

Summary of responses to second consultation paper

3 Paper Buildings

1. The response says that barristers should be allowed to practise as managers of LDPs, and should continue to be held to high professional standards. They should have to inform clients of their right to use the services of the independent Bar. They should be allowed to be shareholders in LDPs, but if they are not also employees of the LDP they should hold no more than 10% of its shares. Barristers should not be allowed to practise both as the manager of a LDP and as an independent practitioner.
2. There is no need to reinforce paragraph 601 of the Code of Conduct.
3. Barristers should be permitted to practise in barrister-only partnerships, and these should be restricted to the provision of advocacy and advice services. A limited liability partnership (LLP) is preferable to a partnership under the Partnership Act 1890; if practice in a LLP is not allowed this might be challenged as an unjustifiable restriction on competition. The cab-rank rule should not be imposed on barristers practising in a partnership, since it could not be imposed on a LLP. Barristers should be allowed to practice both as members of a partnership and as a sole practitioner.
4. The Bar Council should as a matter of urgency take steps to enable the BSB to regulate entities such as LLPs, as they are likely to be of much greater interest to barristers than partnerships under the Partnership Act. Barristers should be allowed to limit their personal liability to a reasonable level, provided that the client is given notice of this.

3 Raymond Buildings

5. The response begins by criticising the time that it has taken the BSB to issue the second consultation paper, and what it perceives as a lack of urgency in dealing with the issues. It suggests that the consultation paper is contradictory in proposing to apply the cab-rank rule to barristers practising in partnerships but not to those practising as managers of LDPs.
6. The response argues that the BSB's proposals are fundamentally misconceived and that a substantially different approach, based on the following, is preferable:
 - the cab-rank rule should be regarded as a defining feature of practice as a barrister (other than an employed barrister);
 - the cab-rank rule is incompatible with a joint business undertaking (including a partnership);
 - especially as the preferred form of LDP is likely to be the LLP, regulation of both the entity and its managers should lie with the same regulator.
7. On this basis, barrister-only partnerships should be forbidden, and barristers wishing to practise in a LDP should be required to requalify as solicitors. All managers of LDPs would then be regulated by the SRA.

8. It would not promote the public interest and the interests of consumers to create “new sub-species of barrister” and so undermine the value of the self-employed Bar. Nor can it be right to blur the distinction between barristers and other advocates while giving a commercial advantage to the managers of LDPs by not applying the cab-rank rule to them.
9. There are five basic flaws in the BSB’s approach:
- i) There is no justification for placing the burden of proof on those who wish to maintain the status quo; and the BSB has failed to give adequate consideration to all eight regulatory objectives in the Legal Services Act and to whether its proposals are compatible with them.
 - ii) The BSB (and the Opinion of Mr Peter Roth QC) too readily assume that few barristers are likely to wish to practise in LDPs or barrister-only partnerships. Partnership structures are superior strategically, managerially and financially to the traditional Chambers model and will drive it out of business. The resulting situation will not be compatible with the regulatory objectives of the Legal Services Act.
 - iii) Mr Roth’s Opinion takes too restricted a view of competition. It gives insufficient weight to the desirability of making available to consumers the widest possible choice of counsel. The cab-rank rule is fundamental to maximising access to justice and promoting competition. If barristers are not subject to it as managers of LDPs that is bound to erode access to justice.
 - iv) LDPs may be commercially attractive to their members, but it is not self-evident that they are more attractive for consumers than the status quo. Barristers wishing to become managers of LDPs could easily requalify as solicitors. Requiring them to do so would not infringe the requirements of the EC Treaties.
 - v) The BSB has adopted a “one-size-fits-all” approach: it has, for example, not considered the possibility of allowing barrister-only partnerships in certain areas or under certain conditions. In the particular case of the Criminal Bar, the assumption that the market will produce an outcome in the interests of consumers (and the public interest) is unjustified because the Legal Services Commission acts as a monopolist.
 - vi) The BSB has failed to conduct adequate research, and has relied on arguments and conjecture. It has also failed to consider possible new business arrangements such as establishing agency companies owned by members of traditional sets of Chambers. It is inappropriate for the BSB to pose the questions in Q.8 of the consultation paper. These should have been the subject of serious research before the consultation paper was issued. In any event, it is unlikely that the responses to the questions will represent more than a broad-brush statement of present intentions. But on the basis of general economic principles, LDPs and barrister-only partnerships will prove to be superior models which will undermine the self-employed model. This will not be in the public interest.

