



REGULATING BARRISTERS

The Legal Services Act 2007

Implications for the regulation of the Bar of England and Wales

Second consultation paper

Legal Disciplinary Practices and Partnerships of Barristers

December 2008

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Introduction

1. In February 2008 the Bar Standards Board (“the Board”) issued a first consultation paper on the implications of the Legal Services Act 2007 (“the Act”) for the regulation of the Bar in England and Wales. The Board received over 50 responses to that paper. It also heard from a large number of barristers and others who attended seminars held in March and April this year, at which the implications of the Act and the content of the first consultation paper were discussed. The written submissions and a summary of them are available on the Board’s website in the ‘Legal Services Act’ section (www.barstandardsboard.org.uk).
2. The Board is very grateful to all who submitted responses, which were detailed, thoughtful and helpful, and to those who attended the seminars. All observations made at the seminars and all responses have been carefully considered. The present consultation paper takes full account of the views and responses, even though it may not refer to each argument or observation that was made.
3. The responses received were notable for their divergence of views, even on fundamental questions. Many responses themselves included different views from different members of the committees or working groups that had produced them. It is clear to the Board that there is not, and will not be, agreement or even a clear majority view on most of the questions raised in the first consultation paper. The only issue on which it could be said that there was a clear majority view was that the cab rank rule (rule 602 of the Code of Conduct¹) should be retained for self-employed barristers, regardless of whether it is disapplied to barristers working in other business structures.
4. The first issue discussed in this second consultation paper is whether barristers should be allowed to practise, that is, to supply legal services to the public, as managers of Legal Disciplinary Practices (LDPs). The paper then discusses the further issue whether barristers should be allowed to practise as members of a partnership (and in due course in other business structures) consisting exclusively of barristers. In discussing those issues, the question of the application of the cab rank rule is addressed.
5. This paper does not address the related issue of whether barristers should be allowed to practise as managers of alternative business structures² (ABSs) as there are many questions concerning the structure and ownership of ABSs which have not yet begun to be considered. Many of the issues of principle will, however, be the same as for LDPs, at least in relation to those ABSs whose activities and structure are similar to those of LDPs. And LDPs with non-lawyer managers will have to become ABSs and be regulated as such when the full ABS regime in the Act comes into force. Whether there should be any relaxation of rules in the Code restricting the kinds of work that self-employed barristers can do (Part V of the first consultation paper) will be addressed in a further consultation paper in due course.

¹ For convenience, Appendix A sets out the text of the paragraphs of the Code of Conduct to which the paper refers.

² The “Alternative Business Structures” (ABSs) envisaged by the Act are described further in paragraphs 45 and 46 of the first consultation paper.

6. This paper does not discuss the question whether the Board should regulate LDPs (or ABSs). Neither it nor the Bar Council currently has power to do so. Once the relevant provisions of the Legal Services Act are in force it would be open to the Bar Council to seek the necessary powers, but that is a matter for the Bar Council, not the Board.

Part 1: Legal Disciplinary Practices

Legal Disciplinary Practices (LDPs)

7. Schedule 16 to the Act confers on the Solicitors Regulation Authority (SRA), through the Law Society, power to permit the establishment of LDPs³ and to regulate LDPs and those who work in them. A LDP may be a body corporate or unincorporated. In broad terms, in order to come under the provisions of schedule 16 at least 75 per cent of the managers⁴ of a LDP must be legally qualified; at least one of them must be a solicitor or a registered European lawyer; and at least 75 per cent of any shares or voting rights in the body must be held by persons who are legally qualified. The Act therefore facilitates the establishment of, for instance, partnerships of barristers and solicitors, as well as partnerships of solicitors and non-lawyers, or of solicitors, barristers and non-lawyers. A non-lawyer manager must be both an individual and approved by the SRA to be a manager of the LDP.
8. Schedule 17 to the Act confers power on the Council for Licensed Conveyancers (CLC) to regulate bodies that provide conveyancing services and other restricted legal services, where an authorised person of a kind qualified to provide such services is a manager, employee or owner of an interest in the body. There is no requirement for more than one manager to be a licensed conveyancer (or a company of which a licensed conveyancer is a director). The Act in this regard therefore contemplates the establishment of, for instance, a partnership of licensed conveyancers, barristers and non-lawyers.
9. The Board has been advised by Leading Counsel that neither it nor the Bar Council currently has power to regulate any body of persons, only individual barristers. To obtain such power in relation to LDPs, the Bar Council would need to seek approval under the Act for appropriate amendments to its constitution. In the absence of powers to regulate entities, the Board could not itself take on the role of regulating LDPs. Even in the longer term it seems likely that the substantial majority of any barristers who became managers of LDPs would join LDPs regulated by the SRA. Nevertheless, this paper is not restricted to LDPs regulated by the SRA but addresses the issue of principle on a broader basis, regardless of who is the entity regulator.⁵
10. In July 2008 the SRA published regulations relating to LDPs and proposed amendments to the Solicitors' Code of Conduct. Subject to approval by the Ministry of Justice, they are expected to come into force in March 2009⁶. Neither they nor the Act would prevent barristers from becoming managers of LDPs. However,

³ Described in the Act as "legal services bodies".

⁴ A manager is defined in the Act as a member of a body corporate; a director; a partner in a partnership; or a member of the governing body.

⁵ The content of the rules of any particular entity regulator will, however, be a highly material consideration in deciding on what terms a barrister might in due course be allowed to become a manager of a firm regulated by that regulator. At this stage, proposed amendments to the Code of Conduct relate only to LDPs regulated by the SRA because the CLC has not yet published its proposed rule changes or regulations for LDPs.

⁶ The CLC hopes to meet the same timetable but it has not yet published rules or regulations.

paragraph 205 of the Bar's Code of Conduct forbids a practising barrister to supply legal services to the public through or on behalf of any other person (including a partnership, company, or other corporate body) except as the employee of a solicitor or firm of solicitors.⁷ The paragraph would preclude the provision of legal services by a barrister acting as the manager or employee of a LDP. It is hard to see why barristers should be forbidden to practise as employees⁸ of a LDP, just as they can now practise as employees of firms of solicitors. None of the responses to the first consultation paper suggested that barristers should be forbidden to practise as employees of LDPs, and many said explicitly that they should be allowed to do so. The Board therefore believes that the Code of Conduct should be amended to allow barristers employed by LDPs regulated by the SRA to supply legal services to the public. The issue is whether it should be further modified so as to permit barristers to become managers of such LDPs.

11. LDPs may take a number of forms, including partnerships under the Partnership Act 1890, limited liability partnerships under the Limited Liability Partnerships Act 2000, and limited liability companies. In the context of the issues discussed in this paper the Board can see no reason based on the public interest to distinguish between these different forms, and believes that it would be artificial and impracticable to try to do so. In this paper the term "LDP" is therefore used to cover all the various possible structures without distinction, save where expressly stated to the contrary.

General framework of the Board's consideration

12. The Board appreciates the force of the argument that the restriction in paragraph 205 works well and should therefore be retained unless it can be demonstrated that there is good reason to change it. However, the paragraph was adopted when the ways in which legal services could lawfully be supplied to the public were much more restricted than what will be permissible under the Act. The Board therefore believes that the restriction should be considered afresh and in the light of the business environment and regulatory objectives created by the Act. The Board is mindful of the fact that the Act embodies the view, which must be taken to have been endorsed by Parliament, that the new ways of supplying legal services either expressly permitted or tacitly contemplated by the Act have important potential benefits both for consumers and for the providers of legal services. The Clementi Report, the Government's White Paper and the Explanatory Notes for the Act all contain the assumption that barristers and solicitors should be able to provide legal services through the same business entity, with or without non-lawyer managers and shareholders. Moreover, the regulatory objectives enshrined in section 1 of the Act, which all approved regulators are under a duty to promote, require the promotion of the interests of consumer and of competition in the provision of legal services.
13. A fundamental premise of the Board's consideration is that barristers should be allowed to do whatever is lawful and, in particular, should be able to practise in whatever form of business organisation they think suitable unless there are good reasons based on the public interest in its widest sense for taking a contrary view. In other words, unless the Board is persuaded by logic or by evidence that a restriction is justified in the public interest, taking into account the regulatory objectives in the Act, there should be no restriction on barristers practising as

⁷ There are a few other exceptions not relevant to the issues discussed in this paper.

⁸ It is possible that the manager of a LDP might also be an employee. For the purpose of the discussion in this paper such persons are not regarded as employees.

managers of LDPs. The Board recognises that others have argued that since the public interest is well served by the existing referral model, there should not be any change to the existing rules unless there is evidence that change will serve the public better, but the Board has difficulty in accepting this approach given the new regulatory climate and objectives created by the Act.

14. The Board has also considered whether it would be lawful to prevent barristers from practising as managers of a LDP: this is discussed in paragraphs 15 to 19 below.

Competition aspects

15. A prohibition on barristers practising as managers of LDPs would be a restriction on competition and would therefore need to be justified both under the general law relating to competition, including the relevant provisions of the European Community Treaty, and under the provisions of the Act, which lays down as a regulatory objective the promotion of competition. Prima facie, a rule that prohibits economic operators, including barristers, from engaging in any form of organisational structure in supplying their services to clients is restrictive of actual or potential competition.
16. In its response to the first consultation paper the Office of Fair Trading (OFT) made the following observations.

“The OFT has identified the prohibition on barristers forming partnerships with other barristers or with other professionals as amongst the most restrictive of competition . The Clementi Report recommended that lawyers from different professional bodies should be allowed to practise together as equals and that outside ownership of such practices should be permitted.

The OFT takes the view that prohibiting partnerships, between lawyers from different professional bodies, restricts the lawyers’ choice of adapting their business structures to best suit their clients’ needs and raises costs and fees. It prevents them from taking advantages of efficiencies that other organisational forms provide.

It has always been the view of the OFT that, allowing partnerships between barristers and others has the potential to increase the availability of barristers, by attracting practitioners to new areas of practice. A barrister should retain the ability to do so without having to requalify as a solicitor, It paves the way for young barristers to gain excellent legal experience and pupillage.

Since the Legal Services Act permits the formation of ABSs which allow barristers to practise in these entities then the Board should revise the Code of Conduct to reflect the wishes of Parliament.”

The OFT’s response went on to say that these comments also applied to barristers providing legal services to the public while acting as a manager of a LDP.

17. In view of the importance of the competition issues to the matters discussed in this paper the Board sought legal advice from Mr Peter Roth QC. His advice is available at the ‘Legal Services Act’ section of the BSB website (www.barstandardsboard.org.uk). The Board has noted in particular Mr Roth’s opinion that the prohibition on barristers entering into partnerships, and also any prohibition upon them entering into ABSs, has the potential appreciably to limit competition; and that on balance a complete prohibition on barristers practising in different business structures is not inherently necessary or proportionate in order to

ensure that the public has a sufficiently wide choice of Counsel. Mr Roth also advises that the maintenance of the prohibition is likely to be a failure on the part of the Board to promote the regulatory objectives in the Act, i.e. a breach of the positive statutory duty as well as a breach of the negative obligation under the Treaty not unjustifiably to restrict competition.

18. The Board is aware that opinions given to others have come to a different conclusion. However, those opinions appear to the Board to be based on assumptions regarding the future development of legal services which the Board does not share. In particular, it appears to have been assumed that a substantial proportion of the Bar would wish to practise in the forms of organisation discussed in the first consultation paper. However, the responses to the paper did not suggest that there was widespread interest in such forms of practice; and as noted, for example, in paragraph 34 below, they would have drawbacks that would reduce their attractions in many fields. The Board has accordingly based its consideration on Mr Roth's opinion.
19. If Mr Roth's opinion is right, it would be unlawful to prohibit barristers from practising as managers of LDPs unless there were sound reasons based on the public interest to justify the prohibition. As explained in more detail below, the Board does not believe that there are such reasons. It would clearly be wrong for the Board to impose on barristers a restriction that it regarded as unlawful.

