would be beneficial? Are there any additional changes you would suggest?

DISCIPLINARY APPEALS

139. Appeals arising out of decisions of the Disciplinary Tribunal are currently heard by the Visitors, pursuant to Rule 25 of the DTRs. The Visitors are High Court Judges exercising their powers as Visitors to the Inns of Court. Annex M of the 8th Edition sets out the procedures for appeals before the Visitors, which are administered by the office of the Lord Chief Justice and not by COIC.
140. The BSB's proposal is that appeals arising from disciplinary proceedings involving entities, and individuals within entities, should also be heard before the Visitors. We are currently holding discussions with the Lord Chief Justice about expanding the jurisdiction and making the necessary constitutional amendments.
141. If agreement can be reached, the rules will be amended so as to include a wider definition of "defendant" that includes entities and individuals within entities. The remainder of the rules around procedure and powers will be unaffected.

Q: Do you agree that entity appeals should be heard before the Visitors?

142. Whilst the BSB is working to expand the Visitors' jurisdiction, it should also be noted that the Ministry of Justice and HM Courts and Tribunals Service are seeking to abolish the jurisdiction and transfer it to the High Court. It is hoped that (subject to the Parliamentary timetable) a legislative vehicle will be available to transfer the jurisdiction to the High Court in advance of the BSB beginning to regulate entities. This will mean that, like appeals from the Solicitors Disciplinary Tribunal, all appeals from BSB Disciplinary Tribunals (either from an individual barrister or an entity) will lie in the High Court and not with the Visitors.

THE BSB HANDBOOK
CONTENTS

Part I	Introduction
Part II	The Code of Conduct
A	Introduction
B	Application
C	The Core Duties
D	The Conduct Rules
E	Conduct Rules applying to Specific Groups
Part III	Scope of Practice, Authorisation and Licensing Rules
A	Application
B	Scope of Practice
C	The Practising Certificate Rules
D	The Registration of European Lawyers Rules
E	Entity Application and Authorisation
F	Non-compliance with the mandatory conditions
Part IV	Qualification Regulations
	[To follow]
Part V	Complaints and Disciplinary Procedures Rules
	[To follow]
Part VI	Definitions
Index	

THE BSB HANDBOOK

FOREWARD

Justice and the rule of law are fundamental to our society. So is public confidence in the administration of justice.

Barristers play a central part in our legal system. The effective and efficient running of our legal system relies on barristers using their independent judgment when advising their client, presenting their clients' cases effectively, and carrying out their duty to the court and their other professional duties. The trust and confidence which the public places in barristers, and the reputation of the Bar as a whole, depend on the behaviour of all barristers continuing to merit the trust reposed in them. Barristers therefore must act with integrity, honesty and independence. In their practice they must provide a competent and professional service, keep their knowledge fully up to date, give sound advice and deal frankly and courteously with clients, colleagues and others.

When acting as an advocate or conducting litigation, the role of a barrister is to present their client's case as effectively as possible. Justice requires that people appearing before a court should have a fair hearing. This in turn means that they should be able to have their case presented by skilled advocates who will do so fearlessly, independently and in the best interests of their client. The sound administration of justice also requires that those who are acting as an advocate, or conducting litigation, always observe their duty to the court, even where this conflicts with the interests of their client.

Barristers are now free, if they choose to do so, to offer their services through a range of different business structures, including structures jointly managed and owned by other types of lawyers, such as solicitors, and non-lawyers. The consumer now has a greater range of choice as to the ways in which the services of the Bar can be accessed. However, the public needs to be sure that the standards that apply will be no less rigorous and that access to justice will be safeguarded. Therefore, this Handbook applies not only to barristers but also to alternative business structures, legal disciplinary practices and barrister only entities which are authorised by the BSB. It is important that the same high standards are maintained by such entities and by those who own, manage or work for them.

The BSB's regime for regulation of entities aims to meet the need for choice, whilst keeping down the cost of regulation, and maintaining a clear emphasis on the individual responsibility which has always characterised the Bar.

(To be signed by the Chair of the BSB)

THE BSB HANDBOOK

INTRODUCTION

The Bar Standards Board

1. The Bar Standards Board is a specialist regulator focussing primarily on the regulation of advocacy and litigation services. These legal services are marked out by their close relationship to access to justice and the rule of law. Our system of justice depends on those who provide such services acting fearlessly, independently and competently, so as to further their clients' best interests, subject always to their duty to the Court.

The Handbook

2. The regulatory objectives of the Bar Standards Board derive from the Legal Services Act 2007 and can be summarised as follows:
 - 2.1 protecting and promoting the public interest;
 - 2.2 supporting the constitutional principles of the rule of law;
 - 2.3 improving access to justice;
 - 2.4 protecting and promoting the interests of consumers;
 - 2.5 promoting competition in the provision of the services;
 - 2.6 encouraging an independent, strong, diverse and effective legal profession;
 - 2.7 increasing public understanding of the citizen's legal rights and duties; and
 - 2.8 promoting and maintaining adherence to the following professional principles:
 - (a) that authorised persons act with independence and integrity;
 - (b) that authorised persons maintain proper standards of work;
 - (c) that authorised persons act in the best interests of their clients;
 - (d) that authorised persons comply with their duty to the court to act with independence in the interests of justice; and
 - (e) that the affairs of clients are kept confidential.

3. The BSB Handbook ("*this Handbook*" or "*the Handbook*") sets out the standards that the Bar Standards Board requires its regulated community to achieve and observe in order for it to be able to meet its regulatory objectives.
4. The Handbook consists of the following parts:
 - 4.1 The Code of Conduct – this part includes the ten Core Duties which underpin the Bar Standards Board's entire regulatory framework, as well as the rules which supplement those Core Duties. Compliance with both the Core Duties and the rules is mandatory. The Code of Conduct also contains details of the outcomes which compliance with the Core Duties and the rules is designed to achieve. The Bar Standards Board's approach to regulation is risk-focused and so these outcomes have been defined by considering the risks which the profession needs to manage if the regulatory objectives are to be achieved;
 - 4.2 Scope of Practice, Authorisation and Licensing Rules – this part includes the requirements that must be met to become entitled to practise as a barrister or a registered European lawyer and the process that must be followed in order to obtain authorisation to practise as a barrister only entity, legal disciplinary practice or a BSB licensed body. It also provides a summary of the scope of activities that each type of BSB authorised person is permitted to undertake;
 - 4.3 Qualification Requirements – this part includes details of the training requirements that BSB persons are required to meet;
 - 4.4 Complaints and Disciplinary Procedures Rules – this part sets out the enforcement procedures that apply if BSB regulated persons fail to act in accordance with the requirements of this Handbook;
 - 4.5 Definitions – this part comprises the definition of all of the italicised terms used throughout this Handbook.
5. Although this Handbook is drafted with specific reference to the regulated community and for use by them, this Handbook should also act as a useful reference tool for all consumers of legal services regulated by the Bar Standards Board. In particular, the outcomes set out in Part II of this Handbook should give consumers a useful indication of what they should expect from the Bar Standard Board's regulatory framework and those subject to it.

Application

6. Subject to paragraphs 7, 8 and 9 below, this Handbook applies to the following categories of person:
- 6.1 all *barristers*, that is to say:
- (a) barristers who hold a practising certificate in accordance with Section C of Part III ("*practising barristers*");
 - (b) barristers who are undertaking either the first non-practising six months of pupillage or the second practising six months of pupillage, or a part thereof and who are registered with the Bar Standards Board as a pupil ("*pupils*"); and
 - (c) all other barristers who do not hold a practising certificate but who have been called to the Bar by one of the Inns and have not ceased to be a member of the Bar ("*unregistered barristers*"),
- 6.2 European lawyers registered as such by the Bar Council and by an Inn in accordance with Section D of Part III ("*registered European lawyers*");
- 6.3 entities which have been licensed or authorised by the Bar Standards Board in accordance with Section E of Part III of this Handbook which means barrister only entities and legal disciplinary practices authorised by the Bar Standards Board and BSB licensed bodies ("*BSB authorised bodies*");
- 6.4 individuals that are authorised to provide reserved legal activities by another Approved Regulator where such individuals are working as an employee of a BSB authorised body ("*authorised (non-BSB) individuals*");
- 6.5 all partners, members or directors of a partnership, limited liability partnership or company respectively where such partnership, limited liability partnership or company is a BSB authorised body ("*BSB regulated managers*"),

which persons, when taken together, are referred to as "*BSB regulated persons*" throughout this Handbook.

PART I: THE INTRODUCTION

7. If you are a BSB authorised individual who is employed by or a manager of an authorised (non-BSB) body, are subject to the regulatory arrangements of the Approved Regulator of that body, and the requirements of that other Approved Regulator conflict with a provision within this Handbook, then that conflicting provision within this Handbook shall not apply to you. You will instead be expected to comply with the requirements of that other Approved Regulator and, if you do so, you will not be considered to be in breach of the relevant provision of this Handbook.

8. If you are a pupil and are:
 - 8.1 the pupil of an employed barrister; or
 - 8.2 the pupil of a manager or employee of a BSB authorised body; or
 - 8.3 the pupil of a manager or employee of an authorised (non-BSB) body; or
 - 8.4 spending a period of external training with a BSB authorised body or an authorised (non-BSB) body,this Handbook will apply to you as though you were an employee of the barrister or body concerned.

9. If you are a registered European lawyer, then, except where otherwise provided, the provisions of this Handbook which apply to barristers shall apply to you, in connection with all professional work undertaken by you in England and Wales, as if you were a self-employed barrister, an employed barrister (non-authorised body, or a manager or employee of an authorised body (as the case may be) depending on the way in which you practise.

Guidance

10. The Bar Standards Board has published and will publish from time to time guidance as to the interpretation and application of this Handbook, consisting of:
 - 10.1 the guidance contained in this Handbook;
 - 10.2 the Pupillage Handbook;
 - 10.3 the Equality and Diversity Code Good Practice Guidelines;

- 10.4 such other guidance as may be published from time to time on the Bar Standard's Board website.
11. In carrying out their obligations under this Handbook, BSB regulated persons must have regard to any relevant guidance issued by the Bar Standards Board, which will be taken into account by the Bar Standards Board if there is an alleged breach of any of the obligations imposed on a BSB regulated person under this Handbook. Failure to comply with the guidance will not of itself be proof of failure to comply with an obligation but the BSB regulated person will need to be able to demonstrate how the obligation has been met.
12. Disciplinary proceedings may be taken against a BSB regulated person if the Bar Standards Board believes there has been a breach of this Handbook. The Bar Standard's Board response to any alleged breach will be informed by the provisions of Part V of this Handbook, together with the Bar Standard Board's enforcement policies as such policies may be published from time to time.

Commencement

13. This first edition of the Handbook came into force on [date] and replaced the eighth edition of the Code of Conduct (which became effective from 31st October 2004).
14. In respect of anything done or omitted to be done or otherwise arising before [date]:
- 14.1 this Handbook shall not apply;
- 14.2 the edition of the Code of Conduct in force at the relevant time shall apply; and
- 14.3 any reference to this Handbook shall include reference to the edition of the Code of Conduct in force at the relevant time.

Amendment

15. Save in the case of Section D of Part V (which shall be amended in accordance with the requirements of that Section), amendments and additions to this Handbook may be made by resolution of the Bar Standards Board which shall be operative upon such date as the resolution shall appoint or if no such date is appointed on the later of:
- 15.1 the date of the resolution; and

15.2 the date when approval of the amendment or addition, if required, is given by the Legal Services Board under Schedule 4 of the Legal Services Act 2007.

16. Amendments and additions will be published from time to time in such manner as the Bar Standards Board may determine.

Waiver

17. The Bar Standards Board shall have the power to waive the duty imposed on a BSB regulated person to comply with the provisions of this Handbook in such circumstances and to such extent as the Bar Standards Board may think fit and either conditionally or unconditionally.

Interpretation

18. In this Handbook:

18.1 words and phrases in italics shall have the meaning given to them in the Definitions section;

18.2 any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural;

18.3 any reference to another provision in this Handbook shall be a reference to that provision as amended from time to time; and

18.4 where references are made to an enactment, it is a reference to that enactment as amended, and includes a reference to that provision as extended or applied by or under any other enactment.

THE BSB HANDBOOK
PART II – THE CODE OF CONDUCT

CONTENTS

- A. INTRODUCTION
- B. APPLICATION
- C. THE CORE DUTIES
- D. THE CONDUCT RULES
 - D1 YOU AND THE COURT
 - D2 YOUR BEHAVIOUR TOWARDS OTHERS
 - D3 YOU AND YOUR *CLIENT*
 - D4 YOU AND YOUR REGULATOR
 - D5 YOU AND YOUR PRACTICE
 - D5.1 GENERAL
 - D5.2 SELF EMPLOYED BARRISTERS
 - D5.3 CHAMBERS
 - D5.4 ENTITIES
- E. RULES APPLYING TO SPECIFIC GROUPS OF REGULATED PERSONS
 - E1 SELF EMPLOYED BARRISTERS, CHAMBERS, BSB AUTHORISED BODIES AND THEIR MANAGERS
 - E1.1 COMPLAINTS RULES
 - E1.2 EQUALITY AND DIVERSITY
 - E1.3 PUPILLAGE FUNDING AND ADVERTISING
 - E2 BARRISTERS UNDERTAKING PUBLIC ACCESS OR LICENSED ACCESS WORK
 - E2.1 PUBLIC ACCESS RULES
 - E2.2 LICENSED ACCESS RULES
 - E3 PRACTISING BARRISTERS OR ENTITIES PROVIDING CRIMINAL ADVOCACY
 - E4.1 QASA RULES

- E4 REGISTERED EUROPEAN LAWYERS
- E5 UNREGISTERED BARRISTERS
- E6 CROSS BORDER ACTIVITIES WITHIN THE EUROPEAN UNION AND THE EUROPEAN ECONOMIC AREA¹

¹ To be added later

A. INTRODUCTION

The Code of Conduct sets out the professional duties and standards that *BSB regulated persons* are required to meet. The Code of Conduct consists of the following:

Core Duties

1. These underpin the entire regulatory framework and set the mandatory standards that all *BSB regulated persons* are required to meet. They also define the core elements of professional conduct.

The Outcomes

2. These explain the reasons behind the regulatory scheme and what it is designed to achieve. They are derived from the regulatory objectives as defined in the *LSA* and the risks which must be managed if those objectives are to be achieved. They are not themselves mandatory rules, but they are factors which *BSB regulated persons* should have in mind when considering how the Core Duties and rules should be applied in particular circumstances. The *Bar Standards Board* will take into account whether or not an outcome has, or might have been, adversely affected when considering how to respond to alleged breaches of the Core Duties and the rules.

The Rules

3. In many aspects of professional life it is necessary to ensure that those whom the BSB regulates have a clear understanding of exactly what is required of them, and that *clients* and *the public* know what they can reasonably expect of those who provide *legal services*. Therefore, the rules supplement the Core Duties and are mandatory. However, the rules are not intended to be exhaustive. In any situation where no specific rule applies, reference should be made to the Core Duties. In situations where specific rules do apply, it is still necessary also to consider the Core Duties, since compliance with the rules, alone, will not necessarily be sufficient to comply with the Core Duties.

Guidance

4. The guidance serves two purposes. The first is to assist in the interpretation of the rules. The second is to provide examples of the types of behaviour that the *Bar Standards Board* expects from *BSB regulated persons* if they are to act in compliance with the Core Duties and the rules and achieve the outcomes. Failure to comply with the guidance will not of itself be proof of failure to comply with a Core Duty or rule but the BSB regulated person will need to be able to demonstrate how the Core Duty or rule has been met in spite of the BSB regulated person's non-compliance with the guidance.

B. APPLICATION

1. Who?

1.1 Section C: Applies to all BSB regulated persons except where stated otherwise, and references to "you" and "your" in Section C of this Part II shall be construed accordingly.

1.2 Section D:

(a) Applies to all BSB regulated persons apart from unregistered barristers except where stated otherwise.

(b) The guidance on Core Duties 2 and 4, rule 21 and rules 32 to 37 (and associated guidance to those rules) also apply to *unregistered barristers*.

References to "you" and "your" in Section D of this Part II shall be construed accordingly

1.3 Section E: applies to specific groups as defined in each sub-section and references to "you" and "your" shall be construed accordingly.

2. When?

2.1 Section C applies when practising or otherwise providing *legal services*. In addition, CD4 and CD9 apply at all times.

2.2 Section D applies when practising or otherwise providing *legal services*. In addition, rules 9 and 30 to 39 and the associated guidance apply at all times.

2.3 Sections C and D only apply to *registered European lawyers* in connection with professional work undertaken by them in England and Wales.

2.4 Where any *BSB regulated persons* are acting in their capacity as an employee or a *manager of an authorised (non-BSB) body*, any requirements placed upon them in Sections C, D or E which directly conflict with the requirements placed upon them by the *Approved Regulator* of that *authorised (non-BSB) body* are disapplied to the extent necessary to resolve the conflict.

C. THE CORE DUTIES

1. You must observe your duty to the court in the administration of justice [CD1].
2. You must act with integrity and honesty [CD2].
3. You must maintain your independence [CD3].
4. You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession [CD4].
5. You must keep the affairs of each client confidential [CD5].
6. You must act in the best interests of each client [CD6].
7. You must provide a competent standard of work and service to each client [CD7].
8. You must not discriminate improperly in relation to any person [CD8].
9. You must be open and co-operative with your regulators [CD9].
10. You must manage your business effectively and in such a way as to achieve compliance with your legal and regulatory obligations [CD10].

The Core Duties are not presented in any order of importance. However, in certain circumstances set out in this Code of Conduct one Core Duty overrides another. The Rules which relate to the order of precedence to be given to the Core Duties are rules 2, 3, 17 and 18.

D. THE CONDUCT RULES

D1. YOU AND THE COURT

Outcomes

1. The *court* is able to rely on information provided to it by those conducting litigation and advocates who appear before it.
2. The proper administration of justice is served.
3. The interests of *clients* are protected to the extent compatible with outcomes 1-2 and the core duties.
4. Both those who appear before the *court* and consumers understand clearly the extent of the duties owed to the *court* by advocates and those conducting litigation and the circumstances in which duties owed to *clients* will be overridden by the duty owed to the *court*.
5. *The public* has confidence in the administration of justice and those who serve it.

Rules

1. Your duty to the *court* includes the following specific obligations which apply (with the exception of rule 1.2 below) whether you are acting as an advocate or are otherwise involved in the *conduct of litigation* in whatever role:
 - 1.1 you must not knowingly mislead or attempt to mislead the *court*;
 - 1.2 you must not abuse your role as an advocate;
 - 1.3 you must avoid wasting the *court's* time;
 - 1.4 you must take reasonable steps to ensure that the *court* has before it all relevant decisions and legislative provisions;
 - 1.5 you must ensure that your ability to act independently is not compromised.
2. Your duty to act in the best interests of each *client* is subject to your duty to the *court*.
3. Your duty to the *court* does not require you to act in breach of your duty to keep the affairs of each *client* confidential.

Not misleading the court

4. Your duty not to mislead the *court* or permit the *court* to be misled will include the following obligations:
- 4.1 subject to rule 3, you must not remain silent when you are aware the *court* is being misled; and
- 4.2 you must not:
- (a) make submissions, representations or any other statement; or
 - (b) call witnesses to give evidence; or
 - (c) ask questions which suggest facts to witnesses,
- which you know, or are instructed, are untrue or misleading.

Guidance on rules 1 – 4

1. Acting “knowingly” as envisaged by rule 1.1 and rule 4 includes where you are reckless as to the truth.
2. For the purpose of rule 1.1 and rule 4 you will be treated as knowing any matter which, according to your *instructions*, is true.
3. Knowingly misleading the *court* includes a situation where you have inadvertently misled the *court* and, on later becoming aware of this, fail to correct the position.
4. Your duty under rule 1.4 includes drawing to the attention of the *court* any decision or provision which may be adverse to the interests of your *client*. You should take particular care to make sure you are complying with this duty in cases where you are appearing against a litigant who is not legally represented.
5. Rule 2 makes it clear that your duty to act in the best interests of your *client* is subject to your duty to the *court*. Thus, for example, you must not make any submission on behalf of your *client* which you know to be untrue as a result of what your *client* has told you or as a result of documents which you have seen. However, your duty to the *court* does not prevent you from putting forward your *client*’s case simply because you do not believe that the facts are as your *client* (or you, on your *client*’s behalf) states them to be. Your role as an advocate or as a provider of litigation services is

to present your *client's* case, and it is not for you to decide whether your *client's* case is to be believed.

6. As set out in rule 3, your duty to the *court* does not permit or require you to disclose confidential information which you have obtained in the course of your *instructions* and which your *client* has not authorised you to disclose to the *court*. However, rule 4 requires you to not knowingly mislead the *court* or permit the *court* to be misled. There may be situations where you have obligations under both these rules.

7. For example, if your *client* were to tell you that he had committed the crime with which he was charged. In this situation, in order to be able to ensure compliance with both rule 3 and rule 4:

7.1 you would not be entitled to disclose that information to the *court* without your *client's* consent; and

7.2 you would not be misleading the *court* if, after your *client* had entered a plea of 'not guilty', you were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of your *client's* guilt.

However, you would be misleading the *court* and therefore be in breach of rule 4 if you were to:

7.3 suggest to prosecution witnesses;

7.4 call your *client* or your witnesses to show; or

7.5 submit to the jury,

that your *client* did not commit the crime.

8. If there is a risk that the *court* will be misled unless you disclose confidential information which you have learned in the course of your *instructions*, you should ask the *client* for permission to disclose it to the *court*. If your *client* refuses to allow you to make the disclosure you must cease to act, and return your *instructions*: see rules 27 to 29 below. In these circumstances you must not reveal the information to the *court*.

9. For example, if your *client* tells you that he has previous convictions of which the prosecution is not aware, you may not disclose this without his consent. However, the *court* will have been misled if it sentences on the basis of an incomplete record of previous convictions. You must, therefore, advise your *client* that if consent is refused to your revealing the information you will have to cease to act.
10. Similarly, if you become aware that your *client* has a document which should be disclosed but has not been disclosed, you cannot continue to act unless your *client* agrees to the disclosure of the document. In these circumstances you must not reveal the existence or contents of the document to the *court*.

Not abusing your role as an advocate

5. Where you are acting as an advocate, your duty not to abuse your role includes the following obligations:
 - 5.1 you must not make statements or ask questions merely to insult, humiliate or annoy a witness or any other person;
 - 5.2 you must avoid unnecessarily naming in open *court* any third party whose reputation would be harmed by being named;
 - 5.3 you must not make an allegation against a witness whom you have had an opportunity to cross-examine unless you have given that witness a chance to answer the allegation in cross-examination;
 - 5.4 you must not make a serious allegation against any person or suggest that a person is guilty of a crime with which your *client* is charged unless:
 - (a) you have reasonable grounds for the allegation; and
 - (b) the allegation is relevant to your *client's* case or the credibility of a witness; and
 - 5.5 you must not put forward a personal opinion of the facts or the law unless you are invited or required to do so by the *court* or by law.

Taking reasonable steps to avoid wasting the court's time

6. Your duty to take reasonable steps to avoid wasting the *court's* time includes not making any submission (either in writing or whilst you are acting as an advocate) which you do not consider to be properly arguable.

Guidance on rule 6

1. Rule 6 is not exhaustive of the duties imposed on you by rule 1.3. For example, if you fail to attend *court* on time you are likely to be in breach of the obligation to take reasonable steps to avoid wasting the *court's* time.

7. You must bring any procedural irregularity to the attention of the *court* during the hearing.

Guidance on rule 7

1. Thus you must not wait to raise a procedural irregularity on appeal.

Maintaining your independence

8. You must not appear as an advocate, or act in litigation, if there is a real prospect that you are not going to be able to maintain your independence as an advocate, or litigator (as appropriate).

Guidance on rule 8

1. Examples of when you may not be able to maintain your independence when appearing as an advocate include where you are appearing as an advocate in a matter in which you are likely to be called as a witness, including where you have taken a witness statement or attended on a *client* at a police station (unless the matter on which you are likely to be called as a witness is peripheral or minor in the context of the litigation as a whole and is unlikely to lead to your involvement in the matter being challenged at a later date).

D2. YOUR BEHAVIOUR TOWARDS OTHERS**Outcomes**

1. Individuals and entities regulated by the BSB maintain standards of integrity, honesty and independence, and are perceived as so doing.
2. Individuals and entities regulated by the BSB do not discriminate improperly and take appropriate steps to prevent *discrimination* occurring in their *businesses*.
3. The proper administration of justice, access to justice and the best interests of *clients* are served.
4. Both those whom the BSB regulates and consumers understand clearly what is encompassed by obligations of honesty, integrity and independence.

Rules

9. You must not do anything which could reasonably be seen to undermine the confidence of *the public* in your independence, integrity or freedom from outside pressures.
10. You must not make any payment to or receive any payment from any person to procure or reward the provision or referral of professional *instructions*.

Guidance on rules 9 and 10

1. Your integrity, honesty and independence are fundamental. The interests of justice and the *client's* best interests can only be properly served, and any conflicts between the two properly resolved, if you strictly maintain your integrity, honesty and independence from external pressures. The duty not to compromise your integrity, honesty and independence will cover conduct designed merely to please the *client*, a colleague, the *court*, your *employer* or any *authorised body* of which you are an *owner* or *manager*.
2. Rule 9 may prevent you from accepting *instructions* or continuing to act on a particular matter if you or the *BSB authorised body* for which you work or any of the owners or *managers* of such *BSB authorised body* has a commercial interest (either directly or indirectly) in any of the parties involved in the relevant matter or in any of the issues involved. See also rule 8.

3. However, nothing in rule 9 shall prevent you from accepting *instructions* or continuing to act in circumstances where you or the *BSB authorised body* for which you work or any of the owners or *managers* of such *BSB authorised body* have a financial or other interest in the particular matter provided always that:
 - 3.1 such interests are in alignment with the best interests of your *client*;
 - 3.2 you have fully disclosed to your *client* the extent and nature of such interests; and
 - 3.3 your *client* has provided its consent to you so acting and in appearing as an advocate or acting in litigation in such circumstances; and
 - 3.4 you act at all times in accordance with the requirements of this Code of Conduct.
4. The following may also be construed as compromising your independence in breach of rule 9:
 - 4.1 offering, promising or giving:
 - a. any commission (of whatever size); or
 - b. a gift (apart from items of modest value),to any *client*, *professional client* or other *intermediary*; or
 - 4.2 lending money to any such *client*, *professional client* or other *intermediary*; or
 - 4.3 accepting any money (whether as a loan or otherwise) from any *client*, *professional client* or other *intermediary*, unless it is a payment for your professional services.
5. If you are offered a gift by a current, prospective or former *client*, *professional client* or other *intermediary*, you should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that your independence had been compromised. If this would be the case, you should refuse to accept the gift.
6. The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would reasonably lead others to think that your independence had been compromised.

7. Guidance 4 to 6 above is likely to be more relevant where you are a *self-employed barrister*, a *BSB authorised body*, an *authorised (non-BSB) individual*, an *employed barrister (BSB authorised body)* or a *BSB regulated manager*. If you are BSB authorised individual that is a an employee or *manager* of an *authorised (non-BSB) body* or you are an *employed barrister (non-authorised body)* and your *Approved Regulator* or *employer* (as appropriate) permits payments to which rule 10 applies, you may make or receive such payments only in your capacity as such and as permitted by the rules of your *Approved Regulator* or *employer* (as appropriate).
8. Nothing shall prohibit:
- 8.1 payments for clerking and administrative services;
- 8.2 payments required to be made to ADR bodies that appoint or recommend a person to provide *mediation*, arbitration or adjudication services; or
- 8.3 genuine payments for advertising and publicity,
- whether or not these are internally or externally provided services. However, in circumstances where the services are externally provided services, rule 53 which deals with outsourcing must be complied with.
9. The former prohibition on *practising barristers* expressing a personal opinion in the media in relation to any future or current proceedings in which they are briefed has been removed. *Practising barristers* must, nevertheless, ensure that any comment they may make does not undermine their independence. Further guidance is available on the Bar Standard Board's website.

Integrity

11. Your duty to act with integrity under CD2 includes the following:
- 11.1 you must not knowingly mislead or attempt to mislead any person;
- 11.2 you must not draft any statement of case, witness statement, affidavit or other document containing:
- (a) any statement of fact or contention which is not supported by your *client* or your *instructions*;

- (b) any contentions which you do not consider to be properly arguable;
 - (c) any allegation of fraud, unless you have before you material which establishes a reasonably credible case of fraud, and clear *instructions* to allege fraud; or
 - (d) (in the case of a witness statement or affidavit) any statement of fact other than the evidence which you reasonably believe the witness would give if the witness were giving evidence orally;
- 11.3 you must not encourage a witness to give untruthful or less-than-truthful evidence;
- 11.4 you must not rehearse, practise with or coach a witness in respect of their evidence;
- 11.5 unless you have the permission of the representative for the opposing side or of the *court*, you must not communicate with any witness (including your *client*) about a case while the witness is giving evidence;
- 11.6 you must not make or offer to make payments to witnesses contingent upon their evidence or the outcome of the case;
- 11.7 you must not publish any advertising material which is inaccurate or likely to mislead.

Guidance on rule 11, CD2 and CD4

1. Acting “knowingly” as envisaged by rule 11.1 includes where you are reckless as to the truth.
2. For the purposes of rule 11.1, you will be treated as knowing any matter which, according to your *instructions*, is true.
3. Rule 11.2 does not prevent you from drafting a document containing specific factual statements or contentions included by you, in circumstances where your *client* or the witness confirms their accuracy.
4. In order to comply with rule 11.6, you should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.

5. A breach of rule 11 may also constitute a breach of CD2 and/or CD4. Other conduct which is likely to be treated as a breach of CD2 and/or CD4 includes (but is not limited to):
- 5.1 subject to guidance 6 below, breaches of rule 9;
 - 5.2 breaches of rule 10;
 - 5.3 criminal conduct, other than *minor criminal offences*;
 - 5.4 offensive or discreditable conduct towards third parties;
 - 5.5 dishonesty;
 - 5.6 unlawful victimisation or *harassment*, or
 - 5.7 abuse of your professional position.
6. Conduct which is not likely to be treated as diminishing the trust and confidence that *the public* places in you or the profession includes (but is not limited to):
- 6.1 *minor criminal offences*;
 - 6.2 your conduct in your private or personal life, unless this involves:
 - a abuse of your professional position; or
 - b committing a criminal offence, other than a *minor criminal offence*.
7. For the purpose of guidance 5 and 6 above, *minor criminal offences* include:
- 7.1 an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;
 - 7.2 an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; or
 - 7.3 an offence whose main ingredient is the unlawful parking of a motor vehicle.
8. For the purposes of guidance 5.7 above, referring to your status as a *barrister*, for example on professional notepaper, in a context where it is irrelevant, such as a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD2 and/or CD4.

Undertakings

12. You must within an agreed timescale or within a reasonable period of time comply with any undertaking you give in the course of conducting litigation.

Guidance on rule 12

1. You should ensure your insurance covers you in respect of any liability incurred in giving an undertaking.

Discrimination

13. You must not discriminate improperly against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age religion or belief.

Foreign work

14. In connection with any *foreign work* you must comply with any applicable rule of conduct prescribed by the law or by any national or local *Bar* of:
 - 14.1 the place where the work is or is to be performed
 - 14.2 the place where any proceedings or matters to which the work relates are taking place or contemplated, unless such rule is inconsistent with any requirement of Core Duties 1 to 4 and 7 of the Code of Conduct.
15. If you solicit work in any jurisdiction outside England and Wales, you must not do so in a manner which would be prohibited if you were a *member* of the local *Bar*.

D3. YOU AND YOUR CLIENT

Outcomes

1. *Clients* receive a competent standard of work and service.
2. The *client's* best interests are protected and promoted by those acting for them.

3. *Clients* have confidence in those who are instructed to act on their behalf.
4. *Instructions* are not accepted, refused or returned in circumstances which adversely affect the administration of justice, access to justice or (so far as compatible with these) the best interests of the *client*.
5. *Clients* and *BSB authorised persons, authorised (non-BSB) individuals* and *BSB regulated managers* are clear about the circumstances in which *instructions* may not be accepted or may or must be returned.
6. *Clients* are adequately informed as to the terms on which work is to be done.
7. *Clients* understand how to bring a *complaint* and *complaints* are dealt with promptly, fairly, openly and effectively.
8. *Clients* are not misled as to who is legally responsible for work done for them and whether and by whom that work is regulated.

Rules

Best interests of each client, provision of a competent standard of work and confidentiality

16. Your duty to act in the best interests of each *client* and to provide a competent standard of work and service to each *client* includes the following obligations:
 - 16.1 you must promote fearlessly and by all proper and lawful means the *client's* best interests;
 - 16.2 you must do so without regard to your own interests or to any consequences to you;
 - 16.3 you must do so without regard to the consequences to any other person (whether to your *professional client, employer* or any other person);
 - 16.4 you must not permit your *professional client, employer* or any other person to limit your discretion as to how the interests of the *client* can best be served; and
 - 16.5 you must protect the confidentiality of each *client's* affairs.

17. Your duty to act in the best interests of each *client* is subject to your duty to act with integrity, honesty and independence.
18. Your duty to act in the best interests of each *client* is subject to your obligations under Core Duties 1 to 4.

Guidance on rules 16 – 18

1. Your primary duty is to your *client*, not your *professional client* or other *intermediary* (if any). The Rules are expressed in terms of the interests of each *client*. This is because you may only accept *instructions* to act for more than one *client* if you are able to act in the best interests of each *client* as if that *client* were your only *client*.
2. In order to ensure compliance with rule 16 you should:
 - 2.1 treat each *client* with courtesy and consideration; and
 - 2.2 take all reasonable steps to avoid incurring unnecessary expense; and
 - 2.3 read your *instructions* promptly. This may be important if there is a time limit or limitation period. If you fail to read your *instructions* promptly, it is possible that you will not be aware of the time limit until it is too late.
3. It is important that you provide not merely a competent standard of work but also a competent standard of service to your *client*.
4. In order to be able to provide a competent standard of work, you should keep your professional knowledge and skills up to date, regularly take part in professional development and educational activities that maintain and further develop your competence and performance and, where you are a *BSB authorised body* or a *manager* of such body, you should take reasonable steps to ensure that *managers* and employees within your organisation undertake such *training*. Merely complying with the minimum Continuing Professional Development requirements may not be sufficient to comply with rule 16. You should also ensure that you comply with any specific *training* requirements of the BSB before undertaking certain activities – for example, you should not attend a police station to advise a suspect or interviewee as to the handling and conduct of police interviews unless you have complied with such *training* requirements as may be imposed by the *Bar Standards Board* in respect of such work.

5. In addition to Guidance 4 above, a *BSB authorised body* or a *manager* of such body should ensure that work is allocated appropriately, to *managers* and/or employees with the appropriate knowledge and expertise to undertake such work.
6. You should remember that your *client* may not be familiar with legal proceedings and may find them to be a difficult and stressful experience. You should do what you reasonably can to ensure that the *client* understands the process and what to expect from it and from you. You should also try to avoid any unnecessary distress for your *client*.
6. The duty of confidentiality is central to the administration of justice. *Clients* who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a *court*. Further guidance in this regard is provided at Section D1 above.
7. Your duty of confidentiality is subject to an exception if disclosure is permitted or required by law. For example, you may be obliged to disclose certain matters by the Proceeds of Crime Act 2002. Disclosure in those circumstances would not amount to a breach of CD5 or rule 16.5.
8. There may be circumstances when your duty of confidentiality conflicts with your duty to the *court*. These are considered in the guidance to Section D1 above.
9. Your duty to keep the affairs of each *client* confidential applies to the affairs of every *client* for whom you do work or whose papers you see even if that *client* is not your personal *client*.
10. The section You and Your Practice provides for duties regarding the systems and procedures you must put in place and enforce in order to ensure compliance with rule 16.5.
11. Your duty to act in the best interests of each *client* does not require you, for example:
 - 11.1 to advise your *client* to disobey a *court* order or to commit any other contempt of *court*,
 - 11.2 to advise your *client* to breach the duty imposed on him by section [section and Act to be inserted].

19. Your duty to act in the best interests of each *client* includes a duty to consider whether the *client's* best interests are served by different legal representation, and if so, to advise the *client* to that effect.

Guidance on rule 19

1. If you consider that your *professional client*, another *solicitor* or *intermediary*, another *barrister*, or any other person acting on behalf of your *client* has been negligent, you should ensure that your *client* is advised of this.
2. Your duty to comply with rule 18 may require you to advise your *client* that in their best interests they should be represented by:
 - 2.1 a different advocate or legal representative, whether more senior or more junior than you, or with different experience to you;
 - 2.2 more than one advocate or legal representative;
 - 2.3 fewer advocates or legal representatives than have been instructed; or
 - 2.4 in the case where you are acting through a *professional client*, different *solicitors*.

20. You must inform your *professional client*, or your *client* if instructed by a *client*, if:
- 20.1 it becomes apparent to you that you will not be able to do the work within the time requested, or within a reasonable time after receipt of *instructions*; or
 - 20.2 there is an appreciable risk that you may not be able to undertake a *brief* or fulfil another professional engagement which you have accepted

Not misleading clients and potential clients

21. If you supply, or offer to supply, *legal services*, you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, *legal services* about:
- 21.1 the nature of the *legal services* which you are entitled to supply;
 - 21.2 the basis on which you are entitled to supply those services;

- 21.3 who is legally responsible for the provision of the services;
- 21.4 the extent to which you are regulated when providing those services and by whom; or
- 21.5 the extent to which you are covered by insurance against claims for professional negligence.

Guidance on rule 21

1. Rule 21 may potentially be infringed in a broad variety of situations. You must look at how matters will appear to the *client*.
2. *Clients* may, by way of example, be misled if *self-employed barristers* were to share premises with *solicitors* or other professionals without making sufficiently clear to *clients* that they remain separate and independent from one another and are not responsible for one another's work.
3. Likewise, it is likely to be necessary to make clear to *clients* that any entity established as a "ProcureCo" is not itself able to supply reserved legal activities and is not subject to regulation by the *Bar Standards Board*.
4. A set of *Chambers* dealing directly with unsophisticated lay *clients* might breach the rule if its branding created the appearance of an entity or *partnership* and it failed to explain that the *members* of *Chambers* are, in fact, self-employed individuals who are not responsible for one another's work.
5. If you are an *unregistered barrister*, you would breach the rule if you misled your *client* into thinking that you were providing *legal services* to them as a *barrister* or that you were subject to the same regulation as a *practising barrister*. You would also breach the rule if you implied that you were covered by insurance if you were not, or if you suggested that your *clients* could seek a remedy from the *Bar Standards Board* or the Legal Ombudsman if they were dissatisfied with the services you provided. You should also be aware of the rules set out in Section E5 of this Code of Conduct and the additional guidance on the BSB website.
6. Rule 21.3 is particularly relevant where you act in more than one capacity, for example as a BSB authorised individual as well as a *manager* or employee of a *BSB authorised body*. This is because you should make it clear to each *client* in what

capacity you are acting and, therefore, who has legal responsibility for the provision of the services.

7. If you are a *pupil*, you may not hold yourself out as a *member of Chambers* or permit your name to appear as such. You should describe yourself as a *pupil barrister*.

Personal responsibility

22. Where you are a BSB authorised individual or an authorised (non-BSB) individual, you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your *client*, *professional client*, *employer* or any other person.

Guidance on rule 22

1. It is fundamental that *BSB authorised individuals* and *authorised (non-BSB) individuals* are personally responsible for their own conduct and their own professional work, whether they are acting in a self employed or employed capacity (in the case of *BSB authorised individuals*) or as an employee or *manager* of a *BSB authorised body* (in the case of authorised (non-BSB) individuals).
2. Nothing in rule 22 is intended to prevent you from delegating or outsourcing to any other person discrete tasks (for example, research) which such other person is well-equipped to provide. However, where such tasks are delegated or outsourced, you remain personally responsible for such work. Further, in circumstances where such tasks are being outsourced, rule 53 which deal with outsourcing must be complied with.
3. You are responsible for the service provided by all those who represent you in your dealings with your *client*, including your clerks or any other employees or agents.
4. Nothing in this rule or guidance prevents a *BSB authorised body* from contracting on the basis that any civil liability from the services provided by a *BSB regulated individual* lies with the *BSB authorised body* and the *BSB regulated individual* is not to be liable. However, any such stipulation as to civil liability does not affect the regulatory obligations of the *BSB regulated individual* including (but not limited to) that of being personally responsible under rule 22 for the professional judgments made.

Accepting instructions

23. You must not accept *instructions* to act on a particular matter if:
- 23.1 due to any existing or previous *instructions* you are not able to fulfil your obligation to act in the best interests of the *client*; or
 - 23.2 there is a conflict of interest between your own personal interests and the interests of the *client* in respect of the particular matter; or
 - 23.3 there is a conflict of interest between the instructing *client* and one or more of your former or existing *clients* in respect of the particular matter unless all of the *clients* who have an interest in the particular matter give their informed consent to you acting in such circumstances; or
 - 23.4 there is a real risk that information confidential to another former or existing *client*, or any other person to whom you owe duties of confidence, may be relevant to the matter and therefore your obligation to maintain that confidentiality means that you cannot act in the best interests of the *client* unless the former or existing *client* consents to that disclosure; or
 - 23.5 your *instructions* seek to limit your ordinary authority or discretion in the conduct of proceedings in *court*; or
 - 23.6 your *instructions* require you to act other than in accordance with law or with the provisions of this *Handbook*; or
 - 23.7 you are not authorised and/or otherwise accredited to perform the work required by the relevant instruction; or
 - 23.8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter; or
 - 23.9 you do not have enough time to deal with the particular matter.
24. Where you first accept *instructions* to act in a given matter, you must, subject to rule 25:
- 24.1 where the *instructions* are from a *professional client*, confirm to the *professional client* in writing acceptance of the *instructions* and the terms upon which you will be acting; or

Part 1 - Public

- 24.2 where the *instructions* relate to the provision of *legal services* to a body instructing you in accordance with the *licensed access rules*, accept such *instructions* in accordance with the requirements of such *licensed access rules*;
- 24.3 where the *instructions* relate to the provision of *legal services* to a *client* in accordance with *the public* access rules, accept such *instructions* in accordance with the requirements of such public access rules; or
- 24.3 where the *instructions* relate to the provision of *legal services* to a *client* other than as set out above, confirm in writing to the *client* acceptance of the *instructions* and the terms upon which you will be undertaking that instruction, including as to fees.
- 25 In the event that, following your acceptance of the *instructions* in accordance with rule 24, the scope of the *instructions* is varied by the relevant *client* (including where the *client* instructs you on additional aspects relating to the same matter), you are not required to re-issue to the *client* the terms upon which you are undertaking that matter. In these circumstances, you will be deemed to have accepted the instructions when you begin the work.
- 26 You must comply with the requirements set out in rules 24 and 25 above before performance of the services unless acceptance in writing before performance of the services is not reasonably practicable, in which case you should comply as soon as reasonably practicable.