5 Paper Buildings

10. The response supports the BSB’s approach. The type of structure through which barristers can provide legal services should not be restricted: the existence of the independent Bar is not threatened by this. In particular, the response suggests that it should be possible for barristers and solicitors to combine in a system analogous to the Chambers system. This

would allow the sharing of expenses and the creation of a common identity. It might, however, be necessary to restrict solicitors in such arrangements from conducting litigation or holding clients' money.

6 King's Bench Walk

11. The response says that it agrees with the BSB's general approach to allowing barristers to practise as members of a LDP and with the proposed amendments to the Code of Conduct. Clients should be told of their rights and the options open to them: the BSB should produce a "standard form" letter to deal with these matters. However, there is a risk that LDPs will tend to specialise in particular types of work at the expense of producing well-rounded and experienced practitioners.
12. It would be desirable to strengthen the provisions of paragraph 601 of the Code of Conduct.
13. Barristers should be allowed to practise in barrister-only partnerships. Again, however, there is a risk that such partnerships will tend to specialise in particular types of work. Barrister-only partnerships should be restricted to the provision of advice and advocacy services. The authors of the response say that they are unlikely to consider joining or establishing a partnership of barristers.
14. Barristers who are members of a barrister-only partnership should be subject to the cab-rank rule.
15. Where multidisciplinary entities are set up it is desirable that there should be a regulatory body which ensures that the same standards apply to all barristers acting in whatever capacity.
16. At several points the response says that it is undesirable that barristers should be allowed to practise in more than one capacity; and its final comment is that the BSB should regulate so as to ensure that this does not happen.

7 Bedford Row

17. This response is largely addressed to one point. It says that it agrees with the BSB's proposals regarding practice in LDPs, and with the proposed changes in the Code of Conduct, but argues that the latter do not go far enough. Barristers should be allowed both to practise as the manager of a LDP and to remain as a member of Chambers. The response suggests that means could be found to deal with any problems of conflict of interest or professional liability. As regards the second part of the consultation paper, it says only "we do not believe that partnerships for barristers offer any material benefits over the present association model."

Arden Chambers

18. This response agrees with the BSB's approach to barristers practising as managers of LDPs, although it suggests that a more "holistic" approach as indicated in paragraph 54 of the consultation paper would be appropriate. It accepts that it will not be possible to apply the cab-rank rule to LDPs and suggests that as much as possible of its provisions should be incorporated in a strengthened paragraph 601 of the Code of Conduct.

19. The response also agrees that barristers should be permitted to practise in barrister-only partnerships. Indeed, it suggests that these (preferably as LLPs) are likely to be the preferred business model. Members of barrister-only partnerships should not be subject to the cab-rank rule.

Bar Association for Commerce Finance and Industry (BACFI)

20. The response welcomes the opening of the market for legal services. However, it suggests that besides LDPs and barrister-only partnerships the BSB should provide for a wider variety of structures within which barristers could work as best suits their business. For example, a single barrister could be permitted to provide services to the public through a company. More generally, many of the restrictions discussed in the consultation paper are unnecessary. In particular, it is unnecessary to restrict barrister-only partnerships to the provision of advocacy and advice services. At the very least they should be allowed to conduct litigation, as many employed barristers are authorised to do.
21. The members of BACFI are more likely to be attracted to practising in a LDP than in a barrister-only partnership; and a LLP would be more attractive than a conventional partnership.
22. A partnership should make it clear to clients that they are dealing with the firm, not an individual.