The arguments against allowing barristers to practise as managers of LDPs

20. As noted earlier, a fundamental premise of the Board's consideration is that barristers should be able to practise in any lawful form of business organisation unless there are good reasons based on the public interest for preventing such practice. The following paragraphs consider the main arguments that have been put forward to suggest that there are such reasons. The crucial issue is whether a prohibition on barristers practising as managers of LDPs is necessary and proportionate in order to manage the risks which would otherwise arise if the prohibition were removed.
21. Many of the arguments are based at least in part on the proposition that because self-employment is historically the main form of organisation within which barristers have practised it is the prime reason why the Bar is held – as it undoubtedly is – in high esteem both in this country and abroad. On that basis it is contended that to allow practice as a manager in alternative forms of business organisation would damage self-employed practice and the standing of the Bar; and that it should therefore be forbidden. However, it seems to the Board that the Bar is held in high regard not so much because most of its members are self-employed as because of the high quality of the advice and advocacy that it provides, its strong professional ethos, its concern for the administration of justice, and (subject to that) its concern for the interests of clients. These characteristics stem at least as much from the high standards of education and training provided to barristers and from their personal and professional qualities as from the type of business organisation within which they practise.
22. The Board recognises, however, that historically the self-employed model has contributed to the strong sense of independence of the self-employed Bar and to its professional ethos. The self-employed Bar is a valuable public resource; and its survival as an important, though not necessarily the only, way of delivering specialist advisory and advocacy services is strongly in the public interest. Were it the case

that allowing barristers to practise as managers of LDPs would be likely to signal the end of the self-employed Bar, or a substantial weakening of it, the Board would have serious concerns. However, having considered carefully all the arguments, the Board is not persuaded that allowing barristers to practise as managers of LDPs will have any such effect. A business model that has such strengths and competitive advantages is unlikely to collapse under pressure from a different kind of business model, provided that the other model is not given unfair economic or regulatory advantages. The self-employed Bar has been largely unaffected by the successive advent of employed barristers and solicitors' extended rights of audience. The reason why it has been unaffected is because of the inherent strengths and advantages of the referral model. The Board believes that these strengths and advantages will continue to be recognised for what they are, even if for some consumers recourse to a one-stop shop for legal services is sometimes more attractive for certain types of work.

23. As the Board sees it, therefore, the public interest lies in maintaining the integrity of the administration of justice, unrestricted access to justice, free choice of Counsel for those who wish to engage them, the high quality of the services provided by Counsel, and fair competition in the way that those services are provided. The Board also considers that it is important that if legal services are delivered in different ways there should be total transparency and full information about the differences, so that the consumer is fully informed and able to decide which method of delivery best suits his or her needs. It is also essential that a different method of delivering the same services should in no way lead to a reduction of the standards of the lawyer delivering them or of the quality of the service. It is against these standards that the Board has considered the arguments against allowing barristers to practise in new forms of business organisation, that is, in this part of the paper, as managers of LDPs.

24. The main such arguments are as follows:

- that the Act does not say anything about barristers becoming managers of LDPs and that any demand for LDPs should be satisfied by solicitors;
- that barristers practising as managers of LDPs will be less independent and less concerned to uphold the interests of their clients if these conflict with the interests of the LDP;
- that a significant proportion of barristers will leave self-employed practice, and that this will reduce consumer choice, especially in "niche" specialities or geographically remote or restricted areas;
- that the cab-rank rule is essential to the proper working of the Bar and to maintaining its ethos; and that it will be impossible, or at least impracticable, to apply the rule to barristers who are practising as managers of a LDP;
- that for this and other reasons LDPs will be tempted to accept only particular types of client, or to act only for claimants or for defendants, and that this will again restrict consumer choice and access to justice;
- that barristers who are managers of LDPs will be liable, like the other managers of the organisation, for any loss of clients' money it

handles; and that this is undesirable both because barristers are not trained to manage such liabilities and because they will cease to be specialist advocates.

Act silent about barrister participation in LDPs

25. It is true that the Act does not say in so many words that barristers and solicitors are to be permitted to practise in partnership together. But the Act does not identify categories of lawyer: it talks of persons being persons authorised to carry out reserved legal activities, the authorisation being granted by an approved regulator in relation to particular categories of reserved legal activities, such as the exercise of rights of audience or the conduct of litigation. The focus is therefore on authority to conduct particular activities irrespective of the professional qualification of the person in question. Both the Bar Council and the Law Society are identified by the Act as authorised regulators in relation to the same reserved legal activities.
26. It was, however, explicit in the Clementi Report and in the Government's White Paper that preceded the Legal Services Bill that in the consumer interest competition in the provision of legal services was to be promoted by allowing different kinds of lawyer to provide legal services from within the same business structure, and by allowing lawyers to practise in business structures that included non-lawyer managers and shareholders. The same principles underlie the Act itself, as reflected in the Explanatory Notes to the Act. Clearly such changes are not to take place at all costs: the new business structures are to be permitted where appropriate, consistently with the regulatory objectives, and subject to appropriate regulatory control. But equally it is impossible to say that the Act was passed on the assumption that barristers should not be part of the new regulatory landscape. The Board cannot agree that the Act has nothing to say about legal services delivered by barristers in LDPs.

Loss of independence

27. The Board is clear that it must continue to be the professional duty of any barrister, wherever he or she may practise, to give overriding priority to the interests of the court and the administration of justice. Second only to that will continue to be the professional duty to give priority to the interests of the client. Personal interests and the interests of any organisation in which the barrister may practise must be subordinate to those duties. The Board would be concerned about changes that created different classes of barrister, all of whom could practice as barristers, but to whom different standards of conduct applied. The Board has held constructive discussions with the SRA, as entity regulator, about the ways in which one can ensure that barristers who are employed by or managers of LDPs will be subject to the same duties owed to client and court as self-employed barristers. In this regard, various paragraphs of the Code have been identified as being of fundamental importance.⁹ The Board sees no reason to suppose that barristers who are managers or employees of a LDP will be more likely to disregard their professional duties or the obligations imposed on the LDP by the business regulator.
28. It is sometimes argued that, for example, the manager of a LDP might be put under pressure to continue a case, when it would be in the client's interests to settle, in

⁹ Specifically, the Board has indicated the need to retain the substance of those paragraphs of the Code (606.1, 606.4, 607, 704, 705, 708, 709, and 710.2(b), (c) and (d)) where it is not yet clear to the Board that the SRA's rules achieve the same effect.

order to maximise fees from the case. However, it would be a short-sighted commercial policy to involve clients in unnecessary expense. Moreover, the financial pressures on a self-employed barrister in this sort of situation would arguably be greater than those on the barrister manager of a LDP: a single case might well account for a much more significant proportion of his or her income than it would of the income of a LDP.

29. It is also argued that because self-employed barristers operate on a referral basis they are likely to be more willing to give unpalatable but correct advice to an important client. Again, it would be poor commercial policy, as well as a breach of professional duty, knowingly to give bad or overly optimistic advice. And several of the employed barristers who responded to the first consultation paper or attended the seminars arranged by the Board argued strongly that it was an important part of their value to their employer that they gave objective advice.
30. The Board therefore does not regard this argument as such as having much weight. However, it regards it as important that a client or potential client should fully understand that an employed barrister or a barrister manager is a member of the LDP and not a barrister in independent practice. The client must be aware that he or she has the right to require the LDP to make use of the resources of the referral Bar and is not obliged to use the services of the in-house barrister. In this context, the Board regards rule 606.1 of the Code as being of fundamental importance. This rule requires a barrister to consider whether the best interests of the client would be served by instructing or continuing to instruct him or her. It must continue to apply in substance to all barristers wherever and in whatever capacity they may be practising, as must the overriding duties that barristers owe the court.

Reduced choice of counsel

31. In assessing the potential impact of allowing barristers to practise as managers of LDPs, the Board cannot be sure how successful LDPs will prove to be, but has proceeded on the basis that they may well be a popular model of business organisation in certain areas (geographical or practice areas), and be capable over the years of attracting barristers to practise in them. Because of conflicts of interest between different clients (“conflicting out”), and the need to preserve client confidentiality, even between different cases, barristers in such LDPs might often have to refuse instructions from one client because one of their colleagues had received instructions from another. Moreover, the number of barristers in practice at the self-employed Bar in that area might be reduced, at any rate for a transitional period. If so, then (at least in the first instance) the choice of counsel available to consumers would be reduced.
32. Against this, however, it is necessary to set the following considerations.
33. First, compared with the Bars of Scotland and Northern Ireland, the practising Bar of England and Wales is very large, numbering some 17,000, of which 12,000 are self-employed. Reviews of the Clementi proposals in Scotland and Northern Ireland¹⁰ concluded that it would not be in the public interest for Clementi-type reforms to be introduced in those jurisdictions. But the reasons for the conclusion were the beneficial “bar library” systems in operation and the small size of the profession (only 560 barristers in Northern Ireland and 460 advocates in Scotland). By

¹⁰ Access to Justice: A Scottish Perspective, a Scottish Solution (Faculty of Advocates, 13.5.08) and Legal Services in Northern Ireland (Complaints, Regulation, Competition) (Legal Services Review Group – “the Bain Report” – 2006).

contrast, the self-employed Bar of England and Wales is sufficiently large and diverse to be able to absorb some degree of further competition from barristers who become managers of LDPs. And those areas where the practising self-employed Bar is limited in numbers are logically the least likely to see any or any significant numbers of barristers moving from independent practice to work as a member of a single LDP. This point is addressed further below.

34. Secondly, since fewer clients would be able to use the services of the barristers in the LDP (because of actual or potential conflicts, the commercial wishes of the firm, or both) than if those barristers had remained self-employed, there would be a restriction on the amount of business available to the LDP. This would be a powerful disincentive to engaging a disproportionate number of barristers. Conversely, the amount of work available to barristers in a single firm is likely to be significantly reduced from the amount of work available to self-employed barristers, who accept instructions from many solicitors. It will therefore be only a minority of firms that are likely to be attractive to successful self-employed barristers.
35. Thirdly, the segment of the market that could not be satisfied by LDPs would be open to others. For example, self-employed barristers from neighbouring areas could extend their practice, chambers could develop new specialisms, other LDPs could be set up to fill the gaps, or barristers could leave the original LDPs and set up on their own or in partnership with other solicitors. There is no reason to suppose that such opportunities would be ignored.
36. Fourthly, if the LDP is a successful and attractive form of organisation it will also be attractive to barristers as employees. As noted in paragraph 9 above, none of those who responded to the first consultation paper suggested that barristers should not be able to practise as employees of LDPs. It may well be more attractive to be able to practise as a manager in a LDP rather than as an employee. It has been suggested to the Board that the attraction will be especially strong in some areas, notably in those funded largely by legal aid, where it is argued that the structure of fees creates an incentive to keep control of all aspects of a case. However, it remains true that the effects on consumer choice which it is suggested will flow from allowing barristers to practise as managers of LDPs will flow in any event, to a considerable degree, from allowing them to practise as employees. The relative ease with which a barrister could re-qualify as a solicitor in order to become a manager of an LDP, if not permitted to do so as a barrister, similarly suggests that the effects on consumer choice will be little different if barristers are permitted to become managers of LDPs.
37. Fifthly, there seems to the Board to be no persuasive logic or evidence to suggest that the independent Bar would cease to exist in sufficient numbers to be able to be a significant competitor for LDPs, as it has been for solicitors' firms with employed barristers or former barristers as partners, and thereby to provide the substantial choice of Counsel that the public interest demands. It is inherently unlikely that in specialist areas of practice substantial numbers of barristers will seek to become managers of LDPs. This is because the LDP (and hence the barrister) would be likely to be conflicted from acting in a significant number of cases. Similarly in small local markets, joining a LDP would be likely to limit the amount (or variety) of work that the barrister could undertake.

The cab-rank rule

38. The cab-rank rule is set out in paragraph 602 of the Code of Conduct. It requires self-employed barristers to accept work which they have the time to undertake, which is within their expertise, and for which an appropriate fee is offered, irrespective of the strength of the client's case or their view of the character, beliefs or behaviour of the client. This positive rule operates alongside, and provides a means of policing and enforcing, the negative rule, common to both barristers and solicitors, that a client should not be discriminated against on the basis of his opinions or beliefs, the nature of his case, or the source of his funding.
39. Nearly two-thirds of those who commented on the point in their response to the first consultation paper accepted the Board's view that it would not be feasible to apply the cab-rank rule to barristers practising as managers of LDPs. This is for two main reasons.
- (a) The risk of a LDP, possibly with 20 or more members, being "conflicted out" of a substantial case by the delivery of instructions, perhaps on a minor point, to what might be the only barrister manager in the organisation, would be commercially unacceptable to the managers of the LDP. To impose the cab-rank rule would thus be tantamount to prohibiting barristers from becoming managers of a LDP. Although the deliberate conflicting out of a firm in this way would be an abuse and contrary to the regulatory objectives of the Act, it would usually be extremely difficult to detect and prevent, given the duties of confidentiality between the client and the LDP.
- (b) In what seems likely to be a popular form of LDP – the limited liability partnership (LLP) – the LDP will have a separate legal personality, and the client's contract will be with the LLP as a corporate body. The cab-rank rule could not be imposed on the LLP. Other difficulties apart, the LLP will be subject to the regulatory requirements of the SRA. These are most unlikely to include observance of the cab-rank rule, which does not apply to solicitors. Any attempt to impose the rule on barristers who were managers of a LLP would therefore have to take the indirect route of forbidding them to practise as managers of an organisation that did not voluntarily observe it. This would be tantamount to prohibiting them from becoming members of a LLP because the rule would be commercially unacceptable to most if not all LLPs.

