

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**NEW INFORMATION AND REGISTRATION  
REQUIREMENTS FOR THE BAR  
CONSULTATION ON RULE CHANGE**

**JUNE 2017**

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## **Foreword**

This consultation paper seeks views on a number of proposed rule changes to the Bar Standards Board (BSB) Handbook. These would require barristers to provide us with additional information when completing the Authorisation to Practise (AtP) process from 2018.

At the BSB we take a risk and evidence-based, proportionate approach to regulation. We also work hard to minimise regulatory costs.

So we are asking for this information because:

- it will help us to be more focused and efficient in our regulation (by collecting data around types and areas of practice);
- it will help us to improve standards in proceedings with young people;
- it will help us to protect the confidentiality of the data that barristers provide; or
- we are required to do so under the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations).

We want the impact of the proposed rules to be minimal. For example, in the case of information on practice area, we are asking barristers to respond using the same categories of practice area which are currently used by the Bar Mutual Indemnity Fund (BMIF).

We are also working hard to make the AtP process generally easier and more efficient through our new My Bar portal, which will launch in November 2017 (replacing the current Barrister Connect portal).

We look forward to receiving your views.

**Dr Vanessa Davies**  
**Director General**  
**Bar Standards Board**

## **Who is this consultation for?**

This consultation will be of particular interest to members of the Bar, the Bar Council, Specialist Bar Associations, consumers of legal services, the organisations which support them and the judiciary.

We would encourage all interested parties to respond to ensure your views are represented. Your response can be answers to the specific questions we have posed under each section or can be provided in a different format.

If you have a disability and need to access this consultation in an alternative format, such as in larger print, or if there is anything else we can do to facilitate feedback other than via written responses, please let us know. Our contact details are:

Email: [professionalstandards@barstandardsboard.org.uk](mailto:professionalstandards@barstandardsboard.org.uk)

Tel: 0207 611 1441

Address: Professional Standards  
The Bar Standards Board  
289-293 High Holborn  
London  
WC1V 7HZ

The deadline for responding is **5pm Friday 15 September 2017.**

## **1 Introduction**

- 1.1 This consultation invites views on proposed changes to the BSB Handbook. The changes will require barristers to provide information on types and areas of practice, and to make specific declarations in relation to anti-money laundering regulations, when requesting or renewing their practising certificate. These changes will also require barristers to provide a unique email address when registering with My Bar.

My Bar will be a new online portal which the BSB will be launching in November 2017.

This will replace the current Barrister Connect portal and will enable barristers to complete the AtP process online, as well as accessing their personal and professional information, with the ability to update it.

We anticipate that the new modernised portal will make the AtP process in particular easier for barristers to complete.

- 1.2 More information on the background and application of each proposed change is set out below. Initial Equality Impact Assessments (EIAs) have been undertaken, and these are attached as Annexes to this consultation paper. The way in which we have drafted the proposed rule changes means that refusal to comply with the new requirements may result in a barrister's practising certificate being refused or revoked.

### **The proposed rule changes**

## **2 Type and area of practice**

### **What are we proposing?**

- 2.1 We are proposing to introduce a new rule into the BSB Handbook which would require barristers to declare, during each AtP exercise, information about their type and area of practice. Specifically, this would require barristers to provide information on:
- their areas of practice; and
  - the percentage of total income attributable to each area of practice for the last full calendar year; and

- for those who are registered to undertake public access work, the percentage of total income derived from public access work for the last full calendar year.

2.2 These requirements relating to practice area information will only apply to barristers who are renewing their practising certificate as we are seeking information for the last full calendar year.

#### Why are we proposing this?

2.3 To be an effective risk and evidence-based regulator that works in the public interest, we need to have reliable information about the Bar and a good understanding of the dynamics of the market and of the way in which consumers engage with the market. To do this, and to ensure we are targeted, proportionate and risk-based in our work, we need more robust and structured information on type and areas of practice.

2.4 Having this information will support our understanding of the variety of different areas of legal work and the risks and opportunities faced in each, including the challenges faced by consumers. This information will allow us to improve our understanding of the major risks in the market, as set out in our Risk Outlook. For example, the information will allow us to understand better the diversity of the profession at practice area level, helping to inform our equality and diversity work<sup>1</sup>. It will also support our monitoring of Continuing Professional Development (CPD) as we can consider the activities undertaken with reference to the practice areas for the barrister. This will mean that we do not treat the Bar as a homogenous set of practitioners and practices. We expect this will reduce the regulatory burden across the market as a whole as having this information will ensure that we take a proportionate approach to regulation by focusing our work on higher risk areas.

