

Interim Equality Analysis

Date of Screening	February 2012
Assessor & Department	Senior Policy Officer, Professional Practice
Policy/Function to be Assessed	Review of the BSB Code of Conduct
Aim/Purpose of Policy	<p>The structure of the Code of Conduct (<i>the Code</i>) has been amended in order to make it more user friendly and to specify more clearly the regulatory outcomes that the BSB is seeking to achieve. The Code of Conduct will apply not only to individual barristers but also to BSB authorised bodies, their managers and all authorised persons (barristers or others) working in them. This has required some amendment to the rules but the basic approach has been to apply the same rules with only the minimum necessary differences to all those the BSB regulates. This approach is intended to achieve regulatory consistency and provide clients with the same degree of protection irrespective of whether their legal adviser is an individual or an entity</p>
The Changes	<p>Since the previous consultations, the Board has critically examined the balance between core duties, rules and guidance. Core duties continue to underpin the entirety of the BSB's regulatory framework and pervade the whole Handbook. As before, compliance with the core duties will be mandatory and they define the core elements of professional conduct. Rules are intended to supplement core duties where a core duty alone is considered insufficient to address the perceived risk or where experience suggests that additional, but mandatory, rules are needed to achieve the required end. In some cases rules are necessary in order to clarify the nature of competing duties owed by barristers. Our general approach has been to express all requirements that are genuinely mandatory as rules, whilst providing further information or examples of behaviour that would breach rules in guidance. We have endeavoured to use prescription in rules only where this is necessary to achieve a desired outcome. In general, we have sought to remove or minimise rules which seek to dictate how barristers or entities organise their business. That should normally be a matter for them unless any of the regulatory objectives, especially the interests of clients, might be adversely affected.</p> <p>Although the whole of the Code of Conduct has been</p>

reviewed, this interim analysis only considers the changes that have taken place since the last consultation on the Code of Conduct and is intended to seek initial views on the impact of those changes. Over the coming months, the BSB will prepare a more comprehensive analysis of the Code of Conduct as a whole.

Another interim analysis has been produced, which covers entity regulation, the conduct of litigation and the changes to the BSB's enforcement processes. This will also be expanded over the coming months.

The following is a summary of policy decisions taken by the Board in response to the consultation. Where an issue will be subject to further consultation in the forthcoming code/entity regulation consultation, this has been highlighted in the body of the report.

Reporting misconduct

- The Compliance Rules will retain the rule which places a positive duty on barristers to report serious professional misconduct of other members of the Bar and introduce a new rule requiring barristers to report their own misconduct;
- Guidance will define what amounts to serious misconduct and the circumstances in which a barrister is obliged to report such conduct by another barrister. The guidance will also underline that a barrister's obligation will always be to maintain their own independence and form their own view.

Unregistered barristers

- All core duties will apply to unregistered barristers. As this is a significant change from previous proposals, there will be a further opportunity to comment on it, in response to the forthcoming code/entity regulation consultation;
- Revised guidance for unregistered barristers and on holding out as a barrister will be issued alongside the new Code;
- Unregistered barristers who provide legal services to potentially vulnerable clients (small businesses and charities) will be required to provide an explanation of their position and obtain written confirmation that this explanation has been provided. A model explanatory note for clients will be issued alongside the new guidance.

Undeeming of legal aid fees – widening of exceptions to the Cab Rank Rule

- The current code provides that where a barrister considers a fee to be "improper", the cab rank rule does not apply. The Code currently provides that all legal aid fees (with the exception of crime and family legal aid) are deemed proper fees.
- The proposed rule will permit barristers to make their own decisions as to whether any legal aid fee is a "proper"

	<p>professional fee. This will have the effect that in immigration and civil legal aid cases, a barrister will have to decide whether the fee is proper and be prepared to justify a decision to refuse a case on that basis. The BSB considers that it would not be appropriate for the regulator to take a view on whether particular fees are, or are not, “proper” professional fees.</p> <p><u>Shared responsibility for Chambers management</u></p> <ul style="list-style-type: none"> • Members of chambers will be collectively responsible for the administration of chambers; • What is required of individual members will depend on their position in Chambers. Guidance will be produced to help, in particular, junior barristers to understand the nature of their personal responsibilities; • Disciplinary action would only be considered in the event of a continuing failure or of a complaint about a serious failure. <p><u>Dual qualification</u></p> <ul style="list-style-type: none"> • Barristers who are dually qualified will be allowed to practise as barristers even if they also practise as a solicitor. <p><u>Web based publication</u></p> <p>The Code will be principally web based. Alternative formats will be made available on reasonable request</p> <p><u>New Core Duties</u></p> <ul style="list-style-type: none"> • The Two new Core Duties have been added: <ul style="list-style-type: none"> ▪ You must be open and co-operative with your regulators; and ▪ You must manage your business effectively and in such a way as to achieve compliance with your legal and regulatory obligation <p><u>Associations with others</u></p> <p>An alternative approach on associations with others has been agreed, moving away from a prohibition on associations and sharing premises sharing etc towards an outcomes-focused approach that allows flexibility to the regulated community as long as clients’ interests are safeguarded</p>
	<p><u>The International Practising Rules</u></p> <p>These were consulted on in May 2011. Since the publication of the consultation, further revisions have been made to the rules. The main changes are that:</p> <ul style="list-style-type: none"> ▪ The public access rules will apply to foreign work as well as to domestic work, but with waivers from the training requirement being available for those barristers who already have experience of working with foreign lay clients without a professional client; ▪ The cab rank rule will not apply to instructions on non-contentious work from foreign professional clients apart from instructions from professional clients in the EU, Scotland or Northern Ireland.

Do you consider the policy may have an adverse impact on equality?

- | | | | | |
|---------------------|-----|-------------------------------------|----|-------------------------------------|
| Gender | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Race | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Disability | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Sexual orientation | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| Religion/belief | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| Age | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Gender reassignment | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| Pregnancy/maternity | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |

Consultation/Engagement

The Bar Standards Board's (BSB) consultation paper 'Review of the Code of Conduct' was published in January 2011.