The same argument would apply to any LDPs incorporated as companies, and in practical terms to any substantial partnership.

40. To these points could be added that a barrister wishing to practise within a LDP could do so as an employee; and employed barristers are not subject to the cab-rank rule.
41. The argument therefore would have to proceed on the basis that no barrister should be allowed to practise otherwise than subject to the cab-rank rule because the cab-rank rule is of the essence of being a barrister. But since this is already not the case with employed barristers the argument cannot be sustained on that basis. None of the responses to the first consultation paper suggested that it would be wrong for the cab-rank rule to be disapplied to barristers employed by LDPs but retained for the self-employed Bar. On the contrary, a large majority of responses favoured retaining the cab-rank rule for the self-employed Bar regardless.

42. The Board therefore regards the issue here as being one of clarity for consumers about the barristers to whom the rule applies and those to whom it does not. There is no difficulty here if the rule applies only to the self-employed Bar, and not to employed barristers or to barristers practising in LDPs. Rule 601 (non-discrimination) would continue to apply to all barristers (see paragraph 45 below).

Risk of refusal to act for certain types of client

43. The Board acknowledges that it is possible that some LDPs may decide for commercial reasons to act only for certain types of client. It is, for instance, suggested that solicitors who undertake work on personal injury cases are subject to pressure from insurance companies not to act for claimants. Many other examples of such commercial choices were given in the responses. A self-employed barrister can resist such pressure because he or she is subject to the cab-rank rule and cannot refuse to accept instructions because they come from a particular type of client. For the reasons noted in paragraph 39 above, the cab-rank rule could not be applied to LDPs or to barristers working in them.
44. The Board accepts that any resulting refusal to act for certain types of client would in principle be undesirable, both because it would reduce the choice of solicitors and Counsel available to litigants and because it is disadvantageous if barristers have experience limited to acting only for claimants or only for defendants. But how important this point is will depend on how large a proportion of barristers in any particular geographical area or speciality choose to join LDPs, and whether those LDPs are subject to the pressure described and willing to accede to it. If a significant number of able barristers remain available to accept instructions from all clients, and retain experience of acting for both claimants and defendants, there will be little damage in practice. As stated already, the Board is of the view that the self-employed Bar is sufficiently large and diverse, and the attractions of LDPs in many areas of work are so small, that a large proportion of barristers will be likely to continue to practise on the referral model.
45. Although the Board believes, for the reasons already given, that it would not be possible to apply the cab-rank rule to barristers practising in LDPs, it nevertheless believes that it is an important professional principle that barristers should be ready to act for any client, without taking a view on the merits of the client or whether his or her case should prevail. In this context, the Board would welcome views on whether it would be helpful to strengthen the provisions of paragraph 601 of the Code of Conduct. This forbids any barrister who supplies advocacy services to withhold them on the grounds (among others) that the nature of the case, or the conduct or opinions of the client, are objectionable to the barrister or to any section of the public. One possibility would be to add to paragraph 601 the substance of paragraph 602(iii), and to forbid a barrister to refuse instructions because of any opinion that he or she may have formed as to the character or conduct or guilt or innocence of the client.

Handling clients' money

46. Many LDPs will handle clients' money; and any barristers who are managers of such LDPs will (according to the SRA's proposed rules) have the right to be able to control such funds if they are familiar with the relevant requirements¹¹. They will in any event share in the liability of all the managers for any loss of that money. Such LDPs will be subject to regulation by the SRA, which will ensure both that the organisation's systems and managers' training for safeguarding client funds are adequate and that the organisation and, if appropriate, its managers individually have adequate insurance to cover any potential losses. In the last resort, compensation from the Solicitors' Compensation Fund ("SCF") would be available. The Board has held constructive discussions with the SRA with a view to ensuring that in no circumstances can additional costs fall on the Bar and it has been assured by the SRA that it accepts this approach.
47. It is therefore hard to see how there could be any greater risk to the public, or any risk of additional costs falling on the Bar, directly or indirectly, if barristers are allowed to be managers of LDPs which handle clients' money. If there is a greater risk perceived, this would be a matter primarily for the SRA as entity regulator, and only secondarily and if necessary for the Board as regulator of the individual barrister or barristers. It has nevertheless been suggested that barristers should not be permitted to handle client monies and so should not be allowed to become managers of LDPs, for the following reasons.
1. Barristers are not trained to handle clients' money.
 2. If barristers handle clients' money they will be diverted from their special skills of advice and advocacy.
 3. If a barrister is a manager of a LDP which misappropriates the funds of clients he or she will be involved in the resulting scandal, and this will be damaging to the reputation of the Bar.
 4. There may be a risk of the SCF refusing to pay out for losses potentially covered by any personal insurance policy held by the barrister.
48. The Board's comments on those arguments are as follows.
1. No doubt any barrister manager of a LDP would be well advised to undergo appropriate training. It would be surprising if the SRA as the entity regulator whose compensation fund would otherwise be at risk did not require this. If it did not, the Board itself could, if it thought it proportionate, impose such requirement, though it currently seems to the Board that lack of such training would not of itself be a sound reason for preventing the barrister concerned from acting as the manager of a LDP. This matter will be kept under review with the SRA.
 2. How to use the skills of any barrister it engages will be a matter for the LDP. The great majority will no doubt wish to make the maximum use of the barrister's skills in advice and advocacy. It seems extremely improbable that he or she will be expected to devote a large amount of time to financial duties. Barristers who have re-qualified as solicitors to become partners of solicitors firms routinely sit and pass the solicitors' accounts rules examination, and there is no reason to suppose that such a requirement, if imposed, would affect the ability of the barrister to practise or the quality of his or her skills.

¹¹ The SRA has not yet made clear what further training will be required of barrister (and other lawyer) managers who have not passed the solicitors accounts rules examination.

3. In the Board's view, which is supported by Mr Roth's advice, it would be clearly disproportionate to forbid all barristers to act as managers of LDPs because of the possibility that they might be involved in some hypothetical scandal. If there is concern about increased risk of misappropriation resulting from non-solicitors handling client monies, the proportionate regulatory response would be for the SRA, which has initial regulatory responsibility, to strengthen its requirements. Although the Bar Council's concern about the reputation of the Bar is understandable, the duty of the Board is to regulate the Bar in the public interest. The Board cannot see that the public interest lies in protecting the reputation of the Bar rather than in protecting clients from suffering losses that are not covered either by insurance or by the Compensation Fund. As stated above, the matter will be kept under review with the SRA.
4. The barrister will invariably be covered by the LDP's insurance policy. Even if he or she also has individual cover a barrister practising as a manager or employee of a LDP would not also be entitled to practise on a self-employed basis, and so would not be a member of the Bar's Mutual Insurance Fund.

Barrister shareholders in LDPs

49. A barrister could in theory be a shareholder of a LDP but not a manager of it. The Board can see no objection to this if the barrister is also practising as an employee of the LDP. However, if the barrister is practising elsewhere the issues are more complex. The Board believes that barristers should be permitted to be shareholders in LDPs, provided that the following safeguards are observed.
 1. Any conflict of interest must be avoided. It would, for example, obviously be unacceptable for a barrister to act in a case against an LDP in which he or she held shares.
 2. A barrister in such a position must not use it to steer work improperly towards either the LDP or himself
 3. A barrister who suggests that a client should use the services of a LDP in which he or she is a shareholder must declare the financial interest to the client.

Consideration will need to be given by the Board in due course to the drafting of further rules to achieve these objectives, but they are not included in the draft Code amendments annexed to this paper.

Practice in more than one capacity

50. It is possible that a barrister practising as the manager of a LDP might also wish to practise as an independent practitioner. The Board is minded to forbid this, partly because of the obvious increased scope for conflicts of interest and problems of confidentiality, and partly because of the possibility that barristers in such a position could undertake different parts of their practice through different entities, transferring risk from one entity to another in order to suit their own purposes. Under paragraph 401(c) of the present Code, a self-employed barrister may not supply legal services for reward except in the course of his or her practice.

The Board's proposals

51. The Board therefore proposes that it should allow barristers to supply legal services to the public as managers of LDPs regulated by the SRA under the provisions of schedule 16 to the Act. Similar considerations would apply in principle to permitting barristers to act as managers of LDPs regulated by any other approved regulator, subject to examination of the details of any proposals.
52. If barristers are allowed to practise as managers of LDPs there will need to be a number of amendments to the Code of Conduct – in particular, to paragraph 205 of the Code. In this context, it is relevant that section 52 of the Act provides that in a situation in which an individual's professional regulator is separate from his or her business regulator and the individual is potentially covered by conflicting regulatory requirements the requirements of the business regulator are to prevail. In its response to the first consultation paper the SRA observed that clients should be assured that all those who work in a particular firm are subject to the same set of rules and regulations, and pointed out that it would not be helpful to clients to be subject to any doubt or confusion as to what rules apply to the person dealing with them. The SRA said that its approach to the regulatory framework would see a barrister manager in an SRA-registered firm being bound by SRA rules applying to all SRA-regulated firms. The SRA is therefore disapplying most of the specific rules in its Code of Conduct (other than those laying down the core duties of solicitors) to solicitors practising in firms regulated by other approved regulators who will instead be required to comply with the rules of the firm's business regulator.
53. While the Board considers that the SRA's approach is right in principle, it considers that the fundamental standards and duties of barristers which currently apply to all practising barristers must continue to apply to barristers who are managers of or employed by SRA- regulated LDPs. As explained in paragraph 27 above, there cannot be different classes of barrister to whom substantially different duties owed to client and court apply. The BSB will continue discussion with the SRA aimed at ensuring, so far as possible, that there is consistency of approach between different regulators in relation to fundamental duties owed to clients and to the court.
54. Appendix B to this paper contains the amendments to the Bar's Code of Conduct that the Board proposes to make so as to enable barristers to practise as managers or employees of LDPs regulated by the SRA. At this initial stage, the amendments are made by applying certain rules only (excluding rule 205) to barristers practising as managers or employees of SRA-regulated LDPs (see draft paragraph 105C.1). Pending the outcome of discussions with the SRA, the precise extent of the rules that need to be expressly applied is uncertain, since this will depend on what rules and guidance the SRA will apply to the LDP itself. The Board has therefore identified as applying those rules that it is not yet satisfied are fully covered in substance by the SRA's rules, but has omitted those rules that are. If other approved regulators such as the CLC seek to exercise a power to regulate LDPs (or ABSs in due course), further amendments to the Code will be required, but the nature of any such amendments will depend on the rules of the regulator in question as these will apply to lawyers in the LDP. As part of the Board's general review of the Bar's Code of Conduct over the next few years, it is hoped that a more holistic approach will be able to be taken rather than the piecemeal interim amendments.

Questions for consultation

- Q.1. Do you agree with the Board's approach (paragraphs 12 to 14) and with the proposals in paragraphs 51 to 54? If not, please explain why not, and also how you consider that the Board can effectively prevent barristers from becoming managers of LDPs.**
- Q.2. Do you consider that there are any restrictions or safeguards that should be attached to any permission to practise as the manager of a LDP, such as a requirement to inform the firm's client of his or her right to access advice or advocacy services from the independent Bar? If so, what are they?**
- Q.3. Do you agree that barristers should be allowed to be shareholders in LDPs, subject to the safeguards described in paragraph 48 above? Are any additional safeguards required? If so, what are they?**
- Q.4. Do you agree that barristers should not be allowed to practise both as the manager of a LDP and as an independent practitioner?**
- Q.5. Do you think it would be desirable to strengthen the provisions of paragraph 601 of the Code of Conduct? If so, in what way? (paragraph 45)?**
- Q.6. Do you agree with the amendments to the Code proposed in Appendix B?**