Guidance on rules 23, 24, 25 and 26

1. Rules 23.2, 23.3 and 23.4 are intended to reflect the law on conflict of interests and confidentiality.
2. Examples of where you may be required to refuse to accept *instructions* in accordance with rule 23.7 include:
 - 2.1 where the *instructions* relate to the provision of litigation services and you have not been authorised to *conduct litigation* in accordance with the requirements of this *Handbook*; and

- 2.2 where the matter involves criminal advocacy and you are not (or, where you are a *BSB authorised body*, none of your *managers* or employees are) accredited at the correct level to undertake such work in accordance with the Quality Assurance Scheme for Advocates Rules set out at Section E3 of this Part II of the *Handbook*.
3. Notwithstanding rule 23.9, there may be exceptional circumstances when *instructions* are delivered so late that no suitable, competent advocate would have adequate time to prepare. In those cases you are not required to refuse *instructions*.
 4. Compliance with the requirement in rule 24 to set out the terms upon which you will be acting may be achieved by simply referring the relevant *client* to the terms of service set out on your website or, where standard terms are being used, the relevant terms of service set out on the *Bar Council's* website. You must also ensure that you comply with the requirements of the Provision of Services Regulations 2009.
 5. A clerk may confirm on your behalf your acceptance of *instructions* in accordance with rules 24 and 25 above.
 6. When accepting *instructions*, you must also ensure that you comply with the complaints handling rules set out in Section E.
 7. When accepting instructions in accordance with rule 24, confirmation by email will satisfy any requirement for written acceptance. When accepting further instructions in accordance with rule 25, you should consider whether it is appropriate in the circumstances to communicate your acceptance to the client in writing.

Returning instructions

27. In circumstances where you have accepted *instructions* to act but one or more of the circumstances set out in rules 23.1 to 23.9 above then arises, you must cease to act and return your *instructions* promptly on the occurrence of such event or circumstance. In addition, you must cease to act and return your *instructions* if:
 - 27.1 in a case funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service it has become apparent to you that

this funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by your *client*; or

27.2 the *client* refuses to authorise you to make some disclosure to the *court* which your duty to the *court* requires you to make; or

27.3 you become aware during the course of a case of the existence of a document which should have been but has not been disclosed, and the *client* fails to disclose it or fails to permit you to disclose it, contrary to your advice.

28. You may cease to act and return your *instructions* if:

28.1 your professional conduct is being called into question; or

28.2 the *client* consents; or

28.3 you are a *self-employed barrister* and:

(a) despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available; or

(b) illness, injury, pregnancy, childbirth, a bereavement or a similar matter makes you unable reasonably to perform the services required in the *instructions*; or

(c) you are unavoidably required to attend on jury service;

28.4 you are a *BSB authorised body* and the only appropriate *BSB authorised individual(s)* are unable to continue acting on the particular matter due to one or more of the grounds referred to at rules 28.3(a) to 28.3(c) above occurring;

28.5 you do not receive payment when due in accordance with terms agreed, subject to rule 28.7 (if you are conducting litigation) and in any other case subject to your giving reasonable notice requiring the non-payment to be remedied and making it clear to the *client* in that notice that failure to remedy the non-payment may result in you ceasing to act and returning your *instructions* in respect of the particular matter; or

- 28.6 you come into possession of confidential or privileged information or documents of another person which relate to the matter on which you are instructed; or
- 28.7 if you are conducting litigation, and your *client* does not consent to your ceasing to act, your application to come off the record has been granted; or
- 28.8 there is some other substantial reason for doing so.

Guidance on rule 28

1. In deciding whether to cease to act and return *instructions* in accordance with rule 28, you should, where possible and subject to your overriding duty to the *court*, ensure that the *client* is not adversely affected because there is not enough time to engage other adequate legal assistance. However, nothing in this guidance is inferring an obligation on you to act indefinitely.
2. If you are working on a *referral basis* and your *professional client* withdraws, you are no longer instructed and cannot continue to act unless appointed by the *court* or you otherwise receive new *instructions*.
3. You should not rely on rule 28.3 to break an engagement to supply *legal services* so that you can attend or fulfil a non-professional engagement of any kind other than those indicated in rule 28.3.
4. An example of a substantial reason under rule 28.8 includes where there is a material change made to the basis of your remuneration. In these circumstances, you should treat such a change as though your original instructions have been withdrawn by the client and substituted by an offer of new instructions on different terms.
5. Accordingly, you must decide whether you are obliged by the cab rank rule to accept the new instructions.
6. If you are obliged under the cab rank rule to accept the new instructions, you must do so.
7. If you are not obliged to accept the new instructions, you may decline them.

8. If you decline to accept the new instructions in such circumstances, you are not to be regarded as returning your instructions, nor as withdrawing from the case, nor as ceasing to act, for the purposes of rules 27 to 29, because the previous instructions have been withdrawn by the client.

29. Notwithstanding the provisions of rules 27 to 28, you must not:

29.1 cease to act or return *instructions* without either:

- (a) obtaining your *client's* consent; or
- (b) clearly explaining to your *client* or your *professional client* the reasons for doing so; or

29.2 return *instructions* to another person without the consent of your *client* or your *professional client*.

Requirement not to discriminate

30. Notwithstanding rules 23 or 24, you must not withhold your services or permit your services to be withheld:

30.1 on the ground that the nature of the case is objectionable to you or to any section of *the public*;

30.2 on the ground that the conduct, opinions or beliefs of the prospective *client* are unacceptable to you or to any section of *the public*;

30.3 on any ground relating to the source of any financial support which may properly be given to the prospective *client* for the proceedings in question.

Guidance on rule 30

1. For example, you must not withhold services on the ground that any financial support which may properly be given to the prospective *client* for the proceedings in question will be available as part of the Community Legal Service or Criminal Defence Service.

The 'Cab-rank' rule

31. Where:

31.1 you are a *self-employed barrister* working on a *referral basis*; or

31.2 you are an authorised individual working within a *BSB authorised body* on a *referral basis*; or

31.3 you are a *BSB authorised body* and the *instructions* seek the services of a named authorised individual working for you who accepts work on a *referral basis*,

you must accept any *brief* to appear before a *court* and/or any other *instructions* on a *referral basis* addressed specifically to you in any field and before any *court* in which you practice and in relation to work appropriate to your experience and seniority, irrespective of:

- (a) the identity of the *client*;
- (b) the nature of the case to which such *brief* or *instructions* relate;
- (c) whether the *client* is paying privately or is publicly funded; and
- (d) any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the *client*,

unless:

- (i) you are otherwise required to refuse to accept the *instructions* in accordance with rule 23; or
- (ii) you have not been offered a proper fee for your services (except that you shall not be entitled to refuse to accept *instructions* on this ground after the time has passed by which a fee would reasonably be expected to have been agreed in all the circumstances of the case); or
- (iii) accepting the *instructions* would require you to do something other than during the course of your ordinary working year; or

Part 1 - Public

- (iv) accepting the *instructions* would require you to act for someone other than a *professional client* who accepts liability for your fees; or
- (v) your *professional client* is named on the List of Defaulting Solicitors (irrespective of whether your fees will be paid by the Legal Services Commission or the Criminal Defence Service); or
- (vi) accepting the *instructions* would require you to act other than on:
 - (1) the Standard Contractual Terms for the Supply of Legal Services by *Barristers* on the *instructions* of Solicitors 2010 as published on the BSB's website; or
 - (2) if you publish standard terms of work, on those standard terms of work,except this rule 31(vi) shall not apply where you are to be paid directly (i) by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service or (ii) by the Crown Prosecution Service; or
- (vii) the potential liability for professional negligence in respect of the particular matter could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for you to accept; or
- (viii) you are a Queen's Counsel, and the acceptance of the *instructions* would require you to act without a junior in circumstances where you are reasonably of the view that the interests of the *client* require that a junior should also be instructed; or
- (ix) accepting the *instructions* would require you to do any *foreign work*;
- (x) accepting the *instructions* would require you to act for a *foreign lawyer* (other than a *European lawyer*, a lawyer from an EFTA

member state a solicitor or *barrister* of Northern Ireland or a solicitor or advocate under the law of Scotland).

Guidance on rule 31

1. Rule 31 means that you would not be required to accept *instructions* to, for example, *conduct litigation* or attend a police station in circumstances where you do not normally undertake such work or, in the case of litigation, are not authorised to undertake such work.
2. In determining whether or not a fee is proper for the purposes of rule 31(ii), regard shall be had to the following:
 - 2.1 the complexity length and difficulty of the case;
 - 2.2 your ability experience and seniority; and
 - 2.3 the expenses which you will incur.
3. Further, you may refuse to accept *instructions* on the basis that the fee is not proper if:
 - 3.1 the *instructions* are on the basis that you will do the work under a *conditional fee agreement*, or
 - 3.2 save in a matter directly funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service:
 - a. your fees have not been agreed; or
 - b. having required your fees to be paid before you accept the *instructions*, those fees have not been paid.
4. The BSB will consider granting a waiver where satisfied that the cab rank rule is being abused in such a way as to be detrimental to access to justice, for example by a party deliberately seeking to conflict out BSB authorised persons by tactical use of instructions on minor related matters, so as to reduce the available pool of representation for its opponent on the main dispute. The BSB will only grant a waiver where this is necessary to safeguard the public interest in access to justice, which the cab rank rule itself is designed to serve, and abuse of the cab rank rule will need to be cogently evidenced.

D4 YOU AND YOUR REGULATOR

Outcomes

1. *BSB authorised persons* are effectively regulated.
2. *The public* have confidence in the proper regulation of *BSB authorised persons*.
3. The BSB has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the regulatory objectives.

Rules

Provision of information to the Bar Standards Board

32. You must:
 - 32.1 comply with all of the reporting and notification requirements placed upon you by the *Bar Standards Board* from time to time;
 - 32.2 supply to the *Bar Standards Board* such other information as it may require from time to time concerning your practice or *business* or any circumstances giving reason to believe that you are practising or otherwise providing *legal services*;
 - 32.3 inform the *Bar Standards Board* of any material changes to such information;
 - 32.4 report such events as may be specified by the *Bar Standards Board* from time to time, to the *Bar Standards Board*.
33. You must respond promptly to any request from the *Bar Standards Board* for comments or information relating to any matter that they may be investigating from time to time whether or not the matter relates to you or another BSB regulated person.

Duty to Report Certain Matters to the Bar Standards Board

34. You must report promptly to the *Bar Standards Board* if:
 - 34.1 you are charged with an *indictable offence*;

- 34.2 you are convicted of or accept a caution in any jurisdiction for any criminal offence other than a *minor criminal offence*;
- 34.3 you are charged with or convicted of a disciplinary offence by another approved regulator or professional body or any other action is taken against you by such other approved regulator or professional body;
- 34.4 you are a *manager* of an *non-BSB authorised body* which is the subject of an intervention by the approved regulator of that body;
- 34.5 you are a *registered European lawyer* and:
- (a) any investigation into your conduct is commenced by your *home professional body*;
 - (b) any finding of professional misconduct is made by your professional body; or
 - (c) your authorisation in your *home State* to pursue professional activities under your *home professional title* is withdrawn or suspended;
- 34.6 any of the following occur:
- (a) bankruptcy proceedings are initiated in respect of or against you;
 - (b) directors disqualification proceedings are initiated against you;
 - (c) a *bankruptcy order* or directors disqualification order is made against you;
 - (d) you have made a composition or arrangement with, or granted a trust deed for, your creditors;
 - (e) you have been wound up;
 - (f) you have had an administrator, administrative receiver or receiver appointed in respect of you;
 - (g) you have had an administration order made against you; or
 - (h) you otherwise become aware that you are in serious financial difficulty.

Reporting Serious Misconduct

35. Subject to your duty to keep the affairs of each *client* confidential and subject also to rule 36, you must report to the *Bar Standards Board* if you become aware of serious misconduct by a *barrister*, a *registered European lawyer*, a *BSB authorised body*, a *BSB regulated manager* or an *authorised (non-BSB) individual* that is working as a *manager* or an employee of a *BSB authorised body*

Guidance on rule 34

1. As an *Approved Regulator*, it is in *the public* interest that the *Bar Standards Board* is made aware of and is able to investigate instances of potential misconduct. The purpose of rule 34, therefore, is to assist the *Bar Standards Board* in undertaking this regulatory function.
2. Serious misconduct includes, without being limited to:
 - 2.1 dishonesty;
 - 2.2 disreputable conduct, such as:
 - (a) assault or *harassment*;
 - (b) seeking to gain access without consent to papers relating to a case in which a *member of Chambers* or other lawyer is instructed on the other side; or
 - (c) seeking to gain access without consent to confidential information relating to another *member of Chambers*, *member of staff* or *pupil*;
 - 2.3 disreputable conduct in relation to *court* proceedings, such as:
 - (a) seeking to gain access without consent to *instructions* or other confidential information relating to the opposing party's case;
 - (b) encouraging a witness to give evidence which is untruthful or misleading;
 - (c) knowingly or recklessly misleading or attempting to mislead the *court*

- or an opponent; or
- (d) being drunk or under the influence of drugs in *court*; or
- 2.4 failure by a *barrister* to report promptly to the *Bar Standards Board* pursuant to rule 34 above;
- 2.5 a breach by a *barrister* of rule 36 below.
3. Your duty to report serious misconduct arises if you have before you material which establishes a credible *prima facie* case of serious misconduct. In considering whether you are obliged to report another person, you should consider all the circumstances, including:
- 3.1 whether that person's *instructions* or other confidential matters might have a bearing on the assessment of their conduct;
- 3.2 whether that person has been offered an opportunity to explain their conduct, and if not, why not;
- 3.3 any explanation which has been or could be offered for that person's conduct;
- 3.4 whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not.

36. You must never report, or threaten to report, another person:
- 36.1 as a litigation tactic or otherwise abusively; or
- 36.2 merely to please your *client* or any other person or otherwise for an improper motive.

Access to Premises

37. You must permit the *Bar Council* or the *Bar Standards Board* or any person appointed by them reasonable access on request to inspect:

37.1 any premises from which you provide *legal services* or are believed to provide *legal services*; and

37.2 any documents or records relating to your *business* and to the administration of your *Chambers* or office or BSB authorised body (as the case may be),

and the *Bar Council*, *Bar Standards Board* or any person appointed by them shall be entitled to take copies of any such documents or records if reasonably required by them.

Co-operation with the Legal Ombudsman

38. You must give the *Legal Ombudsman* all reasonable assistance requested of you, in connection with the investigation, consideration and determination of *complaints* under the Ombudsman scheme.

Keeping Records of non-compliance

39. If you are aware of a failure on your own part (or, where relevant, the BSB authorised body within which you work) to comply with the Core Duties, rules or other requirements of this *Handbook*, you must:

39.1 where you are a *manager* of, or an authorised individual working for, a BSB authorised body, notify your *HOLP*; or

39.2 where you are working as a *barrister* in *Chambers*, notify your Head of *Chambers* (or such other person as may have been nominated for this purpose) or, if it would be inappropriate for you to notify such person, notify the *Bar Standards Board*; or

39.3 where you are a sole-practitioner or otherwise do not fall within the above two categories (for example, if you are an *employed barrister (authorised non-BSB body)* or an *employed barrister (non-authorised body)*), you must notify the *Bar Standards Board*,

of such failure to comply.

40. The *HOLP* and the Head of *Chambers* (or such other person as may have been nominated for this purpose) shall keep a record of all such failures notified to them in accordance with rule 39 and shall report these failures to the *Bar Standards Board* as soon as reasonably practicable (where such failures are material in nature) or on request by the *Bar Standards Board* or during the next monitoring visit or review undertaken by the *Bar Standards Board* (where such failures are non-material in nature).

Guidance on rules 39 and 40

1. It may not be appropriate for you to notify the Head of *Chambers* or such other person that may have been nominated for this purpose in accordance with rule 39.2 if such disclosure will require you to disclose to that person details of a *client* for whom you are acting or otherwise any details in respect of a case on which you are acting in circumstances where it would not be appropriate for such person to receive such information. In such cases, you should notify the *Bar Standards Board* yourself.
2. In determining whether a failure is material, the following are relevant (1) whether the conduct represents a breach of the Core Duties; (2) the impact on *clients* or any of the other relevant outcomes; (3) the scale of the issue or whether it formed part of a pattern.

Ceasing to practise

41. Once you are aware that you (if you are a self employed *barrister* or a BSB authorised body) or the BSB authorised body within which you work (if you are an authorised individual or *manager* of such BSB authorised body) will cease to practise, you shall effect the orderly wind-down of activities, including:
- 41.1 informing the *Bar Standards Board* and providing them with a contact address;
 - 41.2 notifying those *clients* for whom you have current matters and liaising with them in respect of the arrangements that they would like to be put in place in respect of those matters;

- 41.3 providing such information to the *Bar Standards Board* in respect of your practice and your proposed arrangements in respect of the winding down of your activities as the *Bar Standards Board* may require.

D5 YOU AND YOUR PRACTICE

Outcomes

1. Your *business* is run competently and efficiently in a way that achieves compliance with the core duties and your other obligations under this Code.
2. Your employees, *pupils* and trainees understand and perform what is required of them in order that you meet your obligations under this Code.
3. Consumers are not confused about the extent to which your services are regulated or by whom and who is responsible for providing the services.

Rules

D5.1 GENERAL

Client money

42. Except where you are acting in your capacity as a managing (non-BSB) *barrister*, you must not receive or handle *client money*, securities or other assets other than by receiving payment of remuneration.
43. If the Bar Standard Board has approved a stakeholder arrangement pursuant to which a third party may handle *client money*, you may take advantage of such arrangement provided always that you fully comply with the conditions of such approval.

Guidance on rules 42 and 43

1. The prohibition in rule 41 applies to you and to anyone acting on your behalf, including any "ProcureCo". You are prohibited from holding *client money* yourself or through any agent or nominee.
2. If and when the *Bar Standards Board* approves any third party escrow scheme it will publish details as to the scheme that has been approved and the conditions attaching

to that approval.

3. A fixed fee paid in advance is not *client money* for the purposes of rule 41. Equally, if you can demonstrate that you have agreed with a *client* who can reasonably be expected to understand the implications that you will repay any difference between the fixed fee paid in advance and the fee that would have been chargeable on a time charging basis, but that any such obligation will be a debt obligation and that you will not hold the difference on trust for the *client*, then that difference will not be *client money*. Any such agreement must be made in advance and on clear terms. You should also refer to the full guidance in respect of this issue set out on the *Bar Standards Board's* website.

Insurance

44. You must ensure that you have adequate insurance in place (taking into account the nature of your *business*) which covers all *legal services* you supply to *the public*. In the event that the *Bar Standards Board* stipulates a minimum level of insurance that must be taken out by *BSB authorised persons*, then adequate insurance shall, as a minimum, be the amount of such minimum level of insurance stipulated by the *Bar Standards Board* from time to time.
45. If you are entered as a *member* with *BMIF*, you must:
 - 45.1 pay promptly the appropriate insurance premium required by *BMIF* for the purpose of insurance against claims for professional negligence for such amount and upon such terms as may be approved by the *Bar Council* from time to time; and
 - 45.2 supply promptly such information as *BMIF* may from time to time require pursuant to its Rules.

Guidance on rules 44 and 45

1. Where you are working within a *BSB authorised body*, you will satisfy the requirements of rule 44 in circumstances where the BSB authorised body has taken out adequate insurance which covers the activities carried out by you.
2. Where you are working within an *authorised (non-BSB) body*, you will satisfy the

requirements of rule 44 if that body complies with the relevant rules of its *Approved Regulator*.

3. Where you are working as an *employed barrister (non-authorised body)*, the rule does not require you to have your own insurance if you provide *legal services* only to your *employer*. If you supply *legal services* to other people (to the extent permitted by the Scope of Practice rules set out at Section B of Part III) you should consider whether you need insurance yourself having regard to the arrangements made by your *employer* for insuring against claims made in respect of your services. If your *employer* has already put in place adequate insurance for this purpose, you need not put in place any insurance of your own. You should take care as to whether, for example, your *employer's* policy would cover you in respect of any pro-bono work you may do.
4. Where you are acting as a *self-employed barrister*, you should to be entered as a *member* with *BMIF*, unless:
 - 4.1 you are a *pupil* who is covered under his *pupil supervisor's* insurance; or
 - 4.2 you were called to the *Bar* under Regulation 78 of the Bar Training Regulations, in which case you must either be insured with *BMIF* or be covered by insurance against claims for professional negligence arising out of the supply of your services in England and Wales in such amount and upon such terms as are currently required by the *Bar Standards Board* and have delivered to the *Bar Standards Board* a copy of the current insurance policy or the current certificate of insurance issued by the insurer.

Associations with others

46. You must not permit any third party who is not authorised or licensed to provide reserved legal activities to provide reserved legal activities on your behalf.
47. Where you are in *an association* on more than a one off basis, you must

notify the *Bar Standards Board* that you are in *an association*, and provide such details of that association as are required by the *Bar Standards Board*.
48. If you have a material commercial interest in an organisation to which you plan to refer a *client*, you must:

Part 1 - Public

- 48.1 tell the *client* in writing about your interest in that organisation prior to such referral being made; and
- 48.2 maintain a record of referrals made to such organisation for review by the *Bar Standards Board* on reasonable request.
49. If you have a material commercial interest in an organisation that is proposing to refer a matter to you, you must:
- 49.1 tell the *client* in writing about your interest in that organisation prior to accepting such *instructions*;
- 49.2 put in place arrangements with that organisation making it clear how relevant issues such as conflicts of interest will be dealt with; and
- 49.3 maintain a record of referrals received from such organisation for review by the *Bar Standards Board* on reasonable request.
50. If you refer a *client* to a third party which is not a BSB authorised person or an *authorised (non-BSB) person*, you must ensure that the *client* is made aware that such organisation is not subject to the regulation and oversight of the *Bar Standards Board* or another *Approved Regulator*.
51. You must not have a material commercial interest in any organisation:
- 51.1 which gives the impression of being or may otherwise be perceived as being subject to the regulation of the *Bar Standards Board* or another *Approved Regulator* in circumstances where it is not so regulated;
- 51.2 which may otherwise be seen to bring the *Bar* into disrepute.
52. You must not practise in association with any person where that person's conduct is such that, if undertaken by a *BSB authorised person*, it would reasonably be considered to undermine the *professional principles*.

Guidance on rules 47 – 52

1. Where you are in an *association*, you must ensure that *clients* and *members* of the *public* are not confused by such association, in particular as to who is responsible for undertaking work and the extent to which they are regulated in so doing. You may

not do anything, practising in an association, that you are individually prohibited from doing or thereby avoid any obligation which this *Handbook* places upon you. No breaches of this *Handbook* will be permitted simply because you are practising in an *association*. You are particularly reminded of the need to ensure that, notwithstanding such association, you continue to comply with rules 9, 10, 11, 13, 16, 21, 22, 42, 46, 50, 51 (and, where relevant 48, 49, 52 and 53) of this section D and rule 12 of section E. .

2. References to "organisation" in rules 48 and 49 include BSB authorised bodies and authorised (non-BSB) bodies, as well as non-authorised bodies. Therefore, if you have an ownership or management interest in any such body, your interactions with such organisation would be caught by these rules.
3. These rules do not permit you to accept *instructions* from a third party in any case where so acting would give rise to a potential conflict of interest.
4. You should only refer a *client* to an organisation in which you have a material commercial interest if it is in the *client's* best interest to be referred to that particular organisation. This is one aspect of what is required of you by CD6. Your obligation of integrity, in CD4, requires that you be open with clients about any interest you have in, or arrangement you have with, any organisation to which you refer the client or from which the client is referred to you. It is inherently unlikely that a general referral arrangement could be justified as being in the best interests of each individual client and it may well also compromise your independence, contrary to CD3.
5. The *Bar Standards Board* may require you to provide copies of any protocols that you may implement in order to ensure compliance with these rules.
6. Rule 52 requires you not to act in an *association* with any *non-authorised person* that undermines the professional principles. Examples of where this may be the case include where the *non-authorised person* is acting other than in compliance with the Core Duties.

Outsourcing

53. Where you outsource to a third party any support services that are necessary for and integral to the delivery of any *legal services* in respect of which you are instructed:

- 53.1 any outsourcing does not alter your obligations to your *client*;
- 53.2 you remain responsible for compliance with your obligations under this *Handbook* in respect of the said *legal services*;
- 53.3 other than in relation to outsourcing of purely administrative services, you must ensure that such outsourcing is subject to contractual arrangements which ensure that such third party:
- (a) is subject to confidentiality obligations similar to the confidentiality obligations placed on you in accordance with this *Handbook*;
 - (b) complies with any other obligations set out in this Code of Conduct which may be relevant to or affected by such outsourcing;
 - (c) processes any personal data in accordance with your *instructions* and, for the avoidance of doubt, as though it were a data controller under the Data Protection Act; and
 - (d) is required to allow the *Bar Standards Board* or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of such third party in relation to the outsourced activities or functions.

Guidance on rule 53

1. Rule 53 applies to the outsourcing of clerking services.
2. Rule 53 does not apply where the *client* enters into a separate agreement with the third party for the services in question.

D5.2 ADMINISTRATION AND CONDUCT OF SELF-EMPLOYED PRACTICE

54. You must take reasonable steps to ensure that:
- 54.1 your practice is efficiently and properly administered having regard to the nature of your practice; and
 - 54.2 proper records of your practice are kept.

55. You must:

55.1 ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:

- (a) your fees have been paid; and
- (b) any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;

55.2 provide your *client* with such records or details of the work you have done as may reasonably be required for the purposes of verifying your charges.

D5.3 ADMINISTRATION OF CHAMBERS

56. You must take reasonable steps to ensure that:

56.1 your *Chambers* are administered competently and efficiently;

56.2 your *Chambers* has appointed an individual to act as the Head of *Chambers* or otherwise nominated an individual to fulfil the functions referred to in rule 39.2 of Section D4 of this Part II;

56.3 your *Chambers* does not employ any person:

- (a) who has been disqualified from being employed by an authorised person or a *licensed body* by the *Bar Standards Board* or another *Approved Regulator* pursuant to its or their powers as such and such disqualification is continuing in force; or
- (b) who has otherwise been identified by the *Bar Standards Board* as not being eligible to be employed by a BSB authorised person unless the prior written consent of the *Bar Standards Board* has been obtained in respect of such proposed employment;

56.4 proper arrangements are made in your *Chambers* for dealing with *pupils* and pupillage and, in particular,

Part 1 - Public

- (a) that all pupillage vacancies are advertised in the manner prescribed by the Pupillage Funding and Advertising Rules (section E1.3 of this Part II);
 - (b) that arrangements are made for the funding of *pupils* by *Chambers* which comply with the Pupillage Funding and Advertising Rules;
- 56.5 proper arrangements are made in *Chambers* for the management of conflicts of interest and for ensuring the confidentiality of *clients'* affairs;
- 56.6 all persons working in your *Chambers* (irrespective of the identity of their *employer*):
- (a) are competent to carry out their duties;
 - (b) carry out their duties in a correct and efficient manner;
 - (c) are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;
 - (d) are appointed under a contract of employment which requires them to comply with the requirements of this *Handbook* insofar as it is applicable to them; and
 - (e) do nothing which causes or substantially contributes to a breach of this *Handbook* by any BSB authorised individual or *authorised (non-BSB) individual* within *Chambers*,
- and all complaints against them are dealt with in accordance with the complaints rules;
- 56.7 all *registered European lawyers* and all *foreign lawyers* in your *Chambers* comply with this *Handbook* insofar as applicable to them;
- 56.8 appropriate risk management procedures are in place and are being complied with; and
- 56.9 there are systems in place to check that:
- (a) all *barristers* practising from your *Chambers* whether they are *members* of the *Chambers* or not have adequate insurance in place in

accordance with rule 44 above (other than any *pupil* who is covered under his pupil-master's insurance); and

- (b) every *barrister* practising from your *Chambers* has a current *practising certificate*.

57. For the purposes of rule 56 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

57.1 the arrangements in place in your *Chambers* for the management of *Chambers*; and

57.2 any role which you play in those arrangements.

Guidance on rule 56

1. Your duty under rule 56.5 to have proper arrangements in place for ensuring the confidentiality of each *client's* affairs includes:

1.1 putting in place and enforcing adequate procedures for the purpose of protecting confidential information;

1.2 complying with data protection obligations imposed by law; and

1.3 taking reasonable steps to ensure that anyone who has access to such information or data in the course of their work for you complies with these obligations.

5.4 ADMINISTRATION OF BSB AUTHORISED BODIES

Duties of the BSB authorised body, authorised (non-BSB) individuals and BSB regulated managers

58. If you are a *BSB authorised body*, you must ensure that (or, if you are a *BSB regulated individual* working within such *BSB authorised body*, you must use reasonable endeavours to procure that the *BSB authorised body* ensures that):

- 58.1 the *BSB authorised body* has at all times a person appointed by it to act as its *HOLP*;
- 58.2 the *BSB authorised body* has at all times a person appointed by it to act as its *HOFA*; and
- 58.3 the *BSB authorised body* does not appoint any individual to act as a *HOLP* or a *HOFA*, or to be a *manager* or employee of that *BSB authorised body*, in circumstances where:
- (a) that individual has been disqualified from being appointed to act as a *HOLP* or a *HOFA* or from being a *manager* or employed by a *licensed body* (as appropriate) by the *Bar Standards Board* or another *Approved Regulator* pursuant to its or their powers as such and such disqualification is continuing in force; or
 - (b) that individual has otherwise been identified by the *Bar Standards Board* as not being eligible to be employed by a *BSB authorised person* unless the prior written consent of the *Bar Standards Board* has been obtained in respect of such proposed employment.
59. If you are a *BSB authorised body*, you must at all times have (or, if you are a *BSB regulated individual* working within such *BSB authorised body*, you must use reasonable endeavours to procure that the *BSB authorised body* shall have) suitable arrangements in place to ensure that:
- 59.1 the *managers* and other *BSB regulated individuals* working as employees of the *BSB authorised body* comply with the *BSB's* regulatory arrangements as they apply to them, as required under section 176 of the Legal Services Act;
- 59.2 all other employees:
- (a) are competent to carry out their duties;
 - (b) carry out their duties in a correct and efficient manner;
 - (c) are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties; and

Part 1 - Public

- (d) are appointed under a contract of employment which requires such employees and staff to comply with the requirements of this *Handbook* insofar as it is applicable to them; and
 - (e) do nothing which causes or substantially contributes to a breach of this *Handbook* by the *BSB authorised body* or any of the *BSB regulated individuals* employed by it;
- 59.3 the *BSB authorised body* is administered competently and efficiently, is properly staffed and keeps proper records of its practice;
- 59.4 *pupils* and pupillages are dealt with properly and, in particular,
- (a) that all pupillage vacancies are advertised in the manner prescribed by the Pupillage Funding and Advertising Rules (section E1.3 of this Part II);
 - (b) that arrangements are made for the funding of *pupils* which comply with the Pupillage Funding and Advertising Rules;
- 59.5 conflicts of interest are managed appropriately and that the confidentiality of *clients'* affairs is maintained at all times;
- 59.6 all *registered European lawyers* and all *foreign lawyers* employed by or working for you comply with this *Handbook* insofar as applicable to them;
- 59.7 all *barristers* and other authorised individuals employed by or working for the *BSB authorised body* have a current *practising certificate* (except where a *barrister* is working as an *unregistered barrister* in which case there must be appropriate systems in place to ensure that they are complying with the provisions of this *Handbook* which are applicable to *unregistered barristers*); and
- 59.8 adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:
- (a) your fees have been paid; and
 - (b) any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment

or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;

- 59.9 your *client* is provided with such records or details of the work you have done as may reasonably be required for the purpose of verifying your charges;
 - 59.10 appropriate risk management procedures are in place and are being complied with; and
 - 59.11 appropriate financial management procedures are in place and are being complied with.
60. For the purposes of rule 58 and 59 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:
- 60.1 the arrangements in place in your *BSB authorised body* for the management of it; and
 - 60.2 any role which you play in those arrangements.

Guidance to rules 58 and 59

- 1. Section 90 of the *LSA* places obligations on *non-authorised individuals* that are employees and *managers* of *licensed bodies*, as well as *non-authorised individuals* that hold an ownership interest in such *licensed body* (whether by means of a shareholding or voting powers in respect of the same) to do nothing which causes or substantially contributes to a breach by the *licensed body* or its employees or *managers* of this *Handbook*. Rule 59 extends this obligation to *barrister* only entities and *legal disciplinary practices*.

Duties of the HOLP/HOFA

- 61. If you are a *HOLP*, in addition to the more general duties placed on the *BSB authorised body* and *BSB regulated individuals* employed by it, you must:
 - 61.1 take all reasonable steps to ensure compliance with the terms of your *BSB authorised body's* authorisation;
 - 61.2 as soon as reasonably practicable, report to the *Bar Standards Board* any failure to comply with the terms of authorisation;

Part 1 - Public

- 61.3 take all reasonable steps to ensure that the *BSB authorised body* and its employees and *managers* comply with the duties imposed by section 176 of the *LSA*;
- 61.4 take all reasonable steps to ensure that *non-authorised individuals* subject to the duty imposed by section 90 of the Legal Services Act comply with that duty;
- 61.5 report to the *Bar Standards Board* any failure by a *non-authorised individual* to comply with the duty imposed by section 90 of the Legal Services Act.

Guidance to rule 61

- 1. In addition to the above, the *HOLP* also has its duties to keep records of non-compliance and, where relevant, to notify these to the *Bar Standards Board* in accordance with rule 40.

- 62. If you are a *HOFA*, in addition to the more general duties placed on the *BSB authorised body* and its *BSB regulated individuals*, you must ensure compliance with rules 42 and 43 of this Section D5.1.

New managers/HOLP/HOFA

- 63. A *BSB authorised body* must not take on a new *manager*, *HOLP* or *HOFA* without first submitting an application to the Bar Standards Board for approval in accordance with the requirements of Section E of Part III.

E. RULES APPLYING TO SPECIFIC GROUPS OF REGULATED PERSONS

E1. SELF EMPLOYED BARRISTERS, CHAMBERS AND BSB AUTHORISED BODIES

Outcomes

1. *Clients* know that they can make a *complaint* if dissatisfied and know how to do so.
2. *Complaints* are dealt with promptly and the *client* is kept informed about the process.
3. *Self-employed barristers, chambers and BSB authorised bodies* run their practices without *discrimination*.
4. *Pupils* are treated fairly and all vacancies for pupillages are advertised openly.

Rules

E1.1 COMPLAINTS RULES

Provision of information to clients

1. You must notify *clients* in writing at the time of engagement or if not practicable at the next appropriate opportunity:
 - 1.1 of their right to make a *complaint*, how and to whom this can be done, including their right to complain to the *Legal Ombudsman* (where applicable) at the conclusion of the complaints process, the timeframe for doing so and the full details of how to contact the *Legal Ombudsman*;
 - 1.2 where undertaking referral work, that the lay *client* may complain directly to *Chambers* or the *BSB authorised body* without going through *solicitors*.
2. Where undertaking public access or *licensed access* work using an *intermediary*, the *intermediary* must similarly be informed.
3. Where undertaking referral work, in the case of a *professional client*, the notification of the information at 1.1 and 1.2 does not require a separate specific letter. It is sufficient for it to be contained in the ordinary terms of reference letter (or equivalent letter) that is sent by you upon acceptance of *instructions* in accordance with rule 24.

Part 1 - Public

4. In the case of a lay *client*, if there is no letter of engagement in which the information can be included, a specific letter must be sent to them notifying them of the information at 1.1 and 1.2.
5. *Chambers'* websites and literature must carry information about the *Chambers'* Complaints Procedure. A *BSB's authorised body's* website and literature must carry information about that *BSB authorised body's* Complaints Procedure.

Response to complaints

6. All *complaints* must be acknowledged promptly. Together with the acknowledgment, you must provide the complainant with:
 - 6.1 the name of the person who will deal with the *complaint* together with a description of that person's role in *Chambers* or the *BSB authorised body* (as appropriate);
 - 6.2 a copy of the *Chambers'* Complaints Procedure or the *BSB authorised body's* Complaints Procedure (as appropriate);
 - 6.3 the date by which the complainant will next hear from *Chambers* or the *BSB authorised body* (as appropriate).
7. At the conclusion of the complaints process, complainants must be informed in writing of their right to complain to the *Legal Ombudsman* (where applicable), the timeframe for doing so and the full details of how to contact him.

Documents and Record Keeping

8. All communications and documents relating to *complaints* must be kept confidential and disclosed only so far as is necessary for:
 - 8.1 the investigation and resolution of the *complaint*;
 - 8.2 internal review for the purposes of improving the practice;
 - 8.3 complying with requests from the *Bar Standards Board* in the exercise of its monitoring and/or auditing functions.
9. The disclosure of internal documents relating to the handling of the *complaint* (such as the minutes of any meeting held to discuss a particular *complaint*) to the *Bar*

Standards Board for the further resolution or investigation of the *complaint* is not required.

10. A record must be kept of each *complaint*, all steps taken in response to it and the outcome of the *complaint*, together with a copy of all correspondence, including electronic mail, and all other documents generated in response to the *complaint*. The records and copies should be kept for 6 years.
11. The person responsible for the administration of the procedure must report at least annually to either:

11.1 the *HOLP*; or

11.2 the appropriate *member/committee of Chambers*,

(as appropriate) on the number of *complaints* received, the subject areas of the *complaints* and the outcomes. The *complaints* should be reviewed for trends and possible *training* issues.

E1.2 EQUALITY AND DIVERSITY

12. You must take reasonable steps to ensure that in relation to your *business*:
 - 12.1 there is in force a written statement of policy on equality and diversity; and
 - 12.2 there is in force a written plan implementing that policy and a policy for making reasonable adjustments;
 - 12.3 your *business* complies with the following requirements:

Equality and Diversity Officer

- (a) the *business* has at least one *Equality and Diversity Officer*,

Training

- (b) from 1 January 2013, except in unforeseen and exceptional circumstances, the person with lead responsibility for any *selection panel* and at least one *member* of the *selection panel* (who may be the same person) has received recent and appropriate training in fair recruitment and selection processes;

- (c) from 1 January 2014, save in exceptional circumstances, every *member of all selection panels* has been trained in fair recruitment and selection processes;

Fair and Objective Criteria

- (d) the *business's* recruitment and selection processes use objective and fair criteria;

Equality monitoring

- (e) the *business*:
 - (i) conducts a *regular review* of its policy on equality and diversity (including its implementation of the same) for the purposes of ensuring that the *business* complies with the requirements of this rule 12 of Section E of Part II; and
 - (ii) takes any appropriate *remedial action* identified in the light of that review;
- (f) the *business* regularly reviews and, subject to rule 12(h), publishes anonymised summary data about:
 - (i) in the case of a *Chambers* the number and percentages of staff, *barristers*, *pupils* and assessed mini-pupils; and
 - (ii) in the case of a *BSB authorised body*, the number and percentages of employees, *managers*, *pupils* and assessed mini-pupils,

by reference to the following characteristics: age; gender; disability; ethnic group; religion or belief; sexual orientation; socio-economic background; and caring responsibilities;

- (g) the reviews referred to in rule 12(f) above must include:
 - (i) collecting and analysing data broken down by the relevant characteristics (to the extent that those surveyed consent to supply such data);

- (ii) *investigating* the reasons for any disparities in that data; and
 - (iii) taking appropriate *remedial action*;
- (h) the requirement to publish the information referred to in rule 12(f) shall not apply where it would result in the *Chambers of BSB authorised body* in publishing data relating to groups of fewer than 10 people per relevant characteristic;

Fair access to work

- (i) if you are a *self-employed barrister*, the affairs of your *business* are conducted in a manner which is fair and equitable for all *members of Chambers, pupils* and/or employees (as appropriate). This includes but is not limited to, the fair distribution of work opportunities amongst *pupils* and *members of Chambers*;

Harassment

- (j) the *business* has a written anti-harassment policy which, as a minimum:
 - (i) states that *harassment* will not be tolerated or condoned and that *managers, employees, members of Chambers, pupils* and others temporarily in your *business* such as mini-pupils have a right to complain if it occurs;
 - (ii) sets out how the policy will be communicated;
 - (iii) sets out the procedure for dealing with *complaints of harassment*;

Parental leave

- (k) the *business* has an adequate parental and adoption leave policy which, in the case of a *Chambers*, must cover as a minimum:
 - (i) the right of a *member of Chambers* to return to *Chambers* after a specified period (which must be at least one year) of parental or adoption leave;

Part 1 - Public

- (ii) the extent to which a *member* of *Chambers* is or is not required to contribute to *Chambers'* rent and expenses during *parental leave*;
- (iii) this includes, but is not limited to, the method of calculation of any waiver, reduction or reimbursement of *Chambers'* rent and expenses during *parental leave*;
- (iv) where any element of rent is paid on a flat rate basis, the *Chambers* policy must as a minimum provide that *Chambers* will offer *members* taking a period of *parental leave*, or leave following adoption, a minimum of 6 months free of *Chambers'* rent;
- (v) the procedure for dealing with grievances under the policy;
- (vi) *Chambers'* commitment to review regularly the effectiveness of the policy;

Flexible Working

- (l) the *business* has a flexible working policy which covers the right of a *member* of *Chambers*, *manager* or employee (as the case may be) to take a career break, to work part-time, to work flexible hours or to work from home to enable them to manage their *Family Responsibilities* or disability without giving up work.

13. For the purposes of rule 12, the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

13.1 the arrangements in place in your *business* for the management of that *business*; and

13.2 any role which you play in those arrangements.