Since the publication of the Code Review in January 2011 the Legal Services Board (the LSB) has consulted on its Regulatory Standards Framework, which sets out the LSB's view of regulatory best practice. In the light of this, the BSB has taken the opportunity to revise the Code further based on the four cornerstones of legal regulation to which the LSB refer to in their framework. These are:

1. Outcomes focused regulation;
2. A risk identification framework
3. Proportionate supervision; and
4. An appropriate enforcement strategy

The BSB has been carefully considering the implications of this new framework and how the Code could be adapted to take account of it. This has involved some restructuring of the Code and an increased emphasis on high level rather than detailed rules. The majority of the policy points arising from the January 2010 consultation remain relevant and are discussed below.

The other major development is that in April 2011, following a previous consultation, the Board decided that it should undertake the regulation of certain kinds of Alternative Business Structures and of Legal Disciplinary Practices (LDPs) and barrister only entities. The Board is now developing a system of entity regulation. That will be based on and supplement the existing system of regulation for individual barristers.

The work on the Code has therefore been combined with the entity regulation project. The intention is to produce a new BSB Handbook which will contain all the rules applying to individual barristers and to those entities which are regulated by the BSB. A consultation document to be issued in February will cover both the new Code and the rules for entities and will contain drafts of most sections of the proposed new Handbook. The consultation will run for a period of three months.

The version of the Code in that consultation has now been amended to ensure that it takes account of comments on previous consultations and meets the requirements of the LSB and outcomes focussed regulation.

No equality issues were raised in the responses to the previous consultation on the Code. A separate interim EIA has been prepared for the entity regulation scheme.

Impact on Equality

Reporting Misconduct

We will retain the rule from the previous consultation which places a positive duty on barristers to report serious professional misconduct of other members of the Bar. However, we now propose to impose a duty on barristers to report any personal failure to comply with the rules applicable to them. The duty to report will therefore arise in the following circumstances:

1. Where the barrister him/herself has failed to comply with applicable rules;
2. Where the barrister is reporting serious misconduct in relation to another barrister; or
3. Where the Head of Legal Practice or Head of Chambers becomes aware of serious misconduct in an entity or Chambers.

Guidance will define what amounts to serious misconduct and the circumstances in which a barrister is obliged to report such conduct by another barrister. The guidance will also underline that a barrister's obligation will always be to maintain their own independence and form their own view.

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

Cross strand impact – gender, race, age

There is a risk that this provision might have a disproportionate impact on younger barristers who may feel uncomfortable reporting misconduct by more senior colleagues. The Biennial Survey of the Bar shows that the more junior members of the Bar are more likely to be female and BME. Barristers with no religious affiliation are also over-represented in this group

However, the BSB considers that any negative impact will be outweighed by the positive impact in the public interest through the introduction of provisions which require reporting of misconduct (which may include bullying, victimisation or other breaches of the equality and diversity provisions in the Code). The BSB considers that there is a clear public interest in introducing this rule as it meets with our regulatory objective of protecting and promoting the interest of consumers.

Q Does the change relating to the reporting of misconduct have any equality implications or positive or negative effects on younger members of the bar, women or BME barristers?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Unregistered barristers

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

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

We propose that all the Core Duties should apply to unregistered barristers. We believe that this will increase protection for clients. Unregistered barristers will also be subject to rules

about not misleading their clients about their status and co-operating with the regulator. They will be subject to disciplinary action if they breach the core duties or the rules which apply to them.

Cross strand impact – age, disability, race, gender

This change may have an impact on BME barristers who are overrepresented in unregistered barrister numbers (Bar Council Statistics 2010). Similarly, the change may have a greater impact on men as there are slightly more male unregistered barristers, than female.

However despite this potential impact it is suggested that the approach can be justified on grounds of public protection as it fulfils a legitimate aim and regulatory objective of protecting and promoting the interest of consumers. It is also deemed as necessary in the light of the changing legal market.

Q Does the change relating to unregistered barristers have any equality implications or positive or negative effects on BME members of the bar or men?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Undeeming of legal fees – widening the exceptions to the Cab Rank Rule

Paragraph 604(b) of the current Code states that a self-employed barrister is not obliged to accept instructions under the 'Cab-rank' rule for a fee that is not proper in the circumstances. It also states that legal aid fees (apart from those related to criminal or family cases) shall be deemed to be proper fees unless the Bar Council determines otherwise. The proposed new rules will introduce a change in that they will be silent on whether legal aid fees are to be considered proper professional fees. This means that in respect of all legal aid fees (not just criminal and family fees) a barrister has to make their own decisions as to whether they can reject legal aid work on the basis that the fee is not a "proper" fee. Where a case funded by legal aid is accompanied by an "improper" fee the Cab Rank Rule does not apply, allowing the barrister to turn down the case subject to being able to defend that decision in the event of a complaint.

The reason for this decision is that the BSB is of the view that it would not be appropriate for the regulator to take a view on whether particular fees are, or are not, proper professional fees.

Cross strand impact – age, disability, race, gender

The Bar Council's Disability Sub Group (DSG) have warned that making exceptions to the cab rank rule affects those vulnerable clients who may be viewed as "expensive" or "difficult" because they can more easily be turned away. As costs of reasonable adjustments cannot be passed to the client, barristers may be less inclined to take on disabled clients requiring heavy or costly support.

As regards race, the changes could affect immigration clients who may have English as a second, or third language or who may have mental health difficulties caused by ill treatment in their home country. There is a risk that such clients will also be viewed as "difficult" or expensive and may be more likely to be turned away.

There is also a potential age impact where barristers are dealing with young clients who may require extra support.

The effect of no longer deeming legal aid fees to be proper fees in immigration and other

civil cases may be that barristers turn down such work. In the event of a complaint it would ultimately be a disciplinary tribunal which decided whether the fee was proper.

As set out above, the impact of these proposals is largely on access to justice for the above groups. Although female and BME barristers are disproportionately affected by legal aid work, we do not believe that these proposals have a detrimental effect on barristers as they will be free to reach their own decision about the appropriateness of fees.

Q Does the change relating to the undeeding of legal fees (widening the exemptions to the cab rank rule) have any equality implications or positive or negative effects on the young, women or BME persons?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Shared responsibility for chambers management

As proposed in the earlier consultation, the new Code will require that all members of Chambers have some responsibility for the management of Chambers. What those responsibilities are will depend on the position of individuals in Chambers and whether they have any specific duties, for example in relation to pupillage. The Head of Chambers and members of management committees will normally be expected to be able to ensure that all requirements are met, while junior members of Chambers may only be required to draw attention to concerns and not obstruct the implementation of suitable arrangements.