Part 2: Barrister-only partnerships

55. The discussion in this part of the consultation paper focuses on whether barristers should be permitted to practise as members of barrister-only partnerships. The Board recognises that the arguments of principle that apply to practice in such partnerships also apply to other forms of collective or corporate practice, such as LLPs or companies. Hence a decision for or against allowing one type of such practice would logically suggest a similar decision as regards others. However, the Board has no power yet to regulate bodies with separate legal personality. Whether to seek such powers is a matter for the Bar Council, not for the Board. If the Bar Council so wishes, steps could be taken to enable the Board to regulate business entities, though the regulatory route is complex and it would be unlikely to be achieved before the end of 2010. The Board's consideration has therefore necessarily been limited to partnerships without separate legal personality, that is, to partnerships under the Partnership Act 1890.
56. A fundamental premise of the Board's consideration of the issues relating to barrister-only partnerships is the same as that underlying Part 1 of this paper: barristers should be allowed to practise in any lawful form of organisation unless there are good arguments based on the public interest for forbidding such practice. Most of the arguments considered in Part 1 apply in much the same way to the present issue and are not repeated. In particular, the Board considers that it would be unjustifiable, and indeed unlawful, to restrict competition by forbidding barristers to practise in partnerships unless it has evidence suggesting (or it is logically inevitable) that such practice would be detrimental to the public interest. No such evidence (or logic) has so far been put to the Board.
57. The Board acknowledges that, as with the issue of practice in LDPs, the force of the arguments that have been put forward against allowing barristers to practise in partnership depends very much on the extent of such practice, either generally or in particular specialisms or geographical areas. If partnerships were formed on a wide scale the risk and the impact of conflicts on a significant group of barristers would be greater, as would the impact on consumer choice and access to justice, without the offsetting advantage of creating a one-stop shop for legal services. The Board has therefore adopted a cautious approach in assessing the arguments. But the considerations that suggest that the extensive formation of partnerships would have detrimental effects also suggest that it is unlikely to happen. The risk of substantial loss of work through "conflicting out", mentioned in paragraph 31 above, would be at least as great as with LDPs and probably greater. To a more senior member of a set of chambers, for example, the prospective loss of business if he or she went into partnership with other members of the set would be prohibitive. In areas of work where there is a small number of specialist sets of chambers, such as patents, competition law, company law, property law, revenue law, defamation and the like, it seems inconceivable that the interests of members of such specialist chambers would be well served by forming partnerships. The fact that all members of a partnership under the Partnership Act 1890 are liable for the acts and omissions of other members, and the consequences of that in terms of insurance and indemnity, might also be a significant deterrent, as it is far removed from the historic culture of individual responsibility at the self-employed Bar. The responses to the first consultation paper did not suggest that there was any widespread interest in practising in partnerships.
58. Nevertheless, it is possible to envisage circumstances in which forming a partnership could have attractions – for instance, to a group of provincial barristers who need to increase or pool resources or to a small group of barristers embarking

on practice and finding difficulty in obtaining a tenancy. Similarly, a partnership might be able to employ junior barristers as associates, and thus include a greater number of such juniors than under a Chambers structure, since they would not be admitted by a once-for-all tenancy decision that makes most Chambers cautious about admitting new members. The possibility cannot therefore be dismissed on the grounds that it could not conceivably be realised.

59. Indeed, the Board is aware that in the particular area of criminal and other publicly-funded or local authority work there is significant interest among members of the Bar in being able to participate in some form of business arrangement that would facilitate “block contracting”.¹² It understands that barristers who are dependent to any substantial degree on publicly-funded work are finding it increasingly difficult to make a living through traditional, self-employed practice, and that the economic pressures are likely to increase rather than decrease. It seems to the Board that the ability to practise in partnership could provide a useful additional option to practitioners. It could also assist barristers to compete effectively with LDPs.
60. As well as the general question there are other matters that require specific consideration. These are:
- the application of the cab-rank rule to barrister-only partnerships;
 - practice in more than one capacity;
 - the potential problem with recorders and deputy judges.
 - the basis and cost of regulation of barrister-only partnerships, if these are permitted;

The cab-rank rule

61. A clear majority of those who responded to the first consultation paper attached great importance to maintaining the cab rank rule to the widest possible extent: of the responses which referred to the rule over three-quarters supported at least its principle and usually its detail. Views were evenly divided on the question whether, even if the rule could not be applied to barristers practising in LDPs it should nonetheless apply to barristers practising in barrister-only partnerships, should these be allowed. The Board fully accepts the force of the arguments that have been advanced regarding the value of the rule, especially in promoting access to justice and safeguarding the independence of barristers. These are matters to which the Board attaches the highest importance. It has concluded that for the reasons set out in Part I of this paper it would not be feasible to apply the rule to barristers practising as managers of LDPs. But the arguments relating to practice in partnerships are different; and the Board has considered the question on its own merits in that context.
62. The possibility of being “conflicted out” would be a powerful commercial deterrent to the formation of large partnerships of barristers. Imposition of the cab rank rule would further increase the difficulty of managing conflicts and decrease the volume of work that could be accepted. This would be a deterrent to the formation even of small partnerships; but it would not necessarily be so severe in comparison with the potential advantages of forming a partnership as to amount in effect to a prohibition of practice in partnerships. And, since an ordinary partnership does not have separate legal personality, the arguments in paragraph 39b above would not apply.

¹² This is, in brief, undertaking to handle all cases of an agreed type and/or in a defined geographical area offered by the Crown Prosecution Service or by some other purchaser.

63. The Board has considered whether it could be regarded as anti-competitive to apply the rule to barristers in barrister-only partnerships. Mr Roth's advice is that the question is not free from doubt, but that it seems likely that in most cases where a LDP includes barristers it will also include solicitors¹³, since a primary objective of these new structures is to provide a "one stop shop" for clients. In those circumstances, LDPs will be competing with independent solicitors plus the independent Bar, and not directly with barrister partnerships. It is therefore unlikely that maintenance of the "cab-rank" rule on partnerships comprising only barristers would appreciably distort competition.
64. The Board therefore considers that if barrister-only partnerships are permitted, the cab-rank rule should apply. Practice in a partnership exclusively consisting of barristers would be very similar, in many ways, to practice on a self-employed basis, and regulation by the Board would necessarily be on substantially the same basis. It correspondingly seems to the Board that a distinction on such an important matter as the cab-rank rule would be inappropriate. For those who wish to practise in a different environment, outside the confines of the cab-rank rule, the option of LDPs and in due course ABSs is available, where the business will be regulated as a business by a different regulator.

Practice in more than one capacity

65. It is possible that some barristers might wish to be able to practise as a member of a partnership for, in particular, block contracted work, and as a sole practitioner for other work. At least to some extent the arguments outlined in paragraph 50 above would be relevant here. However, it could be argued that it would be easier to distinguish between these different forms of practice, so that the regulatory risks would be smaller. The Board would be grateful for views on whether practice both as a member of a partnership and as a sole practitioner should be allowed and, if so, in what circumstances, and what safeguards would be appropriate.

Recorders and deputy judges

66. At present, there is no obstacle, except where a conditional fee agreement exists, to a member of a set of chambers appearing as advocate before another member who is sitting as a part-time judge or deputy judge. No conflict of interests, and hence no risk of bias, exists where both are independent and self-employed. The position would be the opposite if both barristers were members of a partnership, each having a direct interest in the income and reputation of the other. Were large partnerships of barristers practising in particular regions or areas of work to be formed, this might be an impediment to the working of the courts, in which the work of barristers sitting as recorders and deputy judges plays an important part. Although the Board recognises the practical difficulties in planning the work of the courts, it would not regard it as proportionate to prohibit barrister partnerships for this reason.

Basis and cost of regulation

67. Neither the Board nor the Bar Council currently has power to regulate business entities; and the SRA has no power under schedule 16 to the Act to regulate LDPs without at least one solicitor or registered foreign lawyer member. Hence any

¹³ In the regime set up under schedule 16 to the Act that will almost invariably be the case.

regulation of barrister-only partnerships (properly so-called) before the Act comes fully into force would have to be through the regulation by the Board of individual members of the partnership.

68. In order to regulate barristers who are practising together in partnership, the Board considers that it would be necessary to have some additional or adapted rules in the Code of Conduct to deal with at least the following matters.

- A requirement on each partner to make arrangements for the effective management of the partnership including compliance with certain specified duties. These duties would be similar to those currently applicable to Heads of Chambers with the addition of duties in relation to:
 - The monitoring and prevention of actual or potential conflicts of interest;
 - Ensuring that clients' confidential information is protected;
 - Preparation of partnership accounts;
 - Insurance.
- Additional guidance on conflicts of interest and confidentiality would probably be needed in view of the greater risks involved in handling these matters within a partnership.
- Possibly a requirement to appoint a managing partner with responsibilities similar to those of a Head of Chambers. A requirement on partners to ensure that there is a system for supervising work done for clients.
- A requirement on each partner to ensure that the partnership holds itself out as such and that clients are informed that they are dealing with a partnership, not an individual barrister.
- Contractual terms of engagement, to the extent that these are not generally in force between instructing solicitors and barristers, possibly including a requirement that contractual terms should make it clear whether the instructions require the services of a named barrister or whether the partnership is permitted to provide services through any suitable barrister.
- A requirement to provide information about the partnership for inclusion in the register of practitioners.
- Procedures in the event that the number of partners falls to one or the partnership is wound up.

The Board would welcome suggestions regarding what matters should be covered, and how, in the Code of Conduct. Owing to time constraints produced by the imminent arrival of LDPs regulated by the SRA, the Board has not at this stage addressed in detail Code amendments required to facilitate partnerships (or LLPs or companies) of barristers. It intends to conduct a further more detailed consultation in due course.

69. There would be bound to be some increased regulatory costs of establishing rules for partnerships and of monitoring and enforcing compliance with the rules. The Board would expect to apply a similar approach to monitoring and enforcement as for chambers and self-employed barristers. Its proposed risk-based approach to the assessment of returns from chambers and partnerships might result in more

frequent visits to the latter, at least in the early days, to reflect the additional risks involved and the fact that they were new and relatively unfamiliar. The Board would expect to recover any additional regulatory costs through a higher practising fee for those practising in partnerships. It would keep under review the relative costs of regulating partnerships and traditional chambers.

70. The Board does not currently have the expertise to regulate the conduct of litigation other than that carried on by employed barristers (and, in future, barrister managers of LDPs) or the financial operations of business entities and, in particular, the handling of clients' money. If it sought to regulate such activities, it would need to introduce a much more extensive set of rules and develop procedures for monitoring the handling of clients' money and for intervening in firms if things were going wrong. It would also have to set up a compensation fund. The Board is not aware of any likely interest in setting up barrister-only partnerships which could undertake regulated activities other than the provision of advocacy and advice services. If anyone wished to do this, the obvious route would be to include a solicitor in the partnership, which would then be eligible to be regulated by the SRA. In the absence of any apparent demand for barrister-only partnerships to undertake litigation or hold clients' money, the Board does not think that it would be reasonable to incur the cost that would be needed to develop an appropriate regulatory system. That cost would have to be met entirely by the members of the Bar. Either it would fall on all barristers, which would be widely regarded as unfair; or it would fall solely on those who engaged in the activities that gave rise to it. As these seem likely to be very few in number the average cost would be extremely high. Accordingly, the Board takes the view that if partnerships of barristers are permitted, they should not be allowed to carry on activities other than those carried on by barristers in self-employed practice.

Other possibilities

71. For the reasons indicated in paragraph 55 above, the discussion in this Part of the consultation paper has been concerned almost entirely with partnerships under the Partnership Act 1890. Since the Board has no power to regulate bodies corporate it could not permit barristers to practise in an incorporated organisation other than a LDP regulated by the SRA or another approved regulator.
72. Essentially the same considerations apply to practice in a LLP. It might be argued that it would be possible to regulate such practice by devising and applying appropriate provisions in the Code of Conduct to the individual barrister members. However, the LLP would have a separate legal personality from its members, and the Board would have no power to regulate it as an entity. In the view of the Board, the resulting complexities, regulatory risk, and probable confusion for clients, would be unacceptable.
73. The Board is aware that attempts are being made to design other forms of business arrangement within which barristers would be able to practise with a view to facilitating block contracting. Since no detailed proposals have been put to it, the Board can offer no opinion on the acceptability of such arrangements. However, if proposals were put to the Board it would apply to them the same general approach as underlies the rest of this consultation paper: practice in any lawful organisation should be allowed provided that an appropriate regulatory regime can be put in place and there is no good reason to suppose that it would be detrimental to the public interest.

Provisional conclusions

74. The Board's provisional conclusion is that barristers should be allowed to supply legal services to the public in barrister-only partnerships under the Partnership Act 1890. Such practice would be subject to the cab-rank rule and to rules on the lines set out in paragraph 65 above. The Board does not think that it would be feasible, under its existing powers, to regulate limited liability partnerships or, *a fortiori*, incorporated bodies. Practice in such organisations, except as an employee, should therefore continue to be forbidden. Whether to seek an extension of the Board's powers to cover them is a matter for the Bar Council.
75. The Board recognises that the arguments of principle that underlie its provisional conclusions would apply to forms of business organisation other than partnerships. If and when detailed proposals regarding possible practice in such organisations are put forward the Board will be very ready to consider whether it should permit such practice. This would depend on, among other things, whether an appropriate regulatory regime could be devised under the powers that it possessed at the time.