Guidance on rule 12

- 1. Rule 12 places a personal obligation on all self employed *barristers*, however they practise, and on the *managers* of BSB authorised bodies, as well as on the entity itself, to take reasonable steps to ensure that appropriate policies are in place and

- are enforced in their *business*.
2. In relation to rule 12, if you are a Head of *Chambers* or a *HOLP* it is likely to be reasonable for you to ensure that the policies required by rule 12 are in place, that an *Equality and Diversity Officer* is appointed to monitor compliance and that any breaches are appropriately sanctioned. If you are a *member* of a *Chambers* you are expected to use the means available to you under your constitution to take reasonable steps to ensure that policies are in place and are enforced. If you are a *manager* of a *BSB authorised body*, you are expected to take reasonable steps to ensure that policies are in place and are enforced.
 3. The purpose of rule 12(d) is to ensure that *applicants* exhibiting relevant protected characteristics are not refused employment because of such relevant protected characteristics. In order to ensure compliance with this rule, therefore, it is anticipated that the *Equality and Diversity Officer* will compile and retain data about the relevant protected characteristics of all *applicants* for the purposes of reviewing the same to establish whether there may be any prejudices in the recruitment process.
 4. In respect of *self-employed barristers*, rule 12(i) places an obligation upon them to take reasonable steps to ensure the fair distribution of work opportunities amongst *pupils* and *members* of their *Chambers*. This includes fairness in the allocation of any work which comes into *Chambers* without the *solicitor* already having allocated it to a named *barrister*, fairness in presenting to *solicitors* names for consideration and fairness in opportunities to attract future named work (for example, fairness in arrangements for marketing). These obligations apply even if individual *members* of *Chambers* incorporate their practices or use a "ProcureCo" to obtain or distribute work, as long as their relationship amongst themselves remains one of independent service providers competing for the same work whilst sharing clerking arrangements and costs.
 5. Rule 12(k)(iv) sets out the minimum requirements that must be included in a parental and adoption leave policy in circumstances where any element of rent is paid on a flat-rate basis. If rent is paid on any other basis, then the policy should be drafted so as not to put any *self-employed barrister* in a worse position than they would have been in if any element of the rent were to be paid on a flat-rate basis.
 6. In addition to the above rules, the equality and diversity good practice guidelines

("The Guidelines") describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they should be applied in *Chambers* and in BSB authorised bodies. If you are a self employed *barrister*, a BSB authorised body or a *manager* of a BSB authorised body, you should seek to achieve compliance with the Guidelines as well as the rules as set out above.

7. The Guidelines are also relevant to all *pupil supervisors* and authorised *training* organisations which will be expected to show how they comply with the Guidelines as a condition of authorisation.
8. Although the Guidelines are not directly applicable to *BSB authorised persons* working as employed *barristers* (non authorised bodies) or employed *barristers* (*authorised non-BSB body*), they provide helpful guidance which you are encouraged to take into account in your professional practice.

E1.3 PUPILLAGE FUNDING AND ADVERTISING

Funding

14. The *members* of a set of *Chambers* or the BSB authorised body must pay to each non-practising *pupil* (as appropriate) by the end of each month of the non-practising six months of his pupillage no less than:
 - 14.1 the *specified amount*, plus
 - 14.2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:
 - (a) travel for the purposes of his pupillage during that month; and
 - (b) attendance during that month at courses which he is required to attend as part of his pupillage.
15. The *members* of a set of *Chambers* or the BSB authorised body must pay to each practising *pupil* by the end of each month of the practising six months of his pupillage no less than:
 - 15.1 the *specified amount*, plus

- 15.2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:
- (a) travel for the purposes of his pupillage during that month; and
 - (b) attendance during that month at courses which he is required to attend as part of his pupillage; less
 - (c) such amount, if any, as the *pupil* may receive during that month from his practice as a *barrister*; and less
 - (d) such amounts, if any, as the *pupil* may have received during the preceding months of his practising pupillage from his practice as a *barrister*, save to the extent that the amount paid to the *pupil* in respect of any such month was less than the total of the sums provided for in sub-paragraphs (a) and (b) above.
16. The *members* of a set of *Chambers* or the *BSB authorised body* may not seek or accept repayment from a *Chambers pupil* or an *entity pupil* of any of the sums required to be paid under rules 14 and 15 above, whether before or after he ceases to be a *Chambers pupil* or an *entity pupil*, save in the case of misconduct on his part.
17. If you are a self employed *barrister*, you must pay any *Chambers pupil* for any work done for you which because of its value to you warrants payment, unless the *pupil* is in receipt of an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work.

Advertising

18. All vacancies for pupillages must be advertised on a website designated by the *Bar Council* and the following information must be provided:

18.1 In respect of *Chambers*:

- (a) the name and address of *Chambers*;
- (b) the number of tenants;
- (c) a brief statement of the work undertaken by *Chambers* eg “predominately criminal”;

- (d) the number of pupillage vacancies;
- (e) the level of award;
- (f) the procedure for application;
- (g) the minimum educational or other qualification required;
- (h) the date of closure for the receipt of applications;
- (i) the date by which the decisions on the filling of vacancies will be made;

18.2 in respect of entities:

- (a) the name and address of the BSB authorised body;
- (b) the number of *barristers* employed by that entity;
- (c) a brief statement of the work undertaken by the entity eg “predominately criminal”;
- (d) the number of pupillage vacancies;
- (e) the level of award;
- (f) the procedure for application;
- (g) the minimum educational or other qualification required;
- (h) the date of closure for the receipt of applications;
- (i) the date by which the decisions on the filling of vacancies will be made.

Application

19. The requirements set out in rules 14 to 18 above:

19.1 do not apply in the case of *pupils* who were granted exemption from the Vocational Stage of *training* under Regulation 59 of the Bar Training Regulations;

Part 1 - Public

- 19.2 do not apply in the case of *pupils* who are undertaking a period of pupillage in a set of *Chambers* or BSB authorised body as part of a pupillage *training* programme offered by another organisation that is authorised by the *Bar Council* to take *pupils*;
- 19.3 do not apply in the case of *pupils* who have completed both the non-practising and the practising six months of pupillage;
- 19.4 save as provided in paragraph 19.3 above, do not apply in respect of any period after a *pupil* ceases, for whatever reason, to be a *Chambers pupil* or an entity pupil; and
- 19.5 may be waived in part or in whole by the Pupillage Funding Committee.
20. For the purposes of these requirements:
- 20.1 “*Chambers pupil*” means, in respect of any set of *Chambers*, a *pupil* undertaking the non-practising or practising six months of pupillage with a pupil-master or pupil-masters who is or are a *member* or *members* of that set of *Chambers*;
- 20.2 “entity pupil” means, in respect of a BSB authorised body, a *pupil* undertaking the non-practising or practising six months of pupillage with a pupil-master or pupil-masters who are *managers* or employees of such *BSB authorised body*;
- 20.3 “non-practising pupil” means a *Chambers pupil* or an entity *pupil* undertaking the non-practising six months of pupillage;
- 20.4 “practising pupil” means a *Chambers pupil* or an entity *pupil* undertaking the practising six months of pupillage;
- 20.5 “month” means calendar month commencing on the same day of the month as that on which the *pupil* commenced the non-practising or practising six months pupillage, as the case may be;
- 20.6 any payment made to a *pupil* by a *barrister* pursuant to rule 17 above shall constitute an amount received by the *pupil* from his practice as a *barrister*; and
- 20.7 the following travel by a *pupil* shall not constitute travel for the purposes of his pupillage:

- (a) travel between his home and *Chambers* or, for an entity pupil, his place of work ; and
- (b) travel for the purposes of his practice as a *barrister*.

E2. BARRISTERS UNDERTAKING PUBLIC ACCESS AND LICENSED ACCESS WORK

Outcomes

- 1. *BSB authorised persons* undertaking public access or *licensed access* work have the necessary skills and experience required to undertake such work.
- 2. *BSB authorised persons* undertaking public access or *licensed access* work maintain appropriate records in respect of such work.

Rules

Note: these rules are subject to a separate consultation exercise and so have not been amended. Amendments subject to the outcome of that consultation exercise.

E2.1 PUBLIC ACCESS RULES

- 21. These rules apply to *barristers* instructed by or on behalf of a lay *client* (other than a *licensed access client*) who has not also instructed a solicitor or other professional client (public access *clients*).
- 22. Before accepting any *public access instructions* from or on behalf of a public access *client*, a *barrister* must:
 - 22.1 be properly qualified by having more than 3 years' practising experience², by having undertaken and satisfactorily completed the appropriate *training*, and by registering with the *Bar Council* as a Public Access practitioner; and
 - 22.2 take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the *client* or in the interests of justice for *the public access client* to instruct a *solicitor* or other *professional client*.
- 23. A *barrister* may not accept direct *instructions* from or on behalf of a public access *client*.

² We are consulting separately on amending this

Part 1 - Public

- 23.1 in or in connection with any matter or proceedings in which it is likely that *the public access client* would be eligible for public funding;³
- 23.2 in or in connection with any matter of proceedings in which, in all the circumstances, it would be in the best interests of *the public access client* or in the interests of justice for *the public access client* to instruct a *solicitor* or other *professional client*.
24. In any case where a *barrister* is not prohibited from accepting *instructions*, the *barrister* must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of *the public access client* or in the interests of justice for *the public access client* to instruct a *solicitor* or other *professional client*. If, after accepting direct *instructions* from a public access *client* a *barrister* forms the view that circumstances are such that it would be in the best interests of *the public access client*, or in the interests of justice for *the public access client* to instruct a *solicitor* or other *professional client* the *barrister* must:
- 24.1 inform *the public access client* of his view; and
- 24.2 withdraw from the case in accordance with the provisions of [rules 27 and 28 of Part II of the Handbook and associated guidance] unless the *client* instructs a *solicitor* or other *professional client* to act in the case.
25. A *barrister* must have regard to guidance published from time to time by the *Bar Council* in considering whether to accept and in carrying out any *public access instructions*.
26. A *barrister* who accepts *public access instructions* must forthwith notify his public access *client* in writing, and in clear and readily understandable terms, of:
- 26.1 the work which the *barrister* has agreed to perform;
- 26.2 the fact that in performing his work the *barrister* will be subject to the requirements of the Code of Conduct and, in particular, paragraphs [401(b) and 608];
- 26.3 the fact that the *barrister* cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation

³ We are consulting separately on amending this

Part 1 - Public

- obligations, disclosure obligations and other obligations arising out of or related to the *conduct of litigation*;
- 26.4 the fact that the *barrister* is a sole practitioner, is not a *member* of a firm and does not take on any arranging role;
- 26.5 in any case where the *barrister* has been instructed by an *intermediary*:
- (a) the fact that the *barrister* is independent of and has no liability for the *intermediary*; and
 - (b) the fact that the *intermediary* is the agent of the lay *client* and not the agent of the *barrister*;
- 26.6 the fact that the *barrister* may be prevented from completing the work by reason of his professional duties or conflicting professional obligations, and what the *client* can expect of the *barrister* in such a situation;
- 26.7 the fees which the *barrister* proposes to charge for that work, or the basis on which his fee will be calculated;
- 26.8 the *barrister's* contact arrangements; and
- 26.9 the information about the *barrister's* complaints procedure required by E1 of this Part III
27. Save in exceptional circumstances, a *barrister* will have complied with rule 26 above if he has written promptly to *the public access client* in the terms of the model letter provided on the *Bar Council's* website.
28. In any case where a *barrister* has been instructed by an *intermediary*, he must give the notice required by rule 26 above both:
- 28.1 directly to *the public access client*; and
 - 28.2 to the *intermediary*.
29. A *barrister* who accepts *public access instructions* must keep a case record which sets out:
- 29.1 the date of receipt of the *instructions*, the name of the lay *client*, the name of the case, and any requirements of the *client* as to time limits;

- 29.2 the date on which the *instructions* were accepted;
- 29.3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
- 29.4 when agreed, the fee.
30. A *barrister* who accepts *public access instructions* must either himself retain or take reasonable steps to ensure that the lay *client* will retain for at least seven years after the date of the last item of work done:
- 30.1 copies of all *instructions* (including supplemental *instructions*);
- 30.2 copies of all advices given and documents drafted or approved;
- 30.3 the originals, copies or a list of all documents enclosed with any *instructions*;
- 30.4 notes of all conferences and of all advice given on the telephone.
31. A *barrister* who has accepted *public access instructions* may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the *Bar Standards Board*.
32. Save where otherwise agreed:
- 32.1 a *barrister* shall be entitled to copy all documents received from his lay *client*, and to retain such copies permanently;
- 32.2 a *barrister* shall return all documents received from his lay *client* on demand, whether or not the *barrister* has been paid for any work done for the lay *client*;
- 32.3 a *barrister* shall not be required to deliver to his lay *client* any documents drafted by the *barrister* in advance of receiving payment from the lay *client* for all work done for that *client*;
- 32.4 a *barrister* who has accepted *public access instructions* in any civil matter may take a proof of evidence from his *client* in that matter.

E2.2 LICENSED ACCESS RULES

33. Subject to these rules and to compliance with the Code of Conduct (and to the Scope of Practice, Authorisation and Licensing Rules) a *barrister* in self-employed practice

may accept *instructions* from a *licensed access client* in circumstances authorised in relation to that *client* by the Licensed Access Recognition Regulations whether that *client* is acting for himself or another.

34. These rules apply to every matter in which a *barrister* in self-employed practice is instructed by a *licensed access client* save that rules [35.2, 37, 38 and 40] do not apply to any matter in which a *licensed access client* is deemed to be a *licensed access client* by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations.
35. A *barrister* is only entitled to accept *instructions* from a *licensed access client* if at the time of giving *instructions* the *licensed access client*:
 - 35.1 is identified; and
 - 35.2 sends the *barrister* a copy of the Licence issued by the *Bar Standards Board*.
36. A *barrister* must not accept any *instructions* from a *licensed access client*:
 - 36.1 unless the *barrister* and his *Chambers* are able to provide the services required of them by that *licensed access client*;
 - 36.2 if the *barrister* considers it in the interests of the lay *client* or the interests of justice that a *solicitor* or other authorised litigator or some other appropriate *intermediary* (as the case may be) be instructed either together with or in place of the *barrister*.
37. A *barrister* who accepts *instructions* from a *licensed access client* otherwise than on the terms of the Licensed Access Terms of Work as approved from time to time by the *Bar Standards Board*:
 - 37.1 must first agree in writing the terms upon which he has agreed to do the work and the basis upon which he is to be paid;
 - 37.2 must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid.
38. A *barrister* who accepts *instructions* from a *licensed access client*:
 - 38.1 must promptly send the *licensed access client*.

- 38.2 a statement in writing that the *instructions* have been accepted (as the case may be) (1) on the standard terms previously agreed in writing with that *licensed access client* or (2) on the terms of the Licensed Access Terms of Work (and thereafter if requested a copy of the Licensed Access Terms of Work); or
- 38.3 if he has accepted *instructions* otherwise than on such standard terms or on the terms of the Licensed Access Terms of Work, a copy of the agreement in writing with the *licensed access client* setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid;
- 38.4 unless he has accepted *instructions* on the terms of the Licensed Access Terms of Work or on terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:
- (a) the effect of [paragraph 401 of the Code of Conduct] as it relevantly applies in the circumstances;
 - (b) the fact that the *barrister* cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation obligations disclosure obligations and other obligations arising out of or related to the *conduct of litigation*;
 - (c) the fact that circumstances may require the *client* to retain a *solicitor* or other authorised litigator at short notice and possibly during the case.
39. If at any stage a *barrister* who is instructed by a *licensed access client* considers it in the interests of the lay *client* or the interests of justice that a *solicitor* or other authorised litigator or some other appropriate *intermediary* (as the case may be) be instructed either together with or in place of the *barrister*.
- 39.1 the *barrister* must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or other authorised litigator or other appropriate *intermediary* (as the case may be); and
- 39.2 unless a *solicitor* or other authorised litigator or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter the *barrister* must cease to act and must return any *instructions*.

Part 1 - Public

40. If at any stage a *barrister* who is instructed by a *licensed access client* considers that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply either with the terms of the Licence granted by the *Bar Standards Board* or (where applicable) with the terms of the Licensed Access Terms of Work the *barrister* must forthwith report the facts to the *Bar Standards Board*.
41. A *barrister* who accepts *instructions* from a *licensed access client* must keep a case record (whether on card or computer) which sets out:
- 41.1 the date of receipt of the *instructions*, the name of the *licensed access client*, the name of the case, and any requirements of the *licensed access client* as to time limits;
 - 41.2 the date on which the *instructions* were accepted;
 - 41.3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
 - 41.4 when agreed, the fee.
42. A *barrister* who accepts *instructions* from a *licensed access client* must either himself retain or take reasonable steps to ensure that the *licensed access client* will retain for six years after the date of the last item of work done:
- 42.1 copies of *instructions* (including supplemental *instructions*);
 - 42.2 copies of all advices given and documents drafted or approved;
 - 42.3 a list of all documents enclosed with any *instructions*;
 - 42.4 notes of all conferences and of all advice given on the telephone.

E3. PRACTISING BARRISTERS OR ENTITIES PROVIDING CRIMINAL ADVOCACY

Outcomes

1. []

Rules

E3.1 QASA RULES [Note: To be incorporated]

E4. REGISTERED EUROPEAN LAWYERS

Outcomes

1. Consumers are not confused about the qualifications and status of *registered European lawyers*.

Rules

43. If you are *registered European lawyer*, you must not hold yourself out to be a *barrister*.
44. You must in connection with all professional work undertaken in England and Wales:
 - 44.1 use your *home professional title*;
 - 44.2 indicate the name of your *home professional body* or the *court* before which you are entitled to practise in that *Member State*; and
 - 44.3 indicate that you are registered with the *Bar Standards Board* as a *European lawyer*.

E5. UNREGISTERED BARRISTERS

Outcomes

1. *Clients* who receive *legal services* from *unregistered barristers* are aware that such *unregistered barristers* are not subject to the same regulatory safeguards that would apply if they instructed a *practising barrister*.

Rules

45. If you are an *unregistered barrister* and you supply *legal services* (other than as provided for in rule 46) to an individual or to any other person other than your *employer* who would, if you were a BSB authorised person, be entitled to bring a *complaint* pursuant to the *Legal Ombudsman Scheme Rules* then before supplying such services:

45.1 you must explain to the *client*:

- (a) (unless you are supplying *legal services* pursuant to rule 10 of the Scope of Practice rules set out at Section B of Part III) you are not acting as a *barrister*;
- (b) that you are not subject to those *parts of the Code of Conduct* and other provisions of this *Handbook* which are applicable only to *BSB authorised persons*);
- (c) that the *Bar Standards Board* will only consider *complaints* about you which concern the Core Duties or those parts of the *Code of Conduct* and other provisions of this *Handbook* which apply to you;
- (d) (unless you are covered by professional indemnity insurance) that you are not covered by professional indemnity insurance; and
- (e) that the *client* has no right to complain to the *Legal Ombudsman* about the services you supply; and

45.2 you must obtain written confirmation from the *client* that you have given this explanation.

Guidance on rule 45

1. Under the Legal Services Act, the following complainants can complain to the *Legal Ombudsman*:
 - 1.1 an individual; or
 - 1.2 an enterprise which, at the time at which the complainant refers the *complaint* to the respondent, is a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation

- 2003/361/EC, as that Recommendation had effect at the date it was adopted;
- 1.3 a charity with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to the respondent;
 - 1.4 a club, association or organisation, the affairs of which are managed by its *members* or a committee or committees of its *members*, with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to the respondent;
 - 1.5 a trustee of a trust with an asset value of less than £1 million at the time at which the complainant refers the *complaint* to the respondent; or
 - 1.6 a personal representative of an estate of a person; or
 - 1.7 a residuary beneficiary of an estate of a person.

46. Rule 45 does not apply to you if you supply *legal services*:

- 46.1 as an employee or *manager* of an authorised body;
- 46.2 as an employee or *manager* of a body subject to regulation by a professional body or regulator;
- 46.3 as provided for in section B9 of Part III (legal advice centres); and
- 46.4 pursuant to an authorisation that you have obtained from another Approved Regulator.

E6 CROSS BORDER ACTIVITIES WITHIN THE EUROPEAN UNION AND THE EUROPEAN ECONOMIC AREA

Outcomes

1. Barristers who provide legal services in other Member States of the European Union comply with the terms of the Code of Conduct for European lawyers.

Rules

[To be added later]

THE BSB HANDBOOK

PART III – SCOPE OF PRACTICE, AUTHORISATION AND LICENSING RULES

CONTENTS

- A. APPLICATION OF THESE RULES

- B. SCOPE OF PRACTICE RULES
 - B1 NO PRACTICE WITHOUT AUTHORISATION
 - B2 PROVISION OF RESERVED LEGAL ACTIVITIES
 - B3 SCOPE OF PRACTICE AS A SELF-EMPLOYED BARRISTER
 - B4 SCOPE OF PRACTICE AS A BSB AUTHORISED BODY
 - B5 SCOPE OF PRACTICE AS AN EMPLOYEE, OWNER OR MANAGER OF A BSB AUTHORISED BODY
 - B6 SCOPE OF PRACTICE AS AN EMPLOYED BARRISTER
 - B7 SCOPE OF PRACTICE AS AN EMPLOYEE, OWNER OR MANAGER OF AN AUTHORISED (NON-BSB) BODY
 - B8 SCOPE OF PRACTICE OF A BARRISTER CALLED UNDER REGULATION 78
 - B9 LEGAL ADVICE CENTRES

- C. THE PRACTISING CERTIFICATE RULES
 - C1 ELIGIBILITY FOR PRACTISING CERTIFICATES
 - C2 APPLICATIONS FOR PRACTISING CERTIFICATES
 - C3 PRACTISING CERTIFICATE FEES
 - C4 ISSUE OF PRACTISING CERTIFICATES
 - C5 AMENDMENT AND REVOCATION OF PRACTISING CERTIFICATES
 - C6 APPLICATIONS FOR REVIEW

- D. THE REGISTRATION OF EUROPEAN LAWYERS RULES

- E. ENTITY APPLICATION AND AUTHORISATION
 - E1 ELIGIBILITY FOR AUTHORISATION TO PRACTISE AS A BSB AUTHORISED BODY
 - E2 APPLICATIONS FOR AUTHORISATION
 - E3 DECISION PROCESS

- E4 ISSUES TO BE CONSIDERED BY THE BAR STANDARDS BOARD
 - E5 SUITABILITY CRITERIA IN RESPECT OF HOLPS, HOFAS, NON-AUTHORISED INTEREST HOLDERS, OWNERS AND MANAGERS
 - E6 NOTIFICATION OF THE AUTHORISATION DECISION
 - E7 CONDITIONS OF AUTHORISATION
 - E8 DURATION OF THE AUTHORISATION/LICENCE GRANTED
 - E9 MODIFICATION OF AN AUTHORISATION/LICENCE
 - E10 REVOCATION/SUSPENSION OF AN AUTHORISATION/LICENCE
 - E11 APPLICATIONS FOR REVIEW
 - E12 REGISTER OF AUTHORISED BODIES
- F. ONGOING COMPLIANCE WITH THE AUTHORISATION AND LICENSING REQUIREMENTS
- F1. NON COMPLIANCE WITH THE MANDATORY CONDITIONS
 - F2. LOSS OR REMOVAL OF A MANAGER AUTHORISED TO DO A PARTICULAR RESERVED LEGAL ACTIVITY
 - F3. TEMPORARY EMERGENCY APPROVALS FOR HOLPS AND HOFAS

A. SUMMARY AND APPLICATION OF THESE RULES

1. Section B provides that you must not practise as a barrister or carry on any reserved legal activity unless you are authorised to do so, and explains the different capacities within which you may work if you are so authorised and any limitations on the scope of your practice. It also explains the further requirements which you must follow if you intend to work in more than one capacity. The Section applies to all *BSB regulated persons*, and “You” and “Your” should be construed accordingly.
2. Section C sets out the basis upon which *barristers* and *registered European lawyers* should apply to obtain a *practising certificate* which shall entitle them to practise within England and Wales.
3. Section D provides specific details about how a *European lawyer* can become a *registered European lawyer* in England and Wales, thus entitling them to apply for a *practising certificate* in accordance with the provisions of Section B.
4. Section E sets out the basis upon which entities may be:
 - 4.1 authorised to practise as either a *barrister only entity* or *legal disciplinary practice*; or
 - 4.2 licensed to practise as a *BSB licensed body*.
5. Section F sets out details of the ongoing compliance requirements relevant to BSB authorised bodies.

B. SCOPE OF PRACTICE

B1. No Practice without authorisation

1. You must not carry on any reserved legal activity unless you are specifically authorised to undertake that activity.
2. You must not permit any third party who is not authorised or licensed to provide reserved legal activities on your behalf.
3. If:
 - 3.1 you are an individual and do not hold a practising certificate; or
 - 3.2 you are an entity and you have not been authorised or licensed to provide reserved legal activities in accordance with Section E of this Part III,then:
 - (a) you may not practise as a barrister, a registered European lawyer or as a BSB authorised body (as appropriate); and
 - (b) you are not authorised by the Bar Council to carry on any reserved legal activity.
4. For the purposes of this Handbook, and subject to rule 7 below, you practise as a barrister, a registered European lawyer or a BSB authorised body if:
 - 4.1 you supply legal services and in connection with the supply of such services:
 - (a) you hold yourself out or allow yourself to be held out as a barrister, a registered European lawyer or a BSB authorised body (as appropriate); or
 - (b) you carry on any reserved legal activity pursuant to authorisation from the Bar Council; or
 - 4.2 you act as a manager of or have an ownership interest in an authorised (non-BSB) body and as such you are required by the rules of that body's Approved

Part 1 – Public

Regulator to hold a practising certificate issued by or be authorised or licensed by the Bar Council.

5. For the purposes of this Section B of Part III any reference to the supply of legal services includes an offer to supply such services.
6. Rule 4.1 above does not apply to you if you are a pupil in the non-practising six months of pupillage if and insofar as you accept a noting brief with the permission of your pupil-supervisor, head of chambers or HOLP.
7. If you do not hold a practising certificate and you supply legal services in the manner provided for in rules 8, 9 or 10 below, then you shall not, by reason of supplying those services:
 - 7.1 be treated for the purposes of this Section B of Part III as practising as a barrister or a registered European lawyer; or
 - 7.2 be subject to the rules in Part II of this Handbook or the Rules in this Section B of Part III which apply only to practising barristers or registered European lawyers (as the case may be).
8. Rule 7 above applies to you if and insofar as:
 - 8.1 you are practising as a foreign lawyer; and
 - 8.2 you do not:
 - (c) give advice on English law; or
 - (d) supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law).
9. Rule 7 above applies to you if:
 - 9.1 you are authorised by another Approved Regulator to carry on a reserved legal activity and you are currently permitted to practise by that Approved Regulator;

Part 1 – Public

- 9.2 you hold yourself out as a barrister or a registered European lawyer (as appropriate); and
- 9.3 before supplying legal services to any person or employer and when first dealing with any third party in the course of supplying legal services, you inform them clearly in writing that you are not practising as a barrister or a registered European lawyer.
10. Rule 7 above applies to you provided that:
- 10.1 you supplied legal services prior to [commencement date] pursuant to paragraph 206.1 or 206.2 of the 8th Edition of the Code; and
- 10.2 if you supply any legal services in England and Wales, you were called to the Bar before 31 July 2000; and
- 10.3 before [date] in each year, and promptly after any change in the details previously supplied to the *Bar Council* (acting by the *Bar Standards Board*), you provide in writing to the *Bar Council* (acting by the *Bar Standards Board*), details of the current address(es) with telephone number(s) of the office or premises from which you do so, and:
- (e) if you are employed, the name, address, telephone number and nature of the business of your employer; or
 - (f) if you are an employee or manager of, or you have an ownership interest in, an authorised (non-BSB) body, the name, address, email address, telephone number and the name of the authorised body and its Approved Regulator; and
- 10.4 unless you only offer services to your employer or to the authorised (non-BSB) body of which you are a manager or an employee or which you have an ownership interest in, you are (or, if you are supplying legal services to clients of your employer or authorised body of which you are an owner, manager or an employee, your employer or such body is) currently insured in accordance with the requirements of rule [44] set out in Section D of Part II.

B2. Provision of reserved legal activities

11. You may only carry on reserved legal activities or supply other legal services in the following capacities:

11.1 as a self-employed barrister, subject to the limitations imposed by rules 19 to 21 below;

11.2 as a BSB authorised body, subject to the limitations imposed by rules 23 to 25 below;

11.3 as an owner or manager of a BSB authorised body or as an employed barrister (BSB authorised body), subject to the limitations imposed by rules 27 to 29 below;

11.4 as an owner or manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body), subject to the limitations imposed by rules 31 to 33 below; or

11.5 as an employed barrister (non authorised body), subject to the limitations imposed by rules 35 and 36 below; or

11.6 as a registered European lawyer in any of the above capacities, in which case the equivalent limitations that would have applied if you were practising as a barrister shall apply to your practice as a registered European lawyer,

and in each case in accordance with such further limitations as may be placed on you by this Handbook including, in particular, any requirements that may be placed on you under Sections D and E of Part II of this Handbook and/or any conditions imposed by the Bar Standards Board.

12. You may only practise or be involved with the supply of legal services in more than one capacity after:

12.1 having obtained an amended practising certificate from the Bar Standards Board which recognises the capacities in respect of which you are intending to practise; and

Part 1 – Public

- 12.2 having agreed with each employer or authorised body with which you are involved a protocol that enables you to avoid or resolve any conflict of interests or duties arising from practice and/or involvement in those capacities,
- and provided always that you do not work in more than one capacity in relation to the same case or issue for the same client at the same time.
13. If you are a registered European lawyer, you may only supply legal services to the public if you have delivered to the Bar Standards Board a copy of the current insurance policy or the current certificate of insurance relating to the insurance required by rule [44] of Section D of Part II above.
14. If you are a registered European lawyer, the Bar Standards Board may exempt you from the requirement imposed by rule 13 above:
- 14.1 If you wish to apply for such an exemption, you must provide to the Bar Standards Board evidence to show that you are covered by insurance taken out or a guarantee provided in accordance with the rules of your home state.
- 14.2 If the Bar Standards Board is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover required pursuant to rule 13, the Bar Standards Board may exempt you wholly from the requirement imposed by rule 13.
- 14.3 If the Bar Standards Board is satisfied that the equivalence is only partial, the Bar Standards Board may require you to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by you in accordance with the rules of your home state.
15. If you are a pupil who has completed or been exempted from the non-practising six months of pupillage, you may only supply legal services to the public or exercise any right which you have by reason of being a barrister if you have the permission of your pupil-supervisor, head of chambers or HOLP (as appropriate).
16. If you are a barrister of less than three years' standing, you may:

16.1 only supply legal services to the public or exercise any right of audience by virtue of authorisation by the Bar Standards Board; or

16.2 only conduct litigation by virtue of authorisation by the Bar Standards Board,

if your principal place of practice (or if you are practising in a dual capacity, each of your principal places of practice) is either:

- (a) a chambers or annex of chambers which is also the principal place of practice of a qualified person who is readily available to provide guidance to you; or
- (b) 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 you.

17. In rule 16 above, the references to "years' standing" and "qualified person" mean the following:

Years' standing

17.1 You shall be treated as being of a particular number of years' standing if you:

- (a) have been entitled to practise and have practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another Approved Regulator;
- (b) have made such practice your primary occupation; and
- (c) have 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 person authorised by the same Approved Regulator) of at least that number of years.

Supply of legal services or the exercise of a right of audience – qualified person

17.2 Where:

- (a) You are a barrister exercising a right of audience in England and Wales, a person shall be a qualified person for the purpose of paragraph 16.1 if he:
 - (i) 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 person authorised by another Approved Regulator for a period (which need not have been as a person authorised by the same Approved Regulator) for at least six years in the previous eight years; and
 - (ii) for the previous two years:
 - (1) has made such practise his primary occupation; and
 - (2) has been entitled to exercise a right of audience before every court in relation to all proceedings; and
 - (iii) is not acting as a qualified person in relation to more than two people; and
 - (iv) has not been designated by the Bar Standards Board as unsuitable to be a qualified person.
- (b) You are a barrister exercising a right of audience in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a person shall be a qualified person for the purposes of paragraph 16 if he:
 - (i) Has been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by paragraph 16(1) and (2) above; and

- (ii) Is not acting as a qualified person in relation to more than two other people; and
- (iii) Has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

Exercise of a right to conduct litigation – qualified person

17.3 Where:

- (a) You are a barrister exercising a right to conduct litigation in England and Wales, a person shall be a qualified person for the purpose of paragraph 16.2 if he:
 - (i) 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 person authorised by another Approved Regulator for a period (which need not have been as a person authorised by the same Approved Regulator) for at least six years in the previous eight years; and
 - (ii) has made such practice his primary occupation for the previous two years: and
 - (1) is authorised to conduct litigation; and
 - (2) is not acting as a qualified person in relation to more than two people; and
 - (iii) has not been designated by the Bar Standards Board as unsuitable to be a qualified person; or
- (b) you are a barrister exercising a right to conduct litigation in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a person shall be a qualified person for the purposes of paragraph 16 if he:

Part 1 – Public

- (i)** has been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by paragraph 16(1) and (2) above; and
- (ii)** [is authorised within the state or country within which they practise to conduct litigation (where relevant) and]
- (iii)** Is not acting as a qualified person in relation to more than two other people; and
- (iv)** Has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

Guidance

1. If you are a practising barrister of less than three years' standing and you are authorised to conduct litigation, you will need to work with a qualified person who is authorised to do litigation as well as with someone who meets the criteria for being a qualified person for the purpose of providing services to the public and exercising rights of audience. This may be, but is not necessarily, the same person

B3. Scope of Practice as a Self-Employed Barrister

18. Rules 19 to 21 below apply to you where you are acting in your capacity as a self-employed barrister, whether or not you are acting for a fee.
19. You may only supply legal services if you are appointed or instructed by the Court or instructed:
 - 19.1 by a professional client (who may be an employee of the client), provided that, if you are instructed by a foreign lawyer to provide advocacy services in relation to court proceedings in England and Wales and you are not authorised to conduct litigation yourself or you are otherwise not instructed to conduct the litigation in the particular matter:

Part 1 – Public

- (a) you advise the foreign lawyer to take appropriate steps to instruct a solicitor or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the foreign lawyer to do so;
 - (b) you cease to act and return your instructions if it appears to you that the foreign lawyer is not taking reasonable steps to instruct a solicitor or other authorised litigator to conduct the litigation; and
 - (c) you do not appear in court unless a solicitor or other authorised litigator has been instructed to conduct the litigation; or
- 19.2 by a licensed access client, in which case you must comply with the Licensed Access Rules; or
- 19.3 by or on behalf of any other client, provided that:
- (a) the matter is public access instructions and:
 - (i) you are entitled to provide public access work and the instructions are relevant to such entitlement; and
 - (ii) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients; and
 - (iii) you comply with the Public Access Rules; or
 - (b) the matter relates to the conduct of litigation and
 - (i) you have a litigation extension to your practising certificate; and
 - (ii) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients.

Guidance

1. References to client in paragraph 19.3 include foreign clients.

20. You must not in the course of your practice (except in relation to foreign work performed by you at or from an office outside England and Wales which you have established or

joined primarily for the purposes of carrying out that particular foreign work or foreign work in general) undertake the management administration or general conduct of a client's affairs.

21. You may conduct correspondence but you must not correspond directly with any party other than your client if you are aware that that party has a solicitor or barrister representing him.

Guidance

1. If you are not authorised to conduct litigation but you are intending to conduct correspondence with other parties (in the form of letters, faxes, emails or the like) you should only do so if:
- 1.1 you are satisfied that it is in the client's best interests that you do so;
 - 1.2 you have adequate systems, experience and resources for managing appropriately such correspondence; and
 - 1.3 you have adequate insurance in place in accordance with rule [44] of Section D of Part II which covers, amongst other things, any loss suffered by the client as a result of the conduct of the correspondence.

B4. Scope of Practice as a BSB authorised body

22. Rules 23 to 25 below apply to you where you are acting in your capacity as a BSB authorised body.
23. You may only supply legal services if you are appointed or instructed by the Court or instructed:
- 23.1 by a professional client (who may be an employee of the client), provided that, if you are instructed by a foreign lawyer to provide advocacy services in relation to court proceedings in England and Wales and you are not authorised to conduct litigation yourself or you are otherwise not instructed to conduct the litigation in the particular matter:

Part 1 – Public

- (a) you advise the foreign lawyer to take appropriate steps to instruct a solicitor or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the foreign lawyer to do so;
 - (b) you cease to act and return your instructions if it appears to you that the foreign lawyer is not taking reasonable steps to instruct a solicitor or other authorised litigator to conduct the litigation; and
 - (c) you do not appear in court unless a solicitor or other authorised litigator has been instructed to conduct the litigation; or
- 23.2 by a licensed access client, in which case you must comply with the Licensed Access Rules; or
- 23.3 by or on behalf of any other client, provided that:
- (a) the matter is public access instructions and:
 - (i) the individual in the BSB authorised body with overall responsibility in respect of the matter is entitled to provide public access work and the instructions are relevant to such entitlement; and
 - (ii) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients; and
 - (iii) you comply with the Public Access Rules; or
 - (b) the matter relates to the conduct of litigation and
 - (i) you have been authorised or licensed to conduct litigation (as appropriate); and
 - (ii) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients.

Guidance

1. References to client in paragraph 23.3 include foreign clients.

24. You must not undertake the management administration or general conduct of a lay client's affairs.
25. You may conduct correspondence but you must not correspond directly with any party other than your client if you are aware that that party has a solicitor or barrister representing him.

Guidance

1. If you are not authorised to conduct litigation but you are intending to conduct correspondence with other parties (in the form of letters, faxes, emails or the like) you should only do so if:
 - 1.1 you are satisfied that it is in the client's best interests that you do so;
 - 1.2 you have adequate systems, experience and resources for managing appropriately such correspondence; and
 - 1.3 you have adequate insurance in place in accordance with rule [44] of Section D of Part II which covers, amongst other things, any loss suffered by the client as a result of the conduct of the correspondence.

B5. Scope of Practice as an owner or manager of a BSB authorised body or as an employed barrister (BSB authorised body)

26. Rules 27 to 29 below apply to you where you are acting in your capacity as an owner or a manager of a BSB authorised body or as an employed barrister (BSB authorised body).
27. You may only supply legal services to the following persons:
 - 27.1 the BSB authorised body; or
 - 27.2 any employee, director or company secretary of the BSB authorised body in a matter arising out of or relating to that person's employment;
 - 27.3 any client of the BSB authorised body; or

- 27.4 if you supply legal services free of charge, members of the public.
28. You must not:
- 28.1 undertake the management administration or general conduct of a lay client's affairs; or
 - 28.2 perform any reserved legal activities which the BSB authorised body is not permitted to provide pursuant to the terms of its authorisation or licence (as appropriate).
29. You may conduct correspondence but you must not correspond directly with any party other than your client if you are aware that that party has a solicitor or barrister representing him.

Guidance

1. If you are not authorised to conduct litigation but you are intending to conduct correspondence with other parties (in the form of letters, faxes, emails or the like) you should only do so if:
- 1.1 you are satisfied that it is in the client's best interests that you do so;
 - 1.2 you have adequate systems, experience and resources for managing appropriately such correspondence; and
 - 1.3 you have adequate insurance in place in accordance with rule [44] of Section D of Part II which covers, amongst other things, any loss suffered by the client as a result of the conduct of the correspondence.

- B6. Scope of Practice as an owner or manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)**

30. Rules 31 to 33 below apply to you where you are acting in your capacity as as an owner or a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)
31. You may only supply legal services to the following persons:
- 31.1 the authorised (non-BSB) body;
 - 31.2 any employee, director or company secretary of the authorised (non-BSB) body in a matter arising out of or relating to that person's employment;
 - 31.3 any client of the authorised (non-BSB) body; or
 - 31.4 if you supply legal services free of charge, members of the public.
32. You must comply with the rules of the Approved Regulator of the authorised (non-BSB) body.

B7. Scope of Practice as an employed barrister (non authorised body)

33. Rules 35 and 36 below apply to you where you are acting in your capacity as an employed barrister (non authorised body).
34. You may only supply legal services to the following persons:
- 34.1 your employer;
 - 34.2 any employee, director or company secretary of your employer in a matter arising out of or relating to that person's employment;
 - 34.3 if your employer is a public authority (including the Crown or a Government department or agency or a local authority), another public authority on behalf of which your employer has made arrangements under statute or otherwise to supply any legal services or to perform any of that other public authority's functions as agent or otherwise;
 - 34.4 if you are employed by or in a Government department or agency, any Minister or Officer of the Crown;

Part 1 – Public

- 34.5 if you are employed by a trade association, any individual member of the association;
- 34.6 if you are, or are performing the functions of, a justices' clerk, the justices whom you serve;
- 34.7 if you are employed by the Legal Services Commission, members of the public;
- 34.8 if you are employed by or at a Legal Advice Centre, clients of the Legal Advice Centre;
- 34.9 if you supply legal services free of charge, members of the public; or
- 34.10 if your employer is a foreign lawyer and the legal services consist of foreign work, any client of your employer.

Guidance

1. Rules 35.8 and 35.9 will be reviewed in due course as they are inconsistent with section 15 of the Legal Services Act 2007. However, for the time being, rules 35.8 and 35.9 are enforceable due to the transitional arrangements that are in place in respect of the LSA.

B8. Scope of practice of a barrister called under Regulation 78

35. If you are called to the Bar under Regulation 78 of the Bar Training Regulations (temporary membership of the Bar), you may not practise as a barrister other than to conduct the case or cases specified in the certificate referred to in Regulation 78.

B9. Legal Advice Centres

36. You may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if you do so, the provisions of rule 39 shall apply in respect of the provision of such legal services.
37. If you are employed by a Legal Advice Centre or otherwise supply legal services to such Legal Advice Centre on a voluntary or part time basis in accordance with rule 38:

Part 1 – Public

- 37.1 you must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any legal services to any client of the Legal Advice Centre other than a salary paid by the Legal Advice Centre;
- 37.2 you must ensure that any fees in respect of legal services supplied by you to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre;
and
- 37.3 you must not have any financial interest in the Legal Advice Centre.

C. PRACTISING CERTIFICATE RULES

C1. Eligibility for Practising Certificates

1. In this Section C, references to "you" and "your" are references to *barristers* and *registered European lawyers* who are intending to apply for authorisation to practise as a barrister or a registered European lawyer (as the case may be).
2. You are eligible for a *practising certificate* if:
 - 2.1 you are a *barrister* or *registered European lawyer* and you are not currently suspended from practice and have not been disbarred; and
 - 2.2 you meet the requirements of sub-paragraph 3.1, 3.2, 3.3 or 3.4 below; and
 - 2.3 either:
 - (a) within the last 5 years either (i) you have held a practising certificate; or (ii) you have satisfactorily completed (or have been exempted from the requirement to complete) either the non-practising period of 6 months of pupillage or 12 months of pupillage; or
 - (b) if not, 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:

Part 1 – Public

- (i) you notified the Bar Council that you wished to exercise a right of audience before every Court and in relation to all proceedings; and
- (ii) you have complied with such training requirements as the *Bar Council* or the *Bar Standards Board* may require or you have been informed by the *Bar Council* or the *Bar Standards Board* that you do not need to comply with any such further requirements;

in each case, 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 you were called to the Bar before 1 January 2002 but you are not otherwise eligible for a full practising certificate in accordance with paragraph 3.1 above; or
- 3.4 a *registered European lawyer's practising certificate* if you are a *registered European lawyer*.

C2. 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 paragraph 9 below (subject to any reduction pursuant to paragraph 8 below).