The proposed rules for the management of Chambers list the systems and arrangements which they will need to have in place but do not seek to prescribe how those systems and arrangements should work. That will be a matter for decision by those responsible in the Chambers and entity to suit their own particular circumstances. The BSB will need to be satisfied that adequate systems and arrangements are in place. It will produce some 'good practice' guidance but Chambers will be free to develop alternative arrangements provided they manage the relevant risks effectively.

We will require Chambers to ensure that all employee contracts require compliance with the Code insofar as it is applicable to them and prohibit anything which causes or substantially contributes to a breach of the Code. We will also consult on acquiring a power to disqualify individuals from working for BSB regulated persons.

Strand impact – age

As with reporting misconduct, we believe there is a risk that this provision might have a disproportionate impact on younger members of the Bar who are more likely to be junior and therefore may be more likely to feel uncomfortable exercising such responsibility where it relates to a senior member of chambers. However we consider that there is a considerable positive impact on equality in requiring all barristers to ensure compliance with for example the Equality and Diversity provisions of the Code, giving all people in chambers a collective interest in promoting the aims of the Code. To safeguard against the possibility that more junior members feel burdened by this proposed change, the rules and associated guidance will make clear that individual responsibility will be relative to the individual's position in chambers.

We do not consider that there are any equality issues arising from the disqualification of unsuitable individuals from working for BSB regulated persons. We consider such powers as necessary to the establishment of the statutory licensing regime and in the public interest as they will protect and promote the interests of consumers. Individuals in this situation will have a right to a fair hearing and will have the right of appeal.

Q Does the proposal of shared responsibility for chambers management have any equality implications or positive or negative effects on younger members of the bar?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Dual Qualification

The BSB previously proposed that the prohibition on dual authorisation should remain, meaning those qualified, for example, as both a solicitor and barrister would not be able to practise in both capacities at the same time. The BSB considers that this prohibition is no longer justified.

Such individuals, if they were solicitors, would in fact be regulated by both the SRA and BSB, which could arguably increase protection for clients. Barristers are already permitted to become managers or employees of entities regulated by the SRA and would therefore already be subject to the SRA's rules as well as those of the BSB (with the SRA in effect becoming the lead regulator, as the entity's regulator). Therefore the impact would be minimal if such individuals also choose to practise as a solicitor.

The situation for self-employed barristers is rather different. If they wanted to practise also as solicitors, they would have to be insured as both a barrister and a solicitor and would be subject to monitoring by both the SRA and the BSB and make returns to both organisations. There would no doubt also be complications as regards internal Chambers administration. Dual authorised barristers would be allowed to undertake litigation but that will be an option for all practising barristers in future. For these reasons we believe that, in practice, it is unlikely that self-employed barristers would want to incur the additional costs and administrative burdens of dual authorisation. If they did, clients would still be protected and could complain to the Legal Ombudsman about any inadequate service irrespective of the capacity in which the dual qualified person was working. The BSB is of the view that the interests of consumers do not require the retention of the prohibition.

We are not aware of any evidence to suggest that this proposal will have an adverse effect on equality. We consider the potential impact to be positive in that this change will give individuals greater freedom to practise as they choose.

Q Does the proposal regarding dual qualification have any equality implications or positive or negative effects on members of the bar?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

International Practising

The International Practising Rules were consulted on in May 2011. Since the publication of the consultation, further revisions have been made to the rules. The main changes are that:

1. The public access rules will apply to foreign work as well as to domestic work, but with waivers from the training requirement being available for those barristers who already have experience of working with foreign lay clients without a professional client;
2. The cab rank rule will not apply to instructions on non-contentious work from foreign professional clients apart from instructions from professional clients in the EU, Scotland or Northern Ireland.

The consultation issued in May 2011 proposed various changes to the rules concerning

foreign work. One effect of these changes would have been that barristers would have been able to take on foreign work without a professional client both for foreign clients (as now) and for clients in England and Wales. Respondents commented that such a rule would sit unhappily with the Public Access Rules. On re-consideration the BSB reached the view that the proposed rules did in fact create inconsistencies with the Public Access Rules, making protections for clients inconsistent. The policy and rules as proposed would have implied that protections which are considered necessary for clients in England and Wales in relation to legal services provided in England and Wales are not necessary for either foreign clients or clients in England and Wales in relation to foreign work. The BSB considers that such a policy would be difficult to justify. In particular this might cause confusion for clients in England and Wales, if they were required to use a solicitor if employing a particular barrister to carry out certain types of work but not for other types. It is therefore proposed that the public access rules should apply to foreign work.

We have considered the impact this proposal will have on barristers carrying out foreign work, and have concluded it would be relatively small, with little additional burden being placed on such barristers. Some 60% of authorised barristers are already qualified to do public access work. For the others, in the majority of cases, a one day public access training course would be necessary to qualify. Those who already have experience of working directly with foreign lay clients may be eligible for a waiver.

The application of the cab rank rule to foreign work was the subject of much debate in previous consultation responses. At present, it does not apply to foreign work. The May 2011 consultation proposed that the application of the cab-rank rule should be extended to all proceedings in England and Wales, whether instructions come from English, Welsh or foreign lawyers in order to ensure access to justice for all, including any foreigners who may seek it in our legal system. Conversely it was proposed that the rule should not apply to matters outside England and Wales, which ought logically to be governed by the professional rules of the country administering the local justice system, where the cab rank rule is largely unknown and its application is therefore not expected.

On considering the responses the BSB has concluded, that on balance, it would be a step too far to apply the rule to instructions from any foreign lawyer. It will, of course, still be open to a barrister to take on the work if he so wishes. In forming this view the BSB understood and shared concerns expressed by respondents that requiring barristers to act for foreign lawyers about whom nothing may be known and who may be subject to regulatory regimes of varying standards, could place barristers in difficult situations where they would be obliged to accept the work under the cab rank rule. Barristers in such circumstances might not be able to obtain reliable information on which to base their advice or might come under pressure to act in unprofessional ways. The cab rank rule restricts a barrister's normal commercial freedom to decide for whom they are prepared to act.