Bar Council

23. The response says that it is primarily directed to the question whether barristers should be allowed to practise in barrister-only partnerships: the Bar Council has already accepted that they should be allowed to be managers of LDPs. (However, this should be subject to safeguards to ensure that it cannot be used as a loophole to allow barrister-only partnerships. For example, the proportion of barristers might be limited to one-third. And barristers who practise as managers of an LDP should be subject to the cab-rank rule.) It recognises that there is heavy pressure to alter the business model by which barristers deliver services to the public, but says that this does not require the introduction of barrister-only partnerships.
24. The response says that it is based on the following premises:
- The Bar's unique selling point is that each barrister is self-employed and may therefore be instructed without raising conflicts of interest with other members of an organisation.
 - This widens the pool of advocates.
 - It is enshrined in the cab-rank rule.
 - If barrister-only partnerships are allowed the scope for conflicts in interest will be greatly increased; the scope for application of the cab-rank rule will be much reduced; and this will reduce consumer choice and access to justice.
 - There is evidence that many prospective and newly-qualified barristers consider self-employment as one of the significant attractions of a career at the Bar. Self-employment promotes high standards of service and ethics.
25. Barrister-only partnerships will jeopardise these benefits. The presumption should therefore be that they ought not to be introduced without much more careful scrutiny than the BSB has given them.

26. The response describes the problems facing the publicly-funded Bar, particularly in the fields of criminal and family law. These problems require alternative business models or structures to be explored to enable the Bar to compete effectively.
27. The response takes issues with what it describes as the four premises on which the BSB relies for its proposal to allow barrister-only partnerships:
- i) The proposition that barristers should be allowed to do whatever is lawful and, in particular, should be able to practise in whatever form of business organisation they think suitable unless there are good reasons based on the public interest for taking a contrary view cannot be derived from the Legal Services Act. The Act has instead laid on the Bar Council a duty to promote the regulatory objectives which it sets out. The BSB must prove that its proposed changes are the most appropriate way of promoting the objectives.
 - ii) The BSB, following the Opinion of Mr Peter Roth QC, considers that it would be unlawful under competition law to prohibit barristers from entering into partnerships. The response argues that this view of the law is mistaken, and in particular that the BSB should have undertaken an evidence-based analysis of whether existing restrictions operate against the public interest.
 - iii) The BSB is wrong to assume that there is no widespread interest among barristers in forming partnerships. It accepts that if barrister-only partnerships become widespread there would be adverse results, but argues that this will not happen. But the BSB's arguments are not robust. The only safe assumption is that barristers will engage in normal profit-maximising behaviour. It is significant that partnerships are the business model of choice among solicitors. The possibility of conflicts of interest between partners will not prevent the formation of partnerships, though it may limit the extent of their formation.
 - iv) The BSB's assertion that forming partnerships could have attractions for some groups of barristers is not based on evidence. The examples that it puts forward are all open to criticism.
28. The response says that the Bar Council's own enquiries suggest that the Criminal Bar and the Family Law Bar may need to be able to contract on a block basis; and there are informal block-contracting arrangements in the privately-funded Bar. Barrister-only partnerships are not necessary to facilitate block contracting. Indeed, they are in some important respects unsuitable. What is needed is an exploration of alternative business models, such as the establishment of agency companies, which might either contract on behalf of individual barristers or undertake to procure the provision of advocacy services by individual barristers. This would have considerable advantages, for example in the context of criminal or family work in the provinces, where the formation of even a small number of partnerships could seriously restrict local consumer choice. These alternative models would raise regulatory issues, but solutions to these can be found. The Bar Council invites the BSB to engage in a constructive discussion of the issues before taking an irrevocable decision on barrister-only partnerships.

Boeddinghaus, Herman

29. This response is confined to expressing strong support for the conclusions and reasoning of the response from the Chancery Bar Association.

BSB Consumer Panel

30. The response supports the BSB's approach to barristers practising as managers of LDPs. It makes the point that it is important for the consumer to be clear about the status of a barrister, and that it would therefore be wrong to allow a barrister-manager to act at the same time as an independent practitioner. (The same point applies to barristers who are members of a partnership.) The response agrees that barristers should be permitted to practise in barrister-only partnerships. This would widen consumer choice and enable possible improvements in the delivery of legal services. The cab-rank rule should apply to barristers in partnerships; the rule is of benefit to consumers.