5. You may apply for a litigation extension to your practising certificate by:
 - 5.1 where you are less than three years' standing (as that term is defined in rule 17.4 of Section B to this Part III), confirming that your principal place of business (or if you are practising in a dual capacity, each of your principal places of practice) is either:
 - (a) a chambers of annex of chambers which is also the principal place of practice of a qualified person (as that term is defined in rule 17.5 of Section B to this Part III) who is readily available to provide guidance to you; or
 - (b) an office of an organisation of which an employee, partner, manager or director is a qualified person (as that term is defined in rule 17.5 of Section B to this Part III) who is readily available to provide guidance to you.
 - 5.2 confirming that you have the relevant administrative systems in place to be able to provide legal services direct to clients and to administer the conduct of litigation; and
 - 5.3 where you are applying for the first time, confirming that you have competent procedural knowledge to enable you to conduct litigation either by complying with such training requirements as may be imposed by the Bar Standards Board from time to time or by otherwise providing the Bar Standards Board with such other evidence or information as the Bar Standards Board may reasonably require.
6. An application will only have been made under either paragraph 4 or paragraph 5 above once the Bar Council (acting by the *Bar Standards Board*) has received, in respect of the relevant application, the application form in full, together with the application fee, 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.
7. On receipt of the application, the Bar Council (acting by the *Bar Standards Board*) may require, from you or a third party (including, for the avoidance of doubt, any *BSB*

authorised body), such additional information, documents or references as it considers appropriate to the consideration of your application.

8. 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.
9. When applying for a *practising certificate* you may 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. Such an application must be submitted by completing the form supplied for that purpose by the *Bar Standards Board*.

C3. Practising Certificate Fees

10. 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 *practising certificate fee payable by you* pursuant to that Schedule, having regard to, amongst other things:
 - 10.1 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 authorised bodies or barristers practising with dual capacity);
 - 10.2 any additional fee which may be prescribed by the Bar Council where your application includes a request for authorisation to conduct litigation;
 - 10.3 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*;

- 10.4 any discounts from the annual practising certificate fee which may be permitted by the *Bar Council* in the event of payment by specified methods;
 - 10.5 any reduction in or rebate from the annual practising certificate fee which may be permitted by the *Bar Council* on the grounds of low income, change of category or otherwise; and
 - 10.6 any surcharge or surcharges to the annual 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*.
11. If you have given an undertaking to pay the annual practising certificate fee, you must comply with that undertaking in accordance with its terms.

C4. Issue of Practising Certificates

12. The Bar Council (acting by the *Bar Standards Board*) shall not issue a *practising certificate* to a *barrister* or *registered European lawyer*:
- 12.1 who is not eligible for a *practising certificate*, or for a *practising certificate* of the relevant type; or
 - 12.2 who has not applied for a *practising certificate*; or
 - 12.3 who has not paid or not otherwise undertaken to pay in a manner determined by the Bar Council, the *appropriate practising certificate fee*; or
 - 12.4 who is not insured against claims for professional negligence as provided for in [rule 44 of Section D of Part II of this Handbook].
13. The Bar Council (acting by the *Bar Standards Board*) may refuse to issue a *practising certificate*, or may revoke a *practising certificate* in accordance with section C of Part 5 of this Handbook, 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 relevant *barrister* or *registered European lawyer*:
- 13.1 does not hold adequate insurance in accordance with [rule 44 of Section D of Part II of this Handbook];

Part 1 – Public

- 13.2 has failed and continues to fail to pay the *appropriate practising certificate fee* when due;
- 13.3 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to him; or
- 13.4 would be, or is, practising in breach of the provisions of rules [203, 204, 205, 401, 501, 502 or 503 of the 8th edition of the Code of Conduct] [12-22, 24, 26, 30-34 or 37-39] of the Practising Rules]¹.
14. When the Bar Council (acting by the *Bar Standards Board*) issues a *practising certificate*, it shall:
- 14.1 inform the relevant *barrister* or *registered European lawyer* of that fact; and
- 14.2 publish that fact, together with the name and practising address of the *barrister* and *registered European lawyer* and the other details specified in paragraph 15 below in the register on the *Bar Standards Board's* website.
15. A *practising certificate* shall state:
- 15.1 the name of the *barrister* or *registered European lawyer* (as the case may be);
- 15.2 the period for which the *practising certificate* is valid;
- 15.3 the *reserved legal activities* which the *barrister* or *registered European lawyer* (as the case may be) to whom it is issued is thereby authorised to carry on;
- 15.4 the capacity (or capacities) in which the *barrister* or *registered European lawyer* (as the case may be) practises; and
- 15.5 whether the *barrister* or *registered European lawyer* (as the case may be) is registered with the [*Bar Council/Bar Standards Board*] as a *Public Access* practitioner.
16. 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*.

¹ References to be updated to new code references.

17. A *full practising certificate* shall authorise a *barrister* to exercise a *right of audience* before every *court* in relation to all proceedings.
18. A *provisional practising certificate* shall authorise a second six pupil to exercise a *right of audience* before every *court* in relation to all proceedings provided they have the approval of their pupil-supervisor, head of chambers or HOLP.
19. 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.
20. A *practising certificate* shall authorise a *barrister* to conduct litigation in relation to every court and all proceedings if the practising certificate specifies a litigation extension.
21. Every *practising certificate* issued to a *barrister* shall authorise the *barrister*:
 - 21.1 to carry on:
 - (a) *reserved instrument activities*;
 - (b) *probate activities*;
 - (c) *the administration of oaths*; and
 - 21.2 to undertake immigration work.
22. A *registered European lawyer's practising certificate* shall authorise a *registered European lawyer* to carry on the same *reserved legal activities* as a *full practising certificate* issued to a *barrister*, save that:
 - 22.1 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 person authorised to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right; and
 - 22.2 a *registered European lawyer* is not authorised to prepare for remuneration any instrument creating or transferring an interest in land 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.

C5. Amendment and Revocation of Practising Certificates

23. 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:

23.1 was incomplete or inaccurate when the application form was submitted; or

23.2 changes before the expiry of your *practising certificate*.

24. If you wish to:

24.1 change the capacity in which you practise (e.g. if you change from being an *employed barrister* or a manager or employee of a BSB *authorised body* or an *authorised (non-BSB) body* to a self-employed barrister, or vice versa, or if you commence or cease practice in a dual capacity); or

24.2 become authorised to conduct litigation or cease to be authorised to conduct litigation,

before the expiry of your *practising certificate*, you must:

24.3 notify the Bar Council (acting by the *Bar Standards Board*) of such requested amendment to your practising certificate; and

24.4 submit to the Bar Council (acting by the Bar Standards Board) such further information as the Bar Council (acting by the Bar Standards Board) may reasonably require in order for them to be able to determine whether or not to grant such proposed amendment to your practising certificate; and

24.5 within 14 days of demand by the *Bar Council* pay to the *Bar Council* the amount (if any) by which the *annual practising certificate fee* which would apply to you in respect of your amended practising certificate exceeds the *annual practising certificate fee* which you have already paid (or undertaken to pay) to the *Bar Council*. In the event that the revised *annual practising certificate fee* is less than

Part 1 – Public

the amount originally paid to the *Bar Council* (acting by the *Bar Standards Board*), the *Bar Council* (acting by the *Bar Standards Board*) is not under any obligation to refund any part of the *annual practising certificate fee* already paid although it may in its absolute discretion elect to do so in the circumstances contemplated by the Schedule of Practising Certificate Fees issued by the Bar Council from time to time.

25. 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* (except in response to a request from the barrister) without first:
 - 25.1 giving written notice to the *barrister or registered European lawyer* of the grounds on which the *practising certificate* may be amended; and
 - 25.2 giving the *barrister or registered European lawyer* a reasonable opportunity to make representations.
26. 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 or registered European lawyer by the Bar Council (acting by the *Bar Standards Board*) or by a *Disciplinary Tribunal, Interim Suspension Panel* or *Fitness to Practise Panel*.
27. The Bar Council (acting by the *Bar Standards Board*):
 - 27.1 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
 - 27.2 may revoke a *practising certificate*:
 - (a) in the circumstances set out in paragraph 13 above; or

- (b) if the *barrister or registered European lawyer* has given an undertaking to pay the *appropriate 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 relevant *barrister or registered European lawyer* of the grounds on which the *practising certificate* may be revoked; and
- (ii) giving the relevant *barrister or registered European lawyer* a reasonable opportunity to make representations.

C6. Applications for Review

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

28.1 wrongly failed or refused to issue or amend a *practising certificate*; or

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

then you may lodge an application for review with the *Qualifications Committee* 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*.

29. The Bar Council (acting by the *Bar Standards Board*) may issue a temporary *practising certificate* to a barrister [or registered European lawyer] who has lodged an application for review.

30. 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.

31. 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

Part 1 – Public

Council (acting by the *Bar Standards Board*) shall make such amendment to the *practising certificate* as ought to have been made.

32. 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.
33. 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*.

D. THE REGISTRATION OF EUROPEAN LAWYERS RULES

1. If you are a European lawyer and wish to practise on a permanent basis in England and Wales under a home professional title, you may apply to the *Bar Standards Board* to be registered as a *registered European lawyer*.
2. An application for registration must be made in such form as may be prescribed by the *Bar Standards Board* and be accompanied by:
 - 2.1 a certificate, not more than three months old at the date of receipt of the application by the *Bar Standards Board*, that you are registered with the competent authority in a Member State as a lawyer qualified to practise in that Member State under a Member State professional title;
 - 2.2 a declaration that:
 - (a) you have not on the ground of misconduct or the commission of a criminal offence been prohibited from practising in your Member State and are not currently suspended from so practising;
 - (b) no bankruptcy order or directors disqualification order has been made against you and you have not entered into an individual voluntary arrangement with your creditors;
 - (c) you are not aware of any other circumstances relevant to your fitness to practise under your home professional title in England and Wales; and
 - (d) you are not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland; and
 - 2.3 the prescribed fee.
3. Provided it is satisfied that the application complies with the requirements of paragraph 2 of this Section D, the *Bar Standards Board* will:
 - 3.1 register you as a *registered European lawyer*; and
 - 3.2 so inform you and the competent authority in your Member State which has issued the certificate referred to in paragraph 2.1.

4. The *Bar Standards Board* will:

4.1 remove a *registered European lawyer* from the register:

- (a) pursuant to a sentence of a *Disciplinary Tribunal*; or
- (b) if the *registered European lawyer* ceases to be a *European lawyer*;

4.2 suspend a *registered European lawyer* from the register:

- (a) pursuant to a sentence of either a *Disciplinary Tribunal* or a *Summary Procedure Panel*; or
- (b) if the *registered European lawyer's* authorisation in his home state to pursue professional activities under his home professional title is suspended; and

in each case, notify the *European lawyer's* home professional body:

- (c) of his removal or suspension from the register; and
- (d) of any criminal conviction or bankruptcy order of which it becomes aware against a *registered European lawyer*.

E. ENTITY APPLICATION AND AUTHORISATION

E1. Eligibility for Authorisation to Practise as a BSB authorised body

1. In this Section E, references to "you" and "your" are references to the partnership, LLP or company which is applying for, or has applied for (in accordance with this Section E), authorisation to practise as a *BSB authorised body*.
2. To be eligible for authorisation to practise as a *BSB authorised body*, you:
 - 2.1 must confirm that you will have in place, at all times, individuals appointed to act as a *HOLP* and a *HOFA* of the *BSB authorised body*;
 - 2.2 must confirm that you have or will have appropriate insurance arrangements in place in accordance with [rule 44] of Section D of Part II of this Handbook and you must be able to provide evidence of those insurance arrangements if required to do so by the *Bar Standards Board*;
 - 2.3 must confirm that, in connection with your proposed practice, you will not directly or indirectly hold *client money* [in accordance with [rule 42 of Section D of Part II of this Handbook]] or have someone else hold *client money* on your behalf other than in those circumstances permitted by [rule 43 of Section D of Part II of this Handbook];
 - 2.4 must confirm that no individual that has been appointed or will be appointed as a *manager* or *employee* of the *BSB authorised body* has been disqualified from acting as such by the *Bar Standards Board* or any Approved Regulator pursuant to section 99 of the Legal Services Act 2007 or otherwise as a result of its regulatory arrangements;
 - 2.5 must confirm that you will at all times have a *practising address* in England or Wales;
 - 2.6 must confirm that:
 - (a) if you are an LLP, you are incorporated and registered in England and Wales, Scotland or Northern Ireland under the Limited Liability Partnerships Act 2000;

- (b) if you are a company, you are:
 - (i) incorporated and registered in England and Wales, Scotland or Northern Ireland under Parts 1 and 2 of the Companies Act 2006;
or
 - (ii) incorporated in an Establishment Directive state and registered as an overseas company under Part 34 of the Companies Act 2006;
or
 - (iii) incorporated and registered in an Establishment Directive state as a *societas Europaea*;
- 2.7 without prejudice to paragraph 3 below, you have or will have at all times at least one *practising barrister* who is both a *manager* and an *owner*; and
- 2.8 must confirm that at least one *manager* or employee is an *authorised individual* in respect of each *reserved legal activity* which you wish to provide;
- 2.9 must confirm that any *owner* will also be a *manager*; and
- 2.10 must confirm that all owners and managers will be individuals; and
- 2.11 must confirm that you will not be providing any services other than *legal activities*; and
- 2.12 must confirm that you will pay annual fees as and when they become due.
- 3. In addition to the requirements set out at paragraph 2 above:
 - 3.1 to be eligible for authorisation to practise as a *barrister only entity*:
 - (a) all of the *managers* of the partnership, LLP or company (as the case may be) must be *practising barristers*; and
 - (b) all of the *owners* (whether or not the ownership interest is material) of the partnership, LLP or company (as the case may be) must be *practising barristers*;

- 3.2 to be eligible for authorisation to practise as a *legal disciplinary practice*:
- (a) all of the *managers* of the partnership, LLP or company (as the case may be) must be *BSB authorised individuals* or *authorised (non-BSB) individuals*; and
 - (b) all of the *owners* (whether or not the ownership interest is material) of the partnership, LLP or company (as the case may be) must be *BSB authorised individuals* or *authorised (non-BSB) individuals*;
- 3.3 to be eligible to be licensed to practise as a BSB licensed body:
- (a) the body must be a licensable body, as defined by section 72 of the Legal Services Act 2007 but must also meet the eligibility requirements set out at paragraph 2 of this Section E to Part III; and
 - (b) all of the non-authorised owners in the partnership, LLP or company (as the case may be) must be approved by the Bar Standards Board as being able to hold such interest taking into account the relevant suitability criteria.
4. In the event that you meet the eligibility criteria set out in paragraph 2 above, you may submit an application in accordance with paragraph 9 and paragraphs 13 to 16 below and the *Bar Standards Board* will review that application in accordance with paragraph 20 to 23 below to determine whether or not to authorise you or to grant you a licence (as appropriate) to practise as a *BSB authorised body*. In the event that the *Bar Standards Board* determines that you should be authorised or licensed (as appropriate) to practise as a BSB authorised body then it may either:
- 4.1 authorise you to practise as a *barrister only entity* or a *legal disciplinary practice* in the event that you also meet the eligibility criteria set out in paragraph 3.1 or 3.2 respectively and you have applied to be authorised as such in your relevant application form; or
 - 4.2 license you to practise as a *BSB licensed body*, in the event that you do meet the eligibility criteria set out in paragraph 3.3 above and you have applied to be authorised as such in your relevant application form.

5. Such authorisation or licence (as appropriate) will entitle you to:
 - 5.1 to exercise a right of audience before every court in relation to all proceedings;
 - 5.2 to carry on:
 - (a) reserved instrument activities;
 - (b) probate activities;
 - (c) the administration of oaths;
 - 5.3 to undertake immigration work; and
 - 5.4 if you have been granted a litigation extension, to conduct litigation.

Guidance

6. Insurance taken out with the *BMIF* shall be appropriate insurance for these purposes.
7. Single person entities are permitted under these arrangements. Therefore, a *barrister only entity* may (subject to any structural requirements imposed by general law for the particular type of entity) comprise just one *barrister* who is both the *owner* and *manager* of that entity.
8. These are mandatory eligibility requirements. The Bar Standards Board has a discretion also to take other factors into account in deciding whether an applicant is one which it would be appropriate for it to regulate (see paragraph 24 below).

E2. Applications for Authorisation

Application to be authorised or licensed as a BSB authorised body

9. To apply for authorisation to practise as a *BSB authorised body*, you must:
 - 9.1 complete the application form supplied by the *Bar Standards Board* and submit it to the *Bar Standards Board*; and

- 9.2 submit such other information, documents and references in support of the application as may be required by the application form or by the *Bar Standards Board* from time to time; and
- 9.3 pay the *application fee* in the amount determined in accordance with paragraph 16 below.

Application for a litigation extension

10. If you would like to apply for a litigation extension, you must make this clear on your application form (where you are applying for the litigation extension at the same time as seeking an authorisation or licence to act as a BSB authorised body) or submit the relevant application form in circumstances where the application is being made subsequent to your initial application and you must provide such other information to the Bar Standards Board as it may require in order to satisfy itself that:
 - 10.1 you have the relevant administrative systems in place to be able to provide legal services direct to clients and to administer the conduct of litigation;
 - 10.2 you have a sufficient number of persons who are authorised to conduct litigation to provide guidance to any owners, managers or employees that may be involved in assisting in the conduct of litigation that are not themselves authorised and that you have an adequate number of qualified persons to provide guidance to any persons authorised to conduct litigation who are of less than three years' standing.

Guidance

11. Years' standing and qualified person shall be defined in accordance with rule 17.4 and 17.5 of Section B of this Part III.

Approval applications for any new HOLPs, HOFAs, owners and/or managers

12. If, following authorisation or the grant of a licence (as appropriate), a BSB authorised body wishes to appoint a new HOLP, HOFA, owner or manager, the BSB authorised body must:

- 12.1 notify the Bar Standards Board of such proposed appointment prior to such appointment being made; and
- 12.2 make an application to the Bar Standards Board for approval of the new HOLP, HOFA, owner or manager (as appropriate); and
- 12.3 Pay any fee set by the BSB.

Application Process

13. An application for authorisation and/or a litigation extension will only have been made once the Bar Standards Board has received the application form in full, together with the appropriate fee, 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.
14. On receipt of the application, 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.
15. You are responsible for the contents of your application and any information submitted to 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 Standards Board which you do not believe is full and accurate information.
16. The *application fee* shall be the amount or amounts prescribed by the *Bar Standards Board* from time to time relevant to the type of *BSB authorised body* to which the application relates. A separate application fee will also be payable if you are applying for a litigation extension.

Guidance

17. Application forms and guidance notes for completion can be found on the *Bar Standards Board's* website.
18. Once you have submitted an application, you must disclose to the Bar Standards Board any information which you subsequently become aware of and which you would have been required to supply if it had been known by you at the time of the original application.
19. Details of the relevant *application fee* can be found on the *Bar Standards Board's* website.

E3. Decision Process

20. Subject to paragraphs 21 and 22 below, the *Bar Standards Board* shall make a decision in respect of each valid and complete application within the *decision period*.
21. In the event that the *Bar Standards Board* is not able to reach a decision within the *decision period*, it shall notify you of such delay and shall confirm to you the latest date by which you will have received a response to your application from the *Bar Standards Board*.
22. The *Bar Standards Board* may issue more than one notice to extend the *decision period* except that:
 - 22.1 any notice to extend must always be issued prior to the expiry of the *decision period* on the first occasion and prior to the expiry of any such extended decision period on the second and subsequent occasions; and
 - 22.2 no notice to extend can result in the total decision period exceeding more than 9 months.
23. During its consideration of your application form, the *Bar Standards Board* may identify further information or documentation which it needs in order to be able to reach its decision. If this is the case, you must provide such additional information or documentation as soon as possible after receipt of the relevant request from the *Bar*

Standards Board. Any delay in providing this information shall further entitle the Bar Standards Board to issue an extension notice in accordance with paragraph 21 or 22 (as the case may be) or to treat the application as having been withdrawn.

E4. Issues to be Considered by the Bar Standards Board

Applications for authorisation or the grant of a licence

24. In circumstances where the mandatory conditions set out at paragraphs 2 and 3 above are met, the *Bar Standards Board* shall exercise its discretion as to whether to grant authorisation. In exercising this discretion, the Bar Standards Board shall consider whether the entity is one which it would be appropriate for the *Bar Standards Board* to regulate taking into account its analysis of the risks posed by you, the regulatory objectives of the Legal Services Act and the policy objectives of the *Bar Standards Board*.
25. In circumstances where the mandatory conditions set out at paragraphs 2 and 3 above are not met, the Bar Standards Board shall refuse to grant the authorisation or licence (as appropriate),

Guidance

26. The *Bar Standards Board* is a specialist regulator focussing primarily on the regulation of advocacy and litigation services. The *Bar Standards Board* wishes to ensure that it is an appropriate regulator of your proposed practice, and so, as part of its review of your application, it shall undertake a risk assessment to consider the nature of the risks posed by you taking into account the nature of the services which you are intending to provide. Factors that the Bar Standards Board shall take into account when undertaking this risk assessment include:
 - 26.1 the services which you intend to provide and the nature and extent of any *non-reserved activities*;
 - 26.2 the proposed proportion of *managers* to *employees*;
 - 26.3 the extent to which your *managers* have been and/or are going to be actively involved in advocacy and/or litigation services or related advice;

- 26.4 whether you are intending to undertake *legal transactional services* direct to lay clients and, if so, whether this is likely to constitute a substantial or significant proportion of your practice; and
- 26.5 the business systems which you are have or are intending to put in place to manage such services.
27. The following factors, when present, would indicate that it may be appropriate for the *Bar Standards Board* to regulate you:
- 27.1 if 50% or more of your *owners* and 50% or more of your *managers* are entitled to exercise *rights of audience* in the Higher Courts;
- 27.2 if a substantial part of the services to be provided comprise the provision of advocacy and/or litigation services or related advice;
- 27.3 if 75% of more of your *owners* and 75% or more of your *managers* are *authorised individuals*; and
- 27.4 if each manager supervises only a small number of employees.
28. The following factors, when present, would indicate that it may not be appropriate for the *Bar Standards Board* to regulate you:
- 28.1 if less than 50% of your *owners* and less than 50% of your *managers* are entitled to exercise *rights of audience* in the Higher Courts;
- 28.2 if a substantial part of the services to be provided comprise undertaking legal transactional matters direct to lay clients;
- 28.3 if the provision of advocacy and/or litigation and related advice does not comprise a significant proportion of your proposed business;
- 28.4 if less than 75% of your *owners* and 75% of your *managers* are *authorised individuals*.
29. The factors listed in paragraphs 27 and 28 are indicative only. If you meet all of the requirements of paragraph 27 you may still be refused authorisation if the Bar Standards

Board's analysis of the risks posed by you indicate that it may not be appropriate for the Bar Standards Board to regulate you. Similarly, if you exhibit similar characteristics to those described in paragraph 28 you may still be granted authorisation by the Bar Standards Board if the *Bar Standards Board* is satisfied that the risks posed by your organisation can be managed effectively and further considers that it would be consistent with the regulatory objectives of the Legal Services Act and the policy objectives of the *Bar Standards Board* to grant such authorisation to you.

30. Where the *Bar Standards Board* concludes that you are an entity which is appropriate for it to regulate in accordance with paragraph 24 and the associated guidance, the *Bar Standards Board* may still refuse your application for authorisation if:
- 30.1 it is not satisfied that your *managers* and *owners* individually meet the relevant suitability criteria applicable to managers and owners of BSB authorised bodies;
 - 30.2 it is not satisfied that your *managers* and *owners* are suitable as a group to operate or control a practice providing services regulated by the *Bar Standards Board*;
 - 30.3 if it is not satisfied that your proposed HOLP and HOFA meet the relevant suitability criteria;
 - 30.4 it is not satisfied that your management or governance arrangements are adequate to safeguard the regulatory objectives of the Legal Services Act or the policy objectives of the *Bar Standards Board*;
 - 30.5 it is not satisfied that, if the authorisation is granted, you will comply with the *Bar Standards Board's* regulatory arrangements including this Handbook and any conditions imposed on the authorisation;
 - 30.6 you have provided inaccurate or misleading information in your application or in response to any requests by the *Bar Standards Board* for information;
 - 30.7 you have failed to notify the *Bar Standards Board* of any changes in the information provided in the application; or

Part 1 – Public

- 30.8 you have applied for authorisation to become a *barrister only entity* or a *legal disciplinary practice* and the Bar Standards Board has concluded that it may require the intervention powers allocated to it in respect of *licensed bodies* under the Legal Services Act in respect of you;
- 30.9 for any other reason, the *Bar Standards Board* considers that it would be against the regulatory objectives of the Legal Services Act or the policy objectives of the *Bar Standards Board* to grant authorisation to you.

Guidance

31. In circumstances where the Bar Standards Board rejects your application on the basis of paragraph 30.8 above, you will have the opportunity to make the necessary adjustments to your composition and to re-apply to become a BSB licensed body.

Applications for authorisation to conduct litigation

32. If the Bar Standards Board is unable to satisfy itself that the BSB authorised body meets the requirements set out in paragraph 10 of this Section E to Part III, it can refuse to grant the litigation extension.
33. In the event that the Bar Standards Board refuses such application or decides to place conditions on the BSB authorised body as a result of such application, the BSB authorised body can submit an appeal in respect of such decision in accordance with the provisions of paragraph 51 of this Section E of this Part III.

Approval applications for any new HOLPs, HOFAs, owners and/or managers

34. The Bar Standards Board shall consider any approval applications for any new HOLPs, HOFAs, owners and/or managers and shall determine whether the relevant individual meets the suitability criteria relevant to such proposed appointment.
35. In the event that the Bar Standards Board refuses such application or decides to place conditions on the BSB authorised body as a result of such application, either the BSB authorised body or the individual concerned can submit an appeal in respect of such decision in accordance with the provisions of paragraphs 51 or 52 of this Section E of this Part III.

E5. Suitability Criteria in respect of HOLPs, HOFAs, owners and managers

36. The *Bar Standards Board* shall conclude that an individual is not a fit and proper person to undertake the role of a *HOLP* if:
- 36.1 that individual is not an *authorised individual*; or
 - 36.2 that individual is disqualified from acting as a *HOLP* by the *Bar Standards Board* or an Approved Regulator pursuant to section 99 of the Legal Services Act 2007 or otherwise as a result of its regulatory arrangements.
37. The *Bar Standards Board* may conclude that an individual is not a fit and proper person to undertake the role of a *HOLP* if:
- 37.1 any of the circumstances listed in paragraph 41 below apply to the person designated as the *HOLP*; or
 - 37.2 the *Bar Standards Board* considers that the person is not able effectively to carry out the duties imposed on a *HOLP* by section 91 of the Legal Services Act 2007.
38. The *Bar Standards Board* shall conclude that an individual is not a fit and proper person to undertake the role of a *HOFA* if that individual is disqualified from acting as a *HOFA* by the *Bar Standards Board* or an Approved Regulator pursuant to section 99 of the Legal Services Act 2007 or otherwise as a result of its regulatory arrangements.
39. The *Bar Standards Board* may conclude that an individual is not a fit and proper person to undertake the role of a *HOFA* if:
- 39.1 any of the circumstances listed in paragraph 41 below apply to the person designated as the *HOFA*; or
 - 39.2 the *Bar Standards Board* considers that the person is not able effectively to carry out the duties imposed on a *HOFA* by section 92 of the Legal Services Act 2007.
40. In circumstances where an owner is also a non-authorised individual, the *Bar Standards Board* needs to approve that individual. The *Bar Standards Board* shall approve a non-authorised individual to be an owner of BSB licensed body if:
- 40.1 the non-authorised individual is also a manager; and

- 40.2 the non-authorised individual's holding of that interest does not compromise the regulatory objectives; and
- 40.3 the non-authorised individual's holding of that interest does not compromise compliance with the duties imposed by section 176 by the licensed body or any authorised individuals that are to be employees or managers of that licensed body;
- 40.4 the non-authorised individual is otherwise a fit and proper person to hold that interest taking into account:
- (a) that person's probity and financial position;
 - (b) whether the person is disqualified pursuant to section 100(1) of the Legal Services Act 2007 or included in the list maintained by the Legal Services Board pursuant to paragraph 51 of Schedule 13 of the Legal Services Act 2007; and
 - (c) that person's associates; and
 - (d) the suitability criteria relevant to managers and employees as set out at paragraph 41 below.
41. The *Bar Standards Board* may reject an application if it is not satisfied that:
- 41.1 an individual identified in an application for authorisation or the grant of a licence as a proposed *owner, manager, HOLP or HOFA* of the relevant applicant; or
- 41.2 any individual identified as a replacement owner, manager, HOLP or HOFA,
- is a fit and proper person to act as an *owner, manager, HOLP or HOFA* of a *BSB authorised body*. Reasons why the *Bar Standards Board* may conclude that an individual is not a fit and proper person include where the individual concerned:
- 41.3 has been committed to prison in civil or criminal proceedings;
- 41.4 has been disqualified from being a director;

Part 1 – Public

- 41.5 has been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1)(d) of the Charities Act 1993;
- 41.6 is an undischarged bankrupt;
- 41.7 has been adjudged bankrupt and discharged;
- 41.8 has entered into an individual voluntary arrangement or a partnership voluntary arrangement under the Insolvency Act 1986;
- 41.9 has been a manager of an authorised body or a BSB authorised body which has entered into a voluntary arrangement under the Insolvency Act 1986;
- 41.10 has been a director of a company or a member of an LLP which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been otherwise wound up or put into administration in circumstances of insolvency;
- 41.11 lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to that individual;
- 41.12 is the subject of outstanding judgments involving the payment of money;
- 41.13 is currently charged with an indictable offence, or has been convicted of an indictable offence, any dishonesty offence or any offence under the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006;
- 41.14 has been disqualified from being appointed to act as a HOLP or a HOFA or from being a manager or employed by a licensed body (as appropriate) by the Bar Standards Board or another Approved Regulator pursuant to its or their powers under section 99 of the Legal Services Act and such disqualification is continuing in force; or

Part 1 – Public

- 41.15 has otherwise been identified by the Bar Standards Board as not being suitable to be employed by a BSB authorised person without the Bar Standard Board's prior consent;
- 41.16 has otherwise been identified by another Approved Regulator as not being suitable to be employed by an authorised (non-BSB) body without that Approved Regulator's prior consent;
- 41.17 has been the subject of an equivalent circumstances in another jurisdiction to those listed in [30.1] to [30.11] above; or
- 41.18 has a number of professional conduct actions against them; or
- 41.19 has been involved in other conduct which calls into question his or her honesty, integrity or respect for the law.

E6. Notification of the Authorisation Decision

- 42. The *Bar Standards Board* shall notify you of its decision in writing within the *decision period* or by such later date as may have been notified to the applicant in accordance with paragraph 21 or 22 above. In the event that the *Bar Standards Board* decides to refuse to grant the application, the reasons for such refusal shall be set out.

E7. Conditions of Authorisation

- 43. Authorisation granted by the *Bar Standards Board* to a *barrister only entity* or a *legal disciplinary practice* or the terms of any licence granted by the Bar Standards Board to a *BSB licensed body* in accordance with this Section E of the Scope of Practice, Authorisation and Licensing Rules must specify:
 - 43.1 the activities which are *reserved legal activities* and which the BSB authorised body is authorised to carry on by virtue of the authorisation or the licence (as the case may be); and
 - 43.2 any conditions subject to which the authorisation or the licence (as the case may be) is granted.
- 44. Authorisations and licences shall, in all case, be granted subject to the condition that:

Part 1 – Public

- 44.1 any obligation which may from time to time be imposed on you (or your *managers, employees, or owners*) by the *Bar Standards Board* is complied with; and
- 44.2 any other obligation imposed on you (or your *managers, employees or owners*) by or under the Legal Services Act 2007 or any other enactment is complied with.
45. In addition to the provisions set out at paragraph 44 above, authorisation or a licence may be granted subject to such other conditions as the *Bar Standards Board* considers appropriate including as to:
- 45.1 the *non-reserved activities* which you may or may not carry on; and/or
- 45.2 in the case of licensed bodies:
- (a) the nature of any interest held by a non-authorized owner provided always that the Bar Standards Board complies with its obligations under paragraph 17 of Schedule 13 to the Legal Services Act 2007; and/or
 - (b) any limitations on the shareholdings or voting controls capable of being held by non-authorized owners in accordance with paragraph 33 of Schedule 13 to the Legal Services Act 2007.

E8. Duration of the Authorisation/Licence granted

46. Except where indicated otherwise in the authorisation or licence, any authorisation or licence granted in accordance with these Scope of Practice, Authorisation and Licensing Rules shall be for unlimited duration except that the authorisation or licence:
- 46.1 shall cease to have effect on the occurrence of any of the following:
- (a) [if you have your authorisation/licence withdrawn in accordance with paragraph 50 below]; or
 - (b) if you obtain authorisation/licence from an Approved Regulator or licensing authority.
- 46.2 may cease to have effect on the occurrence of any of the following:

Part 1 – Public

- (a) if you fail to provide the relevant monitoring information or fail to pay the relevant authorisation/licensing renewal fee in circumstances where the Bar Standards Board has notified you (i) that such information or payment is required within a particular timescale; and (ii) that failure to provide such information or payment within the relevant timescale may result in your authorisation or licence being withdrawn in accordance with this paragraph 48; or
- (b) if you fail to replace your HOLP/HOFA in accordance with the requirements of this Handbook.

E9. Modification of an authorisation/licence

47. The Bar Standards Board may modify the terms of an authorisation or licence granted by it:
- 47.1 if you apply to the Bar Standards Board for the terms of such authorisation or licence (as the case may be) to be modified; or
 - 47.2 if such modification is required in accordance with the provisions of this Handbook; or
 - 47.3 in the event of a sanction imposed by a disciplinary tribunal; or
 - 47.4 where the Bar Standards Board reasonably considers that such modification is appropriate and in accordance with the regulatory objectives under the Legal Services Act or the policy objectives of the Bar Standards Board,

in each case, by giving notice to you in writing of the modifications which are to be made to the authorisation or licence (as the case may be) and providing an opportunity for you to make representations prior to a decision. Following the decision by the BSB, you may internally appeal in accordance with 49.3 below. Such modifications will have immediate effect unless an application to appeal is lodged.

E10. Revocation or suspension of an authorisation/licence

48. The Bar Standards Board may:

- 48.1 revoke an authorisation or licence granted by it:
- (a) [if you fail to comply with the obligations set out in this Handbook which are relevant to you and such failure calls into question your suitability to be authorised or licensed by the Bar Standards Board; or
 - (b) revocation otherwise appears appropriate taking into account the regulatory objectives of the Bar Standards Board; or]
- 48.2 suspend an authorisation or licence granted by it:
- (a) to give it an opportunity to carry out any investigations into whether or not your authorisation or licence should be revoked in accordance with paragraph 50.1²

in each case, by giving notice to you in writing of such revocation or suspension (as the case may be), such revocation or suspension to have effect from the date upon which the *Bar Standards Board* delivers such notice to you unless a later date is otherwise specified within the notice.

E11. Applications for Review

49. If you consider that the *Bar Standards Board* has:
- 49.1 wrongly refused an application for authorisation or licence; or
 - 49.2 wrongly imposed a condition on an authorisation or licence; or
 - 49.3 wrongly modified the terms of your authorisation or licence; or
 - 49.4 wrongly refused to modify the terms of your authorisation or licence; or
 - 49.5 wrongly revoked or suspended your authorisation or licence; or
 - 49.6 failed to provide to you notice of a decision in accordance with this section E of the Scope of Practice, Authorisation and Licensing Rules,

² To be developed as part of the second consultation exercise.

then you may lodge an application for review of that decision with the *Qualifications Committee* using the form supplied for that purpose by the *Bar Standards Board*. Such application for review will only have been made once the Bar Standards Board has received the relevant fee in respect of such application for review.

50. Any individual:

50.1 designated to act as a *HOLP* or a *HOFA*; or

50.2 identified as a non-authorised interest holder, owner or manager of the applicant,

that considers that the *Bar Standards Board* has wrongly concluded that such individuals do not meet the suitability criteria relevant to their proposed position within the entity, may lodge an application for review of that decision with the *Qualifications Committee* using the form supplied for that purpose by the *Bar Standards Board*. Alternatively, you may lodge an application for review on such individual's behalf whether or not the individual has requested that you make such an application. In either case, such application for review will only have been made once the Bar Standards Board has received the relevant fee in respect of such application for review.

51. The time period for applying for a review of the decision is 28 days from the date that the decision is notified to you.

52. If, following the completion of a review lodged under paragraph 51 or 52 of these Scope of Practice, Authorisation and Licensing Rules, you or the relevant individual(s) (as the case may be) still consider that the Bar Standards Board has:

52.1 in the case of you and your application:

- (a) wrongly refused an application for authorisation or a licence; or
- (b) wrongly imposed a condition on an authorisation or a licence; or
- (c) wrongly modified the terms of your authorisation or licence; or
- (d) wrongly refused to modify the terms of your authorisation or licence
- (e) wrongly revoked or suspended your authorisation or licence; or

- (f) failed to provide to you notice of a decision in accordance with this section E of the Scope of Practice, Authorisation and Licensing Rules; or

52.2 in the case of an individual, wrongly concluded that such individuals do not meet the *suitability criteria* relevant to their proposed position within the entity,

you or the relevant individual(s) to which the decision relates may appeal to the *First Tier Tribunal*³ against the *Bar Standard Board's* decision.

53. The time period for appealing a decision to the *First Tier Tribunal* is 28 days from the date that the decision is notified to you.

E12. Register

54. The *Bar Standards Board* shall keep a public register containing the names and places of business of all *BSB authorised bodies* (together with details of the reserved legal activities which such BSB authorised bodies are able to undertake) as well as details of any bodies which have in the past been granted authorisation or obtained a licence from the *Bar Standards Board* but where such licence and/or authorisation is no longer current.

55. If an authorisation or licence is, at any time, suspended, this shall be noted on the register of *BSB authorised bodies* by the *Bar Standards Board*.

³ We need to confirm that the First Tier Tribunal has jurisdiction to conclude such appeals in the case of barrister only entities and legal disciplinary practices.

F ONGOING COMPLIANCE WITH THE AUTHORISATION AND LICENSING REQUIREMENTS

F1. Non-compliance with the mandatory conditions

1. If, at any time and for whatever reason, you fail to meet the mandatory conditions set out in Section E which are relevant to the type of BSB authorised body that you are, then you must notify the Bar Standards Board of your failure to comply with the mandatory conditions within seven days of your failure to comply and, at the same time, you must submit your proposals for rectifying such non-compliance which, for the avoidance of doubt, shall include your proposed timetable for such rectification. In the event that the Bar Standards Board considers that your proposals for rectification are not sufficient, the Bar Standards Board may issue a notice suspending or revoking your authorisation or licence (as appropriate) in accordance with paragraph 50 of Section E of this Part III.

Guidance

1. Examples of situations where you may become non-compliant include:
 - 1.1 where your last remaining barrister:
 - (a) dies; or
 - (b) abandons, retires or resigns from the practice; or
 - 1.2 where you are a barrister only entity or a legal disciplinary practice, a non-authorised individual is appointed as a manager of or otherwise acquires an ownership interest in such business;
 - 1.3 you cease to have a HOLP or a HOFA appointed;
 - 1.4 your HOLP, HOFA, any manager or owner ceases to meet the relevant suitability criteria; or
 - 1.5 where you are a licensed body, your last remaining owner and/or manager that is a non-authorised individual dies or otherwise leaves the business.
2. Examples of proposals that you may submit in order to rectify such non-compliance

include:

- 2.1 In the case of guidance 1.1 above, that you are seeking to appoint a different practising barrister to be an owner and/or a manager of a BSB authorised body;
 - 2.2 In the case of guidance 1.2 above, confirmation that you will submit an application to the Bar Standards Board for authorisation to practise as a licensed body [but note guidance 3 below];
 - 2.3 in the case of guidance 1.3 above, that you are seeking to appoint a replacement HOLP or HOFA (as appropriate) in accordance with the relevant procedure set out in Section E;
 - 2.4 in the case of guidance 1.4 above, that you are taking the necessary steps to exclude the relevant person from the business and, where necessary, you are taking steps to replace the same; and
 - 2.5 in the case of guidance 1.5 above, you confirm whether or not you are likely to appoint a replacement non-authorised individual or, if not, whether you will be seeking authorisation from the Bar Standards Board to practise as a barrister only entity or a legal disciplinary practice (as appropriate).
3. In respect of guidance 1.2, it may be the case that a non-authorised individual obtained an ownership interest in a BSB authorised body following the death of a barrister or a non-authorised person. Similarly, a non-authorised person that has not been approved pursuant to the suitability criteria may acquire an ownership in a licensed body. In these cases, it may be the case that the BSB authorised body does not need to submit an application for authorisation to practise as a licensed body or an application for approval of such non-authorised individual (as appropriate) if the BSB authorised body is taking steps to ensure that such non-authorised individual shall divest themselves of their interest as soon as reasonably practicable (for example, on completion of the relevant probate).

F2. Loss or removal of a manager authorised to do a particular reserved legal activity

3. If the only or last remaining manager authorised to do a particular reserved legal activity either dies, leaves the practice or is otherwise no longer readily available to the BSB authorised body, the BSB authorised body must inform the Bar Standards Board within seven days of the relevant event and must cease to provide that reserved legal activity unless an employee is authorised to undertake the reserved legal activity but must appoint a replacement manager who is authorised to undertake the particular reserved legal activity as soon as practicable.

Guidance

1. Examples of situations where an individual should be considered to be unavailable to a BSB authorised body include where:
 - 1.1 they are committed to prison;
 - 1.2 they are unable to attend to the practice because of incapacity caused by illness, accident or age;
 - 1.3 they become and continue to be a person who lacks capacity under Part 1 of the Mental Capacity Act 2005;
 - 1.4 they are made subject to a condition on their practising certificate or registration which would be breached if they continue to be an owner and/or manager of the body; or
 - 1.5 they are no longer authorised to perform the particular reserved legal activity.