However, not all foreign lawyers are unknown quantities. In particular, foreign lawyers who are authorised by other Member States of the EEA, or who practise in Scotland or Northern Ireland, are subject to familiar regulatory regimes of an appropriate standard. Indeed, it would be incompatible with EU law for the BSB to distinguish between instructions from lawyers authorised in different Member States. The BSB therefore proposes to extend the cab rank rule to instructions from lawyers authorised in another Member State of the European Economic Area, Scotland or Northern Ireland, but not to foreign lawyers elsewhere.

Cross strand impact – race

These provisions are likely to have a disproportionate impact on race as clients whose professional adviser is outside of the EEA will not be able to rely on the Cab-rank rule. It is suggested that this is justifiable for the reasons given above. In any case, the 'non-

discrimination rule' would continue to apply. It would, however, be unreasonable to oblige barristers to accept instructions where the professional client is based overseas in a non EEA jurisdiction.

Q Do the changes regarding the international practising rules have any equality implications or positive or negative effects on BME people?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Web based publication

The new Code will be principally web based.

Cross strand impact – disability, age

This may adversely impact on some disabled people, older people and others who may have limited access to the internet. Copies of the Code will be made available in alternative formats.

Q Does the proposal regarding web based publication have any equality implications or positive or negative effects on disabled or older people?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

New Core Duties

The Core Duties were included in the previous consultation; however with the introduction of entity regulation the duties have been re-examined. Core Duties 1-8 remain the same. The BSB considers that an additional Core Duty is required in relation to running or managing a business. The last version of the Code that was consulted on in January 2011, contained rules on the administration of Chambers. The BSB is of the view that similar provisions would be required for managers of BSB authorised bodies. To underpin these provisions a new Core Duty has been introduced (CD10) about managing your practice effectively. The wording of this Core Duty means it will equally apply to the management of Chambers and of entities. The other new Core Duty relates to co-operation with regulators.

The BSB does not consider that the creation of two additional core duties will have an adverse impact on equality.

Q Does the introduction of the two new core duties have any equality implications?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Associations with others

The current Code, and the version consulted on in January 2011, contain prohibitions on sharing premises and practising in associations with others along with a detailed list of exemptions. The BSB has concluded that these prohibitions impose unnecessary restrictions on how barristers structure their business and they have therefore not been replicated in the new Handbook. We have instead adopted a more outcomes focused approach on associations with others and added a provision to deal with outsourcing.

With the introduction of Alternative Business Structures, legal service providers are

becoming more innovative in their working arrangements, which could potentially include novel ways of working and more outsourcing of any operational functions that are necessary for the delivery of legal services

In devising the rules and guidance on associations with others and outsourcing the BSB has had a clear policy objective in mind. Forming novel business arrangements (including the use of ProcureCos or other outsourcing models) must not enable barristers to circumvent regulatory requirements, nor must it create confusion in the eyes of clients as to which services are regulated by the BSB and/or other regulators and those which are not.

The BSB does not consider that the proposed changes in relation to associations with others will have an adverse impact on equality. It is possible that developing new ways of working and outsourcing would have a positive impact on all barristers as it would create greater opportunities for all.

Q Does the proposed changes with regards to associations with others have any equality implications?

Q Do any positive effects outweigh any possible negative effects? Could any negative effects be mitigated?

Action Plan

Action required to reduce/remove barrier	Person Responsible	Deadline
Complete comprehensive Equality Analysis covering the whole Code of Conduct	Professional Practice and Equality and Diversity teams	July 2012
Consultation with appropriate groups to ensure views are fed into wider Equality Analysis	Professional Practice and Equality and Diversity teams	July 2012

Interim Equality Analysis

Date of Screening	February 2012
Assessor & Department	Senior Policy Officer, Professional Practice
Policy/Function to be Assessed	Entity Regulation, Conduct of litigation and changes to supervision and enforcement approach
Aim/Purpose of Policy	<p>The Legal Services Act 2007 (the 2007 Act) establishes a new statutory regime for the regulation of persons and entities to carry out reserved legal activities and other activities.</p> <p>The BSB took the decision in November 2009 that barristers should be permitted to practice as managers of Recognised Bodies and to date there are around 38 barristers who are manager/owners of Solicitors Regulation Authority (SRA) and Council for Licensed Conveyancers (CLC) regulated Recognised bodies. More recently the BSB has decided that barristers should also be allowed to practise as managers or employees of ABSs. The principle has therefore already been established that it is acceptable for barristers to operate in an entity environment, providing advocacy and other services. The issue now is whether the BSB should regulate such entities.</p> <p>The BSB Entity Regulation Programme Board has been set up to establish the extent to which BSB regulation of entities would meet the regulatory objectives set out under the 2007 Act; the basis under which it should become an entity regulator; (including the scope and extent of that regulation) and the design and implementation the new entity regulation regime.</p> <p>Proposed changes</p> <p>On 28 April 2011 the working group tasked with reviewing the consultation responses made a number of recommendations to the Board. After discussion, the Board took the decision that it would be in the public interest to regulate advocacy focused ABSs, LDPs and BoEs but it would not regulate Multi Disciplinary Practices. In summary the Board agreed, in principle, that:</p> <ul style="list-style-type: none"> • BSB regulated entities and self-employed barristers will be permitted to apply to conduct litigation, should they so wish; • BSB regulated entities will be permitted to provide the same services as those currently provided by the self-