2.5 We will not publish information on income or on area of practice at an individual level. This information will be used by the BSB and the Bar Council solely for permitted purposes, as defined in the Legal Services Act 2007<sup>2</sup>. Within the Legal Services Act 2007, the Bar Council is the designated approved regulator and it delegates all regulatory functions to the BSB. We act independently from the Bar Council.

2.6 The below is the relevant section of the Legal Services Act 2007 which outlines permitted purposes:

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<sup>1</sup> Bar Standards Board, Risk Outlook; An overview of the legal market and our regulatory priorities, April 2016 [48]

<sup>2</sup> Section 51(4) of the Legal Services Act 2007

Legal Services Act 2007 – Part 4 – section 51

Control of practising fees charged by approved regulators

(1) In this section “practising fee”, in relation to an approved regulator, means a fee payable by a person under the approved regulator’s regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities.

(2) An approved regulator may only apply amounts raised by practising fees for one or more of the permitted purposes.

(3) The Board must make rules specifying the permitted purposes.

(4) Those rules must, in particular, provide that the following are permitted purposes—

(a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including—

(i) the maintaining and raising of their professional standards, and

(ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;

(b) the payment of a levy imposed on the approved regulator under section 173;

(c) the participation by the approved regulator in law reform and the legislative process;

(d) the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;

(e) the promotion of the protection by law of human rights and fundamental freedoms;

(f) the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions.

2.7 The permitted purposes provide some activities which may be undertaken by the representative arm of the approved regulator (the Bar Council), and we are proposing to make the practice area information available to the Bar Council solely for these permitted purposes. Barristers will have the opportunity within the My Bar portal to opt in for their data to be used for other representative functions<sup>3</sup>, such as marketing from the Bar Council.

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<sup>3</sup> Which are not considered permitted purposes



## What does this mean for barristers?

### *Practice areas*

- 2.8 Barristers who are renewing their practising certificates will have to declare their areas of practice and the percentage of income attributable to each area for the last full calendar year. This will not affect those barristers applying for their first practising certificate or who are returning after a break.
- 2.9 The practice areas we use will mirror those used by BMIF, to make the process as simple as possible, particularly for self-employed barristers.

### *Public Access*

- 2.10 Declaring the percentage of income attributable to public access work in the last full calendar year will only be asked of those barristers who are currently registered to undertake public access work and are renewing their practising certificates.
- 2.11 This will not affect those barristers applying for their first practising certificate or who are returning to practice following a break.

## Questions

- Q1. Do you agree with the proposal to collect areas of practice? Please give reasons for your answer.**
- Q2. Do you agree with the proposal to collect information on the percentage of income attributable to practice area? Please give reasons for your answer.**
- Q3. Do you agree with the proposal to collect information on income attributable to public access work? Please give reasons for your answer.**

### **3 Registration for proceedings involving young people**

#### What are we proposing?

- 3.1 We are proposing a rule change which would require barristers, when applying for a practising certificate through My Bar, to register if they are undertaking, or intend to undertake in the following 12 months, work in proceedings involving young people. This will affect barristers applying for their first practising certificate, barristers returning to practice following a break and barristers who are renewing their practising certificate.
- 3.2 We are also proposing a rule which would require barristers who conduct work in proceedings involving young people and are not registered (as set out above) at the time of doing so, to register that they have undertaken this work promptly after the event. If this occurs outside of the period for applying for a practising certificate<sup>4</sup>, the portal will not have a facility to support this and so we are proposing that the barrister will need to contact the BSB, in order to complete the registration process.
- 3.3 We are proposing to amend the form which pupils have to complete once they come to an end of their non-practising period of pupillage (first six)<sup>5</sup>. Within this form, pupils will be asked to register if they intend to undertake work in proceedings involving young people during their practising period of pupillage (second six) in order to receive their provisional practising certificate.
- 3.4 We do not consider it necessary to introduce a separate rule specifying that pupils should register because:
- a. Our rules provide that pupils must complete the form as prescribed by the BSB, under rQ62; and
  - b. The additions we are proposing to rS59 in relation to youth proceedings registration include provisional practising certificates

#### Why are we proposing this?

- 3.5 In November 2015, the BSB and the Chartered Institute of Legal Executives published a review<sup>6</sup> into the quality of advocacy in youth proceedings. This

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<sup>4</sup> Whether this is their first practising certificate, an application to return following a break or if they are renewing their practising certificate

<sup>5</sup> <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/forms-and-guidelines/pupillage-forms/>

<sup>6</sup> A copy of the review can be downloaded from our website at: [www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf](http://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf)

suggested that standards of advocacy were variable and that, as a result, some young people were being poorly represented.