Questions for consultation

- Q.7(a) Do you agree that barristers should be permitted to practise in barrister-only partnerships?**
- Q.7(b) If so, should these be restricted to the provision of advocacy and advice services?**
- Q.8(a) Are you likely to consider joining or establishing a partnership of barristers for any reason?**
- Q.8(b) Are you more or less likely to do so if barristers are permitted to become managers of LDPs?**
- Q.8(c) Would you be more or less likely to practise through limited liability partnerships or limited companies if this were to become possible?**
- Q.9 Do you agree that barristers who are members of a barrister-only partnership should be subject to the cab-rank rule?**
- Q.10 If barrister-only partnerships were permitted, what restrictions or safeguards would the Board need to put in place to ensure that consumers understand that they are engaging a firm of barristers to act for them, rather than a single, independent barrister?**
- Q.11 Should barristers be permitted to practise both as members of a partnership and as sole practitioners? If so, what safeguards would be appropriate (paragraph 65)?**
- Q.12 Do you agree with the list in paragraph 68 above of additional regulatory matters that would need to be addressed? Are there other matters that would need to be addressed?**
- Q.13 Should the Bar Council take steps to enable the Board to regulate entities such as LLPs and limited companies?**
- Q.14 Are there any further provisions that you think necessary or desirable?**

Responses

Responses to this consultation paper should be sent by 1 March 2009 to Toby Frost at:

**The Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ**

TFrost@barstandardsboard.org.uk

A list of those to whom this consultation is to be sent is at Appendix 3. Responses are, however, welcomed from all who wish to contribute to the debate.

The Board may wish to cite individual responses in its report of the consultation. If you do not wish your response to be identified in the report, or published on the website, you should make this clear in your reply.

Excerpts from the Code of Conduct

Prohibition on the supply of legal services through partnership

- 205.** A practising barrister must not supply legal services to the public through or on behalf of any other person (including a partnership company or other corporate body) except as permitted by paragraph 502.

Prohibition on the supply of legal services outside the course of practice

- 401.** A self-employed barrister whether or not he is acting for a fee:
- (a) ...
 - (b) ...
 - (c) must not supply legal services for reward otherwise than in the course of his practice except as permitted by paragraph 806.¹

Acceptance of instructions and the 'Cab-rank rule'

- 601.** A barrister who supplies advocacy services must not withhold those services:
- (a) on the ground that the nature of the case is objectionable to him or to any section of the public;
 - (b) on the ground that the conduct opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
 - (c) 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 (for example, on the ground that such support will be available as part of the Community Legal Service or Criminal Defence Service).
- 602.** A self-employed barrister must comply with the 'Cab-rank rule' and accordingly except only as otherwise provided in paragraphs 603 604 605 and 606 he must in any field in which he professes to practise in relation to work appropriate to his experience and seniority and irrespective of whether his client is paying privately or is publicly funded:
- (a) accept any brief to appear before a Court in which he professes to practise;
 - (b) accept any instructions;
 - (c) act for any person on whose behalf he is instructed;

and do so irrespective of (i) the party on whose behalf he is instructed (ii) the nature of the case and (iii) any belief or opinion which he may have formed as to the character reputation cause conduct guilt or innocence of that person.

- 606.1** A barrister (whether he is instructed on his own or with another advocate) must in the case of all instructions consider whether consistently with the proper and efficient administration of justice and having regard to:
- (a) the circumstances (including in particular the gravity complexity and likely cost) of the case;

- (b) the nature of his practice;
- (c) his ability experience and seniority; and
- (d) his relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct him in that matter.

Commentary on proposed amendments to the Code

Attached are proposed amendments to the Code to enable barristers to practise as managers or employees of LDPs regulated by other approved regulators, and in particular to make provision for barrister managers and employees of LDPs regulated by the SRA. The suggested amendments appear underlined.

There are a number of issues that we would wish to draw particular attention to in respect of the amendments. These are set out below:

1. We have considered how best to make provision for barristers to practise as managers of LDPs. We have sought to achieve that simply by disapplying rule 205 so that it will not apply to barristers practising as managers or employees of recognised bodies. In the longer term, we would like to see paragraph 205 deleted, and for there to be provision, in Part I, for the ways in which barristers may practise, specifying, in relation to each, which provisions of the Code shall apply. This will be done as part of the Board's medium-term project of re-drafting the Code.
2. We have adopted a definition of "recognised body" which applies to any entity authorised to provide reserved legal services by an approved regulator other than the BSB. As each approved regulator takes on the regulation of LDPs, it will be necessary (in advance of the re-drafting of the Code) to consider which provisions of the Code should apply to barristers who are managers or employees of LDPs regulated by the regulator in question, and hence subject to its rules, by reference to the rules to be applied by that regulator.
3. So far, the only approved regulator which has announced plans for regulating LDPs is the SRA. We have set out in Part I the rules which will apply to barristers who practise as managers or employees in such LDPs. Note that this excludes rule 205. Our objective is to ensure that equivalent standards apply to barristers however they practise, particularly in relation to their duties to the court and to their clients. As will be seen from draft rule 105C.1, we have undertaken, in relation to the SRA, a detailed review of the draft rules and have drawn up a list of the Code of Conduct provisions which we would like to ensure apply to barristers who manage or are employed by SRA regulated bodies. We envisage on-going dialogue with the SRA which we hope will result in the SRA confirming or clarifying the scope of the SRA rules in such a way as to obviate the need to apply some or all of the rules that are at present listed in draft rule 105C.1.
4. We need to achieve a situation in which the BSB has jurisdiction to address the consequences of a breach of another approved regulator's rules. This is so that appropriate steps can be taken, where necessary, to protect the public fully against barristers who have been convicted of a serious disciplinary offence. We have accordingly simply provided that a breach of an approved regulator's rules should constitute a breach of the Code (rule 508), added to the notification requirements imposed in Part IX (rule 905b), and in the case of an offence that has resulted in a termination or suspension of the right to practise through the LDP imposed a restriction on practise (otherwise) as a barrister pending investigation by the Complaints Committee (rule 509). This mirrors the position in rule 808.3 in relation to barristers who are also qualified as solicitors. We anticipate that the Complaints Committee will need to draw up a protocol, or provide internal guidance, as to the approach it will take in circumstances where a barrister notifies the BSB that s/he has been charged with and/or convicted of a disciplinary offence by another approved

regulator. We raise for consideration the idea of adding to the ways in which the Complaints Commissioner or committee may dispose of a complaint "noting" that appropriate disciplinary action has been taken by an approved regulator, to ensure that, should a barrister be convicted by such a regulator and the BSB decide that no further action need be taken at that time to protect the public, but that barrister thereafter starts (or returns) to practise as a self-employed barrister, a record is available of the action taken in relation to the breach.

5. In relation to barristers owning interests in recognised bodies, we do not, at present, consider that (but are keeping under review the question of whether) it is necessary to subject barrister owners of LDPs to the provisions of the code applying to practising barristers if they are not practising or holding themselves out as providing legal services,. Such owners will however be subject to the rules that apply to non-practising barristers in the usual way and in addition to rules requiring them to notify the Bar Standards Board of their ownership interest. In this connection, the definition (in Part X) of "owner" corresponds to that set out in the draft SRA rules. However, we raise for consideration whether there should be excluded from the definition ownership interests below a minimum threshold of, say, 10%. Further, we draw attention to paragraph 49 of the draft consultation paper, which raises the need for rules to prevent conflicts of interest. On a related note, we are mindful that it may prove necessary to make provision to govern shadow managers of regulated bodies.

PART I - PRELIMINARY

101. The Eighth Edition of the Code was adopted by the Bar Council on 18 September 2004 and came into force on 31st October 2004.
102. This Code includes the Annexes.
103. Amendments and additions to this Code may be made by Resolution of the Bar Council which shall be operative upon such date as the Resolution shall appoint or if no such date is appointed on the later of:
- (a) the date of the Resolution; and
 - (b) the date when approval of the amendment or addition, if required, is given under Schedule 4 of the Act.

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

General purpose of the Code

104. The general purpose of this Code is to provide the requirements for practice as a barrister and the rules and standards of conduct applicable to barristers which are appropriate in the interests of justice and in particular:
- (a) in relation to self-employed barristers to provide common and enforceable rules and standards which require them:
 - (i) to be completely independent in conduct and in professional standing as sole practitioners;
 - (ii) to act only as consultants instructed by solicitors and other approved persons (save where instructions can be properly dispensed with);
 - (iii) to acknowledge a public obligation based on the paramount need for access to justice to act for any client in cases within their field of practice;

(b) to make appropriate provision for:

(i) barrister managers, employees and owners of recognised bodies; and

(iv)(ii) employed barristers taking into account the fact that such barristers are employed to provide legal services to or on behalf of their employer.

Application of the Code

105. A barrister must comply with this Code which (save as otherwise provided) applies to all barristers whenever called to the Bar.

105A. Part IV applies only to self-employed barristers.

105B. Section 1 of Part V applies only to employed barristers.

105C.1 Only Parts I, II (save for rule 205), III, (save for sub-rules 307(d) and (e)), Section 2 of Part V, rules 601, 606.1, 606.2, 606.4, 607, 608(d), (e) and (f), 701(a), 701(b)(i), 704, 705, 708, 708.1 and Parts VIII, IX, X and XI apply to barristers practising as managers or employees of

recognised bodies regulated by the Solicitors Regulation Authority when doing work of a sort that the body is authorised to do.

105C.2 In so applying, rules 606.1, 606.2 and 606.4 are to be read as if they referred to a barrister or the recognised body being retained rather than receiving instructions.

106. Subject to the International Practice Rules (reproduced in Annex A) this Code applies to International work and whether a barrister is practising in England and Wales or elsewhere.
107. A registered European lawyer must comply with this Code in the manner provided for by the Registered European Lawyers Rules (reproduced in Annex B).

Waiver of the Code

108. The Bar Council shall have the power to waive the duty imposed on a barrister to comply with the provisions of this Code in such circumstances and to such extent as the Bar Council may think fit and either conditionally or unconditionally.

PART II - PRACTISING REQUIREMENTS

General

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

(a) ~~a barrister practises as a barrister if~~ he supplies legal services and in connection with the supply of such services:

(i) he holds himself out or allows himself to be held out as a barrister; or

(ii) he exercises a right which he has by reason of being a barrister; or

(b) if he acts as a manager of a recognised body;

and any reference to the supply of legal services includes an offer to supply such services.

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

(a) he has complied with any applicable training requirements imposed by the Consolidated Regulations which were in force at the date of his Call to the Bar;

(b) he has complied with any applicable requirements of the Continuing Professional Development Regulations (reproduced in Annex C);

(c) he has a current practising certificate issued by the Bar Council in accordance with the Practising Certificate Regulations (reproduced in Annex D);

(d) he has provided in writing to the Bar Council details of the current address(es) with telephone number(s) of the chambers or office from which he supplies legal services and ~~(if he is an employed barrister) the name address telephone number and nature of the business of his employer;¹;~~

(i) if he is an employed barrister, the name address telephone number and nature of the business of his employer;¹

(ii) if he is a manager or employee or owner of a recognised body the name, address, email address, telephone number and name of the approved regulator of that body.

Rights of audience

202A. Subject to rule 806, a barrister may not without the prior approval in writing of the Bar Standards Board practise in more than one type of practice (e.g. a barrister who is an employed barrister may not without such approval also practise as a self-employed barrister or as a manager or employee of a recognised body).

203.1 A barrister may exercise any right of audience which he has by reason of being a barrister provided that:

(a) he is entitled to practise as a barrister in accordance with paragraph 202; and

¹ paragraph 202(e) removed 11th September 2006

- (b) if he is of less than three years' standing his principal place of practice is either
 - (i) a chambers or annexe of chambers which is also the principal place of practice of a qualified person who is readily available to provide guidance to the barrister; or
 - (ii) an office of an organisation of which an employee, partner, manager or director is a qualified person who is readily available to provide guidance to the barrister.

203.2 For the purpose of paragraphs 203.1(b) and 204(c)(i) a barrister shall be treated as being of a particular number of years' standing if he:

- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body;
- (b) has made such practice his primary occupation; and
- (c) has been entitled to exercise a right of audience before every Court in relation to all proceedings

for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years.

203.3 A person shall be a qualified person for the purpose of paragraph 203.1(b) if he:

- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body for a period (which need not have been as a member of the same authorised body) of at least six years in the previous eight years;
- (b) for the previous two years
 - (i) has made such practice his primary occupation, and
 - (ii) has been entitled to exercise a right of audience before every Court in relation to all proceedings;
- (c) is not acting as a qualified person in relation to more than two other people; and
- (d) has not been designated by the Bar Council as unsuitable to be a qualified person.

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

Supply of legal services to the public

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

- (a) he complies with the requirements of paragraph 203.1;
- (b) he is covered ~~(and in the case of an employed barrister his employer 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; and Standards Board or alternatively (in the case of:
 - (i) an employed barrister; or

(ii) a barrister practising as a manager or employee of a recognised body

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

(c) In the case of legal services supplied pursuant to paragraph 401(a)(iii):

(i) he is more than three years' standing

(ii) he has complied with such training requirements as may be imposed by the Bar Council; and

(iii) he has notified the Bar Council that he holds himself out as willing to accept instructions from lay clients.