	<p>employed Bar;</p> <ul style="list-style-type: none"> • All owners of BSB regulated entities must also be managers; there will normally be a 25% limit on non-lawyer owners /managers of Alternative Business Structures, subject to the BSB's discretion in the light of guidance provided about the types of entity the BSB is likely to be prepared to regulate; • A majority of the owners/managers of ABSs regulated by the BSB must be barristers or other advocates with higher rights of audience, subject to the BSB's discretion as above; • BSB regulated entities and self-employed barristers will not be permitted to hold client money; • All managers of BSB regulated entities (barristers, solicitors and non-lawyers) will be subject to the same conduct rules; • BSB regulated entities will be expected to focus predominantly on legal activities <p>The Board proposes to regulate Barrister only Entities (BoEs), Legal Disciplinary Practices (LDPs) and Alternatives Business Structures (ABSs), but does not propose to regulate Multi Disciplinary Practices (MDPs).</p> <p>For the current purposes, the following definitions apply:</p> <ul style="list-style-type: none"> • LDP – Is an entity owned and managed only by authorised persons (as defined by s18(1)(a) of the Legal Service Act 2007); • BoE – Is an entity owned and managed exclusively by barristers; • ABS – Is an entity that must have at least one authorised person as Head of Legal Practice (HoLP) and at least one non-lawyer owner/manager (subject to further structural restrictions outlined below). <p>The BSB's regulatory regime for entities will build upon its regime for the self-employed Bar, differing only so far as essential and that as far as possible entities of different types should be subject to the same regime.</p> <p>As the Entity Regulation scheme is a major programme, the EIA will look at 3 different strands:</p> <ol style="list-style-type: none"> 1. Entity authorisation and conduct requirements; 2. Litigation; 3. Risk and Enforcement.
<p>Entity authorisation and conduct requirements</p>	<p>The draft Code of Conduct introduces duties for BSB regulated entities and the managers and BSB regulated persons who work in them. In addition there are specific duties provided for in relation to the Head of Legal Practice (HOLP) and/or the Head of Finance and Administration (HOFA). The HOLP is in particular required to take all reasonable steps to:</p> <ul style="list-style-type: none"> • Ensure compliance with the terms of the entity's authorisation (and report to the BSB any failure to do

	<p>so);</p> <ul style="list-style-type: none"> • Ensure that the entity and all of the employees and managers who are BSB regulated persons comply with duties imposed by s176 of the LSA and that any non-authorised persons comply with their duties under s90 (and report any failure to do so to the BSB). <p>We will also impose a duty on the entity to ensure that all employees are appointed under a contract of employment which requires them to comply with the requirements of the Code, insofar as it is applicable to them; and do nothing which causes or substantially contributes to a breach of the Code by the entity, its managers or the BSB regulated persons employed by it.</p> <p>The BSB’s policy is that there must be at least one barrister manager in a BSB regulated entity, who is also an owner. There can be, but there are not required to be, other managers and owners. This structure would permit a self-employed barrister to incorporate a company wholly owned by them as a vehicle through which to supply their own services. The BSB will not regulate entities that have external owners who are not also managers (we propose that owners with a material interest must be managers) and will require all owners and managers to be natural (i.e. not corporate) persons. This is because external ownership introduces a new set of risks that the BSB has neither the experience nor capacity to regulate.</p> <p>Subject to the exercise of the BSB’s discretion, we will normally expect there to be no more than 25% lay ownership and that a majority of managers will be advocates with higher rights of audience.</p> <p>BSB authorised entities, their managers and authorised employees will be subject to a Code of Conduct very similar to that which currently applies to practising barristers.</p>
<p>Litigation</p>	<p>The BSB’s policy is to permit self-employed barristers and BSB authorised entities to conduct litigation, provided that they apply for, and meet the criteria for, a litigation extension to their practising certificate or entity authorisation. It is proposed that entities could be authorised to conduct litigation provided they employ at least one authorised litigator and the BSB is satisfied that the risks are manageable, given its discretionary authorisation factors. These proposals are intended to help open up the market for litigation services and provide greater consumer choice, whilst ensuring that safeguards are in place to protect clients.</p> <p>Conduct of litigation will require separate authorisation. This can then be linked to appropriate training and ongoing CPD.</p>

	<p>The focus for individuals undertaking litigation will be to provide the BSB with evidence that they have both appropriate knowledge and appropriate systems in place to manage the conduct of litigation. After being authorised to conduct litigation, we propose that barristers under three years' standing will be required to have a 'qualified person' in place, who can provide guidance where necessary.</p>
<p>Risk and Enforcement</p>	<p>The BSB's policy is that authorisation, once granted to an entity, will continue unless or until revoked, suspended or subjected to conditions. However, the introduction of entity regulation provides a useful opportunity for the BSB to review its overall approach to supervision/monitoring and enforcement. Building on our current chambers monitoring regime, we propose to move towards a risk-based supervision system. In addition to requiring entities to submit information annually (and in answer to ad hoc BSB requests), we propose to risk assess each entity against a transparent set of criteria related to the likelihood and impact of any risk to the regulatory objectives that the entity presents.</p> <p>It is proposed that the intensity and level of monitoring activity that an entity will be subjected to will depend on the level of risk that they pose. The BSB's assessment of risk will depend on:</p> <ul style="list-style-type: none"> • The potential impact that non-compliance with the Handbook will have on the regulatory objectives. The key factors in deciding impact will be: <ul style="list-style-type: none"> ○ Size ○ Services offered to the public ○ Vulnerability of client base and ○ Availability of other remedies for clients; and • The probability of the impact occurring. Key factors in deciding probability will be: <ul style="list-style-type: none"> ○ Systems and governance in place ○ First tier complaints ○ People and training ○ Regulatory history ○ Novelty of work undertaken or business model ○ Availability of outside assistance ○ Client satisfaction and ○ Quality accreditation. <p>High risk entities may be subject to more regular monitoring with a request for action plans to address perceived issues. Disciplinary action against the entity or individuals working in them or the imposition of conditions on (or ultimately revoking) licences, would only be undertaken if satisfactory progress were not made or the breaches of rules or conditions were serious.</p> <p>Some wider changes are being made to the BSB's</p>

	<p>enforcement powers:</p> <ul style="list-style-type: none"> • The Interim Suspension Rules are being amended to broaden the criteria for interim suspension and enable the BSB to take action immediately to suspend when it is clearly in the public interest to do so; and • A power will be introduced to enable the BSB to disqualify individuals from working for a BSB regulated person when it is in the public interest to do so; • The levels of fines that may be imposed by the BSB are being reviewed to ensure that they are appropriate and consistent with other regulatory regimes. <p>The BSB will also acquire some statutory powers by virtue of its designation by the LSB as a licensing authority under the Legal Service Act 2007. These powers include:</p> <ul style="list-style-type: none"> • The power to apply to the High Court to have an ownership interest of a non-authorized person in an ABS divested; • The power to intervene in an ABS in extreme situations where the entity has failed to comply with the terms of its licence, where it has gone into receivership, where dishonesty is suspected and where it is necessary to do so in the interests of clients.

Do you consider the policy may have an adverse impact on equality?