- 3.6 There is a risk, as outlined in the Youth Advocacy report and BSB Risk Index that if barristers lack the specialist communication skills required in proceedings involving young people, then clients may not be provided with adequate representation which may, in turn, impact on the public perception of legal services<sup>7</sup>.
- 3.7 We believe that introducing this registration will result in better standards of advocacy in proceedings involving young people. One way we believe this will be achieved is by using the information to inform how we supervise barristers. For example, we may choose to tailor our CPD monitoring to ensure that barristers who have registered to undertake advocacy work in proceedings involving young people are maintaining their competence in this area.
- 3.8 We are proposing that the registration will appear against the barrister's name on the [BSB Barristers' register](#), which is publicly available on the BSB website. As a result, anyone will be able to see whether a barrister is registered to conduct work in proceedings involving young people.
- 3.9 We acknowledge that there may be situations in which urgent instructions are received at late notice and the barrister does not have time to complete the registration with us before trial. In these situations, barristers will still be required to comply with the requirements in the Handbook, which state that they should only take on the case if they are competent, and have sufficient experience to do so<sup>8</sup>. They will also be required to update their records by contacting the BSB to register that they have undertaken work in proceedings with young people.
- 3.10 Barristers will be able to unregister from undertaking work in proceedings involving young people at any time, by using their My Bar account. This is important to ensure that only barristers who are currently, or intending to undertake work in proceedings involving young people, are registered as doing so, ensuring our supervisory approach is targeted effectively.
- 3.11 We are not proposing that the registration appear on the practising certificate as having such a registration implies that the barrister must be registered with the BSB to undertake such work *before* the event. By not stating on the practising certificate the registration of work in proceedings involving young

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<sup>7</sup> Our Risk Index can be found on our website:  
[https://www.barstandardsboard.org.uk/media/1751667/bsb\\_risk\\_index\\_12pp\\_5.4.16\\_for\\_web.pdf](https://www.barstandardsboard.org.uk/media/1751667/bsb_risk_index_12pp_5.4.16_for_web.pdf)

Our Risk Outlook can be found on our website:  
[https://www.barstandardsboard.org.uk/media/1751659/bsb\\_risk\\_outlook.pdf](https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf)

<sup>8</sup> This is set out at Rule rC21.8 of the *BSB Handbook*.

people, we enable barristers to undertake such work, and to register and declare their competency after the event, so as not to frustrate the administration of justice, by denying young people access to representation. Similarly, it will enable barristers who no longer wish to undertake this work to do so, without having to have an amended practising certificate issued.

- 3.12 We will be engaging with Magistrates and District Judges to raise awareness of the new requirements.

#### What does this mean for barristers?

- 3.13 Subject to the approval of the proposed rule, compulsory registration for barristers applying for their practising certificate<sup>9</sup>, or pupils applying for their provisional practising certificate, will be likely start from February 2018.
- 3.14 Barristers who are applying for their first practising certificate, or are returning from a break, will be able to complete the AtP process from November 2017. As we do not anticipate the new rules coming into effect until 2018, disclosure for these barristers would be voluntary.

#### Questions

- Q4. Do you foresee any practical challenges with introducing compulsory registration for Youth Court advocates? If you do, what are these?**
- Q5. Do you agree with the proposal to require barristers undertaking work in proceedings involving young people to register?**
- Q6. Do you agree that the registration should appear on the BSB Register?**

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<sup>9</sup> As above, this will apply to barristers applying for their first practising certificate, those who are returning following a break and those who are renewing.

#### **4 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

##### What are we proposing?

- 4.1 We expect that the Regulations will come into force on 26 June 2017. These regulations transpose the EU Fourth Money Laundering Directive (and the Fund Transfer Regulation (FTR) which accompanies it), which seek to implement the international standards set by the Financial Action Task Force<sup>10</sup>. They will replace The Money Laundering Regulations 2007.
- 4.2 In transposing the EU Directive, as well as addressing concerns identified through consultations, the Government has more explicitly set out supervisors' obligations in the 2017 Regulations. This includes a requirement to be risk based in our supervision, ensuring we identify and assess the international and domestic risks of money laundering and terrorist financing with reference to those barristers undertaking work that engages the Regulations.
- 4.3 To achieve this, we are proposing a rule change which would require barristers to disclose during the AtP process:
1. whether they are undertaking, or intending in the next 12 months to undertake, work which falls within the scope of paragraphs 11 (4), 12 (1)(a) to (e) and (2) (a) to (d) of the Regulations; and if they do fall within the scope of the Regulations, to declare:
    - a. whether, with reference to paragraphs 26 (8) and (11) of the Regulations, they have been convicted of a "relevant offence" as listed in Schedule 3 of the Regulations ; and
    - b. that they will obtain a basic disclosure check and provide the result to the BSB<sup>11</sup>.
- 4.4 These paragraphs of the Regulations define the scope of application to the Bar:

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<sup>10</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-03-15/HCWS537/>

<sup>11</sup> <https://www.gov.uk/disclosure-barring-service-check/overview>

11 (4) “Tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

Independent legal professionals:

12 (1) “Independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning—

- a) the buying and selling of real property or business entities;
- b) the managing of client money, securities or other assets;
- c) the opening or management of bank, savings or securities accounts;
- d) the organisation of contributions necessary for the creation, operation or management of companies; or
- e) the creation, operation or management of trusts, companies, foundations or similar structures,

and, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

12 (2) “Trust or company service provider”\* means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services—

- a) forming companies or other legal persons;
- b) acting, or arranging for another person to act—
  - i. as a director or secretary of a company;
  - ii. as a partner of a partnership; or
  - iii. in a similar position in relation to other legal persons;
- c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- d) acting, or arranging for another person to act, as—
  - i. a trustee of an express trust or similar legal arrangement; or
  - ii. a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

4.5 Schedule 3 of the Regulations sets out the relevant offences for the purposes of the Regulations

#### Relevant Offences

1. An offence under the Perjury Act 1911.
2. An offence under section 89 of the Criminal Justice Act 1967.
3. An offence under section 20BB of the Taxes Management Act 1970 (falsification of documents).

4. An offence under section 11 of the European Communities Act 1972.
5. An offence under Article 10 of the Perjury (Northern Ireland) Order 1979.
6. An offence under the Customs and Excise Management Act 1979.
7. An offence under any of sections 1 to 5 of the Forgery and Counterfeiting Act 1981 (counterfeiting offences).
8. An offence under section 1, 2, 3, 3ZA or 3A of the Computer Misuse Act 1990 (computer misuse offences).
9. An offence under the Estate Agency Act 1979, or specified for the purposes of section 3 of that Act in the Estate Agents (Specified offences) (No 2) Order 1991.
10. An offence under sections 112 (false representations or obtaining benefit) or 114 (offences relating to contributions) of the Social Security Administration Act 1992.
11. An offence under section 52 of the Criminal Justice Act 1993 (the offence of insider dealing).
12. An offence under the Value Added Tax Act 1994.
13. An offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995.
14. An offence under the Data Protection Act 1998.
15. An offence under the Terrorism Act 2000.
16. An offence under paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001 (offences).
17. An offence under section 35 of the Tax Credits Act 2002 (offence of fraud).
18. An offence under Part 7 (money laundering) or Part 8 (investigations) of, or listed in Schedule 2 (lifestyle offences: England and Wales), 4 (lifestyle offences: Scotland) or 5 (lifestyle offences: Northern Ireland) to, the Proceeds of Crime Act 2002.
19. An offence under the Money Laundering Regulations 2003, the Money Laundering Regulations 2007 or under these Regulations.
20. An offence under the Commissioners for Revenue and Customs Act 2005.
21. An offence under the Terrorism Act 2006.
22. An offence under section 1, 2, 6 or 7 of the Bribery Act 2010 (bribery).
23. An offence under section 45 of the Serious Crime Act 2015 (offence of participating in activities of organised crime gang).

24. An offence under Parts 1 to 3 or 5 to 7 of the Investigatory Powers Act 2016.
25. An offence of cheating the public revenue.
26. An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of tax.
27. Any offence which has deception or dishonesty as one of its components.
28. The common law offences of conspiracy to defraud and perverting the course of justice.
29. An act which—
  - (a) constituted an offence under the law of a foreign country, and
  - (b) would have constituted an offence under any of paragraphs 1 to 28 under the law of England and Wales if it had been done in England and Wales, or by a UK national, or as regards the United Kingdom.