205. Subject to paragraph 105C.1 and paragraph 502, A practising barrister must not supply legal services to the public through or on behalf of any other person (including a partnership company or other corporate body). ~~except as permitted by paragraph 502.~~

206.1² A barrister called before 31 July 2000 who is deemed to be practising only by virtue of paragraph 201(a)(i) in England and Wales and who does not hold a practising certificate under this Code shall not be subject to the rules in this Code applying only to practising barristers provided that:

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

(i) He provides in writing to the Bar Council details of the current address(es) with telephone number(s) of the office or premises from which he does so, and ~~:-~~

(1) if he is employed, the name address telephone number and nature of the business of his employer;

(2) if he is an employee or owner of a recognised body, the name address, email address, telephone number and the name of the approved regulator of that body

(ii) Unless he is employed only to offer services to his employer, or to the recognised body of which he is an employee he (or, if he is supplying legal services to clients of his employer, or a recognised body of which he is an employee) that employer, or body is currently insured by insurers authorised to conduct such business against any and all claims in respect of civil liability for professional negligence arising out of or in connection with the supply of legal services for at least the first £250,000 of each and every claim, with an excess not exceeding £500.

(b) Before supplying legal services to any person ~~or~~ employer or recognised body, and when first dealing with any third party in the course of supplying legal services, he informs them fully and comprehensibly in writing (a) of his status and the fact that he does not hold a practising certificate under this Code, (b) of the relevant limitations under this Code on the legal services he may undertake, (c) that he is not fully regulated by the Bar ~~Council~~ Standards Board, and (d) of the absence of available compensatory powers for any inadequate professional service he may render.

206.2 A barrister whenever called who is deemed to be practising only by virtue of paragraph 201(a)(i) outside England and Wales ~~, who does not hold a valid practising certificate under this Code~~ and who is not subject to paragraph 4(e) of the International Practice Rules shall

² Paragraphs 206.1 and 206.2 are effective from 31st July 2005

not be subject to the rules in this Code applying only to practising barristers provided that he complies with the provisions of paragraph 206.1.

PART III - FUNDAMENTAL PRINCIPLES

Applicable to all barristers

301. A barrister must have regard to paragraph 104 and must not:
- (a) engage in conduct whether in pursuit of his profession or otherwise which is:
 - (i) dishonest or otherwise discreditable to a barrister;
 - (ii) prejudicial to the administration of justice; or
 - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
 - (b) engage directly or indirectly in any occupation if his association with that occupation may adversely affect the reputation of the Bar or in the case of a practising barrister prejudice his ability to attend properly to his practice.

Applicable to practising barristers

302. A barrister has an overriding duty to the Court to act with independence in the interests of justice: he must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court.
303. A barrister:
- (a) must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any colleague, professional client or other intermediary or another barrister);
 - (b) owes his primary duty as between the lay client and any professional client or other intermediary to the lay client and must not permit the intermediary to limit his discretion as to how the interests of the lay client can best be served;
 - (c) when supplying legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service owes his primary duty to the lay client subject only to compliance with paragraph 304.
304. A barrister who supplies legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service must in connection with the supply of such services comply with any duty imposed on him by or under the Access to Justice Act 1999 or any regulations or code in effect under that Act and in particular with the duties set out in Annex E.
- 305.1.¹⁴ A barrister must not in relation to any other person (including a client or another barrister or a pupil or an employee or a student member of an Inn of Court) discriminate¹⁵ directly or indirectly because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion or belief.

¹⁴ Amended 7th December 2007

¹⁵ As defined in Sex Discrimination Act 1975; Race Relations Act 1976; Disability Discrimination Act 2005; Employment Equality (Religion or belief) Regulations 2003; Employment Equality (Sexual Orientation) Regulations 2003; Employment Equality (Age) Regulations 2006.

305.2.¹⁶ A barrister must not in relation to any other person, victimise that person for carrying out a protected act as defined in the relevant legislation¹⁷.

305.3. Deleted from 1st October 2005.

306. A barrister is individually and personally responsible for his own conduct and for his professional work: he must exercise his own personal judgement in all his professional activities.

307. A barrister must not:

- (a) permit his absolute independence integrity and freedom from external pressures to be compromised;
- (b) do anything (for example accept a present) in such circumstances as may lead to any inference that his independence may be compromised;
- (c) compromise his professional standards in order to please his client the Court or a third party, including any mediator¹⁸;
- (d) give a commission or present or lend any money for any professional purpose to or (save as a remuneration in accordance with the provisions of this Code) accept any money by way of loan or otherwise from any client or any person entitled to instruct him as an intermediary;
- (e) make any payment (other than a payment for advertising or publicity permitted by this Code or in the case of a self-employed barrister remuneration paid to any clerk or other employee or staff of his chambers) to any person for the purpose of procuring professional instructions;

Provided that nothing in paragraph 307(d) or (e) shall prevent a barrister from paying a reasonable fee or fees required by an alternative dispute resolution body that appoints or recommends persons to provide mediation, arbitration or adjudication services, or from entering into such a reasonable fee-sharing arrangement required by such a body, if the payment or arrangement is of a kind similar to that made by other persons who provide such services through the body.^{19 20}

- (f) ~~receive or handle client money securities or other assets other than by receiving payment of remuneration or (in the case of an employed barrister) where the money or other asset belongs to his employer~~

¹⁶ Amended 7th December 2007

¹⁷ As defined in Sex Discrimination Act 1975; Race Relations Act 1976; Disability Discrimination Act 2005; Employment Equality (Religion or belief) Regulations 2003; Employment Equality (Sexual Orientation) Regulations 2003; Employment Equality (Age) Regulations 2006.

¹⁸ Amended 23rd March 2005

¹⁹ Effective from 1st July 2007

²⁰ Effective from 1st July 2007

PART IV - SELF-EMPLOYED BARRISTERS

Instructions

- 401 A self-employed barrister whether or not he is acting for a fee:
- (a) may supply legal services only if appointed by the Court or is instructed:
 - (i) by a professional client; or
 - (ii) by a licensed access client, in which case he must comply with the Licensed Access Rules (reproduced in Annex F1); or
 - (iii) subject to paragraph 204(c), by or on behalf of any other lay client, in which case he must comply with the Public Access Rules (reproduced in Annex F2); or
 - (b) must not in the course of his practice:
 - (i) undertake the management administration or general conduct of a lay client's affairs;
 - (ii) conduct litigation or inter-partes work (for example the conduct of correspondence with an opposite party, instructing any expert witness or other person on behalf of his lay client or accepting personal liability for the payment of any such person);
 - (iii) investigate or collect evidence for use in any Court;
 - (iv) except as permitted by paragraph 707, or by the Public Access Rules, take any proof of evidence in any criminal case;
 - (v) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews.
 - (vi) act as a supervisor for the purposes of section 84(2) of the Immigration and Asylum Act 1999.
 - (c) must not supply legal services for reward otherwise than in the course of his practice except as permitted by paragraph 806.²¹

Insurance

- 402.1 Every self-employed barrister (other than a pupil who is covered under his pupil-supervisor's insurance) and a barrister called to the Bar under part IV(E) of the Consolidated Regulations must be entered as a member with BMIF.²²
- 402.2 Every barrister entered as a member with BMIF shall:
- (a) pay immediately when due 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;

²¹Amended 11th September 2006

²²Amended 7th December 2007

- (b) supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its Rules.

Administration and conduct of self-employed practice

403.1 A self-employed barrister must not practise from the office of or in any unincorporated association (including any arrangement which involves sharing the administration of his practice) with any person other than a self-employed barrister or any of the following:

- (a) a registered European lawyer;
- (b) subject to compliance with the Foreign Lawyers (Chambers) Rules (reproduced in Annex H) and with the consent of the Bar Council a foreign lawyer;
- (c) a non-practising barrister
- (d) a person who is:
 - (i) a lawyer from a jurisdiction other than England and Wales;
 - (ii) a retired judge; or
 - (iii) an employed barrister²³

to the extent that that person is practising as an arbitrator or mediator.²⁴

403.2 A self-employed barrister:

- (a) must take all reasonable steps to ensure that:
 - (i) his practice is efficiently and properly administered having regard to the nature of his practice;
 - (ii) proper records are kept;
 - (iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.
- (b) must have ready access to library facilities which are adequate having regard to the nature of his practice;
- (c) must have regard to any relevant guidance issued by the Bar Council including guidance as to:
 - (i) the administration of chambers;
 - (ii) pupillage and further training; and
 - (iii) good equal opportunities practice in chambers in the form of the Equality and Diversity Code²⁵ for the Bar.
- (d)
 - (i) must deal with all complaints made to him promptly, courteously and in a manner which addresses the issues raised; and
 - (ii) must have and comply with an effective²⁶ written complaints procedure, and make copies of the procedure available to a client on request.

²³Amended 6th April 2006

²⁴Amended 1st September 2005

²⁵Amended 23rd March 2005

²⁶Amended from 1st May 2008

- (iii) meet all the requirements set out in Annexe S to the Code²⁷

Heads of chambers

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

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

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

- (a) his chambers are administered competently and efficiently and are properly staffed;
- (b) the affairs of his chambers are conducted in a manner which is fair and equitable for all barristers and pupils;
- (c) proper arrangements are made in his chambers for dealing with pupils and pupillage and, in particular,
 - (i) that all pupillage vacancies are advertised in the manner prescribed by the Bar Council;
 - (ii) that such arrangements are made for the funding of pupils by chambers as the Bar Council may by resolution from time to time require;
 - (iii) that in making arrangements for pupillage, regard is had to the pupillage guidelines issued from time to time by the Bar Council and to the Equality and Diversity Code²⁸ for the Bar;
- (d) ²⁹Proper arrangements are made in chambers for dealing with equality opportunity issues and in particular,
 - (i) that Chambers appoint at least one Equal Opportunities Officer
 - (ii) that Chambers shall have a written Equal Opportunities Policy made available to all members of Chambers and Staff and to the Bar Council when required, which shall set out the policy adopted by Chambers in relation to each of the Action Areas in the Equality and Diversity Code for the Bar and shall have regard to the recommendations in the Code.
 - (iii) that no barrister shall take pupils until the steps set out in (i) and (ii) above have been complied with.
- (e) all barristers practising from his chambers whether they are members of the chambers or not are entered as members with BMIF and have effected insurance in accordance with paragraph 402 (other than any pupil who is covered under his pupil-master's insurance);
- (f) all barristers practising from his chambers comply with paragraph 403.2 (a)(iii);
- (g) all employees and staff in his chambers (i) are competent to carry out their duties, (ii) carry out their duties in a correct and efficient manner, (iii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their

²⁷Effective from 1st May 2008

²⁸Amended 23rd March 2005

²⁹Introduced 1st October 2005

duties and (iv) all complaints against them are dealt with in the manner set out in paragraph 403(e) above;

- (h) all registered European lawyers and all foreign lawyers in his chambers comply with this Code to the extent required by the Registered European Lawyers Rules (reproduced in Annex B) and the Foreign Lawyers (Chambers) Rules (reproduced in Annex H);
- (i) fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients and in the event of non-payment within a reasonable time, pursued efficiently.
- (j) every barrister practising from his chambers has a current practising certificate in accordance with paragraph 202(c) of the Code of Conduct and the Practising Certificate Regulations (reproduced in Annex D).

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

- (a) the administration of chambers;
- (b) pupillage and further training; and
- (c) good equal opportunities practice in chambers in the form of the Equality and Diversity Code³⁰ for the Bar

Fees and remuneration

405 Subject to paragraph 307 a self-employed barrister may charge for any work undertaken by him (whether or not it involves an appearance in Court) on any basis or by any method he thinks fit provided that such basis or method:

- (a) is permitted by law;
- (b) does not involve the payment of a wage or salary.

406.1 A self-employed barrister who receives fees in respect of work done by another barrister must himself and without delegating the responsibility to anyone else pay forthwith the whole of the fee in respect of that work to that other barrister.

406.2 Subject to paragraph 805 a self-employed barrister who arranges for another barrister to undertake work for him (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience) must himself and without delegating the responsibility to anyone else:

- (a) pay proper financial remuneration for the work done;
- (b) make payment within a reasonable time and in any event within three months after the work has been done unless otherwise agreed in advance with the other barrister.