Chancery Bar Association (ChBA)

31. The response argues that the right of consumers to choose to use the services of the independent Bar must be maintained. The BSB is under a duty to change existing regulatory provisions only if these are incompatible with the regulatory objectives laid down by the Legal Services Act. Otherwise it must consider whether it is appropriate and in accordance with the balance of risk to change them. Contrary to the Opinion of Mr Peter Roth QC, paragraph 205 of the Code of Conduct is not in breach of competition law. Indeed, it is essential that the paragraph should not be amended in any way. Otherwise there is a risk that the cab-rank rule will be abandoned; that in consequence there will be discrimination against some types of client; and the upshot will be a fused legal profession with a single regulator. Barristers and solicitors differ only in that they are regulated by different entities with different regulatory arrangements: since 1990 solicitors have been able to act as advocates, so that the difference that existed before then has disappeared. It is largely to preserve the distinction between the two branches of the profession that the Bar has in large measure resisted the BSB's proposals in its consultation papers on the implications of the Legal Services Act. The onus is on the BSB to justify the changes that it proposes: it has committed a serious error in reversing the onus of proof.
32. The response goes on to analyse the functions and powers delegated to the BSB by the Bar Council and their relation to the provisions of sections 27 and 28 of the Legal Services Act. The decisions of the BSB must be legal, rational and procedurally proper. If those requirements are met, its decisions cannot be impugned by the Legal Services Board or others. It is therefore necessary when considering paragraph 205 of the Code of Conduct to ask whether it is lawful; whether it is compatible with the regulatory objectives of the Legal Services Act; and, if it is lawful and compatible, whether there is some other reason for changing it.
33. The response states that there is now a single legal profession with two branches: solicitors and barristers. A solicitor may do all that a barrister may (and indeed more); solicitors are much more numerous; and they have more direct access to the public. The issue under competition law is whether it is lawful to require a small sub-set of barristers to qualify as solicitors in order to become managers of LDPs. Given the numbers involved, such a requirement would have negligible effects on competition and the supply of legal services.
34. The cab-rank rule operates in the market place so as to ensure that clients have access to specialist legal services. It cannot operate effectively unless those subject to it are independent practitioners. Paragraph 601 of the Code of Conduct cannot achieve the same results as the cab-rank rule, as the situation in the solicitors' profession shows. The BSB is

correct in asserting that the cab-rank rule could not apply to LDPs (or ABSs); the rule is also incompatible with practice in a partnership.

35. Paragraph 201 of the Code of Conduct is prima facie compatible with the regulatory objectives of the Legal Services Act, and it is not in breach of competition law. In considering whether to amend it the BSB should have regard to the following:

- Solicitors and barristers are members of the same profession; and barristers may easily cross-qualify as solicitors if they wish to practise in LDPs or as partners in any other business organisation permitted by the Law Society.
- Existing arrangements give consumers a full choice among all members of the legal profession.
- Independent barristers are in competition with other barristers and with solicitors; this keeps prices low and quality high; paragraph 205 of the Code of Conduct and the cab-rank rule are vital ingredients in the operation of this system.
- The BSB's proposals would create the possibility that in due course so many barristers would choose to join firms as principals or employees that the independent sub-segment of the market will be eliminated, and impossible to re-establish.
- The balance of risk is crucial: leaving paragraph 205 as it is will not limit consumer choice, whereas changing it risks eliminating the independent sub-segment of the market.

Hence the BSB should leave the provisions of the Code of Conduct unchanged. Since its decision would then be based on sound and objective arguments it would be immune from effective challenge, whether from the LSB or others.

Commercial Bar Association (COMBAR)

36. The response says that the cab-rank rule should be retained for all barristers in whatever business structure; and the prohibition on barristers acting in partnerships or as managers of ABSs (sic) should be retained. However, there could be limited exceptions for the Criminal or Family Bar if this was necessary to ensure that the public has access to a large pool of legal service providers.