#### Why are we proposing this?

- 4.6 To ensure we comply with our obligations under the Regulations, we need to know which barristers are undertaking work which engages the Regulations as this will support the risk profiles that we are required, under the Regulations, to prepare<sup>12</sup>.
- 4.7 The Regulations introduce a new criminality test <sup>13</sup> for certain sectors that are not currently subject to fit and proper tests, including tax advisers and independent legal professionals. In order to meet the requirements set out in paragraph 26 of the Regulations, barristers who undertake work that falls under the Regulations will be required to do the following:
  - obtain a basic disclosure check and provide it to the BSB. A basic disclosure certificate shows any 'unspent' criminal convictions in the UK. Any individual can apply for a basic disclosure check themselves, which can currently be completed with Disclosure Scotland. The application can be made online or by completing a paper form. The cost of a basic disclosure is currently £25. Further details about the application process and timeframes are available here: <https://www.gov.uk/disclosure-barring-service-check/overview>; and

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<sup>12</sup> As required under Paragraph 17(4) of the Regulations

<sup>13</sup> Paragraph 26 of the Regulations



- We will also require barristers to confirm annually during AtP that they have not been convicted of a relevant offence as listed in Schedule 3 of the Regulations.
- 4.8 We anticipate contacting barristers who are required to undertake a basic disclosure check in due course to ensure the process is completed in time for June 2018: the deadline we have been set by the Treasury.
- 4.9 Barristers will only be required to complete a basic disclosure check once, in order to satisfy the requirements of the Treasury. Following this, barristers will be required to confirm annually during AtP that they have not been convicted of a relevant offence.
- 4.10 We also have a new obligation to provide HM Revenue and Customs with a register of Trust and Company Service Providers (TCSPs)<sup>14</sup> that we supervise and are therefore required, under the Regulations, to ask barristers whether the work they carry out falls within the definition set out in paragraph 12 (2)(a) to (d) of the Regulations.
- 4.11 The Government also intends to create a new oversight regulator for Money Laundering/Terrorist Financing for the accounting and legal sector supervisors, called the Office for Professional Body Supervisors (“OPBAS”). The Government has indicated that the costs of OPBAS will be passed on and will be consulting over the summer about how they will be apportioned. Collecting data about how many barristers are engaged in relevant work will enable us to ensure that OPBAS costs are allocated to the Bar proportionately.
- 4.12 We recognise that the cab rank rule means that it is not always easy to predict whether a barrister will do work that engages the Regulations. Collecting this data at AtP will give us an annual snapshot that we think will help us meet our obligations as a supervisory authority under the Regulations in a proportionate way.

What does this mean for barristers?

- 4.13 During the AtP process, barristers will be required to:
1. declare whether they carry out work, or intend to carry out work in the next 12 months, which falls within the definition set out in paragraphs 11 (4) and 12(1) (a) to (e) and 12 (2) (a) to (d) of the Regulations; and if so

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<sup>14</sup> Paragraph 53 of the Regulations

- a. declare annually that they have not been convicted of a relevant offence as listed in Schedule 3 of the Regulations; and
- b. to obtain a basic disclosure check and provide it to the BSB (this will only occur the first time the barrister declares they are undertaking work within the scope of the Regulations)

4.14 It will be important for barristers to understand whether the work they do engages the Regulations. The Bar Council is developing new guidance and training and we anticipate that this will be available in June 2017.

#### Question

**Q7. Do you foresee any practical challenges around declaring whether the work you do, or intend to carry out, falls within the scope of paragraph 11 (4) and 12(1) (a) to (e) and 12 (2) (a) to (d) of the Regulations;? If you do, what are these?**

## **5 Unique email address**

### What are we proposing?

- 5.1 We are proposing to introduce a rule that would require barristers to provide us with a unique email address which enables the barrister to restrict access to their account so that only they could view and edit their information. This may be the barrister's direct contact email address with Chambers or an entity, or an alternative email address which is unique to them.

### Why are we proposing this?

- 5.2 The AtP process is currently being redeveloped and the technology on which it is based is being modernised. To ensure that the new "self-service" portal is secure, we consider it important that all barristers use a unique email address to access the system so that they have control over their information. This will mean that personal details - such as home address and contact number – cannot be viewed or edited by other users.

### What does this mean for barristers?

- 5.3 By providing a unique email address when registering with My Bar, the personal information of each barrister will be kept confidential and will not be able to be changed by other users.