Client money securities and other assets

406. A self-employed barrister must not receive or handle client money securities or other assets other than by receiving payment of remuneration or (in the case of an employed barrister) where the money or other asset belongs to his employer

³⁰Amended 23rd March 2005

PART V - EMPLOYED BARRISTERS

Section 1: Barristers employed other than by recognised bodies

501. An employed barrister whilst acting in the course of his employment may supply legal services to his employer and to any of the following persons:
- (a) any employee, director or company secretary of the employer in a matter arising out of or relating to that person's employment;
 - (b) where the employer is a public authority (including the Crown or a Government department or agency or a local authority):
 - (i) another public authority on behalf of which the 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;
 - (ii) in the case of a barrister employed by or in a Government department or agency, any Minister or Officer of the Crown;
 - (c) where the barrister is or is performing the functions of a justices' clerk, the justices whom he serves;
 - (d) where the barrister is employed by a trade association, any individual member of the association.
502. An employed barrister may supply legal services only to the persons referred to in paragraph 501 and must not supply legal services to any other person save that whilst acting in the course of his employment:
- (a) a barrister employed by a solicitor or other authorised litigator or by an incorporated solicitors' practice may supply legal services to any client of his employer;
 - (b) a barrister employed by the Legal Services Commission may supply legal services to members of the public;
 - (c) a barrister employed by or at a Legal Advice Centre may supply legal services to clients of the Legal Advice Centre;
 - (d) any employed barrister may supply legal services to members of the public free of charge (to any person).
503. A barrister employed to supply legal services under a contract for services may be treated as an employed barrister for the purpose of this Code provided that the contract is:
- (a) in writing;
 - (b) (subject to any provision for earlier termination on notice) for a determinate period; ~~and~~
 - (c) the only contract under which the barrister is supplying legal services during that period (unless the Bar Council grants a specific waiver of this requirement~~); and~~
 - (d) not a contract with a recognised body.

504. An employed barrister shall have a right to conduct litigation in relation to every Court and all proceedings before any Court and may exercise that right provided that he complies with the Employed Barristers (Conduct of Litigation) Rules (reproduced in Annex I).

505. An employed barrister must not receive or handle client money securities or other assets other than by receiving payment of remuneration or where the money or other asset belongs to his employer

Section 2: Barristers employed by and/or managers of recognised bodies

506. A barrister who is a manager or employed by a recognised body shall have a right to conduct litigation in relation to every Court and all proceedings before any Court.

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

508. It is a breach of this Code to commit a disciplinary offence under the rules of an approved regulator. Conviction of such an offence will be conclusive evidence of the commission thereof.

509. If an approved regulator other than the Bar Standards Board suspends or terminates a barrister's right to practise in an authorised body or a recognised body, whether on an interim or final basis, the barrister shall not without the written consent of the Complaints Committee practise as a barrister until the Complaints Committee has considered his case and, if it decides to refer the case to a Disciplinary Tribunal, until the case is finally determined.

PART VIII - MISCELLANEOUS

Pupils

801. A barrister who is a pupil must:

- (a) comply with Part V of the Consolidated Regulations;
- (b) apply himself full time to his pupillage save that a pupil may with the permission of his pupil-supervisor or head of chambers take part time work which does not in their opinion materially interfere with his pupillage;
- (c) ~~preserve the confidentiality of every client's affairs and accordingly~~ to the extent that paragraph 702 applies to ~~him in the same way as it does to~~ his pupil-supervisor ~~and or to every~~any person whom he accompanies to ~~Court~~court or whose papers he sees, preserve the confidentiality of the affairs of that person's client in accordance with paragraph 702.

802. A barrister who is a pupil may supply legal services as a barrister and exercise a right of audience which he has by reason of being a barrister provided that:

- (a) he has completed or been exempted from the non-practising six months of pupillage; and
- (b) he has the permission of his pupil-supervisor or head of chambers;

provided that such a barrister may during the non-practising six months of pupillage with the permission of his pupil-supervisor or head of chambers accept a noting brief.

803.1 So long as he is a pupil a self-employed barrister may not become or hold himself out as a member of chambers or permit his name to appear anywhere as such a member.

803.2 A barrister who is a pupil of an employed barrister or of a barrister who is a manager or employee of a recognised body, or who pursuant to Regulation 46 of the Consolidated Regulations spends any period of external training with ~~an employed~~such a barrister or with a solicitor shall be treated for the purpose of the Code as if he were during that period employed by the ~~employed~~barrister's employer or by the recognised body or by the solicitor's firm, as the case may be.

Pupil-supervisors

804. A barrister who is a pupil-supervisor must:

- (a) comply with Part V of the Consolidated Regulations;
- (b) take all reasonable steps to provide his pupil with adequate tuition supervision and experience;
- (c) have regard to the pupillage guidelines issued from time to time by the Bar Council and to the Equality Code for the Bar.

805. Except where a 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, a barrister must pay any pupil (or in the case of an employed barrister ensure that a pupil is paid) for any work done for him which because of its value to him warrants payment.

Legal Advice Centres

806. A ~~self-employed~~ barrister ~~or an employed barrister~~³⁴ may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if he does so, shall in connection with the supply of those services be treated for the purpose of this Code as if he were employed by the Legal Advice Centre.
807. A barrister who is employed by a Legal Advice Centre:
- (a) 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;
 - (b) must ensure that any fees in respect of legal services supplied by him to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre;
 - (c) must not have any financial interest in the Legal Advice Centre.

Dual qualification

- 808.1 A barrister who is a member of another authorised body and currently entitled to practise as such shall not practise as a barrister.
- 808.2 A barrister who becomes entitled to practise as a member of another authorised body shall forthwith inform the Bar Council and the Inn(s) of Court of which he is a member in writing of that fact.
- 808.3 A barrister who:
- (a) has had his name struck off the roll of solicitors or been excluded from membership of an authorised body; or
 - (b) has at any time been found guilty of any professional misconduct or is the subject of any continuing disciplinary proceedings in relation to his professional conduct as a member of an authorised body; or
 - (c) has at any time been refused a practising certificate as a solicitor or had his practising certificate suspended or made subject to a condition

shall not practise as a barrister until the PCC has considered his case and, if it decides to refer the case to a Disciplinary Tribunal, until the case is finally determined.

- 808.4³² A barrister who is a member of another authorised body and currently entitled to practise as a member of that body shall not be deemed to be practising as a barrister if he holds himself out as a barrister provided that before supplying legal services to any person or employer, and when first dealing with any third party in the course of supplying legal services, he informs them fully and comprehensibly in writing (a) of his status and the fact that he does not hold a practising certificate under this Code, (b) of the relevant limitations under this Code on the legal services he may undertake, (c) that he is not fully regulated by the Bar Council, and (d) of the absence of available compensatory powers for any inadequate professional services he may render.

Foreign lawyers

- 809 A barrister called to the Bar under Part IV (E) of the Consolidated Regulations (temporary membership of the Bar) may not practise as a barrister other than to conduct the case or

³⁴ Amended 11th September 2006

³² Paragraph 808.4 is effective from 31st July 2005

cases specified in the certificate referred to in Regulation 39. They must either be insured with BMIF or covered by insurance against claims for professional negligence arising out of the supply of his services in England and Wales in such amount and upon such terms as are currently required by the Bar Council and have delivered to the Bar Council a copy of the current insurance policy or the current certificate of insurance issued by the insurer.³³

³³ Amended 7th December 2007

PART IX - COMPLIANCE

- 901.1 Any failure by a barrister to comply with the provisions of paragraph 202 (a) to (d), 203(1)(a), 204(b), 402, 403(b)(c) and (d), 404, 405, 406, 701, 709, 801(a), 804 or 905(a)(i), (d) or (e) of this Code or with the training requirements imposed by the Consolidated Regulations in force at the date of his Call to the Bar or with the Continuing Professional Development Regulations or the Practising Certificate Regulations shall render him liable to a written warning from the Bar Council and/or the imposition of a fixed financial penalty of £100 (or such other sum as may be prescribed by the Bar Council from time to time) or any financial penalty prescribed by the said Regulations for non-compliance therewith. Liability under this paragraph is strict.
- 901.2 Any failure by a barrister to pay a financial penalty within the time prescribed by the Regulations or stipulated by the Bar Council (or any extension thereof) shall constitute professional misconduct.
- 901.3 In the event that a barrister is given a written warning by the Bar Council, or a financial penalty is imposed upon him for an infringement of the aforementioned provisions of the Code, the barrister shall have a right of appeal to a panel under the provisions of paragraph 23 (3) and (4) of the Disciplinary Rules. The time for bringing such an appeal shall be 28 days from the date upon which the written warning or notice seeking payment of the penalty is deemed to have been received by the Barrister. However, unless the Bar Council agrees or the appeal panel otherwise rules, an appeal shall not operate as a suspension of the requirement to pay the financial penalty or an extension of the time for so doing.
- 901.4 Any failure by a barrister to comply with the provisions of paragraph 202 of the Code shall constitute professional misconduct if the barrister concerned has failed take the necessary action to cure any relevant non-compliance with the preconditions to practise set out therein, or has failed to pay any financial penalty imposed on him within any time limit prescribed by the relevant Regulations or specified by the Bar Council (or any extension thereof).
- 901.5³⁴ (1) Any serious failure to comply with the provisions of the Code referred to in paragraph 901.1 above shall constitute professional misconduct.
- (2) A failure to comply with those provisions may be a serious failure:
- a. due to the nature of the failure; or
 - b. due to the extent of the failure; or
 - c. because the failure in question is combined with a failure to comply with any other provision of the Code (whether or not that provision is mentioned in paragraph 901.1); or
 - d. if the barrister has previously failed to comply with the same or any other provision of the Code (whether or not that provision is mentioned in paragraph 901.1).
- 901.5 If a barrister is given two or more separate written warnings by the Bar Council in a period of three years for infringement of any of the provisions of the Code referred to in paragraph 901.1, or is subjected to an automatic financial penalty for any failure to comply with any such provision of the Code on two separate occasions within a period of three years, then any further failure by him to comply with the provisions of the Code within a period of two years after the later of the written warnings or financial penalties shall constitute professional misconduct even if that failure, taken by itself, would not otherwise be regarded as professional misconduct.
- 901.7 Any failure by a barrister to comply with any provision of this Code other than those referred to in paragraph 901.1 above shall constitute professional misconduct.

³⁴ Amended 18 March 2008

902. If the declaration made by a barrister on Call to the Bar is found to have been false in any material respect or if the barrister is found to have engaged before Call in conduct which is dishonest or otherwise discreditable to a barrister and which was not, before Call, fairly disclosed in writing to the Benchers of the Inn calling him or if any undertaking given by a barrister on Call to the Bar is breached in any material respect that shall constitute professional misconduct.
903. A barrister is subject to:
- a. the Complaints Rules (reproduced in Annex J);
 - b. the Disciplinary Tribunals Regulations (reproduced in Annex K);
 - c. the Summary Procedure Rules (reproduced in Annex L);
 - d. the Hearings before the Visitors Rules (reproduced in Annex M);
 - e. the Interim Suspension Rules (reproduced at Annex N);
 - f. the Fitness to Practise Rules (reproduced at Annex O);
 - g. the Adjudication Panel and Appeals Rules (reproduced at Annex P) which are concerned with inadequate professional service.
904. Pursuant to the Rules referred to in paragraph 903 a barrister may be directed to provide redress to a lay client for inadequate professional service whether or not such inadequate professional service also constitutes professional misconduct.
905. A barrister must:
- a. if he is practising, or the Bar Council has reason to believe may be practising, as a barrister:
 - i. respond promptly to any requirement from the Bar Council for comments on or documents relating to the arrangements made for administering his practice and chambers or office whether or not any complaint has been received or raised arising out of those arrangements;
 - ii. permit the Bar Council or any agent appointed by it to inspect forthwith and on request and at any time which is reasonable having regard to the circumstances and the urgency of the matter any premises from which he practises or is believed to practise as a barrister the arrangements made for administering his practice and chambers or office, and any records relating to such practice and to the administration of his chambers or office.
 - b. report promptly to the Bar Council if:
 - i. he is charged with an indictable³⁵ offence;
 - ii. he is convicted of any relevant criminal offence;
 - iiia. he is charged with a disciplinary offence by another professional body; or
 - iii. he is convicted of a disciplinary offence by another professional body;
 - c. report promptly to the Bar Council if;

³⁵ Effective from 20th June 2008

- i. bankruptcy proceedings are initiated in respect of or against him;
 - ii. directors disqualification proceedings are initiated against him;
 - iii. a bankruptcy order or directors disqualification order is made against him; or
 - iv. if he enters into an individual voluntary arrangement with his creditors;
- d. where a complaint about a barrister has been made to or by the Bar Council, or where the Bar Council has reasonable grounds for believing that a breach of this Code may have occurred or is about to occur, or where a circumstance referred to in sub-paragraph (b) or (c) above has been reported to the Bar Council, respond promptly to any request from the Bar Council for comments or information on the matter whether it relates to him or to another barrister;
- e. respond promptly to any letter of notification sent to him or attend before any tribunal panel body or person when so required pursuant to the rules referred to in paragraph 903;
- f. comply in due time with any sentence or suspension imposed or direction made or undertaking accepted by a tribunal panel body or person pursuant to the rules referred to in paragraph 903.

provided for the avoidance of doubt that nothing in this paragraph shall require a barrister to disclose or produce any document or information protected by law or in circumstances to which paragraph 702 applies.