37. Barristers should not be permitted to practise in partnerships because this would reduce the pool of advocates; that might cause particular problems in niche specialities; and costs would be unlikely to be reduced and be more likely to be increased. The argument that the problem is overstated because the drawbacks of entering into partnerships are likely to make them relatively unpopular is open to question. Successful barristers would have a big economic incentive to combine in firms and employ juniors to minimise costs. This has happened in other jurisdictions and other professions. It would make the English jurisdiction less attractive to overseas clients. Consumers who wished, for instance, to sue a bank would be likely to find it more difficult to engage experienced counsel; and young barristers would often be forced to work for others instead of gaining experience on their own account.

38. Barristers should not be allowed to practise in partnerships with other lawyers; if they are so allowed they should be subject to the same rules as other barristers, including the cab-rank rule. If they are not so subject, it will be essential to make clear that there is a distinction between the two types of barrister.

Diamond, P

39. Barristers should be able to establish such types of practice as are deemed to be in their interest. The cab-rank rule should be abolished. A library system as in Scotland should be established, so that barristers who wish to offer fully independent services to the public can do so without detriment.

Disability Sub-group

40. The response does not directly answer the questions in the consultation paper. Its main point is to remind the BSB of its duties under the Disability Discrimination Act 1995 and the consequent need to conduct an equality impact assessment of current and proposed policies. The views of disabled persons themselves should therefore be sought by the BSB; but the response broadly welcomes the BSB's position as likely to create greater opportunities for disabled practitioners. On the other hand, it suggests that barristers working in an organisation are likely to be less willing to give pro bono advice, and that this may militate against the interests of the disabled public. If an equality impact assessment suggests that there is a risk that there will be adverse effects on either practitioners or clients the BSB's proposals may need to be modified. (One specific suggestion is that it might be made possible for disabled barristers to apply to be allowed to practise both as the manager of a LDP and as an independent practitioner.)
41. The response also observes that the cab-rank rule and the independence of barristers are of paramount importance for the effective representation of disabled people. It therefore welcomes the proposal to apply the cab-rank rule to barrister-only partnerships.

Dodd, Ian

42. The response agrees with the BSB's approach, though only a few barristers will wish to become managers of LDPs. The entire Code of Conduct will need to be revised in order to regulate barristers practising in LDPs.
43. The vast majority of non-professional consumers do not understand that barristers act as individuals: they assume that they act as some sort of corporate body. Safeguards from the BSB in this area are not required, and would be doomed to failure. The right course is to ensure that all public documents from barrister-only partnerships make the position clear.
44. The success of new business organisations to provide legal services will depend on a fundamental reappraisal of how they are managed. Lawyers are not trained as business managers. They should give proper managerial authority to those who are.

Doughty Street Chambers

45. This response agrees "whole-heartedly" with the BSB's fundamental premise that barristers should be allowed to do whatever is lawful and, in particular, to practise in whatever form of business organisation they think suitable unless there are good reasons based on the public interest for taking a contrary view. The Bar Council should accordingly take early steps to permit it to regulate entities.
46. The response appears to agree with most of the proposals in the consultation paper, except that

- it argues that barristers should be allowed to practise in more than one capacity;
- it expresses some concern that retaining the cab-rank rule for sole practitioners and members of partnerships might unfairly disadvantage them as against those who are employees or managers in LDPs.