## 6 Proposed rule change

6.1 The proposed amendments are included below, **in bold**:

rS59 The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate or to grant a litigation extension, or may revoke a practising certificate or a litigation extension in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the practising certificate or litigation extension (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant barrister or registered European lawyer:

- .1 does not hold adequate insurance in accordance with Rule C76;
- .2 has failed and continues to fail to pay the appropriate practising certificate fee or litigation extension fee when due;
- .3 would be, or is, practising in breach of the provisions of Section 3.B;
- .4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to them;
- .5 has not declared information on type and area of practice in a form determined by the BSB;**
- .6 has not declared whether they will be practising in relation to proceedings involving young people;**
- .6 has not made the declarations required by the BSB in relation to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;**
- .7 has not provided the BSB with a unique email address**

- 6.2 We are proposing the following addition to rule rC64 (**in bold**) which would apply to barristers who need to register and declare they are undertaking work in proceedings involving young people outside of the AtP period:

**Provision of information to the Bar Standards Board**

**rC64**

You must:

- .1 promptly provide all such information to the Bar Standards Board as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and
- .2 comply in due time with any decision or sentence imposed by the Bar Standards Board, a Disciplinary Tribunal, the Visitors, the High Court, an interim panel, a review panel, an appeal panel or a Fitness to Practise Panel.
- .3 if you are a BSB entity or an owner or manager of a BSB entity and the conditions outlined in rS113.5 apply, give the Bar Standards Board whatever co-operation is necessary, including:
  - .a complying with a notice sent by the Bar Standards Board or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a BSB entity (such notice may require such documents to be produced at a time and place fixed by the Bar Standards Board or its agent; and
  - .b complying with a notice from the Bar Standards Board or its agent to redirect communications, including post, email, fax and telephones.
- .4 promptly register if you undertake work in proceedings involving young people if you did not register when applying for a practising certificate**

Question

- Q8. Do you agree with the proposed form of words for the rule changes to rS59 and rC64? Please give reasons for your answer.**

## **7 Equality and Diversity**

- 7.1 Separate EIAs have been completed to assess the equality impacts of introducing the proposed rule changes. These did not highlight any obvious adverse impacts and can be found in Annex B.
- 7.2 The EIAs will be reviewed in light of the responses received to this consultation.

### Question

**Q9. Do you agree with our equality impact analysis? Please give reasons for your answer.**

## 8 **Responding to the consultation**

### Who should respond to this consultation?

8.1 We would welcome anyone to respond to this consultation but are particularly interested in hearing from:

- Self-employed barristers;
- Employed barristers;
- Bar special interest networks and associations;
- Organisations and individuals with an interest in legal proceedings with young people and;
- Members of the judiciary

8.2 The deadline for responses is 5pm Friday 15 September 2017.

### How to respond to this consultation

8.3 Responses can be sent to:

Email: [professionalstandards@barstandardsboard.org.uk](mailto:professionalstandards@barstandardsboard.org.uk)

Address: Professional Standards  
The Bar Standards Board  
289-293 High Holborn  
London  
WC1V 7HZ

8.4 A response does not need to be a comprehensive written document, although it can be if you wish. It can be short form answers to the specific questions we have posed. We will never exclude consideration of a response, whatever its form or content.

8.5 You do not have to respond to this consultation in writing. If you would like someone from the BSB to meet you or the organisation you represent, to listen to and accurately record your views, then as far as possible we will try to accommodate this request. Please contact us either by email, telephone or post as soon as possible if you would like to do this.

8.6 We normally publish responses to consultation papers, together with the names of respondents and of responding organisations. **If you do not want your response to be published, or if you wish to remain anonymous, please make this clear in your response.**

8.7 Once the consultation has closed, we will collate and analyse the responses and issue a consultation report. If we decide to go ahead with the rule changes, we will finalise the drafting of the new rules and apply to our regulator, the Legal Services Board (LSB), for approval. If the LSB approves the rule changes, we will amend the BSB Handbook and publish this accordingly. As highlighted earlier in this consultation paper, we hope to have the new rules in place early in 2018 (in time for the 2018/19 AtP exercise).



## **Annex A: Summary of consultation questions**

- Q1. Do you agree with the proposal to collect areas of practice? Please give reasons for your answer.
- Q2. Do you agree with the proposal to collect information on the percentage of income attributable to practice area? Please give reasons for your answer.
- Q3. Do you agree with the proposal to collect information on income attributable to public access work? Please give reasons for your answer.
- Q4. Do you foresee any practical challenges with introducing compulsory registration for Youth Court advocates? If you do, what are these?
- Q5. Do you agree with the proposal to require barristers undertaking work in proceedings involving young people to register?
- Q6. Do you agree that the registration should appear on the BSB Register?
- Q7. Do you foresee any practical challenges around declaring whether the work you do, or intend to carry out, falls within the scope of paragraph 11 (4) and 12(1) (a) to (e) and 12 (2) (a) to (d) of the Regulations;? If you do, what are these?
- Q8. Do you agree with the proposed form of words for the rule changes to rS59 and rC64? Please give reasons for your answer.
- Q9. Do you agree with our equality impact analysis? Please give reasons for your answer.