- | | | | | |
|---------------------|-----|-------------------------------------|----|-------------------------------------|
| Gender | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Race | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Disability | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Sexual orientation | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| Religion/belief | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| Age | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Gender reassignment | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| Pregnancy/maternity | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |

Consultation/Engagement

A survey was undertaken by YouGov on behalf of the BSB in July 2010 to gauge interest in the regulation of new business structures. A consultation exercise (*Regulating Entities: The Legal Services Act 2007 Implications for the Bar of England and Wales*) which invited responses from the entire Bar, was conducted in September 2010. The consultation asked specific questions regarding the impact on equality and diversity of an entity regulation scheme, namely:

- *Would prohibiting BSB regulated entities from providing reserved instrument activities or probate services have any impact from people of different ethnic groups, men and women or disabled people?*
- *What equality and diversity implications will recouping set up costs from the whole profession (by way of an increase in the practising certificate fee) have on people from different ethnic groups, men and women or disabled people?*
- *Would setting a 10% maximum for non-lawyer ownership of ABSs as opposed to 25% have any impact on equality and diversity?*
- *Are there likely to be any negative consequences for people from different ethnic groups, men and women or disabled people arising from the BSB's proposals to regulate entities? If so, how could these be mitigated?*

There were approximately twenty responses which made specific comment or raised concerns about the four equality and diversity questions. The majority of the responses were in respect of the equality and diversity implications in recouping the costs of setting up the entity regulation scheme. It was suggested that recouping the costs from the profession as a whole would unfairly burden the lowest earners at the Bar, and may have a disproportionate effect on those at the junior bar and those who do a large proportion of publically funded work, which tends to include BME barristers, women and disabled people. There was particular concern that recovering the set up costs across the profession would have an adverse impact on those earning less; the junior bar or those working part-time or flexibly. These groups tend to include a higher proportion of women, disabled and BME barristers.

Impact on Equality

Cross Strand Impact - Gender, Race, Disability and Age

Access to Justice

It is possible that forming entities could reduce the availability of practitioners if there is pressure for smaller / independent practices to merge, and there could be an adverse impact on access to justice for particular groups including disabled, elderly, young or vulnerable consumers. Disabled, elderly and vulnerable people may have reduced access to the internet or lower IT skills and will be affected if entities set up virtual alternatives to counter a reduction in the physical presence of practitioners in an area. It is therefore suggested that alternative methods of conducting business, such as telephone interviews, video conferencing via the telephone or visiting clients in person may address this impact. Access to justice will be one of the considerations in considering applications for authorisation. However, given that barristers can already practise in entities, the impact of a BSB decision to regulate entities on the structure of the legal profession is likely to be very small and the greater ease with which one-stop shops

can be set up may increase access to justice.

Changes to the Code of Conduct (to be brought into force in September 2012) will require barristers to put in place a Reasonable Adjustments policy, thereby removing any barriers, physical or otherwise which could make it difficult or impossible for disabled customers or visitors to use their services where it is reasonable to do so.

Financial Impact

The consultation revealed a fear that an increase in the practising certificate fees across the whole profession, to fund the entity regulation scheme, would adversely affect lower-earning barristers or those working on a part-time or flexible basis. These working practices tend to correlate with female barristers, BME barristers, older and disabled barristers. The Bar Council is reviewing its overall fee structures (which currently mean lower fees are paid by more junior barristers). However, the BSB feels that it is reasonable for the profession as a whole to fund the initial set up costs, as all barristers will have the right to take advantage of the entity regulation regime in due course and much of the development work (particularly relating to the BSB's capacities and capabilities) is of wider relevance as the BSB seeks to develop and modernise its regulatory processes. The amounts per head are expected to be small and spread over several years.

Cab Rank Rule

Four respondents to the 2010 *Regulating Entities* Consultation made specific comment regarding the equality implications of the proposals in relation to the cab-rank rule. All felt that the cab-rank rule has positive implications for BME groups, women and disabled people. One respondent commented that it was of particular importance for disabled people as they *"frequently have to rely on the willingness of individual barristers to act in cases which are not highly lucrative, but which play an important role in achieving equal access to justice"*. By extending the cab-rank rule to entities, the BSB believes that the access to justice for BME, female and disabled consumers will be protected.

Non-Lawyer Ownership

The previous consultation suggested setting maximum for non-lawyer ownership of ABSs between 10% and 25%. It was felt by some respondents that the lower level would have an adverse impact on equality. It was suggested that a 10% maximum could have a disproportionate impact upon smaller entities. Existing evidence indicates that BME practitioners are more likely to work in smaller chambers and if this position is carried through to small entities then BME barristers are more likely to be affected.

The BSB believes, however, that entity regulation offers greater business opportunities to these protected groups. The updated proposals introduce a discretionary element into the approval process, whereby guidance specifies that a BSB regulated entity would 'normally' have at least 50% owners and managers as Higher Court Advocates and 75% of owners and managers are authorised individuals but that these limits need not be enforced rigidly if the BSB judges that the risks are sufficiently manageable.

Conduct of Litigation

In permitting self-employed barristers and BSB regulated entities to conduct litigation, the BSB believes that all barristers will benefit from being permitted to compete effectively with businesses and that consumer choice will be enhanced.

The BSB is of the view that self-employed barristers should be permitted to conduct litigation only where they are able to meet the authorisation requirements. It considers that some clients will benefit from a 'one stop shop' which includes advice, advocacy and litigation services. This sort of service could be a cost-effective and "easy to use" alternative to services provided by "traditional" law firms. The BSB believes that the regulatory risks posed by entities conducting litigation are not sufficient to justify a prohibition.

The proposals will help to increase competition in the market, and a greater diversity in the number and type of providers. BSB regulated entities, and individual barristers, will be able to compete for litigation work directly with existing providers such as traditional law firms. They may be able to provide a cheaper and more efficient service to consumers, partly through lower anticipated overheads, and partly through the effect of providing an integrated 'one stop shop'.

In addition, vulnerable clients may find it easier and more attractive to instruct individual barristers or businesses which are able to focus on their litigation problem as a whole, and who are specialists in their field, without necessarily first instructing a traditional law firm. Reductions in cost and increases in ease of access are likely to impact positively across most of the equalities strands, especially in relation to those in lower socioeconomic groups.