Family Law Bar Association (FLBA)

47. The response says that the FLBA agrees with much in the Bar Council's response and with its replies to the questions in the consultation paper, and that it too would welcome discussion with the BSB of the issues raised by the consultation paper. It draws attention to the particular problems faced by practitioners of the Family Bar and the skills they have developed to meet them. As the BSB acknowledges, barristers who are dependent to any substantial degree on publicly-funded work are under heavy and increasing financial pressure. Because of the low rates of pay offered the cab-rank rule no longer applies to publicly-funded family work, and many practitioners refuse to accept it. Current proposals by the Government will make matters worse.
48. The self-employed Family Bar provides an essential pool of skilled advocates. It values the independence of the profession and consumer choice, and it is concerned that the possibility of barristers practising as managers of LDPs may reduce the choice and availability of self-employed counsel. For the reasons set by the Bar Council in its response the FLBA is opposed to the introduction of barrister-only partnerships. It does not believe that the current prohibition is anti-competitive.
49. Although views on block contracting are divided with the Family Bar, the FLBA has considered a possible business model that would allow it. A set of Chambers might set up a limited company, the functions of which were limited to contracting to supply barristers for instruction by solicitors or other clients. The feasibility of this sort of arrangement and the regulatory issues it would raise need to be explored further between the FLBA and the BSB.

Fountain Court Chambers

50. The response argues that the consultation paper is wrong to assume that the Legal Services Act creates a presumption in favour of an expansion of the business organisations through which barristers may provide their services. The BSB should decide whether or not such expansion should occur, having regard to the statutory objectives. It is in the public interest that the expertise of barristers in advocacy and advice should be maintained; sole practice is the model most conducive to this. The proposals in the consultation paper would confuse the public; and their logical consequence is a fused profession under a single regulator. Barristers should not be allowed to practise in partnerships, or as managers of LDPs (or ABSs), since that would be contrary to the public interest. Nor does competition law require it. Concerns about the position of the Criminal and Family Bar can be accommodated without wholesale changes in the rules regarding the organisations through which barristers may provide their services. The cab-rank rule should be preserved for all barristers, in whatever organisation they provide their services. The rule is in the public interest; and strengthening paragraph 601 of the Code of Conduct would not be an adequate substitute for it, because it would not address the case of refusing instructions because of commercial considerations. The scope of work that barristers may undertake should not be significantly expanded; nor should they be permitted to hold clients' money.
51. If the BSB allows barristers to practise through partnerships or LDPs it should not become the business regulator of such entities, but should confine itself to the professional conduct

of barristers. Otherwise, there will be increased regulatory costs, less efficient regulation, and a diminution of the Bar's expertise and independence.

Inner Temple

52. The response argues that the public interest will be best served by giving clients a real choice between the independent self-employed Bar and LDPs offering advocacy services. The distinction between the two types of organisation must be transparent and fully understood by the public.
53. Barristers should therefore be allowed to practise as managers of LDPs. But the BSB should take steps to ensure that work is not channelled to in-house advocates if that is not in the best interests of the client. Barristers in independent practice should not be allowed to be shareholders or members of LDPs.
54. Barristers should not be allowed to form barrister-only partnerships. To allow them to do so would not increase choice but reduce it. It is strongly in the public interest that the principle of self-employed practice should be retained, and that the cab-rank rule should be preserved. These enhance competition and choice. In some areas the conversion of even one set of Chambers to a partnership could drastically reduce the choice of counsel. The cab-rank rule cannot sensibly operate in partnerships: this is in itself a compelling reason for forbidding them. Moreover, to remove the present prohibition would inevitably have unhappy results. Either significant numbers of barristers would join partnerships (in which case consumer choice would be reduced); or they would not (in which case it will be argued that more sweeping changes are required). If barristers are allowed to practise as managers of LDPs, this will provide all the competition that is needed.

Law Society

55. The response supports the BSB's approach. It also makes the general point that it is important to ensure that there is as little duplication as possible in regulation. For example, over-regulation by the BSB of barristers in LDPs could make partnerships between barristers and solicitors unattractive and so thwart the intention of the Legal Services Act. Nor would it be appropriate to insist that clients of LDPs must be told that they should consider whether to employ the services of somebody else, or to prevent barrister managers of LDPs from also practising as an independent practitioner. The response questions the justification for the cab-rank rule, and suggests that it is frequently inapplicable or avoided.
56. To subject barristers in barrister-only partnerships to the rule would inhibit the development of such partnerships and so would be a significant disincentive to the development of the legal services market.