## Annex B: Equality Impact Assessment

### Equality Analysis – Practice Area Declaration

|  |  |
|--|--|
| Date of Assessment                     | May 2017   |
| Name of Policy/Function to be Assessed | <p>Rule change for new reporting and registration requirements:</p> <ul style="list-style-type: none"> <li>• Declare areas of practice; and</li> <li>• Declare the percentage of income derived from each area of practice; and</li> <li>• Declare the percentage of income derived from public access work; and</li> <li>• Provide the BSB with a unique email address to access the My Bar portal</li> </ul>   |
| Aim/Purpose of Policy                  | <p>We are proposing a rule change which would require barristers to declare their areas of practice during the Authorisation to Practise (AtP) process from 2018, accompanied by the percentage of income attributable to each area.</p> <p>We are also proposing that barristers who have declared they are undertaking public access work must provide us with the percentage of their total income that this accounted for in the last full calendar year.</p> <p>By collecting this information, it will enable us to have more reliable information on the Bar and a good understanding of the dynamics of the market.</p> <p>Without such information, we are limited in our ability to be an effective risk-based regulator – one that is targeted and proportionate in our work - if we view the Bar as a homogenous set of practitioners and practices.</p> <p>The aim of proposing a new rule which would require barristers to provide us with a unique email address is to ensure their data is kept confidential, by not allowing other users (who may be using the same username if it was a general email for example) to view and edit personal details.</p> |

1. Do you consider the policy to have an adverse equality impact on any of these groups? Write either 'yes' or 'no' next to the appropriate group(s).

|            |    |                     |    |   |    |
|------------|----|---------------------|----|---|----|
| Race       | No | Sexual Orientation  | No | Marriage/Civil Partnership (only in employment matters) | No |
| Gender     | No | Religion/Belief     | No |   |    |
| Disability | No | Gender Reassignment | No |   |    |
| Age        | No | Pregnancy/Maternity | No |   |    |

2. If you answered 'yes' to any of the above, give your reasons why.

3. If you answered 'no' to any of the above, give your reasons why.

We do not have evidence to suggest that the introduction of rules which would require barristers to comply with the above would result in a significant adverse impact on the protected characteristics outlined above.

We do acknowledge that some individuals may require reasonable adjustments in order to comply with these requirements and we can take steps to accommodate this on request.

We anticipate, that by having more robust data on areas of practice that we will be able to be risk based when targeting our regulatory activities. This could have a positive impact on barristers if we identify a relationship with the protected characteristics.

Equality Analysis - Youth Court registration

|  |  |
|--|--|
| Date of Assessment                     | May 2017   |
| Name of Policy/Function to be Assessed | Rule change for new reporting and registration requirements – Youth Court registration   |
| Aim/Purpose of Policy                  | <p>We are proposing a rule change which would require barristers to register whether they intend to undertake work in proceedings involving young people. This will be captured either during the Authorisation to Practice (AtP) process from 2018, or if a barrister registers promptly after having undertaken the work (if they did not register during AtP).</p> <p>The aim of introducing this rule change is to ensure that we understand which barristers are undertaking such work so that we can tailor our regulatory activities accordingly.</p> |

4. Do you consider the policy to have an adverse equality impact on any of these groups? Write either 'yes' or 'no' next to the appropriate group(s).

|            |    |                     |    |   |    |
|------------|----|---------------------|----|---|----|
| Race       | No | Sexual Orientation  | No | Marriage/Civil Partnership (only in employment matters) | No |
| Gender     | No | Religion/Belief     | No |   |    |
| Disability | No | Gender Reassignment | No |   |    |
| Age        | No | Pregnancy/Maternity | No |   |    |

5. If you answered 'yes' to any of the above, give your reasons why.

6. If you answered 'no' to any of the above, give your reasons why.

## **Race**

### Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of race.

As the proposed rule would impose a minimal burden on barristers undertaking this work, we do not anticipate that introducing a registration process will have a significant adverse impact on BAME barristers.

### Consumers

Young people from a White ethnic background accounted for 75% of all young people receiving a youth caution or court conviction in the year ending March 2016. Those from a Black ethnic background accounted for 9%, those from an Asian ethnic background for 5% and those from a Mixed ethnic background for 6%. The Other ethnic group made up 1%<sup>15</sup>. This is not representative of the UK population and we therefore anticipate that young people from BAME backgrounds are more likely to be impacted by the Youth Court project since they are over-represented in the youth justice system<sup>16</sup>. As we will know which barristers are undertaking work in proceedings involving young people, we will be able to tailor our supervisory activities accordingly. We aim that this will increase standards of advocacy in the Youth Court which could have a positive impact on those clients from BAME backgrounds as they are disproportionately represented in the Youth Justice system.