Risk assessment

The proposed criteria for assessing the risk posed by entities includes 'services offered to the public' as a factor in determining the likely impact of a failure to comply with the Handbook. This factor reflects the assumption that some clients are more vulnerable than others and therefore any adverse events have a greater impact. Because it is difficult to measure vulnerability directly, proxy measurements will be used depending on the area of law in question. For example entities with predominantly immigration, family, personal injury and/or criminal practices have an inherently more vulnerable client base than those who concentrate on high end civil clients like banks and other financial institutions. However, female and BME barristers are more likely to do these types of work so the risk-based monitoring may have a greater impact on these barristers and entities. This is mitigated by the factors that determine the probability of a failure to comply with the handbook, which would allow these entities to reduced their risk assessment by having appropriate systems and safeguards in place. The BSB's intention to seek to encourage compliance wherever possible rather than resorting to disciplinary action will also help barristers and entities. In any case, there is a clear public interest in ensuring that these clients are fully protected, and the BSB's aim is to act proportionately in doing so.

Strand Specific Impact: Gender

Entity Regulation

The BSB believes that the Entity Regulation scheme will present women barristers with additional opportunities. The 2011 biennial survey of the Bar shows that 59% of self-employed women barristers cite control over work patterns/working hours as their reason for being self-employed. This may be attributed to family commitments or to caring for dependants.

The survey also showed that 13% of women at the self-employed bar had personally experienced discrimination at work and 11% said they had experienced bullying or harassment at work. The BSB considers that the possibility of starting up an entity either as a sole practitioner or with other barristers may offer female barristers more choice as to the way in which they work (e.g. through forming an entity with other female barristers) and therefore may promote equality. It may also present female barristers with the opportunity to become managers of their own business, albeit that there are cost implications of creating an entity which some women barristers may feel is prohibitive.

31% of female barristers indicated in their survey response that their main area of practice is criminal law. Entity regulation would therefore offer the possibility of increasing public access via competition in the legal services market at a time where legal aid is being cut; thereby presenting consumers with increased choice and the option of consulting a barrister direct and cutting out the intermediary solicitor. The BSB considers that this is likely to have a positive impact on this group.

The Biennial Survey also established that over 90% of criminal work is publicly funded. Almost

half of those barristers working mainly in Criminal practice indicated that their gross billed income has decreased in the last two years. Amongst barristers of whom 90% of their work is publicly funded, more than half (52%) stated a reduction in gross billed income. This correlates to changes to the Legal Aid scheme and a government policy of cutting public spending. The BSB considers that the opportunities afforded by working in new ways may make it easier for criminal barristers to obtain legal aid contracts and consequently there would be benefit for women barristers within this group.

Conduct of Litigation

The Biennial Survey states that the small amount of part time working that takes place in the self-employed Bar is predominantly undertaken by women. A more flexible working arrangement is potentially more attractive to female managers and employees, who traditionally have greater family responsibilities. A wider variety of permitted services could therefore contribute to greater flexibility for female barristers and women working in BSB entities.

Q Do the proposals have any equality implications or positive or negative effects on women?

Q Do any positive effects outweigh any negative effects? Could any negative effects be mitigated?

Strand Specific Impact: Race

Representation

The Biennial Survey shows that 9% of the self-employed Bar are BME. As BME barristers are disproportionately overrepresented in sole practitioner numbers the introduction of entities could potentially compound this disparity – sole practitioners and small chambers may not necessarily survive due to market competition.

There is the potential for large entities to drive sole practitioners out of business which in turn may reduce the choice available to consumers. As barristers will anyway be permitted to practise in entities, the introduction of BSB regulation of entities is likely to be small. Also, although the encouragement of fewer larger suppliers of legal services could create opportunities for BME practitioners, it is also possible that the reduction in smaller niche providers could disproportionately affect BME barristers who traditionally operate from smaller chambers or as sole practitioners.

The BSB proposals will allow single barrister BOEs. This will enable sole practitioners an opportunity to practise as limited companies if that is beneficial to them. BME practitioners will be able to take advantage of this new flexibility

Enforcement

The Professional Conduct Department Diversity Report 2009 – 2010 provides an analysis of gender, ethnicity and disability profiles of barristers who were the subject of complaints. The report also provides, with regards to external complainants, an analysis of those submitting the complaint.

BME barristers were slightly more likely to have complaints against them upheld and were also slightly more likely to be subject to complaints that are likely to be referred for disciplinary action in the years in question. The Diversity Report also shows that there is was higher incidence of external complaints being upheld against BME barristers compared to white barristers.

The survey also found that BME complainants had a slightly higher proportion of complaints

upheld than white complainants. Furthermore, the survey reported that BME barristers were over-represented in the internal complaints raised. Due to some of the data sets being relatively small, there is a risk that some of the findings are not statistically significant

In light of this analysis, the proposals regarding enforcement could disproportionately affect BME barristers as they are at greater risk of being subject of a complaint. However, a robust enforcement process is necessary in order to protect the public and greater emphasis on helping barristers and entities to achieve compliance will help all BME barristers as well as others. Whilst the evidence presented in the Professional Conduct Department Diversity Report is not sufficient in individual years to suggest that there is any unequal treatment, it is acknowledged that the scope of this report and the analysis it contains are limited, and as a consequence the BSB is undertaking further work in order to identify any disproportionate impact.

Public Access

Like women barristers, many BME barristers work primarily in areas of practice which are predominantly publicly funded. According to the survey, criminal law is the main area of practice for 8% of BME self-employed barristers and family law is 10%. Entity regulation may therefore offer the possibility of increasing public access via competition in the legal services market at a time where legal aid is being cut; thereby presenting consumers with increased choice and the option of consulting a barrister direct and cutting out the intermediary solicitor. The option of developing new ways of working may also assist barristers to obtain legal aid contracts. This would be a positive impact.

Access to Justice

Access to justice for consumers may be improved through removing current barriers and enabling consumers to contact entities direct. Competition between entities may drive down costs and lead to more competitive pricing between entities, which could be of financial benefit to consumers.

Working life

Many BME barristers cited independence and control over working patterns as being their reason for being self-employed in the Biennial Survey. The BSB believes that by forming an entity as owners/managers, BME barristers may have more control over their working patterns and may also enjoy the financial benefits that the pooling of resources an entity could offer.

The Biennial Survey also showed that BME respondents reported bullying, harassment and discrimination was more prevalent at the employed as opposed to the self-employed Bar. 6% of BME self-employed barristers indicated they had personally experienced discrimination at work in the previous two years compared to 20% of BME barristers at the employed bar. Entity regulation could potentially increase the number of employed barristers.