F3. Temporary emergency approvals for HOLPs and HOFAs

4. If a BSB authorised body ceases to have a HOLP or HOFA whose designation has been approved by the Bar Standards Board, the BSB authorised body must immediately and in any event within seven days:
 - 4.1 notify the Bar Standards Board;

Part 1 – Public

- 4.2 designate another manager or employee to replace its previous HOLP or HOFA, as appropriate; and
 - 4.3 make an application to the Bar Standards Board for temporary approval of the new HOLP or HOFA, as appropriate.
5. The Bar Standards Board may grant a temporary approval under this rule if on the face of the application and any other information immediately before the Bar Standards Board, there is no evidence suggesting that the new HOLP or HOFA is not suitable to carry out the duties imposed on them under these rules.
6. If granted temporary approval under paragraph 5 above for its designation of a new HOLP or HOFA, the authorised body must:
- 6.1 designate a permanent HOLP or HOFA, as appropriate; and
 - 6.2 submit a substantive application for approval of that designation in accordance with Section E above,
- before the expiry of the temporary approval or any extension of that approval by the Bar Standards Board.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

THE BSB HANDBOOK

PART V – COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

B. THE COMPLAINTS RULES

B1. INTRODUCTION

1. This Section B of Part V prescribes the manner in which:

1.1 all complaints about the conduct of BSB regulated persons; and

1.2 all complaints about the conduct of persons who, at the time of such conduct, are serving a sentence of disbarment, disqualification or prohibition order which is subsequently overturned on appeal,

shall be processed. In this Section B of Part V, the expression "BSB regulated persons" shall be interpreted as including persons falling within sub-paragraph 1.2 above. It shall also include, for the purposes of this Section B of Part V only (and only to the extent contemplated by this Section B of Part V) all of those non-authorized persons directly or indirectly employed by Chambers, barrister only entities, legal disciplinary practices and licensed bodies.

2. In these Rules:

2.1 disqualification condition means that the BSB regulated person has (intentionally or through neglect):

(a) breached a relevant duty to which the BSB regulated person is subject; or

(b) caused, or substantially contributed to, a BSB regulated person breaching the terms of this Handbook; and

2.2 unless the context otherwise requires, any term defined in the Code of Conduct shall carry the same meaning as it does in Part VI of this Handbook.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

3. If a barrister is a member of more than one Inn, references in these Rules to his Inn shall mean the Inn by which he was called, unless he is a Bencher in which case his Inn shall mean the Inn of which he is a Bencher.
4. The Complaints Committee ("the Committee") and the Chairman of the Committee shall each have the power to authorise any person, group or body to fulfil any function or exercise any power given to them by these Rules. Any authorisations under given under this paragraph 4 must be in writing and may be both retrospective and prospective, and both general and for a particular purpose.
5. Save in respect of the matters dealt with at paragraphs 24 and 25 below (time limits for making a complaint), the Committee, the Chairman of the Committee, or any person authorised under paragraph 4 above, shall have the power to extend any time limits prescribed by these Rules, in his or their absolute discretion, whenever it appears to be appropriate to do so.

B2 Powers and functions of the Committee

6. The membership of the Committee shall be as prescribed by the Standing Orders of the BSB as amended from time to time.
7. The powers of the Committee shall be as set out in these Rules, and shall include the power:
 - 7.1 to consider complaints made by persons other than the BSB;
 - 7.2 to raise complaints on behalf of the BSB, and to withdraw such complaints;
 - 7.3 to determine whether any complaint:
 - (a) discloses a potential breach of this Handbook; or
 - (b) a potential case of professional misconduct; or
 - (c) satisfies the disqualification condition,

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

and if so to deal with it in accordance with these Rules;

- 7.4 to direct the investigation of complaints;
- 7.5 to seek, in appropriate cases, to resolve complaints using the Determination by Consent procedure;
- 7.6 to bring charges of professional misconduct before Disciplinary Tribunals (as provided by the Disciplinary Tribunals Regulations at Section C of this Part V of this Handbook);
- 7.7 to make an application for disqualification or a prohibition order in respect of those persons identified in Section D of this Part V of the Handbook in accordance with the provisions of Section D of this Part V of this Handbook);
- 7.8 to seek an interim suspension or disqualification order in accordance with Section E of this Part V of this Handbook;
- 7.9 to refer to such tribunals any legal aid complaint relating to the conduct of a barrister and to be responsible for prosecuting any such charges or legal aid complaints before such Tribunals;
- 7.10 to take such other actions in relation to complaints or infringements of the Handbook as are permitted by these Rules, and in particular paragraph 30 below;
- 7.11 to impose, or direct the imposition, of a fixed financial penalty or a written warning in accordance with the provisions of paragraph [] below;
- 7.12 to make recommendations on matters of professional conduct to the BSB or to any of its committees, as the Committee may think appropriate;
- 7.13 to make rulings on matters of professional conduct when the Committee considers it appropriate to do so; and
- 7.14 to exercise the power of the BSB under Part 1 of the Handbook to grant waivers of the provisions of the Handbook either generally or in particular cases.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

B3 Procedure for dealing with complaints - general

8. The Committee may at any time postpone consideration of a complaint, whether to permit further investigation of the complaint to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.
9. The Committee may at any time seek information or assistance, orally or in writing, as it thinks fit, from any person, group or body.
10. If at any time the Committee decides in accordance with these Rules:
 - 10.1 to refer a complaint to another person or body for consideration; or
 - 10.2 to dismiss or take no further action on a complaint; or
 - 10.3 to postpone consideration of a complaint or part of it;it shall give written reasons for such decision, and provide such reasons to the BSB regulated person against whom the complaint was made and (where the complaint was made by a person other than the BSB) the complainant.
11. Any complaint raised by the BSB itself shall be considered by the Committee in accordance with paragraph 28 and following below.
12. Any complaint other than a complaint raised by the BSB itself shall be considered by the Committee in accordance with paragraphs 13 to 27 below.

B4 Procedure for dealing with complaints by persons other than the BSB

Referral of complaints to other persons

13. On receipt of a complaint, the Committee shall first consider whether it is appropriate to refer the complaint to another person, taking into account the factors set out in paragraphs 14 to 27 below. If at any time the Committee decides to refer a complaint to another person or body for consideration it shall give written reasons for such decision, and provide such

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

reasons to the BSB regulated person against whom the complaint was made and (where the complaint was made by a person other than the BSB) the complainant.

Reference to Legal Ombudsman

14. Subject to paragraph 17 below, if a complaint is made by or on behalf of a client of a BSB regulated person against that BSB regulated person (or, in the case of a BSB authorised body, such complaint is made against any individual working as an employee or manager of such BSB authorised body), the Committee shall refer such complaint without further consideration to the Legal Ombudsman, and shall notify the complainant of the referral.
15. For the avoidance of doubt, such referral shall not prevent the immediate operation of the Interim Suspension Rules or the Fitness to Practise Rules, where appropriate.
16. On a complaint being referred, or referred back, to the BSB by the Legal Ombudsman, paragraphs 28 and following below shall apply.
17. Nothing in paragraph 14 above shall entitle the Committee to refer a complaint that has been made against an unregistered barrister to the Legal Ombudsman.

Reference to Chambers/BSB authorised bodies

18. If it appears to the Committee that a complaint against a BSB regulated person (not being a complaint in respect of which paragraph 14 should apply) may appropriately be resolved by:
 - 18.1 Chambers (where the complaint is against a self-employed barrister or other BSB regulated individual working at such Chambers at the relevant time); or
 - 18.2 a BSB authorised body (where the complaint is against such BSB authorised body or the complaint is against an individual that was acting in their capacity as a manager or employee of such BSB authorised body at the relevant time),

the Committee may refer the complaint to the Chambers or BSB authorised body for investigation and resolution. For the avoidance of doubt, where a complaint is made

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

against an employed barrister (authorised non-BSB body) or an employed barrister (non-authorised body), the provisions of paragraph 25 shall apply.

19. When deciding whether to refer a complaint in accordance with paragraph 18 above, the Committee shall take into account all the circumstances, including:
 - 19.1 the seriousness of the complaint;
 - 19.2 the complexity of the complaint;
 - 19.3 the relationship (if any) between the complainant and the relevant Chambers/BSB authorised body;
 - 19.4 any other factor relevant to the issue of whether it is appropriate and potentially effective to refer the complaint to the relevant Chambers/BSB authorised body.
20. The Committee shall consider whether the complaint should be dismissed in accordance with paragraph 28 below prior to deciding whether to refer the complaint to the relevant Chambers/BSB authorised body in accordance with paragraph 18 above.
21. Where a complaint is referred to the relevant Chambers/BSB authorised body in accordance with paragraph 18 above, the Committee will send any information held by it relating to the complaint to the Head of Chambers (in the case of a referral to Chambers) or to the HOLP (in the case of a referral to a BSB authorised body) or to such other individual at the Chambers/BSB authorised body as appears appropriate in all the circumstances.
22. Following a referral to a Chambers/BSB authorised body in accordance with paragraph 18 above, the Committee shall inform the complainant of the complainant's rights under paragraph 24.2 below.
23. The Committee's decision under paragraph 18 is final and no party shall have the right to appeal against it.
24. If:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

24.1 the Committee considers that progress made by the Chambers/BSB authorised body in investigating and resolving the complaint, or the outcome of such investigation, is unsatisfactory; or

24.2 a complainant informs the Committee that he is dissatisfied with the progress or outcome of the Chambers/BSB authorised body's investigation, giving reasons for such dissatisfaction,

then the Committee shall consider the complaint in accordance with paragraph 28 and following below.

Reference to any other person

25. If it appears to the Committee that a complaint relates to a matter which might more appropriately be dealt with by an Inn, Circuit, employer or any other professional or regulatory body (including, for the avoidance of doubt, any other Approved Regulator), it may refer the complaint without further consideration to such other body.

Reference where BSB regulated individual acting in judicial or quasi-judicial capacity

26. If it appears to the Committee that the complaint arises out of a BSB regulated individual's actions in a part-time or temporary judicial or quasi-judicial capacity, it shall act as follows:

26.1 If it appears to the Committee that the complaint would otherwise fall to be dismissed under this Section B of Part V, the Committee shall dismiss it;

26.2 If it appears to the Committee that the complaint would otherwise not fall to be dismissed, the Committee shall refer the complaint without further consideration to the person or body responsible for the appointment of the BSB regulated individual to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other person or body as appropriate) ('the appointing body'), requesting the appointing body to notify the Committee when the complaint has been dealt with and of any action taken. Where the appointing body is a person other than the Lord Chancellor or a Minister of the Crown and where the Committee considers it inappropriate to refer the complaint to the appointing body, or where the appointing body refuses to deal with a complaint, the Committee shall consider the

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

complaint and, subject to 26.4 below, direct it to be proceeded with in accordance with paragraph 28 and following below.

26.3 If the appointing body, having dealt with a complaint, believes that it may be appropriate for further consideration by the Bar Standards Board, the appointing body may, subject to 26.4 below, refer the matter back to the BSB and, following such referral, the Committee may reconsider the complaint and may, if it sees fit, direct it to be proceeded with in accordance with paragraph 28 and following below.

26.4 No such reference to the BSB as is mentioned in 26.3 above by the appointing body shall be acted upon by the Committee, nor shall the Committee exercise the powers under the last sentence of paragraph 26.2 above, in respect of any part of the complaint relating to anything said or done by the BSB regulated individual in the exercise of his judicial functions or affecting the independence of the BSB regulated person in his judicial or quasi-judicial capacity.

27. If it appears to the Committee that the complaint relates to the conduct of a BSB regulated individual who, since the events giving rise to the complaint took place, has been appointed to and continues to hold full-time judicial office and has ceased practice, the Committee shall not consider the complaint further and shall inform the complainant that his complaint should be directed to the Lord Chancellor or to such other person or body as may hereafter assume the responsibilities of the Lord Chancellor in this regard.

B5 Committee's powers before investigation of complaints

28. In determining whether a complaint raised by a person other than the BSB:

28.1 discloses a potential case of professional misconduct; or

28.2 discloses a potential breach of the Code; or

28.3 otherwise satisfies the disqualification condition,

and whether, if it does, it is apt for further consideration, the Committee shall first consider:

28.4 whether the complaint has been made:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (a) within twelve months of the conduct of which complaint is made, or
- (b) (where a complainant has indicated to the Committee his dissatisfaction with the outcome of a Chambers/BSB authorised body's investigation in accordance with paragraph [] above) within three months of the conclusion of the investigation by Chambers/BSB authorised body, whichever is the later. Where the conduct of which complaint is made is (or was) ongoing or consists of a series of related acts or omissions, then the conduct shall for the purposes of this paragraph be treated as having taken place at the time when the ongoing conduct ceased or at the time of the last of such acts or omissions; and

28.5 in respect of whom the complaint is made.

29. Where the Committee considers that the complaint has not been made within the period identified in paragraph 28.4 above or relates to a non-authorised person in circumstances where the the nature of the complaint is unlikely to satisfy the disqualification condition, then it shall dismiss the complaint unless it considers that further consideration of the complaint is justified, by reason of the regulatory objectives. The Committee shall give written reasons for any decision made under this paragraph.

30. The Committee shall next consider whether further consideration of the complaint is justified. If the Committee considers that:

30.1 the complaint for any reason obviously lacks substance; or

30.2 the complaint cannot be properly or fairly investigated, or the BSB regulated person is for any reason unable fairly to respond to it; or

30.3 the complaint or its consequences are insufficiently serious to justify further action;
or

30.4 for any other reason whatsoever the complaint is not apt for further consideration,

then the Committee shall dismiss the complaint.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

31. If a complaint is not dismissed by the Committee following its initial consideration, it shall be investigated and dealt with in the manner set out in paragraph 32 and following below.

B6 Investigation of complaints

32. The investigation of complaints shall be conducted by the Professional Conduct Department under the direction of the Committee.
33. Following the completion of any investigation into a complaint, the Committee shall exercise the powers given to it by paragraph 34 and following below.

B7 Committee consideration of complaints

34. The Committee shall consider complaints, together with the results of investigations thereof, in such manner as it shall see fit, provided that (save in the case of complaints falling within paragraph 35.2 below), the Committee shall not conclude that there is:

34.1 in the case of a potential referral to a Disciplinary Tribunal, a realistic prospect of a finding of professional misconduct being made against a BSB regulated person; or

34.2 in the case of a potential application for disqualification or a prohibition order being made, a realistic prospect of the disqualification condition being satisfied against the relevant individual,

on the basis of any allegation by a complainant to which the relevant person has not had a reasonable opportunity to respond.

35. If in the course of its consideration of a complaint ("the original complaint") the Committee considers that there is any matter other than that complained of which might give rise to a potential breach of this Handbook, or a potential case of professional misconduct, or a potential breach of the disqualification condition, the Committee may raise a complaint about that matter on behalf of the BSB ("the new complaint").

35.1 In such event, unless the new matter falls within paragraph 35.2 below:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (a) The new complaint shall be investigated in the manner set out in paragraph 28 and following above.
- (b) The Committee shall not proceed to consider whether there is a realistic prospect of a finding of professional misconduct being made or a realistic prospect of the disqualification condition being satisfied in respect of the new complaint unless and until the BSB regulated person concerned has been given the opportunity to comment in writing on the matter complained of in the new complaint. The Committee shall take any comments made by the BSB regulated person into consideration when it determines whether there is a realistic prospect of a finding of professional misconduct being made or a realistic prospect of the disqualification condition being satisfied in respect of the new complaint.
- (c) The Committee may defer further consideration of the original complaint pending the results of any investigation of the new complaint.

35.2 No further investigation will be required where the subject matter of the new complaint has already been investigated in the course of investigations into the original complaint.

36. The Committee may reopen or reconsider a complaint which has been disposed of, unless it has been disposed of by a Disciplinary Tribunal,

36.1 where new evidence becomes available to the Committee which leads it to conclude that it should do so, or

36.2 for some other good reason.

37. Following such reopening or reconsideration, the Committee may take any further or different action it thinks fit, as if the former decision had not been made, provided that if the complaint has already been referred to a Disciplinary Tribunal and charges have been served on the Defendant then the Committee's actions shall be confined to instructing counsel for the BSB to:

37.1 offer no evidence on a charge, or

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

37.2 apply to the Directions Judge for the making of additions to or amendments of a charge.

then the Committee shall deal with the breach of the Handbook by imposing an administrative fine or warning.

B8 Findings of the Committee

38. Upon considering any complaint, and subject to the provisions of paragraph 38 below, the Committee may take any of the following steps:

38.1 dismiss the complaint, provided that (where the decision is taken at a meeting of the Committee, and not by some other person, group or body authorised in accordance with paragraph 4 of these Rules) the majority of the lay members present at the meeting consent to such dismissal.

38.2 determine that no further action shall be taken on the complaint.

38.3 impose an administrative fine or warning.

38.4 direct that the complaint should be subject to the Determination by Consent procedure (under paragraph 55 and following below);

38.5 direct that the complaint form the subject matter of a charge before a Disciplinary Tribunal in accordance with Section C of this Part V;

38.6 make an application for disqualification or a prohibition order in accordance with Section D of this Part V.

39. Subject to paragraph 43, a direction shall be made by the Committee under paragraph 36.6 above only where:

39.1 the Committee considers that there is a realistic prospect of a finding of professional misconduct being made; and

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

39.2 the Committee decides that the regulatory objectives would be best served by pursuing disciplinary proceedings.

40. For the purpose of these Rules a "realistic prospect of a finding of professional misconduct being made" means that the Committee considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of a complaint, that it is more likely than not that such a finding will be made.

41. Subject to paragraph 43, a direction shall be made by the Committee under paragraph 36.7 above only where:

41.1 the Committee considers that there is a realistic prospect of a finding that the disqualification condition has been satisfied; and

41.2 the Committee decides that the regulatory objectives would be best served by pursuing disqualification or a prohibition order.

42. For the purpose of these Rules a "realistic prospect of a finding that the disqualification condition has been satisfied" means that the Committee considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of a complaint, that it is more likely than not that such a finding will be made.

43. If the subject matter of the complaint involves a conviction for an offence of dishonesty or deception the Committee shall direct that the complaint should form the subject matter of a charge before a Disciplinary Tribunal or a Disqualification Panel (as appropriate).

44. Where the Committee decides to take no further action on a complaint, or dismisses a complaint, but the BSB regulated person's conduct is nevertheless such as to give cause for concern, the Committee may in those circumstances, and either before or after any disposal of the complaint, do any or both of the following:

44.1 draw to the BSB regulated person's attention in writing the Committee's concerns;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 44.2 advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the Committee or on some other person nominated by the Committee, to receive such advice.
45. If, when dismissing or deciding to take no further action on a complaint in respect of a barrister, the Committee nonetheless considers that the circumstances of the complaint are relevant to the barrister's position as a pupil supervisor, it may notify the barrister's Inn of its concern in such manner as it sees fit.
46. In all other cases, the Committee shall deal with the breach of the Handbook by imposing an administrative fine or warning.
47. The level of the fine or the nature of the administrative warning to be imposed by the Committee shall be determined by reference to the Fine Policy set out in the Sentencing Guidelines. The maximum level of a fine capable of being levied by the Committee under paragraph 46 is:
- 47.1 £3,000 where the fine is to be imposed on a BSB regulated individual; and
- 47.2 £5,000 where the fine is to be imposed on Chambers or a BSB authorised body.
48. Any decision by the Committee to impose an administrative fine or warning will be formally recorded but will not be made public.

B9 BSB regulated person's right to appeal a fine or administrative warning

49. A BSB regulated person has a right to appeal any decision of the Committee to impose an administrative fine in accordance with this Section B of Part V to an Appeal Panel constituted under the auspices of the Council of the Inns of Court in the same manner as a three-person panel constituted under Regulation 2(3) of the Disciplinary Tribunal Regulations.
50. An appeal shall be made by the BSB regulated person sending to the Chairman of the Committee a notice identifying the administrative fine or warning appealed against, the decision the BSB regulated person contends for, the grounds of such appeal and a

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

statement of whether or not the BSB regulated person requires his appeal to be disposed of at an oral hearing. The appeal shall be by way of a re-hearing.

51. The notice shall be accompanied by the sum of £100 (or such other sum as may be prescribed by the BSB from time to time) payable to the BSB to defray expenses.
52. At least 5 working days before the time set for the appeal, the Committee will provide each member of the Panel and the BSB regulated person with a paginated bundle of the correspondence and other documents on its files relating to the imposition of the administrative fine.
53. On such an appeal:
 - 53.1 the BSB regulated person may be represented;
 - 53.2 the Appeal Panel shall decide whether to set aside the administrative fine;
 - 53.3 if the Appeal Panel shall allow the appeal in whole or in part, the Panel may direct that any administrative fine already paid by the BSB regulated person be refunded: but the Appeal Panel shall have no power to award costs.
54. Any failure by the BSB regulated person to pay the administrative fine within the relevant timescale is likely to be treated as professional misconduct and shall entitle the Committee to refer the matter to a full Disciplinary Tribunal for disposal.

B10 Determination by consent

55. A complaint which the Committee is otherwise intending to refer to the Disciplinary Tribunal in accordance with paragraph [] may, with the consent of the BSB regulated person against whom the complaint is made, be finally determined by the Committee. This is referred to as the “Determination by Consent procedure”.
56. The circumstances in which the Determination by Consent procedure is to be used, and how it is to be used, are set out below.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

57. The Committee shall, in deciding whether to make a complaint subject to the Determination by Consent procedure, consider all the circumstances. The Committee may make the complaint subject to the Determination by Consent procedure only if:

57.1 the BSB regulated person submits to the jurisdiction of the Committee; and

57.2 if the Committee considers that:

(a) there is a realistic prospect of a finding of professional misconduct being made in respect of the complaint (taking into account the provisions of paragraph [] below); and

(b) there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and

(c) the potential professional misconduct, if proved, combined with:

(i) the BSB regulated person's previous disciplinary history, and

(ii) any deferred sentences which would be activated if the breach or breaches were proved,

do not appear to be such as to warrant:

(iii) a period of suspension from practice or disbarment;

(iv) the BSB regulated person being made subject to a sanction other than those set out in paragraph [] below; and

(d) there are no exceptional circumstances which would warrant no further action being taken on the complaint or the complaint being dismissed; and

(e) there are no other public interest considerations which warrant a full hearing.

58. The Determination by Consent procedure shall be conducted in accordance with such procedures as the Committee may prescribe from time to time.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

59. The Committee may terminate the Determination by Consent procedure at any time if it no longer considers that the requirements of paragraph 57 are satisfied, or for any other good reason.
60. If the Determination by Consent procedure terminates other than by a finding and sentence to which the BSB regulated person consents, then the complaint shall be referred to a full Disciplinary Tribunal.
61. The Committee shall publish any finding and sentence resulting from the Determination by Consent procedure to the same extent as such publication would have taken place following a finding and sentence resulting from a Disciplinary Tribunal, as provided for in the Disciplinary Tribunal Regulations.
62. Once accepted by the BSB regulated person, no appeal may be made against a Determination by Consent, whether by the BSB regulated person or by the complainant (if applicable).
63. In determining any sanction to be imposed under the Determination by Consent procedure, the Committee shall have regard to the relevant Sentencing Guidance.
64. A BSB regulated person against whom a charge of professional misconduct has been found proved under the Determination by Consent procedure may be subject to the following sanctions:
 - 64.1 in the case of a BSB licensed body, ordered to pay a fine of up to £250,000,000 to the Bar Standards Board; or
 - 64.2 in the case of a manager or employee of a BSB licensed body, ordered to pay a fine of up to £50,000,000 to the Bar Standards Board; or
 - 64.3 in the case of any other BSB regulated person, ordered to pay a fine of up to £1,000,000 to the Bar Standards Board.
65. Where the Committee has imposed a fine, the confirmation letter to the BSB regulated person shall indicate that the BSB regulated person must pay the fine within 28 days, subject to any representations made regarding the need for extra time to pay. Any

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

application to pay a fine in instalments shall be left to the discretion of the Chairman of the Committee.

66. Where a sanction imposed by the Committee includes a fine, that element of the sentence may be directed by the Committee to have deferred effect. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the “period of deferral”).
- 66.1 A deferred sentence shall be activated where the BSB regulated person is subsequently found (whether during the period of deferral or afterwards) to have committed a Relevant Breach during the period of deferral. For the purpose of this Regulation, a Relevant Breach would be a breach of this Handbook amounting to professional misconduct.
- 66.2 Where the Committee finds that there has been a Relevant Breach during the period of deferral, it shall (at the same time as imposing sentence for the Relevant Breach) activate the sentence which had been deferred, save in exceptional circumstances.
- 66.3 For the avoidance of doubt, the Committee may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a Disciplinary Tribunal, so long as the total sanction imposed does not exceed the powers of the Committee set out in paragraph [] above.

B11 Disciplinary charges

67. If the Committee directs under paragraphs [] above that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the following paragraphs shall have effect.
68. At the same time as the Committee directs that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the Committee shall also direct whether a three-person panel or a five-person panel is to be constituted.
- 68.1 Where paragraph [] above applies (complaint involving conviction for dishonesty or deception), the Committee shall direct that a five-person panel is to be constituted.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

68.2 In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the Committee shall only consider the sentence which it considers is likely to be imposed if the BSB regulated person is found guilty of the charges alleged, having regard to:

- (a) any applicable Sentencing Guidance issued by the Council of the Inns of Court; and
- (b) the previous disciplinary record of the BSB regulated person; and
- (c) any deferred sentence which would be activated if the BSB regulated person were to be found guilty of the charges alleged.

68.3 If the Committee considers that the BSB regulated person is likely, if convicted, to be disbarred or suspended from practice for more than three months then the Committee shall direct that a five-person panel is to be constituted; otherwise, the Committee shall direct that a three-person panel is to be constituted.

68.4 The Committee shall inform the BSB regulated person and the complainant (if any) of the decision taken under this paragraph. The decision taken by the Committee under this paragraph shall not be subject to any appeal.

69. Where the Committee directs that a three-person panel is to be constituted, the Committee may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chairman of the Panel, giving reasons for any such recommendation.

70. In the event that another charge of professional misconduct is pending or to be brought against the BSB regulated person concerned, the Committee shall have the power to direct that the additional charge be brought before the same Tribunal or panel as is disposing of the original charge, even if the additional charge, by itself, may be regarded as insufficiently serious to merit disposal by a Tribunal of that level.

71. The Committee may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions are satisfied:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 71.1 the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction),
- 71.2 witnesses are unlikely to be called for the hearing,
- 71.3 the case needs to be resolved urgently, or
- 71.4 there is some other good reason for expedition.

72. When the Committee has directed that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the Committee shall be responsible for bringing the charge on behalf of the BSB. In this regard:

- 72.1 The Committee may arrange for the appointment of counsel to settle the charge and to present the case before the Tribunal, and may arrange for the appointment of a solicitor or such other person as may be necessary to assist counsel and prepare the case.
- 72.2 Any charges shall be brought in the name and on behalf of the BSB.

B11 Disqualification Panels

- 73. If the Committee directs under paragraphs [] above that a complaint shall form the subject matter of an application to be brought before Disqualification Panel, the following paragraphs shall have effect.
- 74. In the event that there is another instance of the BSB regulated person satisfying the requirements of the disqualification condition, the Committee shall have the power to direct that the additional charge be brought before the same Panel as is disposing of the original charge.
- 75. The Committee may direct that the application is expedited if it considers that one or more of the following conditions are satisfied:
 - 75.1 the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction),

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

75.2 witnesses are unlikely to be called for the hearing,

75.3 the case needs to be resolved urgently, or

75.4 there is some other good reason for expedition.

76. When the Committee has directed that a complaint shall form the subject matter of a charge before a Disqualification Panel, the Committee shall be responsible for bringing the charge on behalf of the BSB. In this regard:

76.1 The Committee may arrange for the appointment of counsel to make the application and present the case before the Panel, and may arrange for the appointment of a solicitor or such other person as may be necessary to assist counsel and prepare the case.

76.2 The application shall be brought in the name and on behalf of the BSB.

B12 Confidentiality

77. The BSB shall respect the confidentiality of complaints. The BSB shall not disclose the fact that a complaint has been made or details of the complaint or its disposal save as specified in paragraphs 80 to 83 below or otherwise required by law.

78. Disclosure may be made:

78.1 for the purpose of investigating the complaint;

78.2 for the purpose of keeping the complainant and the barrister informed of the progress of the complaint;

78.3 for the purpose of publicising any forthcoming public hearing of charges arising from the complaint;

78.4 where the complainant and the BSB regulated person consent;

78.5 for the purposes of paragraphs 82 or 83 of these Rules;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 78.6 where the publication of a finding is required by the provisions of the Disciplinary Tribunals Regulations or the Disciplinary Panel Rules;
- 78.7 subject to paragraph 81, in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body for a Certificate of Good Standing in respect of a barrister; or from one of the Inns of Court in respect of an application from a barrister to become a pupil supervisor; or
- 78.8 with the approval of the Committee, for any other good reason.
79. Where a disclosure is made pursuant to paragraph 80.7 above, if any complaint has been made against the barrister concerned which has not been disposed of by the Committee under these Rules, or dismissed by any Disciplinary Tribunal or by any other body to which it may have referred by the Committee, the BSB shall simply indicate that a complaint has been received which has not been dismissed.
80. Where any finding of professional misconduct has been made (whether by a Disciplinary Tribunal, the Visitors, or the Committee in the course of a Determination by Consent), the BSB shall publish on the BSB's website the name of the BSB regulated person against whom that finding was made, the nature of that finding, and the sentence imposed, unless the body making the finding directs otherwise.
81. Where the Disqualification Panel has found that a BSB regulated person has satisfied the disqualification condition, the BSB shall publish on the BSB's website the name of the BSB regulated person against whom that finding was made, the nature of that finding, and the sentence imposed, unless the body making the finding directs otherwise.

B13 Commencement and Transitional Provisions

82. These Rules will come into effect on [date]. They shall apply to all complaints whenever raised.
83. Any step taken in relation to any complaint prior to [date] pursuant to the provisions of the Rules then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Rules.

THE BSB HANDBOOK

PART V – COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

C THE DISCIPLINARY TRIBUNALS REGULATIONS

C1. ARRANGEMENT OF REGULATIONS

These Disciplinary Tribunal Regulations are organised as follows:

[]

C2. THE REGULATIONS

Definitions

1. In these regulations:
 - 1.1 "defendant" shall mean the relevant BSB regulated person(s) that are the subject of the charge or charges brought before a Disciplinary Tribunal¹; and
 - 1.2 "the standard directions" mean the standard directions set out at Annex 6 to this Section C of Part V (as such Annex may be amended or updated by the Bar Standards Board from time to time); and
 - 1.3 Other expressions shall have the meanings assigned to them by Part VI of the Handbook.
2. Anything required by these Rules to be done or any discretion required to be exercised by, and any notice required to be given to, the President may be done or exercised by, or given to, any person authorised by the President (either prospectively or retrospectively and either generally or for a particular purpose).

Service of Charges

¹ In respect of the disqualification provisions, the defendant shall become the respondent and the definition of respondent shall be those employees and former employees of a BSB authorised body which are not otherwise included within the definition of BSB regulated persons.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

3. Once the PCC has taken the decision to refer a matter to a Disciplinary Tribunal in accordance with the provisions of the Complaints Rules, the Director of the Bar Standards Board shall appoint a person or persons to represent the Bar Standards Board in respect of the charges. That person or persons shall be referred to throughout these Regulations as the “BSB Representative”.
4. The BSB Representative, once appointed, shall cause a copy of the charge or charges to be served on the relevant defendant(s), together with a copy of these Regulations not later than 10 weeks (or 5 weeks if the PCC has directed that the prosecution of the charges be expedited) after the date on which the decision was taken by the PCC to refer the matter to a Disciplinary Tribunal.
5. The BSB Representative shall at the same time cause copies of the charge or charges to be supplied to the President.

Documents to be served on the defendant

6. As soon as practicable after the issue of the charges to the defendant, the BSB Representative shall supply the defendant(s) with:
 - 6.1 a copy of the evidence of any witness intended to be called in support of the charge or charges (which, for the avoidance of doubt, does not need to be in the form of a formal witness statement but which can, for example, simply be in the form of a letter or attendance note); and
 - 6.2 a list of the documents intended to be relied on by the BSB Representative; and
 - 6.3 the standard directions which, subject to Regulation 9, shall automatically apply to the particular matter. Such standard directions shall include a timetable determined by the BSB Representative as being reasonable as to the facts of each case.
7. If the documents referred to in Regulation 6.1 and/or 6.2 are not supplied to the defendant within 28 days of the defendant being served with charges in accordance with Regulation 4 above, then the BSB Representative shall provide to the defendant within that period:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 7.1 details of the evidence that is still being sought; and
 - 7.2 details of when it is believed that it will be practicable to supply that evidence to the defendant.
8. Nothing in Regulation 6 or 7 above shall preclude the reception by a Disciplinary Tribunal of the evidence of a witness that has not been served on the defendant (within the time specified aforesaid, or at all), or of a document not included in the list of documents, provided the Tribunal is of opinion that the defendant is not materially prejudiced thereby, or the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

Directions etc

9. Following receipt of the standard directions, the defendant shall have twenty one (21) days to:
- 9.1 provide to the BSB Representative written submissions explaining why the standard directions should be amended, revoked or added to; and
 - 9.2 confirm whether they are intending to make any of the following:
 - (a) an application for separate hearings;
 - (b) an application to sever charges;
 - (c) an application to strike out charges;
 - (d) an application to grant leave to amend and/or add to charges;
 - (e) an application to stay proceedings;
 - (f) an application regarding the admissibility of documents;
 - (g) an application to extend or abridge any time limit governing the disciplinary procedures;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (h) an application for adjournment of the substantive hearing;
 - (i) an applications for costs.
10. If the defendant does not provide the information referred to in Regulation 9.1 within the relevant twenty one day period, the defendant shall be deemed to have accepted the standard directions and they shall be deemed to apply to the particular matter.
11. If the defendant does not provide the information referred to in Regulation 9.2 within the relevant twenty one day period, the defendant shall be deemed to have confirmed that there are no matters that may need to be dealt with at a preliminary hearing.
12. If the BSB Representative receives any written submissions from the defendant in accordance with Regulation 9.1 above, the BSB Representative shall:
- 12.1 review such written submissions and determine whether or not it is able to agree to the changes that have been requested to the standard directions and, if so, to confirm those changes that have been agreed by the BSB Representative in writing to the defendant within seven days after receipt of the written submissions; and
 - 12.2 if it is not able to agree to the changes that have been requested to the standard directions, seek to agree with the defendant, in the seven days following receipt of the written submissions from the defendant, those amendments to the standard directions which are acceptable to both parties; and
 - 12.3 in respect of those standard directions where no agreement has been reached in accordance with Regulation 12.1 or 12.2 above, issue a copy of the standard directions, those written submissions received from the defendant together with the BSB Representative's response to those submissions, to the President.
13. If the BSB Representative receives confirmation that the defendant may be intending to make an application referred to at Regulation 9.2 above, the BSB Representative shall provide a copy of such notice of intention to the President.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

14. After receipt by the President of the documentation referred to in Regulation 12.3 and/or 13 above, the President shall designate one or more Judge or Queen's Counsel ("the Directions Judge(s)") to exercise the powers and functions conferred on the Directions Judge(s) in the following Regulations and shall notify the BSB Representative and the defendant of the identity of such Directions Judge(s). For the avoidance of doubt, the Directions Judge(s) do not have to be the same individuals that will Chair the Disciplinary Tribunal, once convened.
15. The President shall cause copies of the charge or charges, together with the documentation referred to at Regulation 12.3 and/or 13 above (as applicable), to be supplied to the Directions Judge(s) once designated.
16. The Directions Judge(s) shall consider the submission as to directions within twenty eight days of receipt of the relevant documentation. In appropriate cases, the Directions Judge(s) may conclude that an oral directions hearing is required to resolve the relevant matters.
17. If the Directions Judge(s) consider that no oral hearing is necessary, then:
 - 17.1 they shall make a directions order setting out those directions that are to apply to the particular matter taking into account all of the relevant circumstances, including any written submissions put forward by the parties as well as their own findings; and
 - 17.2 they may determine such other issues as they may be required to deal with at the relevant time including, for the avoidance of doubt:
 - (a) how any of the applications referred to at Regulation 9.2 are to be dealt with;
 - (b) the admission of documents;
 - (c) the admission of facts;
 - (d) such other matters as they deem expedient for the efficient conduct of the hearing.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

18. If the Directions Judge(s) considers that an oral hearing is necessary, the Directions Judge(s) shall give written notice to the BSB Representative and the defendant that an oral directions hearing is to be held for the purpose of giving directions and taking such other steps as they consider suitable for the clarification of the issues before the tribunal and generally for the just and expeditious handling of the proceedings. The Directions Judge(s) shall also provide the BSB Representative and the defendant with details of how long the oral directions hearing is anticipated to last.
19. Within 7 days of receipt of the notice referred to in Regulation 18, the BSB Representative and the defendant shall notify the relevant Tribunal Administrator and the other party of their and, where relevant, their Counsel's available dates and times during the six week period immediately following the date of such notice.
20. The Tribunal Administrator shall endeavour to find a date within that six week period which is convenient for both parties. However, in the event that no mutually convenient time and date is available, the Directions Judge(s) shall decide on the date within the relevant six week period that the oral directions hearing is to take place and shall notify both the BSB Representative and the defendant of that date and time.
21. The oral directions hearing shall be convened and may deal with, amongst other things, all of those issues referred to at Regulation 17 above.
22. A Clerk shall take a note of the proceedings at any oral directions hearing and shall cause a record to be drawn up setting out the directions given and/or admissions made at the oral directions hearing.
23. Following the conclusion of the oral directions hearing (or, in circumstances where an oral directions hearing was not required, following the completion of the review by the Direction(s) Judge of the papers) the President shall cause copies of the directions order to be served on the BSB Representative and the defendant.
24. The directions orders issued by the President under Regulation 23 will be final, and no appeal will lie against such decision.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

Setting the date, appointing a tribunal and issuing a Convening Order

25. On:

25.1 the deemed acceptance or subsequent agreement of the standard directions by the parties; or

25.2 receipt of the directions order from the President,

each party shall submit details of its availability to attend the substantive hearing to the Council of the Inns of Court in accordance with those directions. Following receipt of each party's availability to attend the substantive hearing or, where no such details are provided, following expiry of the relevant time limit by when details of such availability were required to have been provided, the President shall:

25.3 set the date of the substantive hearing having regard to the availability of the parties (if provided) and the need for the prompt and expeditious determination of charges brought against defendants in accordance with the provisions of these Regulations (and provided always that the date of such substantive hearing has not already been set by the Directions Judge(s) (for whatever reason));

25.4 appoint an appropriate Disciplinary Tribunal to sit on the relevant date(s), taking into account the requirements of these Regulations;

25.5 appoint a person or persons to act as Clerk or Clerks to the Disciplinary Tribunals to perform the functions specified in these Regulations and such other functions as the President, Direction Judge(s) or the Chairman of any Tribunal may direct. No person who has been engaged in the investigation of a complaint against a defendant in accordance with the relevant procedure or otherwise shall act as Clerk in relation to disciplinary proceedings arising out of that complaint. The President may publish qualifications or other requirements required in those appointed to be Clerks;

25.6 inform both parties of the date fixed for the hearing as soon as reasonably practicable after the date has been fixed; and

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

25.7 not less than fourteen days before the date of the substantive hearing, serve an Order on the defendant ("the Convening Order") specifying:

- (a) the name of the defendant and such other information as may be relevant to that defendant, for example:
 - (i) where the defendant is a barrister, details of the barrister's Inn, their date of call and (if appropriate) their date of taking silk, as well as details of whether or not the barrister was acting as a self-employed barrister or an employed barrister and, in the case of the latter, details of their employer including whether or not it is a BSB authorised body;
 - (ii) where the defendant is a BSB authorised body, details of the date that such body was so authorised or licensed by the Bar Standards Board, a summary of the number of barristers and other individuals working within that BSB authorised body; and
 - (iii) where the defendant is another type of BSB regulated person, details of the role undertaken by that individual, any specific qualifications that individual may have and whether that individual is subject to regulation by any other regulator;
- (b) the date of the sitting of the Disciplinary Tribunal at which it is proposed the charge or charges should be heard; and
- (c) the names and status (that is, as Chairman, as lay member, as barrister or other) of those persons who it is proposed should constitute the Disciplinary Tribunal to hear the case; and
- (d) the name of the Clerk,

and sending copies of such Convening Order to the nominated members of the Disciplinary Tribunal and the Clerk. In the Order the defendant's attention will be drawn to:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (e) their right to represent themselves or be represented by counsel, with or without instructing a solicitor, as they shall think fit; and
 - (f) their right to inspect and be given copies of documents referred to in the list served pursuant to Regulation 6 above; and
 - (g) their right (without prejudice to his right to appear and take part in the proceedings) to deliver a written answer to the charge or charges if they think fit.
26. The defendant shall have the right upon receipt of the Convening Order to give notice to the President objecting to any one or more of the proposed members of the Disciplinary Tribunal. Such notice shall be given as soon as reasonably practicable and shall specify the ground of objection.
27. Upon receipt of such objection, the President shall, if satisfied that it is justified (but subject to Regulation 28) exercise the power conferred on him by Regulation 39 to nominate a substitute member or members of the Tribunal, and notify the defendant accordingly. Upon receipt of such notification, the defendant shall have in relation to such substitute member or members the like right of objection as is conferred by Regulation 26.
28. No objection to any member of the Tribunal shall be valid on the ground that he has or may have had knowledge of a previous charge of professional misconduct or breach of proper professional standards or a charge consisting of a legal aid complaint against the defendant or any finding on any such charge, or of any sentence imposed on the defendant in connection therewith.
29. The Convening Order shall contain words drawing the attention of the defendant to the rights conferred by Regulation 26.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

The Disciplinary Tribunal

Hearing in private

30. The hearing before a Disciplinary Tribunal shall be in public unless it has been directed that it shall not be held in public, and such direction has not been over-ruled by the Tribunal.

Composition of Disciplinary Tribunals

31. A Disciplinary Tribunal shall consist of either three persons or five persons.
32. A five-person panel shall include the following persons nominated by the President:
- 32.1 as Chairman, a Judge; and
- 32.2 at least one lay member; and
- 32.3 at least one practising barrister of not less than seven years' standing.
33. A three-person panel shall include the following persons nominated by the President:
- 33.1 as Chairman, one Queen's Counsel or a Judge; and
- 33.2 at least one lay member.
34. In determining the other persons to sit on the panel the President shall have regard to the nature of the charges being determined and the identity of the defendant against whom the charges have been made. When constituting the panel, as well as taking into account the requirements of Regulation 33 above and Regulation 35 below, the President shall also have regard to (but shall not be bound by) any recommendations by the PCC, which may include a recommendation that a Judge rather than a QC be appointed to act as Chairman of a three-person panel.
35. No person shall be nominated to serve on a Disciplinary Tribunal if they
- 35.1 are a member of the Bar Council or of any of its committees; or

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 35.2 are a member of the BSB or of any of its committees; or
- 35.3 were a member of the PCC at any time when the matter was being considered by the PCC.
36. The President may publish qualifications or other requirements required in those appointed to to serve on a Disciplinary Tribunal.
37. For the purposes of Regulations 32 and 33, a Judge includes:
- 37.1 a puisne judge of the High Court;
- 37.2 a judge of the Court of Appeal;
- 37.3 a Circuit judge;
- 37.4 a Recorder who has been requested to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;
- 37.5 a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and
- 37.6 a person who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that he:
- (a) remains permitted by virtue of section 9 of the Supreme Court Act 1981 to be requested to act as a judge of the High Court, or is eligible for appointment as a deputy Circuit judge under section 24 of the Courts Act 1971; and
- (b) has acted as a judge of the Court of Appeal or of the High Court or as a deputy Circuit judge in the last 12 months².