PART X - DEFINITIONS

1001. In this Code except where otherwise indicated:

"the Act" means the Courts and Legal Services Act 1990 and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

"the Act of 1985" means the Administration of Justice Act 1985;

"the Act of 2007" means the Legal Services Act 2007;

"Adjudication Panel" means an adjudication panel constituted under the Adjudication and Appeals Rules (reproduced in Annex P);

"advocacy services" means advocacy services as defined in Section 119 of the Act;

"Appointments Board" means the Board established by the Bar Council to make appointments to the Bar Standards Board and its regulatory committees;¹

"approved regulator" has the same meaning as in section 20(2) of the Act of 2007;

"authorised body" means any body other than the Bar Council authorised under the Act to grant rights of audience or rights to conduct litigation;

"authorised litigator" means an authorised litigator as defined in Section 119 of the Act;

"bankruptcy order" includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world;

"Bar" means the Bar of England and Wales;

"Bar Council" means The General Council of the Bar as constituted from time to time or a Committee thereof;

"barrister" means an individual who has been called to the Bar by one of the Inns of Court and who has not ceased to be a member of the Bar; and in Parts III (other than paragraph 301), VI, VII and VIII of this Code means a practising barrister;

"Bar Standards Board" means the Board established to exercise and oversee the regulatory functions of the Bar Council;¹

"BMIF" means Bar Mutual Indemnity Fund Limited;

"brief" means instructions to a barrister to appear as an advocate before a Court;

"Call" means Call to the Bar in accordance with the Consolidated Regulations;

"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;

"client" means lay client or intermediary;

"company" means a company regulated by an approved regulator;

¹ Amended 1st January 2006

"complaint" means an allegation by any person or by the Bar Council of its own motion of professional misconduct or of inadequate professional service and includes a legal aid complaint;

"Complaints Commissioner" means the person appointed as such under Regulation 17A of the Bar Council Constitution.

"the Complaints Committee" means the Complaints Committee of the Bar Standards Board or its successor;

"conditional fee agreement" means a conditional fee agreement as defined in Section 58 of the Act;

"Consolidated Regulations" means the Consolidated Regulations of the Inns of Court;

"Court" includes 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;

"Director" means a director of a company, and includes the director of a recognised body which is a company, and in relation to a *societas Europaea* includes:

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

(b) in a one-tier system, a member of the administrative organ

"Disciplinary Tribunal" means a disciplinary tribunal constituted under the Disciplinary Tribunals Regulations (reproduced in Annex K);

"employed barrister" means a practising barrister who is employed other than by a recognised body either under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Communities and who supplies legal services as a barrister in the course of his employment;

"employer" means a person by whom an employed barrister is employed as such and any holding subsidiary or associated company corporate body or firm of that person;

"English law" includes international law and the law of the European Communities;

"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.

"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:

(a) a solicitor or barrister of England and Wales or Northern Ireland; or

(b) a solicitor or advocate under the law of Scotland.

"foreign lawyer" means a person (other than a registered European lawyer or a practising barrister of the bar of England and Wales) who is authorised by a competent professional body to practise in a system of law other than English law;

"Hearings before the Visitors" means an appeal hearing constituted under the Hearings before the Visitors Rules 2005 (reproduced in Annex M);

“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 States, it shall mean any such body;

“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;

“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;

“inadequate professional service” means such conduct towards a lay client or performance of professional services for that client which falls significantly short of that which is to be reasonably expected of a barrister in all the circumstances;

“incorporated solicitors’ practice” means a body recognised under section 9 of the Act of 1985;

“indictable offence” carries the definition set out in the Serious Organised Crime and Police Act 2005 as defined in Schedule 1 of the Interpretation Act 1978 as “an offence which, if committed by an adult is triable on indictment whether it is exclusively so triable or triable either way”;

“Informal Hearing Panel” means an informal hearing panel constituted under paragraph 43 of the Complaints Rules (reproduced in Annex J);

“instructions” means instructions or directions in whatever form (including a brief) given to a practising barrister to supply legal services whether in a contentious or in a non-contentious matter and “instructed” shall have a corresponding meaning;

“Interim Suspension Panel” means a panel constituted under the Interim Suspension Rules (reproduced in Annex N);

“intermediary” means any person by whom a self-employed barrister is instructed on behalf of a lay client and includes a professional client who is not also the lay client;

“International work” shall have the meaning set out in the International Practice Rules (reproduced in Annex A);

“JRC” means the Joint Regulations Committee of the Bar Council or any successor body exercising the same responsibilities by whatever name called;²

“lay client” means the person on whose behalf a practising barrister (or where appropriate in the case of an employed barrister his employer) is instructed;

“lay member” means a lay person appointed by the Appointments Board to be a member of the Bar Standards Board or one of its regulatory committees;²

“lay representative” means either

- (a) a lay person appointed by the President of the Council of the Inns of Court to serve on Disciplinary Tribunals, Summary Procedure Panels, Informal Hearings Panels Interim Suspension Panels and Appeal Panels therefrom, Adjudication

² Amended 1st January 2006

Panels, Adjudication Appeal Panels 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

save that no person may be appointed as a lay representative:

- (i) if they are a member of the [PCC Complaints Committee](#) or of the Bar Council or any of its other Committees; or
- (ii) if they were a member of the [PCC Complaints Committee](#) at any time when the matter which the Tribunal or panel is dealing with was considered by the [PCC Complaints Committee](#);

"legal aid complaint" shall mean a complaint so described in section 40 of the Act of 1985 as amended by the Access to Justice Act 1999;

"Legal Advice Centre" 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:

- (a) which employs or has the services of one or more solicitors pursuant to paragraph 7(a) of the Employed Solicitors' Code 1990 or for whom the Law Society has granted a waiver, or
- (b) which has been and remains designated by the Bar Council as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Bar Council in relation to insurance or any other matter whatsoever;

"legal services" includes legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:

- (a) sitting as a judge or arbitrator or acting as a mediator;
- (b) lecturing in or teaching law or writing or editing law books articles or reports;
- (c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;
- (d) communicating to or in the press or other media;
- (e) exercising the powers of a commissioner for oaths;
- (f) 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;
- (g) 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;

"Legal Services Commission" means a body established by or under Section 1 or Section 2 of the Access to Justice Act 1999 and includes any body established and maintained by such a body;

"Licensed Access client" means a person or organisation approved as such by the Bar Council in accordance with the Licensed Access Recognition Regulations (reproduced in Annex F);

"litigation services" means litigation services as defined in Section 119 of the Act;

"LLP" means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000;

"Manager" means a practising barrister who is:

(a) a partner in a partnership;

(b) a member of an LLP; or

(c) a director of a company

which is a recognised body;

"Mediation"³⁶ mediation is a process whereby the parties to a dispute appoint a neutral person (mediator) to assist them in the resolution of their dispute;

"Medical Panel" means a panel constituted under the Fitness to Practise Rules (reproduced in Annex O);

"Member State" means a state which is a member of the European Communities;

~~"the Monitoring Committee" means the Monitoring Committee of the Bar Standards Board or its successor"~~⁴

"non-practising barrister" means a barrister who is not a practising barrister;

~~"the Professional Conduct and Complaints Committee" or "PCC" means the Professional Conduct and Complaints Committee of the Bar Council or any successor body exercising the same responsibilities by whatever name called;"~~⁵

"owner" in relation to a body means a person with any ownership interest in that body;

"partner" means a person who is or is held out as a partner in an unincorporated firm;

"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;

"practising barrister" means a barrister who is practising as such within the meaning of paragraph 201;

"the President" means the President of the Council of the Inns of Court;

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

(a) a solicitor, solicitors' firm, LLP or company, recognised body regulated by the Solicitors Regulation Authority, authorised litigator, Parliamentary agent, patent agent, European Patent Attorney¹, trade mark agent, Notary or a European lawyer registered with the Law Society of England and Wales;

(b) a licensed conveyancer in a matter in which the licensed conveyancer is providing conveyancing services;

³⁶ Amended 23rd March 2005

⁴ -Amended 1st January 2006

⁵ -Amended 1st January 2006

- (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 in a matter which does not involve the barrister supplying advocacy services;
- (f) a Scottish or Northern Irish Solicitor
- (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 a fee, and which has been and remains designated by the Bar Council (subject to such conditions as may be imposed by the Bar Council 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;

“professional misconduct” shall bear the meaning given in paragraphs 901 and 902;

~~“the Professional Standards Committee” or “the PSC” means the Professional Standards Committee of the Bar Council or any successor body exercising the same responsibilities by whatever name called;⁶~~

“the public” includes any lay client of a practising barrister (or in the case of an employed barrister of the barrister's employer) other than any of the persons referred to in Paragraph 501;

“public access instructions” means instructions given to a barrister by or on behalf of a lay client pursuant to paragraph 401(a)(iii);

“the Qualifications Committee” means the Qualifications Committee of the Bar Standards Board or its successor;⁶

“the Quality Assurance Committee” means the Quality Assurance Committee of the Bar Standards Board or its successor;

“recognised body” means a partnership, LLP, company or sole principal authorised to provide reserved legal services by an approved regulator other than the Bar Standards Board;

“registered European lawyer” means a European lawyer registered as such by the Bar Council and by an Inn pursuant to a direction of the JRC under Regulation 30 of the Consolidated Regulations;

“relevant criminal offence” means any criminal offence committed in any part of the world except:

- (a) an offence committed in the United Kingdom which is a fixed penalty offence for the purposes of the Road Traffic Offenders Act 1988 or any statutory modification or replacement thereof for the time being in force;
- (b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence; and
- (c) an offence whose main ingredient is the unlawful parking of a motor vehicle;

“right of audience” means a right of audience as defined in Section 119 of the Act;

⁶ -Amended 1st January 2006

"right to conduct litigation" means a right to conduct litigation as defined in Section 119 of the Act;

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

(a) a barrister who is a manager or employee of a recognised body; and

(b) an employed barrister acting in the course of his employment;

- "solicitor" means a solicitor of the Supreme Court of England and Wales;

"the Standards Committee" means the Standards Committee of the Bar Standards Board or its successor;

"Summary Procedure Panel" means a panel constituted under the Summary Procedure Rules (reproduced in Annex L);

"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;

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

List of consultees

Bar Standards Board Committees/Panels

Consumer Panel
Complaints Committee
Education and Training Committee
Qualifications Committee
Quality Assurance Committee
Diversity Sub-group

Bar organisations

Chairman of the Bar
Access to the Bar Committee
Alternative Dispute Resolution Committee
Bar Human Rights Committee
Employed Barristers' Committee
Equality and Diversity Committee
European Committee
Fees Collection Committee
Information Technology Committee
International Relations Committee
Law Reform Committee
Legal Services Committee
Professional Practice Committee
Public Affairs Committee
Remuneration Committee
Training for the Bar Committee
Young Barristers' Committee

All Circuit Leaders
All Heads of Chambers
All Chairs of Specialist Bar Associations

Inns of Court

Other bodies

Advocacy Training Council
Architects Registration Board
Association of District Judges
Association of Muslim Lawyers
Association of Women Barristers
Attorney General
Bar Council of Northern Ireland
Bar Mutual Indemnity Fund
Chancellor of the High Court
Chartered Association of Certified Accountants
Chartered Institute of Patent Attorneys
Chartered Institute of Taxation

Chartered Insurance Institute
Council of HM Circuit Judges
Council of the Inns of Court
Council for Licensed Conveyancers
Citizens' Advice
Crown Prosecution Service
Department for Business, Enterprise and Regulatory Reform
Faculty of Advocates
Faculty of Actuaries
Federation of Small Businesses
Institute of Barristers' Clerks
Institute of Chartered Accountants of England and Wales
Institute of Chartered Secretaries and Administrators
Institute of Legal Executives
Institute of Paralegals
Institute of Trade Mark Attorneys
Justices Clerks Society
Law Centres Federation
The Law Society
Legal Action Group
Legal Complaints Service
Legal Practice Management Association
Legal Services Consultative Panel
Legal Services Commission
Legal Services Ombudsman
Lord Chief Justice
Master of the Rolls
Ministry of Justice
National Consumer Council
Office of Fair Trading
Office of the Immigration Services Commissioner
President of the Family Division
President of the Queen's Bench Division
Revenue and Customs Prosecutions Office
Royal Institute of British Architects
Society of Asian Lawyers
Society of Black Lawyers
Solicitor General
Solicitors Regulation Authority
Which?