Consumers may be aware that they can check whether their advocate is registered to undertake work in proceedings with young people but as we are not prohibiting barristers from representing in the Youth Court if they are not registered, as they will still be covered by the general competency rules within the Handbook, we do not anticipate a negative impact will result of the publication of the registration.

## **Gender**

### Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of gender.

As the proposed rule would impose a minimal burden on barristers undertaking this work, we do not anticipate that introducing a registration process will have a significant adverse impact on barristers on the basis of gender.

### Consumers

As males are over-represented in the youth justice system<sup>17</sup> we anticipate that the increase in the standards of Youth Court advocacy will have a greater impact on males.

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585897/youth-justice-statistics-2015-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf) [30-31]. The remaining 5% were unknown.

<sup>16</sup> <https://www.gov.uk/government/statistics/youth-custody-data> and [http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776\\_2\\_90558.pdf](http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776_2_90558.pdf)

<sup>17</sup> <https://www.gov.uk/government/statistics/youth-custody-data>

## **Disability**

### Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of disability.

## **Age**

### Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of age.

### Consumers

The report on advocacy in the Youth Courts showed that a number of respondents were unlikely to continue practising in the Youth Court, with some stating the reason for this being the relatively low pay and status of Youth Court advocacy<sup>18</sup>. It could be suggested that requiring barristers to fulfil extra criteria (registration) may create a disincentive to undertake such work. However, as this will impose a minimal burden, we consider that this relatively unlikely risk is justified.

## **Religion/belief**

### Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of religion/belief.

We do not have evidence to suggest that the implementation of a rule requiring registration and declaration of competency will impact of the following protected characteristics; **sexual orientation, gender reassignment, pregnancy/maternity, marriage and civil partnership.**

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<sup>18</sup> The Youth Proceedings Advocacy Review: Final Report, Ali Wigzell, Amy Kirby and Jessica Jacobson, Institute for Criminal Policy Research, 2015 [18]

Equality Analysis – The Regulations

|  |  |
|--|--|
| Date of Assessment                     | May 2017   |
| Name of Policy/Function to be Assessed | Rule change for new reporting and registration requirements – The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations)  |
| Aim/Purpose of Policy                  | <p>We are proposing a rule change which would require barristers to disclose during the Authorisation to Practise (AtP) process:</p> <ol style="list-style-type: none"> <li>1. whether they are undertaking, or intending to undertake in the next 12 months, work which falls within the scope of the Regulations as set out in paragraphs 11 (4), 12 (1)(a) to (e) and (2) (a) to (d); and if they do, to declare: <ol style="list-style-type: none"> <li>a. annually that they have not been convicted of a relevant offence as listed in Schedule 3 of the Regulations; and</li> <li>b. that they will undertake a basic disclosure check and provide the result to the BSB</li> </ol> </li> </ol> |

7. Do you consider the policy to have an adverse equality impact on any of these groups? Write either 'yes' or 'no' next to the appropriate group(s).

|            |    |                     |    |   |    |
|------------|----|---------------------|----|---|----|
| Race       | No | Sexual Orientation  | No | Marriage/Civil Partnership (only in employment matters) | No |
| Gender     | No | Religion/Belief     | No |   |    |
| Disability | No | Gender Reassignment | No |   |    |
| Age        | No | Pregnancy/Maternity | No |   |    |

8. If you answered 'yes' to any of the above, give your reasons why.

9. If you answered 'no' to any of the above, give your reasons why.

**Race**

Barristers who are foreign qualified may not be able to satisfy the document requests for the basic disclosure checks. This process may therefore take longer and/or affect their ability to practise in the short term.

**Disability & Age**

Barristers will be required to declare online as part of the annual AtP process. This process is predominantly conducted online which may affect those barristers who have IT literacy issues as the result of a disability and we can make reasonable adjustments if required.

Some older people may also find an online system more difficult to navigate and require more support. We can make reasonable adjustments if required.

We do not have evidence to suggest that the introduction of a rule which would require barristers to make the above disclosures and undertake a basic disclosure check will have an adverse impact on a barrister's **gender, sexual orientation, religion/belief**, whether they are, have or are proposing to undergo **gender reassignment** or whether they are **pregnant or on maternity**.