² It is being confirmed with COIC that this list is still correct and does not need expanding.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

38. If a vacancy in the Disciplinary Tribunal shall arise prior to the substantive hearing of the charge, the President shall select another member of the relevant class to fill such vacancy.
39. At any time before the commencement of the substantive hearing of the charge, the President may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as in the exercise of his discretion he deems to be necessary or expedient.
40. The proceedings of a five-person panel shall be valid notwithstanding that after the Convening Order has been issued (in accordance with Regulation 25 above) one or more of the members becomes unable to continue to act or is disqualified from continuing to act, so long as:
- 40.1 the Chairman and at least one lay member remain able to act and are present throughout the substantive hearing; and
 - 40.2 the number of members present throughout the substantive hearing of the charge is not reduced below three.
41. A member of a Disciplinary Tribunal who has been absent for any time during a sitting shall take no further part in the proceedings.

Provision of documents to the Disciplinary Tribunal

42. There shall be provided to each member of the Disciplinary Tribunal prior to the commencement of the substantive hearing copies of the following documents:
- 42.1 the Convening Order;
 - 42.2 the charges and any particulars thereof;
 - 42.3 any documents proposed to be relied on by the BSB Representative or by the defendant, unless a direction has been made that copies of such documents be withheld;
 - 42.4 any written answer to the charges submitted by or on behalf of the defendant;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 42.5 such other documents as have been agreed or directed to be laid before the Tribunal prior to the start of the hearing; and
- 42.6 the standard directions (as amended by the parties) or failing such agreement, the directions order issued by the Directions Judge(s) pursuant to Regulation 23.

Procedure at the hearing

43. The Tribunal shall apply the criminal standard of proof when adjudicating upon charges of professional misconduct.
44. The proceedings of a Disciplinary Tribunal shall be governed by the rules of natural justice, subject to which the tribunal may:
- 44.1 (subject to Regulation 45 below) admit any evidence, whether oral or written, whether being given in person or over the telephone or by video link or by such other means as the Tribunal may deem appropriate, whether direct or hearsay, and whether or not the same would be admissible in a court of law;
- 44.2 give such directions with regard to the conduct of and procedure at the hearing, and with regard to the admission of evidence thereat, as it considers appropriate for securing that the defendant has a proper opportunity of answering the charge or otherwise as shall be just;
- 44.3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.
45. Reference may be made (if applicable) by any party to the fact that the Determination by Consent procedure was used prior to the complaint being referred as a charge before a Disciplinary Tribunal. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the Determination by Consent procedure terminated), unless and until the defendant makes reference to the substance of the procedure in the course of presenting his case.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

Decision of a court or tribunal

46. [In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal, the following rules of evidence shall apply provided that it is proved in each case that the decision relates to the defendant:

46.1 the fact that the defendant has been convicted of a criminal offence may be proved by producing a copy of the certificate of conviction relating to the offence;

46.2 the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sentence; and

46.3 the judgment of any civil court may be proved by producing an official copy of the judgment,

and, for the avoidance of doubt, any findings of fact set out in such conviction, finding and sentence or judgment (as appropriate) shall be prima facie proof of the facts set out therein.]

Absence of Defendant

47. If a Disciplinary Tribunal is satisfied that the relevant procedure has been complied with and the defendant has been duly served (in accordance with Regulation 110 of these Regulations) with the documents required by Regulations 6 or 7 (as appropriate) and the defendant has not attended at the time and place appointed for the hearing, the tribunal may nevertheless proceed to hear and determine the charge or charges if it considers it just to do so, subject to compliance with Regulation 78 in the event of any charge being found proved.

48. If a Disciplinary Tribunal is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal may hear and determine the charge or charges in the absence of the defendant if it considers it just to do so, subject to compliance with Regulation 78 in the event of any charge being found proved.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

Recording of proceedings

49. The Clerk shall arrange for a record of the proceedings before a Disciplinary Tribunal to be made by the employment of a shorthand writer or the use of a recording machine.

Amendment of charges

50. A Disciplinary Tribunal may at any time before or during the hearing direct that the charge(s) shall be amended provided always:

50.1 that the Tribunal is satisfied that the defendant will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence; and

50.2 that the Tribunal may, if so requested by the defendant, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges as so amended; and

50.3 that the Tribunal may make such order as to the costs of or occasioned by the amendment, or of any consequential adjournment of the proceedings, as it considers appropriate.

Adjournment

51. Subject to the provisions of the following Regulation, the Disciplinary Tribunal shall sit from day to day until it has arrived at a finding and if any charge has been found proved until sentence is pronounced.

52. Notwithstanding the provisions of Regulation 51, a Disciplinary Tribunal may, if the Tribunal decides an adjournment is necessary for any reason, adjourn the hearing for such period as it may decide.

The finding

53. At the conclusion of the hearing, the finding of the Disciplinary Tribunal on each charge, together with its reasons, shall be set down in writing and signed by the Chairman and all members of the Tribunal. If the members of the Tribunal are not unanimous as to the

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

finding on any charge, the finding to be recorded on that charge shall be that of the majority. If the members of the Tribunal are equally divided as to the finding on any charge, then, the burden of proof being on the BSB, the finding to be recorded on that charge shall be that which is the most favourable to the defendant. The Chairman of the Tribunal shall then announce the Tribunal's finding on the charge or charges, and state whether each such finding was unanimous or by a majority.

The sentence

54. If the Disciplinary Tribunal finds the charge or any of the charges proved, evidence may be given of any previous finding of professional misconduct or of breach of proper professional standards or any finding on a charge consisting of a legal aid complaint against the defendant. After hearing any representations by or on behalf of the defendant the Tribunal shall set down in writing its decision as to the sentence. If the members of the tribunal are not unanimous as to the sentence, the sentence to be recorded shall be that decided by the majority. If the members of the Tribunal are equally divided as to the sentence, the sentence to be recorded shall be that which is the most favourable to the defendant. The chairman of the Tribunal shall then announce the Tribunal's decision as to sentence and state whether the decision was unanimous or by a majority.
55. Subject to Regulation 57 below, a defendant against whom a charge of professional misconduct has been found proved may be sentenced by the Disciplinary Tribunal as follows:
- 55.1 in the case of barristers, in accordance with Annex 1 to these Regulations;
 - 55.2 in the case of a barrister only entity or a legal disciplinary practice, in accordance with Annex 2 to these Regulations;
 - 55.3 in the case of a licensed body, in accordance with Annex 3 to these Regulations;
 - 55.4 in the case of registered European lawyers, in accordance with Annex 4 to these Regulations; and

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

55.5 in the case of all other BSB regulated persons, in accordance with Annex 5 to these Regulations.

56. In any case where a charge of professional misconduct has been found proved, the Tribunal may decide that no further action should be taken against the defendant.

57. A three-person panel shall not:

57.1 disbar a barrister;

57.2 revoke the authorisation or licence (as appropriate) of an BSB authorised body;

57.3 remove a registered European lawyer from the register of European lawyers; or

57.4 impose a sentence of suspension on any BSB regulated person for a prescribed period in excess of three months' duration.

(For the avoidance of doubt, this Regulation does not prevent a three-person panel making an order in accordance with Regulation 58 below.)

58. In the event that a three-person panel considers that a case before it merits (in conjunction with any deferred sentence) any of the sentences referred to in Regulation 57 above:

58.1 the three-person panel shall refer the case to a five-person panel for sentencing.

58.2 the three-person panel shall, for the assistance of the five-person panel, prepare a statement of facts as found. The defendant shall not be able to challenge the facts found by the three-person panel but the defendant may challenge the statement of facts prepared by that three-person panel if they are of the view that it is an inaccurate statement of the facts found; and

58.3 the three-person panel shall direct within what period of time the sentencing hearing before the five-person panel is to be held.

59. The five-person panel shall be composed in accordance with Regulation 32. The defendant shall be informed as soon as practicable of the names and status (that is, as Chairman, as

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

lay member, as barrister or other) of those persons who it is proposed should constitute the five person panel. The defendant shall have the right upon receipt of such information to give notice to the President objecting to any one or more of the proposed members of the panel. Such notice shall be given as soon as reasonably practicable and shall specify the ground of objection.

60. The President shall fix the date for the sentencing hearing in accordance with Regulation 58.3 above.
61. If the five-person panel is satisfied that the requirements of Regulation 60 above have been complied with and the defendant has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless proceed to sentence the defendant, subject to compliance with Regulation 78.
62. If the five-person panel is satisfied that it has not been practicable to comply with the requirements of Regulation 60 above and the defendant has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless proceed to sentence the defendant, subject to compliance with Regulation 78.
63. If the procedure under Regulation 62 has been followed, the defendant has the right to apply to the Directions Judge for an order that there should be a new sentencing hearing before a fresh five-person panel.
64. Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the Legal Services Commission in connection with services provided as part of the Community Legal Service or Criminal Defence Service and to exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service) on a Disciplinary Tribunal in the cases to which those Sections apply. Accordingly:
 - 64.1 any Disciplinary Tribunal which hears a charge consisting of a legal aid complaint relating to the conduct of a defendant who is a barrister may if it thinks fit (and whether or not it sentences the defendant in accordance with Regulation 55.1 in

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

respect of any conduct arising out of the same legal aid complaint) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled.

64.2 where a Disciplinary Tribunal hears a charge of professional misconduct against a defendant who is a barrister it may (in addition to or instead of sentencing that defendant in accordance with Regulation 55.1) order that he shall be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service either temporarily or for a specified period if it determines that there is good reason for the exclusion arising out of (i) his conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or (ii) his professional conduct generally.

65. In a case where a defendant is found to have breached the provisions of this Handbook but such breach is not considered to constitute professional misconduct, then the panel may direct that the BSB send a written warning to the defendant or that a financial penalty is imposed on them for the infringement of the Handbook or both.

66. Whether or not a Disciplinary Tribunal shall have found any charge proved, if the Disciplinary Tribunal considers that the circumstances of the complaint are relevant to the defendant in his capacity as a pupil supervisor, it may notify the defendant's Inn of its concerns in such manner as it sees fit.

67. If a barrister is a member of more than one Inn, each Inn of which he is a member shall be mentioned in the sentence.

68. For the purpose of this Regulation:

68.1 A sentence of suspension for a barrister shall mean that the defendant is suspended from practice as a barrister and from enjoyment of all rights and privileges as a member of the Inn(s) of which he is a member and is, for so long as he remains suspended, prohibited from holding himself out as being a barrister without disclosing the suspension.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 68.2 A sentence of suspension for a registered European lawyer shall mean that the defendant is suspended from the register of European lawyers maintained by the BSB and is, for so long as he remains suspended, prohibited from holding himself out as registered with the BSB without disclosing the suspension.
- 68.3 A sentence on a barrister or a registered European lawyer requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the Continuing Professional Development Regulations at Part IV of this Handbook.

Sentence of suspension from practice or from authorisation or licensing

69. Any sentence of suspension from practice or from authorisation or licensing may apply to the whole of a defendant's practice or to such part only as the Disciplinary Tribunal may determine.
70. The conditions to which a sentence of suspension from practice may be made subject include a requirement that the defendant, or in the case of an authorised body, its managers or employees, shall undergo such further pupillage or training or attain such standard of competence as the Tribunal may determine.
71. The prescribed period for which a sentence of suspension from practice is expressed to run may be
- 71.1 for a fixed period; or
- 71.2 for a period until the defendant has complied with any practising requirements under this Handbook of which the defendant has been found by that Disciplinary Tribunal to be in breach; or
- 71.3 until the defendant has complied with the order of the tribunal.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

Power to order that a sentence has deferred effect

72. Where a sentence imposed by a Disciplinary Tribunal includes a fine and/or a suspension from practice, those elements of the sentence may be directed by the Disciplinary Tribunal to have deferred effect.
73. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the “period of deferral”).

Power to activate a deferred sentence

74. A deferred sentence shall be activated where the defendant is subsequently found (whether during the period of suspension or afterwards) to have committed a Relevant Breach during the period of deferral. For the purpose of this Regulation, a Relevant Breach is a breach of the Code of Conduct amounting to professional misconduct.
75. Where a Disciplinary Tribunal finds that there has been a Relevant Breach during the period of deferral, it shall (at the same time as imposing sentence for the Relevant Breach) activate the sentence which had been deferred, save in exceptional circumstances.
76. For the avoidance of doubt, a Disciplinary Tribunal may (where the conditions for activation of a deferred sentence are satisfied) activate a sentence which has been deferred when imposed by the PCC pursuant to the Determination by Consent procedure.
77. Where a deferred sentence is activated pursuant to this Regulation, the sentence shall then be pronounced, and any action as may be required to carry the sentence into effect shall be taken, in accordance with Regulations 85 to 91 below.

Wording of the sentence when defendant not present

78. If the defendant has not been present throughout the proceedings, the sentence shall include one or more of the following statements:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 78.1 If the relevant procedure under Regulation 47 has been complied with, that the finding and sentence were made in the absence of the defendant in accordance with Regulation 47.
- 78.2 If the procedure under Regulation 48 has been complied with, that the finding and the sentence were made in the absence of the defendant and that he has the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.
- 78.3 If the relevant procedure under Regulation 61 has been complied with, that the sentence was made in the absence of the defendant in accordance with Regulation 61.
- 78.4 If the procedure under Regulation 62 has been complied with, that the sentence was made in the absence of the defendant and that he has the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.

Report of Finding and Sentence

79. As soon as practicable after the conclusion of the proceedings of a Disciplinary Tribunal, the chairman of the Tribunal shall prepare a report in writing of the finding on the charges of professional misconduct and the reasons for that finding and, where applicable, the sentence. At the discretion of the chairman of the Tribunal, the report may also refer to matters which, in the light of the evidence given to the Tribunal, appear to require investigation or comment. He shall send copies of the report to the following:
- 79.1 In all cases:
- (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (d) the Director of Public Prosecutions;
- (e) the Chairman of the Bar Council;
- (f) the Leaders of the six circuits;
- (g) The Chairman of the Bar Standards Board;
- (h) the Chairman of the PCC;
- (i) the Defendant;
- (j) the Defendant’s head of chambers;
- (k) the Treasurers of the Defendant’s Inn of Call and of any other Inns of which he is a member;
- (l) such one or more press agencies or other publications, as the Chairman of the PCC may direct;
- (m) all other Approved Regulators and the LSB; and
- (n) in the case of a registered European lawyer, his home professional body.

79.2 In cases where one or more charges of professional misconduct have been found proved and any such charge constitutes or arises out of a legal aid complaint, and/or the sentence includes an order under Regulation 76, the Legal Services Commission.

Appeal to the Visitors

80. In cases where one or more charges of professional misconduct have been proved, an appeal may be lodged with the Visitors in accordance with the Hearings Before the Visitors Rules 2010:

80.1 against conviction by the defendant; and/or

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

80.2 against sentence, by the defendant or (with the Consent of the Chairman of the BSB or the Chairman of the PCC) by the BSB; and/or

80.3 in any case where any charge of professional misconduct has been dismissed (with the consent of the Chairman of the BSB or the Chairman of the PCC) by the BSB.

81. In any case where the BSB intends to appeal under Regulation 80.3 above, the consent of the Chairman of the BSB or the Chairman of the PCC shall be obtained within the period of 28 days beginning with the date on which the order of the Disciplinary Tribunal was made (or, if later, within the period of 28 days beginning with the date on which sentence was imposed pursuant to such order). In the event that such consent is not obtained within that period no appeal under Regulation 80.3 shall be permitted without permission of the Visitors.

82. Where a defendant lodges an appeal against a sentence of disqualification, he may at the same time lodge with the Visitors an appeal against any requirement imposed pursuant to Regulation 28.

83. For the avoidance of doubt, a complainant (other than, where applicable, the BSB) shall have no rights of appeal.

Appeal: sum payable

84. Where an appeal is lodged with the Visitors by the Defendant, the Notice of Appeal must be accompanied by the sum of £250 payable to the BSB to defray expenses, such sum to be refunded in the discretion of the Visitors in the event of an appeal which is successful wholly or in part.

Action to be taken by the Inn (in circumstances where a barrister has been sentenced to be disbarred or suspended)

85. On receipt of the report prepared in accordance with Regulation 79, the Treasurer of the defendant's Inn of Call shall, not less than 21 days after the conclusion of the Tribunal's proceedings (or, where the defendant has given notice of appeal to the Visitors against the finding and/or sentence, once the time for appeal has expired and any appeal arising has

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

been disposed of) pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry the sentence into effect. The Treasurer shall inform the persons specified in Regulation [] of the date on which the sentence is to take effect.

86. Similar action shall be taken by the Treasurer of any other Inn of which the defendant is a member in conjunction with the Treasurer of the defendant's Inn of Call.
87. In any case in which the defendant has given notice of appeal to the Visitors against the finding and/or sentence of the Tribunal on the charges of professional misconduct, the action set out in Regulations 85 and 86 shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.
88. Where, pursuant to Regulation [], a Tribunal has required the BSB suspend the defendant's practising certificate or not to issue a practising certificate to the defendant pending appeal ("the Interim Measure"), the Treasurer shall direct that any period of suspension to which the defendant has been sentenced shall be deemed to have taken effect on the date on which the Interim Measure came into effect, or the date on which the defendant would otherwise have been eligible to be issued with a practising certificate, whichever is the later.

Action to be taken by the Bar Standards Board (in all other circumstances)

89. In circumstances where the Disciplinary Tribunal has imposed a sentence (other than disbarring or suspending a barrister which is dealt with in accordance with Regulations 85 to 88 above), on receipt of the report prepared in accordance with Regulation [], the Bar Standards Board shall, not less than 21 days after the conclusion of the Tribunal's proceedings, pronounce the sentence decided on by the Tribunal and take such further action as may be required to carry that sentence into effect. The Bar Standards Board shall inform the persons specified in Regulation 93 of the date on which the sentence is to take effect.
90. In any case in which a BSB regulated person has given notice of appeal to the Visitors against the finding and/or sentence of the Tribunal on the charges of professional

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

misconduct, the actions set out in Regulation 89 shall be deferred until the appeal has been heard by the Visitors or otherwise disposed of without a hearing.

91. The Bar Standards Board shall take all such steps as may be necessary or expedient to give effect to any requirement made by the Tribunal pursuant to Regulation 92 below.

Publication of finding and sentence

92. The following procedures are to be observed in regard to publication of the finding and sentence of a Disciplinary Tribunal:

92.1 When the Tribunal has found one or more charges of professional misconduct have been proved the President shall publish the charges found proved together with details of the sentence and the date that such sentence is to take effect once it has heard from the Inn or the Bar Standards Board (as the case may be) of the date that such sentence is to take effect.

92.2 When the Tribunal has found that any charge of professional misconduct has not been proved the President shall not publish that charge and the finding unless the defendant so requests.

93. When publishing any finding, sentence or decision in accordance with Regulation 92, the President shall communicate the same in writing to:

- (a) the Lord Chancellor;
- (b) the Lord Chief Justice;
- (c) the Attorney General;
- (d) the Director of Public Prosecutions;
- (e) the Chairman of the Bar Council;
- (f) the Leaders of the six circuits;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (g) The Chairman of the Bar Standards Board;
- (h) the Chairman of the PCC;
- (i) the Defendant;
- (j) the Defendant’s head of chambers;
- (k) the Treasurers of the Defendant’s Inn of Call and of any other Inns of which he is a member;
- (l) such one or more press agencies or other publications, as the Chairman of the PCC may direct;
- (m) all other Approved Regulators and the LSB; and
- (n) in the case of a registered European lawyer, his home professional body.

94. The BSB shall publish the finding and sentence of the Tribunal in such manner and in such time as it sees fit unless:

94.1 the hearing was held in private; and

94.2 the Chairman of the Tribunal directs that publication shall be delayed until the President has published the finding under Regulation 92.

Suspension/withdrawal of practising rights pending the hearing of any appeal

95. This regulation applies in relation to any defendant who has been sentenced to be disbarred or to be suspended for more than one year or prohibited from accepting or carrying out the conduct of litigation or any public access instructions for a period of more than one year.

96. Where this regulation applies the Tribunal shall seek representations from the defendant and the BSB Representative as to whether it would be inappropriate to take action under Regulation 97.1 or 97.2 below;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

97. Having heard any representations under Regulation 96 above, the Tribunal shall, unless in the particular circumstances of the case it appears to the Tribunal to be inappropriate to do so, either:
- 97.1 require the defendant to suspend their practice immediately; or
 - 97.2 determine that its sentence prohibiting the defendant from accepting or carrying out any litigation or public access instructions shall take effect immediately.
98. If pursuant to Regulation 97.1 above the Tribunal concludes that it would be inappropriate to require immediate suspension it may nonetheless require the defendant to suspend their practice from such date as the Tribunal may specify.
99. Where this regulation applies but the defendant is permitted to continue to practise for any period the Tribunal may require the BSB to impose such terms in respect of the defendant's practice as the Tribunal deems necessary for the protection of the public.
100. If a defendant in relation to whom a requirement has been made pursuant to Regulation 97.1 or 97.2 above considers that, due to a change in the circumstances, it would be appropriate for that requirement to be varied, he may apply to the President in writing for a variation to be made.
101. On receiving an application made pursuant to Regulation 100 above the President shall refer it to the Chairman and one of the lay members of the Tribunal which originally imposed the requirement.
102. Any application made pursuant to Regulation 100 above shall be sent by the applicant, on the day that it is made, to the PCC and the PCC may make such representations as they think fit on that application to those to whom the application has been referred by the President.
103. The persons to whom an application made pursuant to Regulation 100 above is referred may vary or confirm the requirement in relation to which the application has been made.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

104. References in this Regulation to the BSB shall be treated as referring to such body as may from time to time have the power to issue or suspend practising certificates or to impose terms in respect of a barrister's practice.

Costs

105. A Disciplinary Tribunal shall have power to make such Orders for costs, whether against or in favour of a defendant, as it shall think fit.
106. Upon making such an Order a Disciplinary Tribunal shall either itself determine the amount of such costs or appoint a suitably qualified person to do so on its behalf.
107. Any costs ordered to be paid by or to a defendant shall be paid to or by the BSB.
108. All costs incurred by a Disciplinary Tribunal or by the PCC in connection with or preparatory to the hearing before the Tribunal shall be borne by the BSB.

Miscellaneous

Representation of complainant's interests

109. The BSB Representative shall keep the complainant (if any) informed of the progress of the complaint.

Service of documents

110. Any documents required to be served on a defendant arising out of or in connection with disciplinary proceedings shall be deemed to have been validly served:

110.1 If sent by registered post, or recorded delivery post, or receipted hand delivery to:

- (a) the address notified by such defendant pursuant to the requirements of Part II of this Handbook (or any provisions amending or replacing the same) or, in the case of a manager or employee of a BSB authorised body, the address of such BSB authorised body notified pursuant to the requirements of Part II of this Handbook; or

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (b) an address to which the defendant may request in writing that such documents be sent; or
- (c) in the absence of any such request, to his last known address;

and such service shall be deemed to have been made on the fifth working day after the date of posting or on the next working day after receipted hand delivery;

110.2 If served by e-mail, where:

- (a) the defendant's e-mail address is known to the BSB; and
- (b) the defendant has requested or agreed to service by e-mail, or it is not possible to serve by other means;

and such service shall be deemed to have been made on the second working day after the date of sending the e-mail;

110.3 If actually served;

110.4 If served in any way which may be directed by the Directions Judge or the Chairman of the Disciplinary Tribunal.

111. For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the defendant or his clerk.

Delegation

112. The powers and functions specified in these Regulations as being conferred on a Directions Judge(s) may be exercised by any other Judge or Queen's Counsel nominated by the President, including the Judge designated in the Convening Order as Chairman of the Tribunal appointed to hear and determine the charge or charges against the defendant, in circumstances where the Directions Judge(s) is unable to act due to absence or any other reason.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

113. Any duty or function or step which, pursuant to the provisions of these regulations, is to be discharged or carried out by the President may, if he is unable to act due to absence or any other reason, be discharged or carried out by any other member of the Council of the Inns of Court, the Treasurer of any Inn or by any other person nominated in writing by the President for any specific purpose.

Other

114. When the Treasurer of an Inn is a Royal Bencher, references in these Regulations to such Treasurer shall be read as references to his deputy.

Exclusion from providing representation funded by the Legal Services Commission - Application for termination

115. A defendant who has been excluded from legal aid work under Section 42 of the Act of 1985 may apply for an order terminating his exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service in accordance with this Regulation.
116. Any such application shall be in writing and shall be addressed to the President.
117. On considering any such application the President may dismiss the application or may determine that the defendant's exclusion from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service be terminated forthwith or on a specified future date.
118. The President shall give notification of his decision in writing to the same persons as received copies of the report of the Disciplinary Tribunal which ordered that the defendant be excluded from providing such representation legal aid work.
119. Upon the receipt of any such report the Treasurer of the applicant's Inn of Call and of any other Inn of which he is a member shall take action equivalent to that which it took in respect of the report of the Disciplinary Tribunal which sentenced the defendant to be excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

120. The procedures to be observed in regard to the publication of the decision of the President on any such application as is referred to in this Regulation shall be those which were applicable to the publication of the finding and sentence whereby the applicant was excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service.
121. The President shall have power to make such order for costs as he thinks fit and Regulations 105 to 108 shall apply with all necessary modifications.

Citation, commencement, revocations and transitional provisions

122. These Regulations may be cited as "The Disciplinary Tribunals Regulations []" and shall come into operation on [] save that no fine may be ordered in excess of [] in respect of conduct before [].
123. Subject to Regulations 124 and 125 below, the Disciplinary Tribunals Regulations of the Council of the Inns of Court and any other rules or regulations relating to Disciplinary Tribunals made prior to the commencement of these Regulations shall cease to have effect on [];
124. These Regulations shall apply to all cases, including any case in which a defendant was served with the charge or charges before [] and any step taken in any such case pursuant to the Regulations then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Regulations.
125. These Regulations shall apply to all cases where the PCC decided before [] that a complaint should form the subject matter of a charge before a Disciplinary Tribunal as if the PCC had at that time directed that the charge should be heard by a five-person panel.

ANNEX 1 – SENTENCING POWERS AGAINST BARRISTERS

In relation to a barrister against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such barrister should:

1. be disbarred;
2. be suspended from practising as a barrister and from rights and privileges as a member of his Inn for a prescribed period (either unconditionally or subject to conditions);
3. have conditions imposed on his practising certificate;
4. be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from conducting litigation or otherwise from accepting or carrying out any public access instructions;
5. be ordered to pay a fine of up to £1,000,000 to the BSB (or up to £50,000,000 if, the charges relate to their time as an employee or manager of a licensed body);
6. be ordered to complete continuing professional development of such nature and duration as the Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the Monitoring Unit;
7. be reprimanded by the Treasurer of his Inn;
8. be reprimanded by the Tribunal;
9. be given advice by the Tribunal as to his future conduct;
10. be ordered by the Tribunal to attend on a nominated person to be reprimanded; or
11. be ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.

**ANNEX 2 – SENTENCING POWERS AGAINST BARRISTER ONLY ENTITIES AND LEGAL
DISCIPLINARY PRACTICES**

In relation to a barrister only entity or a legal disciplinary practice against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such entity should:

1. have its authorisation to practise as a barrister only entity or a legal disciplinary practice (as appropriate) removed;
2. have conditions imposed upon its authorisation to practise as a barrister only entity or a legal disciplinary practice (as appropriate);
3. have its authorisation to practice suspended for a prescribed period (either unconditionally or subject to conditions);
4. be re-classified as a licensed body (either unconditionally or with conditions being imposed on its licence to practise as a licensed body);
5. have its authorisation to conduct litigation withdrawn;
6. be ordered to pay a fine of up to £1,000,000 to the BSB;
7. be ordered to ensure that its managers or employees complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the Monitoring Unit;
8. be reprimanded by the Tribunal;
9. be given advice by the Tribunal as to its future conduct; or
10. be ordered by the Tribunal to attend on a nominated person to be given advice as to its future conduct.

ANNEX 3 – SENTENCING POWERS AGAINST LICENSED BODIES

In relation to a licensed body against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such licensed body should:

1. have its licence to practise revoked;
2. have its licence to practice suspended for a prescribed period (either unconditionally or subject to conditions);
3. have conditions imposed on its licence to practice;
4. have its right to conduct litigation withdrawn;
5. be ordered to pay a fine of up to £250,000,000 to the BSB;
6. be ordered to ensure that its managers or employees complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the Monitoring Unit;
7. be reprimanded by the Tribunal;
8. be given advice by the Tribunal as to its future conduct; or
9. be ordered by the Tribunal to attend on a nominated person to be given advice as to its future conduct.

ANNEX 4 – SENTENCING POWERS AGAINST REGISTERED EUROPEAN LAWYERS

In relation to a registered European lawyer against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such registered European lawyer should:

1. be removed from the register of European lawyers;
2. be suspended from the register of European lawyers for a prescribed period (either unconditionally or subject to conditions);
3. be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any public access instructions;
4. be ordered to pay a fine of up to £1,000,000 to the BSB (or up to £50,000,000 if, the charges relate to their time as an employee or manager of a licensed body);
5. be ordered to complete continuing professional development of such nature and duration as the Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the Monitoring Unit;
6. be reprimanded by the Tribunal;
7. be given advice by the Tribunal as to his future conduct;
8. be ordered by the Tribunal to attend on a nominated person to be reprimanded; or
9. be ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.

ANNEX 5 – SENTENCING POWERS AGAINST ALL OTHER BSB REGULATED PERSONS

In relation to all other BSB regulated persons against whom a charge of professional misconduct has been found proved by a Disciplinary Tribunal, the Disciplinary Tribunal may determine that such BSB regulated person³ should:

1. be ordered to pay a fine of up to £1,000,000 to the BSB (or up to £50,000,000 if the charges relate to their time as an employee or manager of a licensed body);
2. be ordered to complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the Monitoring Unit;
3. be reprimanded by the Tribunal;
4. be given advice by the Tribunal as to his future conduct;
5. be ordered by the Tribunal to attend on a nominated person to be reprimanded;
6. be ordered by the Tribunal to attend on a nominated person to be given advice as to his future conduct.

³ If an application to disqualify is made at the same time, the Disciplinary Tribunal may also disqualify a BSB regulated person in accordance with the provisions of the disqualification regulations. Decisions to disqualify shall be made in accordance with s.99 Legal Services Act.

ANNEX –6- STANDARD DIRECTIONS

Pursuant to the Disciplinary Tribunal Regulation:

- (1) The hearing of the matter shall be in public;
- (2) That within [] days the Defendant shall be required to specify:
 - (1) Whether in relation to each of the charges they are admitted;
 - (2) Whether the facts set out in the documents provided pursuant to Rule 6 of the DTRs are admitted;
- (3) That the Defendant provide by [] a list of those witnesses he intends to rely upon
- (4) That on or before [] both the BSB Representative and the Defendant serve written notice as to which witnesses (if any) they require the other party to tender for cross-examination.
- (5) That the Defendant within 7 days states the address for service;
- (6) That there be liberty for the parties to agree in writing to vary the timetable for these directions;
- (7) That there be liberty to apply.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

E. THE INTERIM SUSPENSION AND DISQUALIFICATION RULES

E1. INTRODUCTION

1. This Section E of Part V prescribes the manner in which the BSB may seek to take interim action to:
 - 1.1 suspend a BSB authorised person; or
 - 1.2 disqualify any other person that is a manager or employee (either directly or indirectly) of Chambers or a BSB authorised body,subject to the criteria outlined at rules xx – xx below, and pending consideration by a Disciplinary Tribunal under Section C or a Disqualification Panel under Section D (as appropriate).
2. Anything required by these rules to be done or any discretion required to be exercised by, and any notice required to be given to, the President may be done or exercised, or given to, any person authorised by the President (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

3. In this Section D of Part V unless the context otherwise requires:
 - (a) Any term defined in the Part VI of the Handbook shall carry the same meaning;
 - (b) 'Appeal Panel' means an Appeal Panel as provided for in rule [] of this section;
 - (c) 'defendant' means any of the persons referred to in paragraph 1 of this Section E;
 - (d) 'disqualify' or 'disqualification' means the ability of the BSB to disqualify or prohibit an authorised (non-BSB) person or a non-authorised individual from

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

continuing to act in their capacity as an employee or manager of a BSB regulated person;

- (e) 'Interim Panel' means an Interim Panel as provided for in rule [] of this section;
- (f) 'President' means the President of the Council of the Inns of Court;
- (g) 'Prohibition order' means a prohibition from accepting or carrying out any public access instructions;
- (h) 'Suspended' or 'suspension' means the ability of the BSB to suspend the practising certificate, licence or authorisation of a BSB authorised person.

D2. RULES

Composition of panels

- 4. An *interim panel* shall consist of three members nominated by the *President* being a Chairman (who shall be a Queen's Counsel) and two others, of whom at least one must be a lay member. Provided that:
 - 4.1 the proceedings of an Interim Panel shall be valid notwithstanding that one of the members becomes unable to continue to act or is disqualified from continuing to act, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one lay member;
 - 4.2 no person shall be appointed to serve on a panel if they are: a member of the Bar Council or any of its committees, a member of the Bar Standards Board or any of its committees or were a member of the PCC of the Bar Standards Board at any time when the matter was being considered by the PCC.
- 5. An Appeal Panel shall consist of three members nominated by the President being:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 5.1 Two Queen's Counsel who are entitled to sit as a Recorder or a Deputy High Court Judge or who have been Queen's Counsel for at least ten years. Unless the Panel otherwise decides, the senior barrister member will be the Chairman of the panel.
- 5.2 a lay member

Provided that:

- (a) the proceedings of an Appeal Panel shall be valid notwithstanding that one of the members, becomes unable to continue to act or is disqualified from continuing to act, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one lay member.
- (b) no person shall be appointed to serve on a panel if they are: a member of the Bar Council or any of its committees, a member of the Bar Standards Board or any of its committees or were a member of the Professional Conduct PCC of the Bar Standards Board at any time when the matter was being considered by the PCC.
- (c) no individual shall sit on both the Interim Panel and the Appeal Panel considering the same matter.

Referral to an interim panel

6. On receipt of a complaint or any other information, the PCC may refer a defendant to an Interim Panel on any of the following grounds:
- (a) There is reason to suspect dishonesty;
 - (b) The referral is necessary to protect the interests of clients (or former or potential clients);
 - (c) The defendant has been convicted of, or charged with, a criminal offence other than a minor criminal offence;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- (d) The defendant has been convicted by another Approved Regulator, for which they have been sentenced to a period of suspension or termination of the right to practise;
 - (e) The entity has been intervened into by the BSB.
7. No matter shall be referred to an Interim Panel unless the PCC considers that the grounds of referral ((a)-(e) above) would warrant, in the case of an authorised person, a charge of professional misconduct and referral to a Disciplinary Tribunal, or for a non-authorised individual, an application for disqualification in accordance with Section D of this Part V.
 8. If the PCC refers a defendant to an Interim Panel under paragraph 6, the PCC (or the Chair on its behalf) shall go on to consider whether or not the defendant should be subject to an immediate interim suspension or disqualification pending disposal by the Interim Panel.
 9. An immediate interim suspension or disqualification may only be imposed if the PCC is satisfied that such a course of action is justified having considered the risk to the public posed if such interim suspension or disqualification is not implemented.
 10. Any immediate interim suspension or disqualification imposed by PCC will remain in force until such time as an Interim Panel has considered the matter.

Procedure after referral to an Interim Panel

11. As soon as practicable after the PCC has made a decision to refer a defendant to an Interim Panel, the Bar Standards Board shall write to the President notifying him of the decision.
12. As soon as practicable after receipt of the letter referred to in paragraph 11, the President shall write to the Defendant notifying him of the decision, together with a copy of these Rules, and briefly setting out the details that have caused the referral to the Panel. The letter of notification:
 - 12.1 shall lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 12.2 shall invite the Defendant to accept one or other of the dates proposed or to provide a written representation to the President, which should be copied to the Chairman of the PCC, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the President not more than fourteen days from the date of the letter of notification. The President shall consider any such representation together with any representations from the Chairman of the PCC, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rule 12.1 above. The President's decision, which shall be notified in writing to the Defendant by the President, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the President;
- 12.3 shall inform the Defendant that he may by letter to the Chairman of the PCC undertake, pending the disposal of any charge(s) by a Disciplinary Tribunal;
- (a) to be immediately suspended or disqualified;
 - (b) not to accept or carry out any public access instructions; and/or
 - (c) to inform his professional and/or lay clients about any convictions, charges or other matters leading to a referral.
- 12.4 shall inform the Defendant that he is entitled to make representations in writing or orally, by himself or by others on his behalf;
- 12.5 shall inform the Defendant that he is entitled to request an expedited hearing of any charges of professional misconduct by a Disciplinary Tribunal.
13. If a Defendant sends a letter in accordance with rule 12.3 above which is satisfactory to the Chairman of the PCC, the Chairman shall accept the undertaking contained in the letter in lieu of imposing any period of interim suspension, disqualification or an interim prohibition pending the disposal by a Disciplinary Tribunal of any charges of professional misconduct.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

Procedure and powers of interim panels

14. At any hearing of an Interim Panel the proceedings shall be governed by the rules of natural justice, subject to which:
- 14.1 the procedure shall be informal, the details being at the discretion of the Chairman of the Panel;
 - 14.2 the Defendant shall be entitled to make representations in writing or orally, by himself or by another on his behalf, as to:
 - (a) why a period of interim suspension, disqualification or interim prohibition order should not be imposed; or
 - (b) why the Panel should not direct the defendant to notify his professional clients and/or lay clients about any convictions, charges or other matters leading to a referral,pending the disposal of any charges by a Disciplinary Tribunal;
 - 14.3 no witnesses may be called without the prior consent of the Chairman of the Panel and without the submission of a proof of evidence;
 - 14.4 the attendance of the Defendant shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence subject to the Panel being satisfied that this course is appropriate and that all relevant procedures requiring the Defendant's attendance have been complied with. Should the Panel not be so satisfied, it shall have the power to adjourn the hearing;
 - 14.5 the hearing shall not be in public unless so requested by the Defendant and a record shall be taken electronically.
 - 14.6 if the Panel decides an adjournment is necessary for any reason, it may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

15. If the members the Panel are not unanimous as to any decision, the decision made shall be that of the majority of them. If the members of the Panel are equally divided the decision shall be that which is the most favourable to the Defendant.

16. At the conclusion of the hearing the Panel:
 - 16.1 may decide not to impose any period of interim suspension, disqualification or interim prohibition order;

 - 16.2 may impose a period of interim suspension (either unconditionally or subject to conditions) for up to six months pending the hearing before a Disciplinary Tribunal, provided that no interim suspension may be imposed unless:
 - (a) the Panel considers that it is likely that a Disciplinary Tribunal would impose a sentence of disbarment (with respect to barrister defendants), a sentence of suspension (with respect to barrister defendants, registered European lawyer defendants or BSB authorised body defendants) or revocation of the licence or authorisation (with respect to BSB authorised body defendants); and

 - (b) it considers that it is in the public interest.

 - 16.3 may impose a period of interim disqualification or prohibition order (either unconditionally or subject to conditions) for up to six months pending the hearing before a Disqualification Panel, provided that no interim disqualification or prohibition order may be imposed unless:
 - (a) the Panel considers that it is likely that a Disqualification Panel would impose a sentence of disqualification or prohibition order in respect of the relevant defendant; and

 - (b) it considers that it is in the public interest.

 - 16.4 the 6 month limitation period may be extended for a further period of 6 months and more than once on application to the Panel by the PCC if the Disciplinary Tribunal

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

or the Disqualification Panel (as appropriate) has not been convened to hear the charges against the Defendant.

16.5 in lieu of imposing a period of suspension, disqualification or prohibition order, the Panel may either:

- (a) direct the Defendant to carry out his future activities in accordance with such conditions as the Panel may think fit; or
- (b) accept from the Defendant an undertaking in written terms satisfactory to the Panel (and subject to such conditions and for such period as the Panel may agree):
 - (i) to be immediately suspended or disqualified;
 - (ii) not to accept or carry out any public access instructions; or
 - (iii) to inform his professional and lay clients about any convictions, charges or other matters leading to a referral,

pending the disposal of any charges by a Disciplinary Tribunal or Disqualification Panel (as appropriate).

16.6 shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any period of interim suspension, disqualification or prohibition order imposed under rule 16.2 above or undertaking accepted under rule 16.4 above.

- (a) Where the defendant is a barrister, the imposition of any period of suspension shall be recorded as follows:

“That.....be suspended from practice as a barrister and from enjoyment of all rights and privileges as a member of the Honourable Society of.....and be prohibited from holding himself out as being a barrister for a period expiring on the..... day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

the interim suspension or such Disciplinary Tribunal may otherwise direct.”
(Note: If the Panel decides that the suspension should apply to only part of the Defendant’s practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded).

- (b) Where the defendant is a barrister, the imposition of any period of prohibition from accepting or carrying out any public access instructions shall be recorded as follows:

“That.....be prohibited from accepting or carrying out any public access instructions (as defined in the Handbook) for a period expiring on the.....day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused this interim prohibition or such Disciplinary Tribunal may otherwise direct.” (Note: If the Panel decides that the sentence shall be subject to conditions, such conditions shall be specified in the wording of the sentence.)”

- (c) Where the defendant is a BSB authorised entity, the imposition of any period of suspension shall be recorded as follows:

“That have its BSB licence/authorisation suspended for a period expiring on the day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused the interim suspension or such Disciplinary Tribunal may otherwise direct.”

- (d) Where the defendant is a person other than a barrister or BSB authorised body referred to above, the imposition of any period of disqualification shall be recorded as follows:

“That be disqualified from working for any BSB regulated person for a period expiring on the day of.....or such earlier date as a Disqualification Panel shall have disposed of any charges that have caused the interim disqualification or such Disqualification Panel may otherwise direct.”

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 16.7 shall, if a period of interim suspension, disqualification or prohibition order is imposed under rule 16.2 above or a written undertaking is accepted under rule 16.4 above:
- (a) inform the Defendant of his right to request a Panel to review the matter as provided in rule 17 below;
 - (b) inform the Defendant of his right of appeal as provided in rule 21 below;
 - (c) inform the Defendant that he is entitled to request an expedited hearing of any charges by a Disciplinary Tribunal or a Disqualification Panel and, if so requested, the Chairman of the Panel may so direct;
- 16.8 may, if it has not already been referred to a Disciplinary Tribunal or Disqualification Panel, refer the matter to a Disciplinary Tribunal or a Disqualification Panel.