Q Do the proposals have any equality implications or positive or negative effects on people from BME groups?

Q Do any positive effects outweigh any negative effects? Could any negative effects be mitigated?

Strand Specific Impact: Disability

The 2011 biennial survey of the Bar shows disabled barristers are more likely to work as sole practitioners (23% compared to 9% of non-disabled barristers).

Financial Implications

The cost of setting up an entity may have an adverse effect upon sole practitioners who may work reduced hours or on a part-time basis, as entity authorisation costs will be in addition to

the requisite practising certificate costs. Although the costs for sole practitioner entities are likely to be less than those for larger entities, the additional associated costs of creating and running an entity may be financially prohibitive to some sole practitioners. However, nothing in the BSB's proposals would require incorporation as an entity, so sole practitioners would only do so where it was in their interests overall.

Discrimination

13% of disabled barristers state in their biennial survey responses that they have personally experienced discrimination compared to just 6% of those with no disability. The BSB believes that starting up an entity either as a sole practitioner or with other barristers in a similar position may offer disabled barristers more choice as to the way in which they work and therefore may promote equality (e.g. through forming an entity with other diverse groups.)

Access to Justice

Disabled consumers could benefit from entity regulation due to the convenience offered by accessing services from a "one stop shop". The new changes could also lead to an increased choice of providers.

In contrast, the possible migration of some sole practitioners into an entity with other barristers may reduce the access opportunities for vulnerable people e.g. some disabled consumers as it may be difficult for them to access face to face meetings due to access to public transport and mobility issues. Similarly, the creation of virtual firms to try and address this issue of accessibility to entities may also have the effect of further restricting access to disabled consumers who may have more limited access to the internet. Alternative methods of conducting business, such as telephone interviews, video conferencing via the telephone or visiting clients in person may address this issue. Furthermore, changes to the Code will require barristers to put in place a Reasonable Adjustment policy, removing any barriers, physical or otherwise which could make it difficult or impossible for disabled customers or visitors to use their services.

Many disabled people are economically disadvantaged; The Bar Council Disability Sub Group indicated concerns that entities which operate with a view to maximise business returns may be less inclined to deal with disabled or vulnerable clients, due to the increased level of support such clients may require e.g., home visits, paper transcription, reasonable adjustments etc. These are costs that an entity cannot legally pass on to directly to the individual client. The application of the cab rank rule will mitigate this risk.

In the *Regulating Entities* consultation, only four respondents made specific responses to the question; "*Are there likely to be any negative consequences for people from different ethnic groups, men and women or disabled people arising from the BSB's proposals to regulate entities?*" It was suggested that regulating entities could have a negative impact on disabled people as entities could be under a duty to maximise financial security, therefore there may be fewer barristers willing to give pro bono advice or grant access in difficult circumstances. However, there is no evidence that in practice entities or the lawyers working in them are less likely to provide services pro bono. The BSB believes that maintaining the cab-rank rule and imposing new duties to put in place a Reasonable Adjustment policy, would ensure the removal of any barriers, physical or otherwise which could make it difficult or impossible for disabled customers or visitors to use barristers' services.

Publicly Funded Work

Concern was also raised that entity regulation could also have negative consequences for BME, or women or disabled people practicing exclusively in publicly funded work. The BSB suggests that entity regulation offers new business opportunities for these protected groups at a time when legal aid is being cut.

Q Do the proposals have any equality implications or positive or negative effects on disabled people?

Q Do any positive effects outweigh any negative effects? Could any negative effects be mitigated?

Strand Specific Impact: Age

The Biennial Survey shows that 9% of the self-employed bar are sole practitioners. Older barristers (aged 45 or more) are twice as likely to work as sole practitioners (12% compared to 6% under 45).

Equality of Opportunity

As older barristers are more likely to work as sole practitioners rather than in chambers, it is possible that there may be fewer opportunities for them to form an entity with colleagues. However the BSB has considers that the risk in this regard is not high as the scheme permits a self-employed barrister to incorporate a company wholly owned by them as a vehicle through which to supply their own services. This may therefore present older barristers with an opportunity to start up their own entity.

Access to Justice

Although increased competition for new clients could result in reduced costs for consumers, elderly consumers and children may also be adversely affected by a reduction in the variety or geographical spread of practitioners, should sole practitioners join up to form local or regional entities. Due to mobility and financial constraints there could be an adverse impact on access to justice for particular groups including elderly or other vulnerable consumers.

Many older people are more comfortable with face-to-face contact and for older people living in rural areas, public transport availability may prevent access to larger towns where their nearest entity is likely to be based. Virtual firms would not necessarily address this issue as both the elderly and the young may not have access to or be able to use the requisite technology. Alternative methods of conducting business, such as telephone interviews, holding a visiting 'clinic' in a suitable location (e.g. hiring a meeting room) or visiting clients in person may address this.

Conduct of Litigation

The Biennial Survey shows that almost 40% of the self-employed bar is below the age of 40 and 21% of the self-employed bar is of less than 8 years' call. The BSB feels that broadening the scope of permitted services could have a positive impact on younger members of the Bar, who could benefit from being given litigation tasks. It could allow barristers and others regulated individuals to gain broader, valuable skills during training or the early stages of their careers. This could in turn help to widen access to the Bar, potentially contributing to a greater numbers of pupillages or other training opportunities.

Q Do the proposals have any equality implications or positive or negative effects which have not been identified in the Interim Equality Impact Analysis?

Q Do any positive effects outweigh any negative effects? Could any negative effects be mitigated?

Action Plan

Action required to reduce/remove barrier	Person Responsible	Deadline
--	--------------------	----------

Consultation with an appropriate focus group to establish reasonable thresholds for application and annual fees	Ewen MacLeod/ Professional Practise Team	
Ensure that Communication strategy highlights and clarifies the business opportunities ABSs and other entities may offer barristers.	Entity Regulation Programme Board/BSB Communication & Strategy team	
Consider payment options for fees to ensure that particular groups are not adversely affected by a rise in fees	Entity Regulation Programme Board & Bar Council	
Consultation with vulnerable client representative groups to ensure how access to justice can be maintained	Entity Regulation Programme Board/Equality Committee	
Monitor distribution of different protected groups following the introduction of BSB regulation	BSB/ Equality Committee	