Review

17. In the event of a significant change in circumstances or other good reason the defendant may at any time while suspended, disqualified or subject to a prohibition order make a request in writing to the President for a Panel to be convened to review the matter.
18. The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the President may seek representations from the Chairman of the PCC and may in his discretion convene a Panel or refuse the request. In either case the President shall notify the Defendant in writing of the decision. The President shall not be obliged to give reasons and his decision shall be final. If the President decides to convene a Panel the procedure to be followed for fixing the time and date of the hearing shall be as set out in rules 12.1 and 12.2 above.
19. Unless in the meantime the hearing before a Disciplinary Tribunal or Disqualification Panel of any charges based on the referral to an Interim Panel has commenced, a hearing by a Review Panel convened pursuant to rule 17 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the Panel which may reconsider the matter as if there had been no previous hearing.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

20. If the hearing before a Disciplinary Tribunal or Disqualification Panel of any charges based on the referral to a Interim Panel has commenced before the date fixed for a rehearing by a Review Panel, such date shall be vacated and any interim suspension, disqualification, prohibition order or the terms of any direction made or undertaking accepted by an Interim Panel shall continue until such charges have been disposed of by the Disciplinary Tribunal or Disqualification Panel (as appropriate).

Appeals

21. A Defendant may by letter served on the President and on the Chair of the PCC not more than fourteen days after the date of the relevant decision of an Interim Panel give notice of his wish to appeal against the decision.
22. As soon as practicable after receipt of a letter in accordance with rule 21 above the President shall convene an Appeal Panel and write to the Defendant notifying him of a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The Defendant may make a written representation, addressed to the Chairman of the proposed Appeal Panel, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chairman of the Appeal Panel not more than fourteen days from the date of the letter of notification. The Chairman shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within ten days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the Defendant. The Chairman's decision, which shall be notified in writing to the Defendant shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the Appeal Panel.
23. The proceedings before an Appeal Panel shall be by way of a rehearing and the provisions of rule 14 above shall apply as if for references therein to the Interim Panel and the Chairman of the Interim Panel there were substituted references respectively to the Appeal Panel and the Chairman of the Appeal Panel.
24. At the conclusion of the hearing the Appeal Panel:

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

- 24.1 may remove the period of interim suspension, disqualification or interim prohibition order and/or any conditions attached thereto;
- 24.2 may confirm the period of interim suspension, disqualification or interim prohibition order (subject to any conditions), impose further or alternative conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;
- 24.3 may confirm, remove or modify any direction previously given by the Interim Panel, subject to such conditions as to the Defendant's practice as the Panel may think fit;
- 24.4 in lieu of confirming or imposing a period of interim suspension, disqualification or interim prohibition, may accept from the Defendant in terms satisfactory to the Chairman of the Panel an undertaking in writing to continue to be suspended, disqualified or to continue not to accept or carry out any public access instructions (subject in either case to such conditions and for such period as the Panel may agree) pending the disposal of any charges by a Disciplinary Tribunal or Disqualification Panel (as the case may be);
- 24.5 shall set down in writing signed by the Chairman of the Panel the decision of the Panel and the terms of any interim suspension, disqualification or interim prohibition order confirmed or imposed under rule 24.2 above or undertaking accepted under rule 24.3 above. If the members of the Panel are not unanimous as to the decision the decision made shall be that of the majority of them. Any period of suspension, disqualification or prohibition order, which is confirmed or imposed, shall be recorded as set out in rule 16.5 above;
- 24.6 may, if it has not already been referred to a Disciplinary Tribunal or a Disqualification Panel (as appropriate), refer the matter to a Disciplinary Tribunal or a Disqualification Panel.
25. A pending appeal to an Appeal Panel shall not operate as a stay of any period of interim suspension, disqualification, prohibition order or the terms of any direction or undertaking which is the subject of the appeal.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

26. There shall be no right of appeal from the decision of an Appeal Panel.

Suspension or disqualification ceases to have effect

27. Unless a Disciplinary Tribunal or Disqualification Panel shall otherwise direct, any period of interim suspension, disqualification, prohibition order shall cease or the Defendant shall cease to be bound by the terms of any direction made or undertaking accepted by a Interim Panel or an Appeal Panel immediately upon:

27.1 all charges of professional misconduct based on the referral to a Interim Panel being disposed of by a Disciplinary Tribunal or Disqualification Panel (as appropriate);

27.2 any appeal by the Defendant against the conviction or all the conviction(s) which had caused the referral to a Interim Panel being successful;

27.3 the acquittal of the Defendant of the criminal charge or all the criminal charges which had caused the referral to a Interim Panel;

27.4 the criminal charge or all the criminal charges which had caused the referral to a Interim Panel being withdrawn.

Costs

28. An Interim Panel and an Appeal Panel shall have no power to award costs.

Report and Publication of Decisions

29. As soon as practicable after the conclusion of an Interim Panel hearing or an Appeal Panel hearing, the President shall confirm the decision to the Defendant in writing.

30. In any case where a period of interim suspension, disqualification, prohibition order is imposed or a direction is made requiring notification to lay and professional clients or an undertaking from a Defendant is accepted as a consequence of which he is suspended, disqualified or prohibited from accepting or carrying out public access instructions (either

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

unconditionally or subject to conditions) the President shall communicate brief details thereof in writing to the following:

- (a) the Lord Chancellor;
- (b) the Lord Chief Justice;
- (c) the Attorney General;
- (d) the Director of Public Prosecutions;
- (e) the Chairman of the Bar Council;
- (f) the Leaders of the six circuits;
- (g) The Chairman of the Bar Standards Board;
- (h) the Chairman of the PCC;
- (i) the Defendant;
- (j) the Defendant's head of chambers or employer (as appropriate);
- (k) the Treasurers of the Defendant's Inn of Call and of any other Inns of which he is a member;
- (l) such one or more press agencies or other publications, as the Chairman of the PCC may direct.
- (m) all other Approved Regulators and the LSB.

31. The Bar Standards Board shall keep a record of such interim suspension and shall incorporate details of such interim suspension in its register of disqualified persons which is to be maintained in accordance with the provisions of Section D of this Part V.

PART V: COMPLAINTS AND DISCIPLINARY PROCEDURES RULES

Service of documents

32. Regulations 110 and 111 of the Disciplinary Tribunals Regulations shall apply for the purposes of the service of any documents in connection with the procedures which are the subject of these Rules save that for the reference in Regulation 110.4 to the “Directions Judge or the Chairman of the Disciplinary Tribunal” there shall be substituted the “President of the Council of the Inns of Court”.

Commencement and Transitional Provisions

33. These Rules will come into effect on [date]. They shall apply to all matters, including matters referred to an Interim Panel prior to [date], and to all Interim Panels, Appeals and Appeal Panels, including all Panels and Appeals pending as at [date].
34. Any step taken in relation to any Interim Panel, Appeal or Appeal Panel prior to [date] pursuant to the provisions of the Rules then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Rules.
35. These Rules shall not be applied in respect of any conviction or charge prior to [date].
36. These Rules shall not be applied in respect of any conviction by an Approved Regulator prior to [date].

THE BSB HANDBOOK
PART VI - DEFINITIONS

In this Handbook, the following words and phrases have the meaning set out below:

(1)	administration of oaths	has the same meaning as set out in paragraph 8 of Schedule 2 to the LSA;
(2)	applicant	means an entity which is intending to apply or which has already applied to the <i>Bar Standards Board</i> for authority to practise as a <i>BSB authorised body</i> ;
(3)	application fee	Means the amount payable by an <i>applicant</i> to the <i>Bar Standards Board</i> on submission of their application to become a <i>BSB authorised body</i> , such fee to be the amount as determined by the <i>Bar Standards Board</i> from time to time;
(4)	Approved Regulator	has the same meaning as in section 20(2) of the LSA;
(5)	associates	means in relation to an individual: <ul style="list-style-type: none"> (a) the spouse or civil partner of that individual; (b) a child or stepchild of that individual (if under 18); (c) the trustee of any settlement under which the individual has a life interest in possession (or, in Scotland, a life interest); (d) an undertaking in respect of which that individual is a director; (e) an employee of that individual; (f) a partner of that individual; or (g) any other person with whom that individual may have an agreement relating to the acquisition, holding or disposal of shares or otherwise the exercise of any voting rights in respect of the applicant or BSB authorised body (as the case may be);
(6)	an association	means where: <ul style="list-style-type: none"> (a) BSB authorised individuals are practising as a chambers; or (b) BSB authorised persons are sharing premises and/or costs and/or using a common vehicle for obtaining or distributing work with any person other than a BSB regulated person, in a manner which does not require the association to be authorised as an entity under the Legal Services Act 2007.

Annex I to BSB Paper 013 (12)

Part 1 – Public

(7)	authorised body	means BSB authorised bodies and authorised (non-BSB) bodies;
(8)	authorised (non-BSB) body	means a partnership, LLP or company authorised or licensed by another Approved Regulator to undertake reserved legal activities;
(9)	authorised (non-BSB) individual	Individuals that are authorised to provide reserved legal activities by another Approved Regulator where such individuals are working as an employee of a BSB authorised body;
(10)	authorised (non-BSB) person	means an authorised (non-BSB) body or an authorised (non-BSB) individual (as the case may be);
(11)	bankruptcy order	includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world;
(12)	Bar	means the Bar of England and Wales;
(13)	Bar Council	means The General Council of the <i>Bar</i> as constituted from time to time or a committee thereof;
(14)	barrister	means: (a) <i>practising barristers</i> ; (b) <i>pupils</i> ; and (c) <i>unregistered barristers</i> ;
(15)	barrister only entity	means partnerships, LLPs and companies that have been and continue to be authorised to act as a barrister only entity by the <i>Bar Standards Board</i> in accordance with Section E of Part III;
(16)	Bar Standards Board	means the board established to exercise and oversee the regulatory functions of the <i>Bar Council</i> ;
(17)	Bar Training Regulations	means [to be inserted];
(18)	BMIF	means Bar Mutual Indemnity Fund Limited;
(19)	brief	means instructions to a barrister to appear as an advocate before a Court;
(20)	BSB authorised body	means barrister only entities and legal disciplinary practices which have been authorised by the BSB, and BSB licensed bodies;
(21)	BSB authorised individuals	means all individuals authorised by the <i>Bar Standards Board</i> to carry on activities which are reserved legal activities being: a) <i>practising barristers</i> ; b) <i>pupils</i> ; c) <i>registered European lawyers</i> , including where such practising barristers, pupils or registered European lawyers are an owner, manager or employee of a BSB authorised body;

Annex I to BSB Paper 013 (12)

Part 1 – Public

(22)	BSB authorised persons	Means BSB authorised bodies and BSB authorised individuals;
(23)	BSB licensed body	means partnerships, LLPs and companies that have been and continue to be licensed to act as a licensed body by the <i>Bar Standards Board</i> in accordance with Section E of Part III;
(24)	BSB regulated individuals	means BSB authorised individuals, authorised (non-BSB) individuals employed by BSB authorised bodies and BSB regulated managers;
(25)	BSB regulated managers	means all partners, members or directors of a partnership, limited liability partnership or company respectively where such partnership, limited liability partnership or company is a BSB authorised body;
(26)	BSB regulated persons	means, as stated by paragraph 6 of Part I: a) <i>barristers</i> (including, for the avoidance of doubt, <i>unregistered barristers</i>); b) <i>registered European lawyers</i> ; c) <i>BSB authorised bodies</i> ; d) <i>authorised (non-BSB) individuals</i> ; and e) <i>BSB regulated managers</i> ;
(27)	business	Means your Chambers or place of work, including if you are a self employed barrister, any business structure through which you may offer your services as a self employed barrister (including any procurement vehicle which does not itself supply legal services but arranges for barristers to do so), or any BSB authorised body in which you are a manager or employee;
(28)	Call	Means Call to the Bar in accordance with the Bar Training Regulations;
(29)	Chambers	means a place at or from which one or more self-employed barristers carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) who for the time being carry on their practices at or from that place;
(30)	client	means, in relation to any legal services provided or to be provided by you, the person to whom or on whose behalf you provide or are to provide those services;
(31)	client money	means any money to which a client is beneficially entitled
(32)	company	has the same meaning as in section 1 of the Companies Act 2006;
(33)	complaint	In Part V, means an allegation by any person or by the Bar Standards Board of its own motion of professional misconduct and includes a legal aid complaint; in part II means a complaint by a client about the standard of service received that is addressed either to the Legal Ombudsman or the chambers or BSB authorised person

Annex I to BSB Paper 013 (12)

Part 1 – Public

(34)	Complaints and Disciplinary Procedure Rules	means the complaints and disciplinary procedure rules set out at Part V of this Handbook;
(35)	conditional fee agreement	means a conditional fee agreement as defined in Section 58 of the Courts and Legal Services Act 1990;
(36)	conduct litigation or conduct of litigation	has the same meaning as set out in paragraph 4 of Schedule 2 to the LSA;
(37)	court	means any court or tribunal or any other person or body whether sitting in public or in private before whom a barrister appears or may appear as an advocate;
(38)	decision period	means: in respect of an application for authorisation or licensing, the period of 6 months; in respect of a standalone application for authorisation to conduct litigation, [insert details]; and in respect of an application for approval of a manager, owner, HOLF or HOLA, [insert details], in each case, commencing on the last date on which the Bar Standards Board receives any of the documentation, information or payments required to be submitted with such application;
(39)	Definitions Section	means Part VI of the Handbook;
(40)	director	means a director of a company, and includes the director of a BSB authorised body or an authorised (non-BSB) body which is a company, and in relation to a <i>societas Europaea</i> includes: a) in a two-tier system, a member of the management organ and a member of the supervisory organ; b) in a one-tier system, a member of the administrative organ;
(41)	discrimination	has the same meaning as in chapter 2 of the Equality Act 2010;
(42)	employed barrister	Means: a) an employed barrister (authorized non-BSB body); or b) an employed barrister (BSB authorized body); or c) an employed barrister (non authorized body);
(43)	employed barrister (authorised non-BSB body)	Means a practising barrister who is employed by an authorised (non-BSB) body either: a) under a contract of employment; or b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice), who supplies legal services as a barrister in the course of his employment;

Annex I to BSB Paper 013 (12)

Part 1 – Public

(44)	employed barrister (BSB authorised body)	Means a practising barrister who is employed by a BSB authorised body either: a) under a contract of employment; or b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice), who supplies legal services as a barrister in the course of his employment;
(45)	employed barrister (non-authorised body)	Means a practising barrister who is employed: a) other than by a BSB authorised body or an authorised (non-BSB) body; b) either: (i) under a contract of employment; or (ii) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice); or (iii) by virtue of an office under the Crown or in the institutions of the European Union; and who supplies legal services as a barrister in the course of his employment;
(46)	employees	Means persons (other than BSB authorised individuals or authorised (non-BSB) individuals) who are employed by BSB authorised persons;
(47)	employer	Means persons by whom employed barristers (non-authorised bodies) are employed including any holding subsidiary or associated company, corporate body or firm of that person;
(48)	English law	includes international law and the law of the European Communities;
(49)	Equality and Diversity Officer	Means the individual appointed as such by the chambers or the BSB authorised body (as appropriate), one of whose responsibilities is to ensure compliance with the Equality and Diversity rules set out in Part II of this Handbook;
(50)	Establishment Directive	Means Directive 98/5/EC of the European Parliament and of the Council of February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;
(51)	European lawyer	Means a person who is a national of a Member State and who is authorised in any Member State to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999, but who is not any of the following:

Annex I to BSB Paper 013 (12)

Part 1 – Public

		<p>a) a solicitor or barrister of England and Wales or Northern Ireland; or</p> <p>b) a solicitor or advocate under the law of Scotland;</p>
(52)	Family Responsibilities	Includes caring responsibilities for older, young, or disabled dependants or relatives;
(53)	foreign client	Means a lay client who has his centre of main interests outside England and Wales, or who reasonably appears as having that characteristic;
(54)	foreign lawyer	is a person who is a member, and entitled to practice as such, of a legal profession regulated within a jurisdiction outside England and Wales and who is not an authorised person for the purposes of the LSA;
(55)	foreign work	Means legal services of whatsoever nature relating to: <p>a) court or other legal proceedings taking place or contemplated to take place outside England and Wales; or</p> <p>b) if no court or other legal proceedings are taking place or contemplated, any matter or contemplated matter not subject to the law of England and Wales;</p>
(56)	full practising certificate	means, in accordance with paragraph 16 of Section C of Part III, a practising certificate which entitles a barrister to exercise a <i>right of audience</i> before every <i>court</i> in relation to all proceedings;
(57)	Handbook	means this Handbook;
(58)	harassment	has the same meaning as in section 26 of the Equality Act 2010;
(59)	Hearings before the Visitors	Means an appeal hearing constituted under the Hearings before the Visitors Rules 2005;
(60)	HOFA	Means a Head of Finance and Administration within the meaning of paragraph 13(2) of Schedule 11 to the LSA;
(61)	HOLP	Means a Head of Legal Practice within the meaning of paragraph 11(2) of Schedule 11 to the LSA;
(62)	home professional body	Means the body in a Member State which authorises a European lawyer to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 and, if he is authorised in more than one Member State, it shall mean any such body;
(63)	home professional title	Means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 under which he is authorised in his home State to pursue professional activities;

Annex I to BSB Paper 013 (12)

Part 1 – Public

(64)	home State	Means the Member State in which a European lawyer acquired the authorisation to pursue professional activities under his home professional title and, if he is authorised in more than one Member State, it shall mean any such Member State;
(65)	immigration work	Means the provision of immigration advice and immigration services, as defined in section 82 of the Immigration and Asylum Act 1999;
(66)	indictable offence	has the same meaning as in Schedule 1 of the Interpretation Act 1978, i.e. "an offence which, if committed by an adult is triable on indictment whether it is exclusively so triable or triable either way";
(67)	instructions	Means instructions or directions in whatever form (including a brief) given to a practising barrister [or an BSB authorised body] to supply legal services whether in a contentious or in a non-contentious matter and "instructed" shall have a corresponding meaning;
(68)	intermediary	Means any person by whom a self-employed barrister is instructed on behalf of a client and includes a professional client who is not also the client;
(69)	investigating	In E1.2 of Part II, means considering the reasons for disparities in data such as: <ul style="list-style-type: none"> • Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people • Absence of particular groups e.g. men, women, different ethnic groups or disabled people • Success rates of particular groups • Over or under allocation of unassigned work to particular groups.
(70)	Justices' clerk	Means a serving Justices' clerk or assistant Justices' clerk, appointed under the Courts Act 2003;
(71)	lay member	Means a lay person appointed to be a member of the Bar Standards Board or one of its regulatory committees;
(72)	lay representative	Means either <ol style="list-style-type: none"> a) a lay person appointed by the President of the Council of the Inns of Court to serve on Disciplinary Tribunals, Interim Suspension Panels and Appeal Panels therefrom, and Medical Panels and Review Panels therefrom; or b) a lay person appointed by the Lord Chief Justice to serve on Hearings before the Visitors;
(73)	Legal activities	Means an activity which is a reserved legal activity and any other activity which consists of one or both of the following: <ol style="list-style-type: none"> a) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;

Annex I to BSB Paper 013 (12)

Part 1 – Public

		<p>b) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes,</p> <p>and includes, for the purposes of this Handbook, activities of a judicial or quasi-judicial nature (including acting as a mediator) and legal academic work such as lecturing, where this is ancillary to other legal activities. (Note that <i>legal services</i> are more narrowly defined.)</p>
(74)	Legal aid complaint	has the same meaning as in section 40 of the Administration of Justice Act 1985;
(75)	Legal Advice Centre	<p>Means a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and:</p> <p>a) which employs or has the services of one or more solicitors conducting work pursuant to rule 4.16 of the Practice Framework Rules of the SRA Handbook, or</p> <p>b) which has been and remains designated by the Bar Standards Board as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Bar Standards Board in relation to insurance or any other matter whatsoever;</p>
(76)	legal disciplinary practice	Means partnerships, LLPs and companies that have been and continue to be authorised to act as a legal disciplinary practice by the Bar Standards Board in accordance with Section E of Part III or by another Approved Regulator[?];
(77)	Legal Ombudsman	the Legal Ombudsman of England and Wales, set up by the Office for Legal Complaints, under the LSA, to consider and resolve complaints made about lawyers by consumers of legal services;
(78)	legal services	<p>includes legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:</p> <p>a) sitting as a judge or arbitrator or acting as a mediator;</p> <p>b) lecturing in or teaching law or writing or editing law books articles or reports;</p> <p>c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;</p> <p>d) communicating to or in the press or other media;</p> <p>e) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;</p>

Annex I to BSB Paper 013 (12)

Part 1 – Public

		<p>f) in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;</p> <p>(Note that <i>legal activities</i> are more broadly defined.)</p>
(79)	Legal Board Services	Means the independent body established under the LSA to be the over-arching regulator for the legal profession as a whole;
(80)	licensed access client	Means a person or organisation approved as such by the Bar Standards Board in accordance with the Licensed Access Recognition Regulations.
(81)	licensed access rules	Means the rules on Licensed Access set out in Part 7 of this Handbook;
(82)	Licensable body	<p>A partnership, LLP or company that has a non-authorised individual:</p> <p>either holding an ownership interest in that partnership, LLP or company (either through ownership of shares and/or voting rights) whether or not that ownership interest is a material interest; or</p> <p>as a manager of that body;</p> <p>Guidance: <i>the definition of licensable body contained within section 72 of the LSA also deals with indirect interests arising where one of the owners or interest holders in the partnership, LLP or company is a corporate entity. However, as such an arrangement would not meet the eligibility requirements set out in Part III, this definition does not include such situations.</i></p>
(83)	licensed body	A licensable body which has been granted a licence by the BSB to undertake reserved legal activities;
(84)	licensing authority	Means an approved regulator which has been granted by the LSB a power to license licensable bodies to undertake reserved legal activities;
(85)	limited practising certificate	in accordance with paragraph 18 of Section C of Part III, a limited practising certificate authorises a barrister to exercise any right of audience that they had on 30 July 2000 as a result of them being a barrister;
(86)	LLP	Means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000;
(87)	LSA	Means the Legal Services Act 2007;
(88)	manager	<p>Means:</p> <p>a) a partner in a partnership;</p> <p>b) a member of an LLP; or</p> <p>c) a director of a company;</p>

Annex I to BSB Paper 013 (12)

Part 1 – Public

(89)	material interest	has the same meaning as in paragraph 3 of Schedule 13 to the LSA;
(90)	mediation	Means the process whereby the parties to a dispute appoint a neutral person (mediator) to assist them in the resolution of their dispute;
(91)	Medical Panel	Means a panel constituted under the Fitness to Practise Rules;
(92)	member	Means a member of a limited liability partnership as determined by section 4 of the Limited Liability Partnership Act 2000;
(93)	Member State	Means a state which is a member of the European Union;
(94)	minor criminal offence	includes: a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; c) an offence whose main ingredient is the unlawful parking of a motor vehicle.
(95)	Non-authorized body	any body that is not an authorised body;
(96)	Non-authorized individual	any individual that is not a BSB authorised individual or an authorised (non-BSB) individual;
(97)	non-authorized person	means: d) non-authorized bodies; and e) non-authorized individuals;
(98)	non-reserved activities	means any activities other than reserved legal activities;
(99)	Notarial activities	has the same meaning as set out in paragraph 7 of Schedule 2 to the LSA;
(100)	owner	means: a) in relation to a <i>BSB authorised body</i> that is a company or an LLP (or an applicant to become such a body), any person who holds a material interest in that company or LLP; b) in relation to a <i>BSB authorised body</i> that is a partnership (or an applicant to become such a body), any <i>partner</i> of that partnership who holds a material interest in that partnership;
(101)	Parental Leave	means leave taken by the main carer of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex;

Annex I to BSB Paper 013 (12)

Part 1 – Public

(102)	partner	Means a person who is or is held out as a partner in an unincorporated firm.
(103)	partnership	Means an unincorporated partnership, and includes any unincorporated firm in which persons are or are held out as partners, but does not include an LLP;
(104)	practising address	Means an address from which the services which consist of or include the carrying on of <i>reserved legal activities</i> are being provided;
(105)	practising barrister	<i>barristers</i> who hold a <i>practising certificate</i> in accordance with Section C of Part III;
(106)	practising certificate	Means a <i>full practising certificate</i> , a <i>provisional practising certificate</i> , a <i>limited practising certificate</i> , or an <i>European lawyer's practising certificate</i> or a temporary practising certificate issued by the Bar Council;
(107)	practising certificate fee	means the amount payable for a <i>practising certificate</i> each year, such amount to be calculated by reference to the Schedule of Practising Certificate Fees issued by the Bar Council from time to time, together with the provisions of Section C of Part III;
(108)	practising certificate year	Means the period from 1 April in any calendar year to 31 March in the next calendar year;
(109)		
(110)	the President	means the President of the Council of the Inns of Court;
(111)	probate activities	has the same meaning as set out in paragraph 6 of Schedule 2 to the LSA;
(112)	professional client	means a solicitor or other professional person by whom a BSB authorised person may be instructed on a referral basis - that is to say: <ul style="list-style-type: none"> a) a solicitor, a solicitors' firm, LLP or company who is authorised by the SRA to carry on a legal activity, a person or body authorised to carry on the conduct of litigation, a Parliamentary agent, a patent agent, a European Patent Attorney, a trade mark agent, a Notary or a European lawyer registered with the SRA; b) a licensed conveyancer in a matter in which the licensed conveyancer is providing conveyancing services; c) an employed barrister or registered European lawyer; d) any practising barrister or registered European lawyer acting on his own behalf; e) a foreign lawyer; f) a Scottish or Northern Irish Solicitor; or g) the representative of any body (such as a Legal Advice Centre or Pro Bono or Free Representation Unit) which arranges for the supply of legal services to the public without

Annex I to BSB Paper 013 (12)

Part 1 – Public

		a fee, and which has been and remains designated by the Bar Standards Board (subject to such conditions as may be imposed by the Bar Council or Bar Standards Board in relation to insurance or any other matter whatsoever) as suitable for the instruction of barristers, and which instructs a barrister to supply legal services without a fee;
(113)	Professional principles	means: a) that authorised persons act with independence and integrity; b) that authorised persons maintain proper standards of work; c) that authorised persons act in the best interests of their clients; d) that authorised persons comply with their duty to the court to act with independence in the interests of justice; and e) that the affairs of clients are kept confidential,
(114)	Professional Conduct Committee	means the Professional Conduct Committee of the Bar Standards Board or its successor;
(115)	provisional practising certificate	has the meaning given to it in paragraph 17 of Section B of the Authorisation and Licensing Rules;
(116)	the public	includes any client of: a) a practising barrister; or b) a BSB authorised body; or c) in the case of an employed barrister, of the barrister's employer; or d) in the case of a manager or employee of an authorised (non-BSB) body, of that authorised (non-BSB) body;
(117)	public access instructions	means instructions given to a barrister by or on behalf of a public access client, in accordance with the Public Access Rules;
(118)	pupil	means an individual who is undertaking either the first non-practising six months of pupillage or the second practising six months of pupillage, or a part thereof and who is registered with the Bar Standards Board as a pupil;
(119)	pupil supervisor	an individual, qualified barrister who has been approved as a pupil supervisor by his or her Inn of Court, and in accordance with the Bar Training Regulations;
(120)	Qualifications Committee of the Bar Standards Board	means the Qualifications Committee of the Bar Standards Board or its successor;
(121)	Qualification Rules	means the rules on qualification set out at Part 3 of this Handbook;

Annex I to BSB Paper 013 (12)

Part 1 – Public

	the Quality Assurance Committee	means the Quality Assurance Committee of the Bar Standards Board or its successor
(122)	registered European lawyer	means a European lawyer registered as such by the Bar Council and by an Inn in accordance with Part II.D;
(123)	Registered European lawyer's practising certificate	means, in accordance with paragraph 21 of Section C of Part III, a practising certificate which entitles a registered European lawyer to carry on the same reserved legal activities as a full practising certificate issued to a barrister, save that: <ul style="list-style-type: none"> a) 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; and b) a registered European lawyer is not authorised to prepare for remuneration any instrument creating or transferring an interest in land 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;
(124)	referral basis	means where a professional client instructs a BSB authorised individual to provide legal services on behalf of one of that professional client's own clients (and which, for the avoidance of doubt, would not include that professional client instructing a BSB authorised individual to provide legal services for the benefit of that professional client);
(125)	regular review	as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that "regularly" should mean annually. In respect of managers of a BSB authorised body or tenants, it is likely to be considered reasonably that "regularly" should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.
(126)	regulatory objectives	<ul style="list-style-type: none"> a) protecting and promoting the public interest; b) supporting the constitutional principles of the rule of law; c) improving access to justice; d) protecting and promoting the interests of consumers; e) promoting competition in the provision of the services; f) encouraging an independent, strong, diverse and effective legal profession; g) increasing public understanding of the citizen's legal rights and duties; and h) promoting and maintaining adherence to the professional principles;

Annex I to BSB Paper 013 (12)

Part 1 – Public

(127)	remedial action	Any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups; [Add link to guidance on the difference?]
(128)	reserved instrument activities	has the same meaning as set out in paragraph 5 of Schedule 2 to the LSA;
(129)	reserved legal activity	means: a) the exercise of a right of audience; b) the conduct of litigation; c) reserved instrument activities; d) probate activities; e) notarial activities; and f) the administration of oaths;
(130)	right of audience	has the same meaning as set out in paragraph 3 of Schedule 2 to the LSA;
(131)	right to conduct litigation	refer to conduct of litigation above;
(132)	Scope of Practice, Authorisation and Licensing Rules	means the rules set out at Part III of this Handbook;
(133)	selection panel	Any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of pupils, assessed mini-pupils, tenants, clerks, or staff, or, in the context of a BSB authorised body, any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of pupils, assessed mini-pupils, managers or employees of that BSB authorised body;
(134)	self-employed barrister	means a practising barrister who is self-employed;
(135)	solicitor	means a solicitor of the Supreme Court of England and Wales;
(136)	specified amount	means the amount payable to a pupil in their non-practising period or their practising period (as appropriate), such amount being specified by the Bar Standards Board from time to time;
(137)	suitability criteria	means: a) in respect of a HOLP, the criteria set out at paragraphs [] of the the Scope of Practice, Authorisation and Licensing Rules; b) in respect of a HOFA, the criteria set out at paragraphs [] of the the Scope of Practice, Authorisation and Licensing Rules;

Annex I to BSB Paper 013 (12)

Part 1 – Public

		<p>c) in respect of owners and managers, the criteria set out at paragraphs [] of the the Scope of Practice, Authorisation and Licensing Rules; and</p> <p>d) in respect of non-authorised owners, the criteria set out at paragraphs [] of the Scope of Practice, Authorisation and Licensing Rules</p>
(138)	trade association	means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members;
(139)	training	<p>In section E1.2 of Part II, means any course of study covering all the following areas:</p> <ul style="list-style-type: none"> • Fair and effective selection & unconscious methods • Attraction and advertising • Application processes • Shortlisting skills • Interviewing skills • Assessment and making a selection decision • Monitoring and evaluation <p>Training may be undertaken in any of the following ways:</p> <ul style="list-style-type: none"> • Classroom sessions. • Online sessions • Private study of relevant materials such as the BSB Recruitment Toolkit for chambers. (<i>Depending on Board decision on this issue</i>). • Completion of CPD covering fair recruitment and selection processes;
(140)	unregistered barrister	an individual that does not hold a practising certificate but who has been called to the Bar by one of the Inns and has not ceased to be a member of the Bar;
(141)	victimisation	has the same meaning as in section 27 of the Equality Act 2010;

Business Plan 2012-13

Status:

1. For discussion

Executive Summary

2. This paper provides members of the Board with an update on the progress of finalising the 2012-13 Business Plan, which is due to be published before 31 March 2012.

Recommendations

3. Members of the BSB are asked to **note** the paper.

Background

4. Members of the Board considered an early version of the 2012-13 Business Plan and Budget bid in September 2011, which was then presented as a first cut to members of the Finance and Audit Committee (FAC) in August 2011.
5. The Board then requested that the business plan and budget be redrafted against two scenarios: with a 0% and a 10% increase on the previous year's 12 month budget.
6. Board and PBVC members reviewed three scenarios and opted for Scenario 2, which reflected the following assumptions:

- All current regulatory programmes funded at existing levels,
- Committee activity at historical actual committee member participation levels,
- Funding of the BSB's own education review implementation work at a more modest level,
- Resource to deal with the implementation of the FOI Act,
- A contribution to the over arching LETR;
- A reduced-scale new staff capacity building programme,
- Reduced levels of external relations work

This resulted in a 0.6% rise in the budget to £4,062k.

7. This budget bid was taken to the FAC on 25 October 2011 and was fed into the Practising Certificate Fee (PCF) setting exercise. The Bar Council, as the Approved Regulator, submitted the PCF application to the Legal Services Board (LSB) and approval has now been received.

Comment

8. Since the budget sign-off, the Legal Services Board issued its Regulatory Standards decision document, which has put in place the regulatory standards framework with which all applications to the LSB must now comply. The elapse of time means that the external factors have also changed, which affects several workstreams. Timelines for all work identified in the earlier drafts of the business plan have had to be reconsidered as a result.
9. Members of the Senior Management Team have been reconsidering the activities in the 2012-13 Business Plan by looking at the descriptions and timelines to reflect changes. Particular attention has been paid to ensuring that any workstreams that require application to the LSB have sufficient time allowed to fully address all aspects of the regulatory standards framework. As part of this, staff have also been looking at

- a) The distinction between core and additional activity
 - b) Ensuring that timelines are challenging, yet realistic
 - c) Staff required for the activities
 - d) Non-staff budget for all activities
 - e) Other resources that may be required (for example Central Services Teams' support or pro bono work); and
 - f) The headline risks that will prevent the activity being completed.
10. The initial indicators of this work are that the 75-85% of staff time is spent on core activity. The remaining time is available for all other aspects of BSB operation, including projects. The Board, its committees and its staff will need to be vigilant during the coming year to ensure that the resources we have continue to be deployed effectively to achieve the stated aims and complete the identified activities. Re-prioritisation may be necessary and as that is considered by staff, may result in recommendations to the Board regarding the delaying of some projects in order to properly complete others. When doing this, the focus will be on completing those which are externally driven and which have the strongest link to the regulatory objectives. Projects that are entirely within BSB control in terms of timeline are more likely to be deferred where possible. Any change of activity or new activity identified during the year will require re-prioritisation as there is no spare capacity to allow any new activities to be simply added to the existing schedule of work. All reprioritisation is being undertaken within the existing baseline budget that has been set.
11. The Board will be asked at its March meeting to sign off the final version of the 2012-13 Business Plan which we anticipate will be published by the end of March 2012.

Financial implications

12. The business plan, objectives and targets inform the BSB's budget. Large amendments to the draft Business Plan may have major implications in terms of how the budget is allocated to activities. However, the work being undertaken is all being done within the baseline budget that has been set.

Equality Impact Assessment

13. Equality and Diversity issues are addressed in the Business Plan objectives.

Risk implications

14. Risks that may have an impact on the BSB achieving its objectives have been considered as part of compiling the business plan and key risks feature in the Corporate Risk Register.

Consultation

15. No external consultation required at this point. Internal consultation has taken place with members of the BSB's Operational Management Team and the Planning, Resources and Performance Committee.

Publicity

16. We anticipate that the Business Plan and Budget 2012-13 will be published by the end of March 2012.

Lead responsibility:

Vanessa Davies
Amanda Thompson

Performance Report: October - December 2011 (Q4)

Status:

1. For discussion and decision

Executive Summary

2. This paper presents, for the fourth three-month period (Q4) of the reporting year, the BSB's:
 - a) progress against the Business Plan 2011-12; and
 - b) financial performance against the budget (for Q4 and for January 2012)
3. Most of the areas of activity are on track, however those activities that have not met, or are not going to meet the due dates, are outlined in this report for members of the Board to decide on remedial action.
4. The current YTD outturn for the BSB's budget is an underspend of +7% or +£277k and the actual spend projection for the end of the year is £4,447k (-3%). Income has reached £1,480k (+16%).

Recommendations

5. Members of the Board are invited to:
 - a) note the Q4 summaries;
 - b) review the areas that are currently underperforming;
 - c) decide on any areas that require further consideration or additional action;
 - d) note that the revised timeline for the implementation of the pupillage review is to be clarified and reported to the next PRP meeting;
 - e) agree to make a formal approach to the Bar Council to ask that it is involved in decisions about how the PCF is levied in future;
 - f) note the need to complete Equality Impact Assessments as part of the policy formation process; and
 - g) agree that the due dates and priorities are altered on the activities that have been flagged:
 - i. Review all processes and procedures following CPD Review recommendations – *lower priority*;
 - ii. The review of the revised complaints handling processes and restructured staff teams – *Change due date from April 2012 to June 2012*;
 - iii. The implementation of the salary review methodology – *Change due date from December 2011 to March 2012*;
 - iv. Publication of Annual report – *Change due date from May 2011 to September 2012*;
 - v. Investigate data to feed into the information strategy and put in place any plans to address necessary improvements – *lower priority*.

Background

6. The 2011-12 Business Plan was signed off by the Board in January 2011. The Business Plan states the Bar Standards Board's objectives for 2011-12 in our four priority areas: Regulation, Accountability, People and Values.
7. This report combines the updates on our key performance targets with financial performance. It is useful to review these reports alongside the Corporate Risk Register (which is being considered during Part 2) to obtain a fuller picture of the BSB's overall performance.
8. The progress against the business plan is monitored on a monthly basis by the BSB's management team which provides information on the activities, and flags areas that may require remedial action. The Planning, Resources and Performance (PRP) Committee receives detailed business plan reports on a quarterly basis to review the performance management processes being followed and to provide assurance to the Board that the BSB's management team is adequately managing the business plan activities and the budget. This information is presented to the Board so that it can note the progress made and to decide on remedial action on the areas that have been flagged.
9. These reports were discussed at the PRP meeting on 2 February 2012 and the following points were raised:
 - a) for the next strategic plan it will be important to detail any further work the BSB may want to carry out for the next quality assurance scheme;
 - b) Members underlined the need for equality impact assessments to be undertaken as part of the process of policy formation – Committee Chairs to note;
 - c) The Fees and Charges review is a wide ranging issue that requires guidance from the Board, and the Committee recommended that the Board makes a formal approach to the Bar Council to ask that it is involved in decisions about how the PCF is levied in future;
 - d) underspends in some Departments have been compensated for by overspends in the Professional Practice and Quality budgets;
 - e) underspends in the Education budget for the Bar Professional Training Course are likely to offset against any additional costs relating to the Centralised Examination project;
 - f) the trend of underspends has driven the setting of a tighter budget for next year.

Business Plan 2010 Update

10. The report summary (annex 1) shows the BSB's activities presented in pie chart form to provide an easy to read overall picture of performance. In the chart, Greens (G) show activities that are on target or have been completed, Amber (A) are the activities that are behind schedule and Reds (R) are those activities that are overdue or will become overdue.
11. Where the Board have agreed changes to due dates, the timelines in the Business Plan have been altered accordingly and the RAG status for the activities has then been reviewed against the new completion dates. Areas of work that are on target, yet are high risk, can be found in the Corporate Risk Register which is being considered in the private session of the Board meeting.

12. The Business Plan summary charts are generated by a detailed analysis of each activity, with an indication of whether we are on target, how many staff are involved, the budget allocation, and what risks could affect the tasks being completed. The detail has been scrutinised by members of the BSB's Operational Management Team and the PRP.
13. Overall the business plan activities are progressing well:
- a) Regulation - (Green 81%, Amber 11%, Red 8%);
 - b) Accountability - (Green 83%, Amber 3%, Red 13%);
 - c) People - (Green 100%, Amber 0%, Red 0%);
 - d) Values - (Green 75%, Amber 12%, Red 12%).
14. Unlike the management accounts report that presents a static picture for the period ending December 2011 and January 2012, the business plan updates are recorded in a live document that can be updated as and when events happen; it was last updated on 14 February 2012.
15. Annex 1 also displays a list of the 'Red' (or likely to become red) activities and more information about these particular items is set out in the following sections with details of our completed activities. Members of the Board are invited to discuss the areas flagged for consideration and agree any necessary remedial action.

Regulation

16. Out of the 64 activities the organisation is carrying out to deliver its Regulation objectives, 51 (previously 55 in Q2) are completed or on target, 7 (5) are behind schedule and 5 (4) are overdue.
17. Completed activities include:
- a) JASB management reverted to the SRA from 1 September 2011;
 - b) The Board agreed the Equality and Diversity provisions of the Code and it is planned that they will come into force before the end of 2012;
 - c) The CPD accreditation process has been completed for this year;
 - d) With regard to the LSB Equality data collection requirements, a project board has now been established and the Project Initiation Documentation has been discussed with the LSB. Plans were submitted to the LSB in January;
 - e) The Board has approved the approach on Entity Regulation;
 - f) A Memorandum of Understanding for ABSs has been signed and it forms part of the SRA's application to become a licensing authority;
 - g) At the November meeting, the Board agreed to delay public consultation on criminal standards of proof and this action is now recorded as 'halted'.
18. Areas for further consideration include:
- a) The activities relating to the pupillage review implementation are ongoing, however the Board agreed at its September meeting that the due date should be reviewed. The Chair of the PRP requested that the revised timeline for the implementation of the review is clarified and reported to the next PRP meeting with the nature of the problem, the options for resolution, timescales and resource requirements;

- b) There has been a delay in reporting barristers that default against the CPD requirements to the Professional Conduct Department (PCD); defaulting self employed barristers were reported in December and employed barristers will be reported by year-end; this is having an impact on the PCD and this issue is reported in the Corporate Risk register;
- c) A review of all processes and procedures regarding CPD recommendations has not taken place as it will follow on from the consultation; analysis of the consultation results has been completed and steering group recommendations are anticipated in February, although this may be delayed further to take account of the regulatory standards framework. The PRP recommended that this action does not need to be flagged as a priority;
- d) QASA scheme development and implementation is at risk of being delayed due to recent proposals to change the scope of the scheme by the SRA; an update was provided to the Board at the January meeting; this issue also appears on the Corporate Risk register;
- e) There were some issues with the barristers register caused by the core database implementation, however they have now being resolved and this action will appear green on the next update report;
- f) The review of the revised complaints handling processes and restructured staff teams was planned for completion in April 2012 however this will now be completed in May with a report being presented to the Board in **June 2012**; the Board is asked to endorse this change to the timetable;
- g) The BSB has not completed or published Equality Impact Assessments for all existing policies, however the newly recruited Senior Policy Officer is currently tasked with setting up an Equality Champions group which will review the need and scope for EIAs. The Chair of PRP underlined the need for EIAs to be carried out as part of the policy formation process.

Accountability

19. Out of the 30 activities the organisation is carrying out to deliver its Accountability objectives, 25 (26) are completed or on target, 1 (2) are behind schedule and 4 (2) are overdue.
20. Completed activities include:
- a) Publishing our quarter 4 performance reports;
 - b) Carrying out an induction programme for our new Board members. Ongoing support is being provided including organisation of visits to relevant institutions;
 - c) The BSB has contributed to the PCF setting process by submitting our draft Business Plan and budget bid to the Finance and Audit Committee as well as contributing to the submission of the PCF application to the LSB.
21. Areas for further consideration:
- a) The Governance Handbook is unlikely to be published by April 2012; the initial delay was due to staff focus being shifted to the implementation of the internal Feedback and Complaints policy. Work on the scheme of delegations was paused whilst the Standing Orders were agreed. The finalising of the planning and finance chapters will be impacted upon by the LSB regulatory standards framework; a new timeline has been discussed with the GRA Committee;
 - b) The Fees and Charges review will be delayed beyond the due date of December 2012 as this will need to be aligned with the new strategic plan and the impacts of

the LSB regulatory standards framework; it is now unlikely to occur in 2011-12 year. Fees and charges will need to be addressed as part of a longer term strategy on income management and subsidisation. The Bar Council Treasurer is planning a review of the PCF in the near future and it is recommended that the Board is involved in this project;

- c) The implementation of the salary review methodology has not met the published due date of December 2011 however it is running to the timescale developed for the project: the first stage is complete and the second stage is due in **March 2012**. It is recommended that the Board formally agree this change of due date;
- d) The original due date of May 2011 for the Annual report not been met as a re-write is underway following comments from Board. A major consolidated report covering Jan 2010-Mar 2012 will now be published in **September 2012**. The text will be presented to Board first followed by the final publication when audited accounts available. The Board is asked to endorse this change.

People

- 22. Out of the 11 activities the organisation is carrying out to deliver its People objectives, 11 (10) are completed or on target, 0 (0) are behind schedule and 0 (1) are overdue.
- 23. Completed activities include:
 - a) The launch of the redeveloped website on 15 December 2011.

Values

- 24. Out of the 24 activities the organisation is carrying out to deliver its Values objectives, 18 (16) are completed or on target, 3 (4) are behind schedule and 3 (4) are overdue.
- 25. Completed activities include:
 - a) The investigation into complaints handling satisfaction data has been completed;
 - b) The business plan and budget setting exercise fed into the Research Team's plans. Implementation of the regulatory standards framework will strengthen this further;
 - c) Activities relating to the communications strategy have been carried out including monthly emails being sent out to the profession and we have >1900 followers on Twitter.
- 26. Areas for further consideration:
 - a) There is a delay in investigating data to feed into the information strategy so that we can put in place plans to address necessary improvements; this is because we are awaiting information from the User Satisfaction Survey. This area of work will feed into the regulatory standards framework. The members of the PRP Committee commented that there is no pressing delivery date in respect of this item and recommended that it is not shown as a priority activity;
 - b) We have not published a publications scheme as this is linked to the Freedom of Information Act regime; formal implementation is likely to be between 2013 and 2015; provisions were made in the 2012-13 business plan however were removed to keep within the 0% budget increase boundaries;
 - c) The evaluation programme regarding the effect of the Legal Services Act 2007 has not met the December 2011 due date. The MoJ will commence a triennial

review of the LSA and LSB in early 2012. Members of the PRP noted that no work has been undertaken on this to date;

- d) A consultation policy, which will form an annex to the Governance Handbook, has not yet been drafted; this will feed into the work on regulatory standards.

Management Accounts as at 31 January 2012

27. The management accounts for the period ending 31 January 2012 have been issued. This paper provides commentary on the overview of the budgets, and highlights areas of significant overspend (-) and underspend (+). The current YTD outturn is an underspend of +7% or +£277k and the actual spend projection for the end of the year is £4.447k (YE £137k var, +3%).

Expenditure

28. As at 31 January 2012, there was an actual spend of £3,713,550 against a budget of £3,990,407; the underspend was £276,857 (+7%). Significant underspends occurred in the Executive budget (YTD £136,004 var, +23%), the Strategy budget (YTD £71,588 var, +18%) and the Education Standards budget (YTD £115,368 var, +14%). However there are overspends recorded in the Professional Practice budget (YTD £152,655 var, -46%), the Quality budget (YTD £8,950 var, -5%) and the QASA budget (YTD £19,241 var, -78%).

Income

29. Alongside the underspend, income is greater than predicted (YTD £198,030 var, +16%), where we had forecast £1,281,600 and actually received £1,479,630. JASB has generated £54,342 (YTD +189%), BPTC Online has brought in £201,160 (YTD +61%), and for the Bar Transfer Test income has reached £10,875 (YTD: no income forecast). However, there are areas that record shortfalls which are Validation (YTD £23,850 var, -4%), Accreditation (YTD £4,795 var, -2%), BPTC Accreditation (YTD £15,000 var, -100%) and the Bar Exam (YTD £660 var, -20%).

Financial implications

30. Financial implications have been considered as part of drawing up this report; some issues are detailed in the annexes and further information is presented in the Corporate Risk Register report (see Part 2).

Equality Impact Assessment

31. Equality and Diversity issues are addressed in the Business Plan objectives.

Risk implications

32. Risks that may have an impact on the BSB achieving its objectives have been considered as part of compiling the business plan update in the commentary columns of the report.

Consultation

33. No external consultation required at this point. Internal consultation has taken place with members of the BSB Management Team when assessing the progress against our Corporate Objectives, and also members of PBVC.

Publicity

34. Achievements highlighted in our Business Plan update reports feed into the Communications Plan.

Annexes

35. Annex 1: Business Plan 2011-12 Update
Annex 2: Q4 Management Accounts
Annex 3: January 2012 Management Accounts

Lead responsibility:

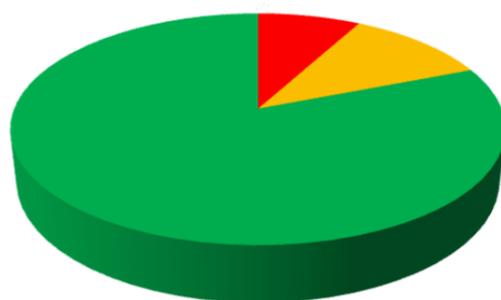
Matthew Nicklin
Chair of the Planning, Resources and Performance Committee

Bar Standards Board

Business Plan 2011-12 - Update

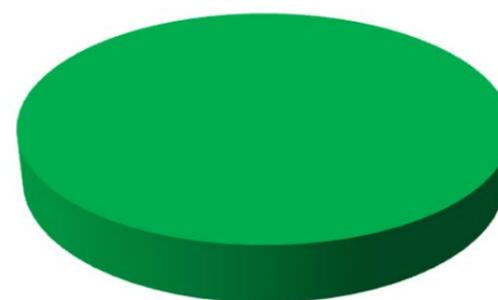
Summary of 128 Activities

Regulation: activities



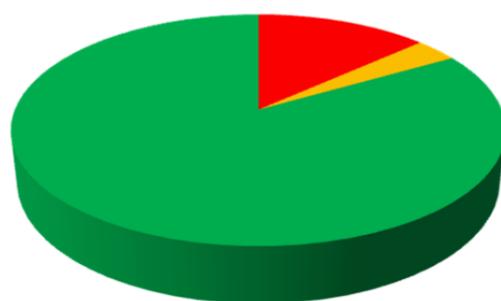
Activities		
R	A	G
5	7	51
Total		63

People: activities



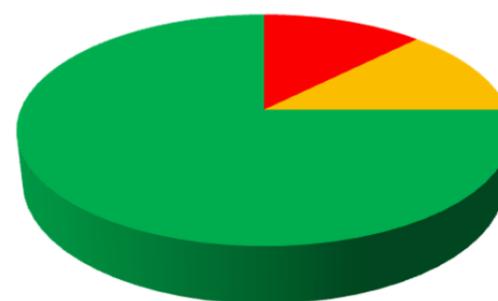
Activities		
R	A	G
0	0	11
Total		11

Accountability: activities



Activities		
R	A	G
4	1	25
Total		30

Values: activities



Activities		
R	A	G
3	3	18
Total		24

As at:
14 February 2012

- Activities that are on target or completed
- Activities that are behind schedule
- Activities that are overdue or will become overdue

Regulation													
Aims:													
Our standards continuously ensure high quality practice													
All those whom we regulate live up to our standards													
Clients receive effective advocacy and legal representation from those we regulate													
We research, design and implement a regulatory framework that reflects the regulatory objectives													
Activities in 2011-12	Due Date	On Target	Status update	Lead Officer	Staff allocation	Allocated budget	Budget variance		Commentary				
		R / A / G			Hrs		(+/- £)	(+/- %)	Reasons why not on / met target	Other impacting factors	Risks impacting on Activity	Resource implications	Action to get back / stay on track
Objectives for 2012:													
A) We define the standards and competencies which barristers must satisfy at key stages of their education and training, qualification, professional development													
d) Pupillage review implementation completed	Dec-11	R	The main activities will be completed by 2012. However the due date may need to be altered for discussions of a common timetable (in or out of the Portal), the review of pupillage portal, holding a pupillage event, continued monitoring, and monitoring supervisor training as these are long term activities.	Valerie Shrimplin	about 25% of officer and 10% of Head of Education	£20k	+£20k	+99%	Debate may be reopened on the recruitment (online) systems and / or common timetable.	LSB approval obtained; Inns are improving supervisor training; IT improvements needed to track supervisor accreditation		none additional	LSB submission managed by Education. The Board agreed at its Sep11 meeting that the due date should be reviewed.
Objectives for 2012:													
A) We give the public a comprehensive positive assurance that barristers meet the standards required for registration and at key stages throughout their career relative to whether they are in employment or self-employed, and take regulatory action when required													
CPD Compliance	na			Valerie Shrimplin									
a) Monitor compliance with CPD requirements by all barristers	All year	A	Checking of records completed. 1st set of warning letters sent out in June and 2nd to be sent out in October. Defaulting SE barristers reported to PCD in December. Defaulting employed barristers to be reported to PCD by Year-end.	Valerie Shrimplin	Around 2.5 FTE	Staff only	Staff only	Staff only	Staff absences earlier in year + delayed recruitment to vacant position caused delays.	New staff member in post.		Delayed recruitment led to decrease in staff costs.	Permanent member of staff now in post. No further action required.
c) Review all processes and procedures following CPD Review recommendations	Dec-11	R	Review will take place following the consultation process	Valerie Shrimplin	tbc	Staff only	Staff only	Staff only	dependent on consultation process first (see above)	non acceptance of proposed new model by BSB/LSB/Members	non acceptance of proposed new model by BSB/LSB/Members	significant income may be reduced if system is revised	see above
Quality Assurance programme	na			Oliver Hanmer									
d) Quality Assurance for Advocates scheme development and implementation	Apr-12	A	Recent proposals to the scope of the scheme by the SRA in relation to its application to a small number of solicitor advocates have had potential but significant impacts on the delivery of the scheme against the timetable. The Board has received an update on this issue at the January Board meeting.	Oliver Hanmer	FAC approved two additional members of staff	£27k	-£1.9k	-8%	SRA proposed changes to the scheme at odds with the BSB's requirements	Uncertainty over judicial support for the scheme as a result of the SRA proposed changes.	Impact on the scope and timeline of the scheme	Substantial staff time has been taken up in managing the policy and political considerations of the SRA proposal and what the position of the BSB should be.	Board has received an update at January meeting and agreed to mandate lead Board and staff members to take the matter forward.
e) Implementation of Quality Assurance for Advocates (crime)	Apr-12	A	See above - is likely to have an impact on implementation.	Oliver Hanmer	FAC approved two additional members of staff	see above			See above				See above
Barristers' register				Oliver Hanmer									
h) Maintenance of the Barristers' Register	All year	A	Due to the Core database work, there was a delay in updating individual barrister's entries on the Register. The priority entries have been updated however this issue will be addressed by the time authorisation to practise is launched in March 2012	Oliver Hanmer	tbc	Staff Only	Staff only	Staff only	The functionality of the core database has impacted upon staff ability to update the Register				Backlog of updates prioritised
Objectives for 2012:													
B) We ensure fair and rigorous processes protect the public when registrants fail to live up to standards													
f) Conduct a formal review of the efficacy and outcomes of the revised complaints handling processes and restructured staff teams	Apr-12	A	Project Plan developed for review. Will now be completed by May 2012 for report to Board in June 2012	Sara Down	tbc	Staff Only	Staff only	Staff only	Date amended to bring this in line with the entity regulation timetable. Pressure of work and scheduling of meetings means June Board is earliest date for report				Already underway - project plan being developed. Board requested to move completion date to June 2012
Objectives for 2012:													
D) Equality is embedded into all aspects BSB standards.													
a) Complete and publish equality impact assessments for existing priority policies	Dec-11	R	In view of legislative changes, an internal Equalities Champions Group is to be established which will review the need and scope for EIAs. There is likely to be a delay in establishing this Group due to staffing shortages. A Senior Policy Officer has now been recruited and is currently tasked with setting up an Equality Champions group.	Sarah Loutfi, Jessica Bradford	0.25 FTE	Staff only	Staff only	Staff only	Some EIAs have been delayed due to resourcing issues in teams.	It is no longer necessary to publish details of EIAs as a result in changes to equality legislation	Lack of staff time available means this is not progressing. There is the small risk that BSB is retrospectively challenged i.e. for a lack of an EIA at a time when one would have been necessary for a project to continue.	Additional staff time is required.	New staff member in post

Regulation

Aims:

Our standards continuously ensure high quality practice
 All those whom we regulate live up to our standards
 Clients receive effective advocacy and legal representation from those we regulate
 We research, design and implement a regulatory framework that reflects the regulatory objectives

Activities in 2011-12	Due Date	On Target	Status update	Lead Officer	Staff allocation	Allocated budget	Budget variance		Commentary				
		R / A / G			Hrs		(+/- £)	(+/- %)	Reasons why not on / met target	Other impacting factors	Risks impacting on Activity	Resource implications	Action to get back / stay on track
Objectives for 2012:													
A) A quality scheme is in place that will allow assessment of a barrister's capability and performance.													
a) Continued development and implementation of Quality Assurance for Advocates Scheme	Mar-12	A	See Regulation 2 A d) and e)	Oliver Hanmer	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2
b) Agreement on standards for criminal advocacy across all regulators	Jul-11	R	See Regulation 2 A d) and e)	Oliver Hanmer	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2
c) Implementation of new standards including arrangements for establishing a Quality Assurance for Advocates structure	Jul-11	R	See Regulation 2 A d) and e)	Oliver Hanmer	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2	See Reg 2
d) Run the QAA scheme in conjunction with the Joint Advocacy Group	Mar-12	A	(see overleaf (QAA should be QASA))	Oliver Hanmer	tbc	Will appear in next year's budget	tbc	tbc					

Accountability

Aims:

Excellent governance & management ensure effective independent regulation
 We raise our resources responsibly, use them efficiently and effectively and account for our spending decisions
 We set performance standards, monitor progress and report transparently
 We have an Information Strategy that ensures we deliver good customer service

Activities in 2011-12	Due Date	On Target	Status update	Lead Officer	Staff allocation	Allocated budget	Budget variance		Commentary				
		R / A / G			Hrs		(+/- £)	(+/- %)	Reasons why not on / met target	Other impacting factors	Risks impacting on Activity	Resource implications	Action to get back / stay on track
Objectives for 2012:													
C) Charging levels are set equitably across barristers and within overarching parameters for current and future years, and are set transparently using sound fee setting policy													
a) Fees and Charges review scope defined	Jul-11	R	Work may be delayed further to align with new strategic plan and to deal with impact of LSB regulatory standards framework.	Amanda Thompson	tbc	Staff Only	Staff Only	Staff Only	Waiting for outcome of CPD Review	This is also linked to the subventions review, new strategic plan and LSB's regulatory standards framework.			
b) Fees and Charges review completed	Dec-11	R	Work on this will commence following the scoping exercise - now unlikely to occur in 2011-12 year.	Amanda Thompson	tbc	tbc	tbc	tbc	Waiting for outcome of CPD Review				
Objectives for 2012:													
F) Staff recruitment and deployment decisions are in line with BSB strategic aims and the corporate plan as well as reflecting equality and diversity													
b) Implementation of salary review methodology	Dec-11	R	Discussed at May Board meeting, on track.	Vanessa Davies	tbc	tbc	tbc	tbc	na	na	na	na	na
Objectives for 2012:													
B) Regular reporting to Approved Regulator, Board and public													
a) Publication of Annual report	May-11	R	Re-write underway following comments from Board. Short summary likely to be published in February. Major consolidated report covering Jan 2010-Mar 2012 to now be published 2012. Text to Board first then final publication when audited accounts available.	Amanda Thompson	tbc	Staff Only	tbc	tbc	Re-write necessary. Pressure of other work has delayed				Work being prioritised to ensure completion. Board to agreed a change of due date to September 2012.

Values													
Aims: Fair and just: we act responsibly in the public interest Innovative: we lead change for better regulation or partner with others to do so Responsive and proactive: we listen, reflect and act; we set the agenda strategically and deliver it We support the development of a profession that reflects the diversity of society and provides equal access to justice for all													
Activities in 2011-12	Due Date	On Target	Status update	Lead Officer	Staff allocation	Allocated budget	Budget variance		Commentary				
		R / A / G			Hrs		(+/- £)	(+/- %)	Reasons why not on / met target	Other impacting factors	Risks impacting on Activity	Resource implications	Action to get back / stay on track
Objectives for 2012:													
C) Feedback from members of the public and barristers who have been involved in our regulatory processes shows that they have subjectively experienced our processes and our behaviour as being fair													
a) Investigate data to feed into the information strategy and put in place any plans to address necessary improvements	All year	R	Awaiting information from the User Satisfaction Survey.	Amanda Thompson	tbc	tbc	tbc	tbc					
Objectives for 2012:													
E) We have created a culture of openness within the organisation in relation to information													
a) Publication in line with publication scheme and to reflect possible application of Freedom of Information Act 2000 to BSB	All year	A	Date when FOI 2000 will apply is unknown. Unlikely to be this business year - formal implementation is likely to be between 2013 and 2015. Provision were made in 2012-13 business plan and budget, however were removed to keep within the '0% budget increase' boundaries.	Amanda Thompson	tbc	tbc	tbc	tbc					
Objectives for 2012:													
A) We continuously question and challenge our own policies and processes													
b) Evaluation programme devised to understand effect of LSA 2007 on profession, BSB and users of barristers' services	Dec-11	R	Work may commence on this later in the year. The MoJ will commence a triennial review of the LSA and LSB in early 2012.	Amanda Thompson	tbc	tbc	tbc	tbc					
Objectives for 2012:													
A) Members of the public, clients, barristers and stakeholder organisations are actively involved in all aspects of our work and our decision-making													
a) Develop and monitor effectiveness of consultation policy	All year	A	This will form part of the Governance handbook and feed into work planned for later in the year on policy development	Amanda Thompson	tbc	Staff Only	Staff Only	Staff Only					The Board agreed at its November meeting that the Governance Handbook Due Date is altered to April 2012. The consultation policy will be drafted in line with the handbook schedule.

BAR COUNCIL												
MANAGEMENT ACCOUNTS : DECEMBER 2011												
Expenditure : BSB												
Summary Budget												
Budget Holder : Vanessa Davies												
Cc Amanda Thompson												
dec11bsbmanaccs												
2010		Dec	Dec	Dec	Month	Dec	Dec	Dec	YTD 2011	Period	Dec	Dec
YTD		Month	Month	Month	%	YTD 2011	YTD 2011	YTD 2011	%	2011/12	Month	YTD 2011
Actual		Actual	Budget	Var.F(U)	Variance	Actual	Budget	Var.F(U)	Variance	Budget	Budget	Budget
£		£	£	£		£	£	£		£	£	£
458,997	Executive	41,918	97,320	55,402	56.9%	420,481	550,936	130,455	23.7%	662,085	30,945	581,881
320,860	Strategy	23,468	31,470	8,002	25.4%	312,365	378,260	65,895	17.4%	470,126	29,618	407,878
1,076,327	Professional Conduct	96,986	96,152	(834)	-0.9%	1,071,007	1,175,759	104,752	8.9%	1,469,111	93,050	1,268,809
640,294	Education Standards	53,023	54,852	1,829	3.3%	654,365	761,160	106,795	14.0%	925,276	46,009	807,169
239,422	Qualification Regs.	24,706	28,891	4,185	14.5%	330,961	349,136	18,175	5.2%	436,173	29,042	378,178
442,072	Professional Practice	82,851	38,310	(44,541)	-116.3%	428,587	307,926	(120,661)	-39.2%	378,983	22,948	330,874
6,172	Quality	21,232	14,351	(6,881)	-47.9%	195,573	176,577	(18,996)	-10.8%	218,004	13,741	190,318
0	QASA	3,630	2,000	(1,630)	-81.5%	26,720	24,800	(1,920)	-7.7%	24,800	0	24,800
3,184,143	TOTAL : DEPT.	347,814	363,346	15,532	4.3%	3,440,058	3,724,554	284,496	7.6%	4,584,558	327,243	3,989,907
	Directly Attributable Income:											
128,115	Fines & Cost Recovery	18,702	0	18,702		105,019	0	105,019		205,000	0	0
583,050	Validation	0	0	0		576,150	600,000	(23,850)	-4.0%	600,000	0	600,000
179,753	Accreditation	17,180	30,000	(12,820)	-42.7%	203,205	220,000	(16,795)	-7.6%	295,000	25,000	245,000
24,950	JASB	2,958	0	2,958		53,842	18,800	35,042	186.4%	18,800	0	18,800
115,480	BPTC Online	10,960	25,000	(14,040)	-56.2%	116,200	100,000	16,200	16.2%	125,000	25,000	125,000
0	BPTC Accreditation	0	4,000	(4,000)	-100.0%	0	12,000	(12,000)	-100.0%	15,000	0	12,000
	Bar Transfer Test	0	0	0		10,875	0	10,875		0	0	0
161,210	Qual. Comm. App	19,532	14,000	5,532	39.5%	194,427	200,000	(5,573)	-2.8%	250,000	10,000	210,000
47,259	Academic Stage	2,260	4,000	(1,740)	-43.5%	64,038	59,500	4,538	7.6%	74,400	5,000	64,500
3,225	Bar Exam	0	200	(200)	-100.0%	2,145	3,000	(855)	-28.5%	3,800	300	3,300
1,114,927	Subtotal	52,890	77,200	(24,310)	-31.5%	1,220,882	1,213,300	7,582	0.6%	1,382,000	65,300	1,278,600
1,243,042	TOTAL	71,592	77,200	(5,608)	-7.3%	1,325,901	1,213,300	112,601	9.3%	1,587,000	65,300	1,278,600

BAR COUNCIL												
MANAGEMENT ACCOUNTS : JANUARY 2012												
Expenditure : BSB												
Summary Budget												
Budget Holder : Vanessa Davies												
Cc Amanda Thompson												
jan12bsbmanaccs												
2010		Jan	Jan	Jan	Month	Jan	Jan	Jan	YTD 2011	Period	Feb	Feb
YTD		Month	Month	Month	%	YTD 2011	YTD 2011	YTD 2011	%	2011/12	Month	YTD 2011
Actual		Actual	Budget	Var.F(U)	Variance	Actual	Budget	Var.F(U)	Variance	Budget	Budget	Budget
£		£	£	£		£	£	£		£	£	£
458,997	Executive	25,396	30,945	5,549	17.9%	445,877	581,881	136,004	23.4%	662,085	30,945	612,826
320,860	Strategy	23,925	29,618	5,694	19.2%	336,290	407,878	71,588	17.6%	470,126	29,623	437,501
1,076,327	Professional Conduct	84,521	93,550	9,029	9.7%	1,155,528	1,269,309	113,781	9.0%	1,469,111	99,649	1,368,958
640,294	Education Standards	37,436	46,009	8,573	18.6%	691,801	807,169	115,368	14.3%	925,276	70,560	877,729
239,422	Qualification Regs.	26,256	29,042	2,786	9.6%	357,217	378,178	20,961	5.5%	436,173	28,948	407,126
442,072	Professional Practice	54,942	22,948	(31,994)	-139.4%	483,529	330,874	(152,655)	-46.1%	378,983	24,048	354,922
6,172	Quality	3,695	13,741	10,046	73.1%	199,268	190,318	(8,950)	-4.7%	218,004	13,843	204,161
0	QASA	17,321	0	(17,321)		44,041	24,800	(19,241)	-77.6%	24,800	0	24,800
3,184,143	TOTAL : DEPT.	273,491	265,853	(7,638)	-2.9%	3,713,550	3,990,407	276,857	6.9%	4,584,558	359,506	4,288,023
	Directly Attributable Income:											
128,115	Fines & Cost Recovery	7,135	0	7,135		112,154	0	112,154		205,000	0	0
583,050	Validation	0	0	0		576,150	600,000	(23,850)	-4.0%	600,000	0	600,000
179,753	Accreditation	37,000	25,000	12,000	48.0%	240,205	245,000	(4,795)	-2.0%	295,000	25,000	270,000
24,950	JASB	500	0	500		54,342	18,800	35,542	189.1%	18,800	0	18,800
115,480	BPTC Online	84,960	25,000	59,960	239.8%	201,160	125,000	76,160	60.9%	125,000	0	125,000
0	BPTC Accreditation	0	0	0		0	15,000	(15,000)	-100.0%	15,000	0	15,000
	Bar Transfer Test	0	0	0		10,875	0	10,875		0	0	0
161,210	Qual. Comm. App	19,965	10,000	9,965	99.7%	214,392	210,000	4,392	2.1%	250,000	20,000	230,000
47,259	Academic Stage	3,675	5,000	(1,325)	-26.5%	67,713	64,500	3,213	5.0%	74,400	4,900	69,400
3,225	Bar Exam	495	300	195	65.0%	2,640	3,300	(660)	-20.0%	3,800	200	3,500
1,114,927	Subtotal	146,595	65,300	81,295	124.5%	1,367,477	1,281,600	85,877	6.7%	1,382,000	50,100	1,331,700
1,243,042	TOTAL	153,730	65,300	88,430	135.4%	1,479,630	1,281,600	198,030	15.5%	1,587,000	50,100	1,331,700

Chair's Report on Visits and Meetings January – February 2012**Status:**

1. For noting

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last board meeting.

List of Visits and Meetings:

- 20 Jan Chaired schoolchildren's debate on "advertising and young people" at the House of Lords, part of the Parliament Education programme.
- Participated in conference call re QASA with Sir John Thomas
- 23 Jan Meeting with Sir John Thomas re QASA at the RCJ.
- Dinner at Mercers' Hall to celebrate Gresham College professors: my 6-lecture series this year is entitled *Regulation, Regulation, Regulation* and includes two on legal regulation.
- 24 Jan Attended lecture in Oxford by Law Society President John Wotton on "Fission or Fusion". He predicted fusion of solicitors and barristers but also drew attention to possible micromanagement by the LSB.
<http://www.sbs.ox.ac.uk/centres/professionalservices/Documents/Law%20Society%20Lecture%20transcript.pdf>.
- 25 Jan Attended Scarman lecture at Middle Temple by S Africa Constitutional Court judge Edwin Cameron "What you can do with rights"
http://www.justice.gov.uk/lawcommission/docs/Scarman_2012_Justice_Cameron_What_you_can_do_with_rights.pdf
- I was delighted that he opened his lecture by quoting from my *Guardian* profile of Lord Scarman, "My Legal Hero" <http://www.guardian.co.uk/law/2011/jan/20/lord-scarman-brixton-human-rights>
- 27 Jan Spoke at Student Bar Society in Oxford, *From Student to Barrister*. In this lecture, available on request, I described recent reforms to education, pupillage etc. Comments from the audience were largely about the BPTC providers, the fee for the aptitude test, whether admission should depend on prior securing of pupillage and whether pupillage was necessary.
- 31 Jan Attended Select Committee on Communications, House of Lords
- 2 Feb Attended Retention Working Group meeting at Inner Temple. This all-Inns meeting considered ways to retain women at the Bar, including the link to the new Parental

- Reference Hub which will be available on the Bar Council website, persuading barristers' clerks to help returners, and noted that there will be held at Middle Temple the first ever "Women's Forum" on 6 March
<http://www.middletemple.org.uk/downloads/MT%20Winter%202011.pdf>
- Participated in conference call re QASA, a prelude to a weekend of drafting.
- Attended "Law, Politics and the Future of the Human Rights Act" seminar at Middle Temple, chaired by Lord Phillips.
- 3 Feb Attended Board meeting at Gresham College
- Attended Chairmen's Committee meeting; QASA and CEO were the topics.
- 6 Feb Participated in conference call re QASA with Sir John Thomas
- Meeting re QASA with Sir John Thomas.
- 7 Feb Attended Select Committee on Communications, House of Lords
- 8 Feb Catch up with Sir John Thomas at Royal Courts of Justice: We discussed QASA and the future of the Bar.
- Dinner at Inner Temple, the Director was my guest
- 9 Feb Met with Max Hill QC re QASA
- Lunch with Aina Khan at RJW solicitors to discuss Sharia law.
- Meeting with LSB re business planning priorities: discussed their Business Plan and Regulatory Standards publication and various other issues. M. Nicklin, P. Diggle, R. Thompson, G. Nice, V. Davies, A. Thompson and I attended. We made a presentation on priorities and how their work impacted on ours.
- 10 Feb Presented prizes at St Anne's College Law Dinner, which included barrister alumni.
- 11 Feb Lunch with 3 Supreme Court Justices attending memorial service for Lord Rodger.
- 12 Feb Chaired session of Oxford conference "Israel and the Changing Middle East", Dept of Politics and International Relations
- 13 Feb Farewell Dinner with John Carrier and Andrew Mitchell at House of Lords

- 14 Feb Attended Governance, Risk & Audit Committee
- Arranging speeches by Professors Jowell and Feldman on the Parliament Acts for the House of Lords *Campaign for an Effective Second Chamber*.
- Speaking about Genetics at *Faith in the Future* seminar for teenagers, House of Lords
- 16 Feb Lunch with the Director of the Campaign for Freedom of Information
- 17 Feb Attending discussion about journalists, freedom and the media, SEH, Oxford
- 21 Feb Attending National Union of Students meeting, House of Lords
- Meeting Mr Justice Burton at Gray's Inn about pupillage.
- 22 Feb Attending COIC meeting
- Attending SRA reception to mark the launch of ABSs
- 23 Feb Meeting with Catherine Lee, Director of Access to Justice at the MoJ

Equality Impact Assessment

3. No Impact

Risk implications

4. These reports address the risk of poor governance by improving openness and transparency.

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Baroness Ruth Deech

Director's Report

Status

For consideration and noting.

Director

Considerable senior (Board and executive) time has been spent in relation to the further development of QASA, which appears elsewhere on the agenda. We are indebted to Sir John Thomas, President of the QBD, for chairing several very helpful meetings of key stakeholders to maintain progress on the scheme. We were consulted by Moses LJ prior to his Ebsworth Memorial Lecture and as a result were able to ensure that the Chair of the LSB was invited to attend. We continue to work closely with all stakeholders.

The question of quality assurance schemes in other areas of law has sparked interest amongst sectors of the regulated community and as a result I had a very useful meeting with Chairs of several Specialist Bar Associations (SBA's) to explain the regulatory role. We agreed to maintain a dialogue on the issue.

On 21 February I spoke at a debate on Diversity at the Bar, hosted by the College of Law and chaired by Cherie Booth QC. This was a useful opportunity to present data drawn from the Bar Barometer and the Biennial Survey, and to give early publicity to our new equality objectives, which are reported on further below.

A joint (mini) Board meeting was held with the LSB on 9 February, focusing on business and strategic plans and aiming to build relationships for successful future working. Board members involved in PRP and GRA were key players, and those two committees have now had their first meetings and scoped their work for the forthcoming year.

These committees will play a significant role in the LSB assessment in relation to "Developing Regulatory Standards" which we are required to conduct. Considerable senior management team (SMT) time has been spent on the framework this month. This has involved assessing the draft 2012/13 business plan in the light of the framework and further discussion and planning of the assessment itself. We aim to have first drafts prepared for SMT consideration by 5 March.

As has been previously noted by the Board, the LSB framework will steer significant shifts in the organisation, not least culturally. Equipping the SMT to deal with the change programme ahead was the focus of the second of our "top team" development days on 21 February.

Internally, further work has been done on the pay and grading review and the Emoluments Committee met on 15 February to consider strategic options. We have also commenced work on the re-draft of the Finance Manual to better reflect the requirements of the Internal Governance Rules (IGRs) set by the LSB, and following the agreement to split the Approved Regulator FAC into two committees for Finance and Audit respectively.

Professional Practice Team

The Professional Practice team and the Entity Regulation Programme Board have been finalising our consultations on the new Code of Conduct and entity regulation, which are elsewhere on the agenda.

On 20 January 2012, the LSB issued the BSB with a warning notice pursuant to paragraph 21(1)(b) of Part 3 of Schedule 4 to the Legal Services Act in relation to our application for

approval of the new Standard Contractual Terms. The warning notice informs the BSB that the LSB is considering whether to refuse the BSB application and gives the LSB more time to seek further advice on the issues raised. The LSB has raised a number of legitimate questions in relation to this application, and have sought legal advice on certain aspects. Following the warning notice, they have written to key stakeholders (including the Bar Council) for feedback on the application. Those responses will be shared with the BSB so that we can make further representations before the LSB reaches a final view. An internal action plan has been agreed.

Quality

Chambers monitoring and regulatory standards

- The Chambers Monitoring Working Group had its first meeting in January. The group was set up to advise the QA Committee on the development of a new risk based monitoring strategy that would ensure compliance with the LSB's regulatory standards. The intention is for a consultation on the new framework to be presented to the Board for approval in September and for the new approach to be implemented in early 2013. There is a consultation expected from the LSB within the next month on a proposed regulatory toolkit for removing and reducing risks, which will provide further insight into what the LSB will expect from the new monitoring scheme.

Other activity by the team is reflected in the QASA update item on the Part 2 agenda.

Education and Training

The first meeting of 2012 of the Education & Training Committee took place on 8 February, with many new members.

Legal Education and Training Review

- The Research group reported in February to the Research Executive, with their thorough and comprehensive Literature Review which is to be published on the LETR website. Some short comments were provided, mainly to the effect that it was considered disappointing that more reference was not made to the reviews carried out by the BSB. Some emerging themes will be identified by the Research group soon. Professor Julian Web, leader of the Research group, attended the Education & Training Committee on 8 February to update members of the Committee. An international symposium (Manchester 8-9 July 2012) is being organised and the LSB is also holding a series of related seminars on the review of Legal Education (see <http://letr.org.uk/>).

Academic Stage/Joint Academic Stage Board

- The Joint Academic Stage Board met on 17 February 2012. The Board is taking steps to feed in as appropriate, to the LETR.

Bar Course

- Only a small number of responses to the consultation on the Aptitude Test have been received so far but it is expected that more will be received closer to the closing date on 29 February 2012. Depending on the consultation, a formal submission will be prepared for the LSB, for approval at the March meeting of the BSB. Timing is tight but the schedule must be adhered to if time is to be allowed for the LSB approval process,

and setting up of the Test by Pearson Vue in time for it to be utilised as a formal entry requirement for candidates applying from November 2012 to start in September 2013.

- The project to establish Centralised Examinations in Civil Litigation, Criminal Litigation and Ethics has encountered some problems in terms of the range and quality of questions provided by the BPTC Providers for the Question Bank, the additional time needed for the Examiners to formulate the Centralised Examination papers, and problems with the IT systems to be used to implement the system. With the addition of further resources from within existing budgets to support the Centralised Examination Board, in spite of real difficulties and escalated risk, it is expected that all will be in place by April as planned.
- Consultation has taken place with Field Fisher Waterhouse concerning the contracts for the provision of the BPTC from summer 2013, which is in hand.
- Some revisions were made to the BPTC Assessment criteria to allow one additional chance at re-sit for students who had failed the entire course by one very marginal fail in one assessment. The ReDOC (Resolution of Disputes out of Court) Working Group has met to progress the review of the new module. Four out of five scheduled visits to Providers have been completed. Consideration is being given to a more economical, one-day, BPTC Conference, due to budget constraints.

Bar Transfer Test

- Meetings have taken place to review the Bar Transfer Test. A mapping exercise is being carried out to compare the content of the BTT as against the BPTC. The Handbook is being completely revised and redrafted.

Pupillage stage

- Counsel's opinion has been provided on the legality of the imposition of a common timetable (or possibly a common compulsory system) by the BSB. This is being carefully considered by the Pupillage Sub-committee who are also looking at the regulations covering pupillage more generally.
- Participation in Inns' training for pupils and supervisors is continuing. Further consideration is being given to the proposed 'Pupillage Event', since resources might be better expended elsewhere.

CPD stage

- An analysis of all the responses to the consultation has been considered by the CPD Steering Group and some tentative recommendations are being drafted. Issues related to the legal implications of the proposed link between completion of CPD requirements and Authorisation to Practise are still under consideration, and operational issues are also being fully considered. It is hoped that, following further discussion in the Steering Group, the findings and recommendations can be presented in the form of a proposed submission to the LSB, at the March meeting of the BSB.

Qualification Regulations

- The full Qualifications Committee met on 6 February 2012. It undertook reviews of nine decisions of its Panels. It upheld the original decision in six cases and varied the original decision in three cases.

- The Training Compliance team has been working hard logging the CPD record cards of all those barristers who had returned them by the due date of 31 January 2012.

Equality and Diversity

Equality Objectives

- The BSB EDC considered 10 recommended equality objectives, both internal for staff and external for the profession, at its meeting in January. The BSB must publish one or more equality objectives by 6 April 2012. The Committee approved the objectives and they will be presented to the March Board for approval prior to publication in April.

Equality Champions Group

- The BSB SPO is in the process of creating an 'Equality Champions' group. The Champions group will play a central role in disseminating good practice and encouraging the promotion of equalities across the BSB. The names of representatives from each team have now been confirmed by managers, and dates are being selected for meetings throughout the year. It is anticipated that the first meeting will be in March and will focus on the Terms of Reference for the group, and refreshing the equality impact assessment process, forms and guidance.

LSB Equality Objectives Consultation

- In December the LSB released a consultation document setting out its proposed equality objectives for 2012/13. The E&D team has received comments and feedback from the Senior Management team and a draft response is being prepared. The consultation closes on 9 March 2012.

LSB Data Collection Project

- The BSB's detailed plans were submitted to the LSB on 30 January. The LSB has considered the plans and has requested clarification on a number of issues; these are the subject of discussions between the EDA and LSB lead. The draft data collection rules and guidance have been developed by FFW and considered by the Project Board. Revisions proposed by the Project Board have been worked into the rules which will be presented to Standards Committee on 22 February following which the finalised rules will be presented to the Board.

Legal Education and Training Review

- The SRA is leading on the establishment of a forum to channel views on E&D/social mobility issues into the Legal Education and Training Review research process. This work has arisen in response to concerns that the project's Consultation Steering Panel may not be able to fully reflect the range of concerns around E&D. The Panel has therefore decided to set up an advisory group which will provide expert advice to the Panel on E&D issues. The E&D team has been working with the SRA to nominate members for the advisory group and approve its Terms of Reference.

Professional Conduct

Challenge to the independence of the disciplinary cases

- Judgment was recently given by the Visitors in respect of an appeal wherein a challenge had been raised in relation to the independence of the original Disciplinary

Tribunal Panel (and also the Visitors' Panel hearing the appeal). The argument centred upon the Panel being perceived as biased towards the Bar Standards Board based upon (1) the system for paying lay members' fees and expenses which are ultimately paid by the Bar Council and in the past had been paid directly by the Bar Council, and (2) the Bar Standards Board's involvement in the drafting and preparation of an Information and Guidance Pack issued by COIC to its panellists. The appeal was dismissed and the Visitors rejected the argument that there was any basis upon which the non-judicial visitors should recuse themselves. The argument that the Tribunal below had been infected with bias was also rejected. The barrister has recently indicated that he is considering challenging the decision of the Visitors by way of a claim for Judicial Review.

Judicial Reviews

- There are now seven outstanding judicial review cases. In the two most recent cases received in December 2011, the grounds allege apparent bias on the part of the non-judicial members of the Panel for a variety of reasons, including the basis upon which they are paid (ie by the Bar Council) and for the Bar Standards Board's involvement in drafting the Guidance Pack issued by COIC. In another case where permission has been granted on a single ground in relation to costs, an oral renewal hearing took place in the Court of Appeal on 1 February in respect of the refused grounds: that application was refused. We still await a hearing date for the substantive application for this judicial review to take place.

Strategy and Communications

Business planning

- Work continues on the 2012-13 business plan, as dealt with in more detail in a separate agenda item at this meeting, and work is already underway for the preparation of the 2013-16 three year strategic plan.

Website & Twitter

- The new website went live successfully on 15 December 2011 and has received over 36,770 unique visitors to date. We have received a number of compliments about the look and feel of the new site as well as, more importantly, its ease of use. People see it as a considerable improvement. There have been a few issues with the search function and the layout of the Code, which have been resolved or are currently being resolved. As of Tuesday 14 February we have 2,065 followers on Twitter. As previously reported, our website traffic increases when we tweet as well as after the Chair's monthly email to the profession is sent.

Committee recruitment

- The committee recruitment process completed with a number of lay appointments being made and a small number of barristers, leaving some barrister member vacancies. A second round of advertising and interviewing is underway, due to be completed on 13 March. Appointments will be made as soon as possible after that.

Governance Handbook

- This work has been delayed due to the need to revise the business plan and prior to that, the development and implementation of the internal complaints policy. Staff training for our new Feedback and Complaints policy was completed in January. Work

will recommence on the Handbook as soon as it is possible to do so. Work is underway to revise the Finance Manual with the Bar Council.

Communications activity

- This month has seen a lot of work being undertaken in preparation for the launch of Authorisation to Practise, the Code consultation, QASA and the data collection project. As a result, the next few months will see a considerable amount of communications activity being necessary. We have also seen a significant increase in activity around our disciplinary findings, possibly as a result of the improved accessibility of the new website.

Communications team changes

- It is with regret that we advise that our Communications Manager, Rachel Podolak, is leaving us. She has been appointed to the role of Head of Welsh Affairs for the General Medical Council. It is an exciting opportunity for her and we wish her well although we will of course miss her enormously. Recruitment plans are being drawn up at present.

Service Level Agreements (with Central Services)

- The BSB held a Service User group meeting in January to look at the services provided by the Central Services Teams. We are meeting up with our Central Services colleagues to go through any issues that have arisen in the last six months and to discuss work that will impact on staff in the next few months. A report will be drafted for the March 2012 PRP meeting.

Dr Vanessa Davies
Director, Bar Standards Board
16 February 2012