Legal Services Board (LSB)

57. This response is not a formal response from the LSB but an indication of views from its Executive. It supports the main proposals in the consultation paper and specifically the proposal to allow barristers to become managers of LDPs. It says that this proposal is consistent with the regulatory objectives of the Legal Services Act. The response also supports the proposal that barristers should be permitted to practise in barrister-only partnerships. The risks are not sufficient to justify the maintenance of the current prohibition.

Middle Temple Hall Committee

58. The response says that the views of the Committee have not changed since the submission of its response to the first consultation paper, except that there has been a hardening of opinion among criminal practitioners against the proposed changes. Those practitioners are concerned at the erosion of work that is available in criminal practice, especially to younger barristers. The BSB should not assume that the effect of LDPs in this area will simply be absorbed by the independent Bar. Nevertheless, it is not suggested that any individual barrister should be prohibited (emphasis in original) from joining a LDP or a barrister-only partnership.
59. The response goes on to say that the civil practitioner members of the Committee agree with the BSB's general approach and in particular with the fundamental premise that barristers should be able to practise in whatever form of business organisation they think suitable unless there are good reasons based on the public interest for taking a contrary view. Indeed, barristers should be able to compete with other professionals, if they choose to do so, on an equal footing and without additional restrictions such as the cab-rank rule. Criminal practitioners, however, disagree with this in that they believe that the BSB's proposals are not practicable for the Criminal Bar. The response accepts that the cab-rank rule cannot be applied to barristers practising in LDPs. It also argues that the rule ought not to be applied to members of barrister-only partnerships. To apply it to them, but not to barristers practising in LDPs, would be unfair; and the argument that barrister-only partnerships will not be in competition with LDPs has no justification in logic or evidence. It would be wrong if LDPs were, for instance, free to decline on commercial grounds to accept instructions while members of a partnership were not. Moreover, the rule could easily be evaded by adding one non-barrister to the partnerships. Since the cab-rank rule cannot be applied in the one case and should not be in the other, paragraph 601 of the Code of Conduct should be strengthened as the consultation paper suggests.

Monckton Chambers

60. This response concentrates on the question whether barrister-only partnerships should be permitted and the application of the cab-rank rule to members of such partnerships. It argues that it would not be in the public interest to allow barrister-only partnerships, and that the BSB's approach is based on three errors:
- i) The BSB is mistaken in thinking that the Legal Services Act envisaged that new ways of providing legal services should be permitted by the regulators. The Act set out a statutory basis for considering the issues objectively.
 - ii) The BSB's fundamental premise that barristers should be able to practise in whatever form of business organisation they think suitable unless there are good reasons based on the public interest for taking a contrary view is inconsistent with the Legal Services Act: the regulatory objectives set out in the Act have no logical connection with that premise. The structure of the independent Bar provides almost perfect competition. Provisions in the Code of Conduct that preserve it are not anti-competitive, notwithstanding the Opinion of Mr Peter Roth QC. The BSB ought to have investigated the merits of the changes it proposes: it has failed to do so. In particular, to allow barrister-only partnerships will take the Bar away from the present optimum position. It therefore requires strong justification, which the consultation paper fails to provide.
 - iii) The BSB's understanding of the market in legal services is defective. It has failed to offer any evidence to suggest that its proposals will lead to the market operating in a

way that furthers the regulatory objective of the Legal Services Act. Partnerships are likely to be attractive to barristers as a business model. They are likely to become common; and this will reduce the supply of legal services, as the consultation paper recognises, and not just in a few specialist areas.

61. Finally, the spread of partnerships will adversely affect the operation of the cab-rank rule, because of conflicts of interest, and so increase the likelihood of manipulation of the market in legal services to the detriment of consumers.

Office of Fair Trading (OFT)

62. The OFT says that allowing barristers to enter into LDPs and partnerships is likely to have a positive effect on competition in the legal services market. It therefore supports the BSB's approach. In answers to a number of individual questions the response does not give an affirmative or negative answer, but says that any proposed restriction or safeguard must be necessary and proportionate to protect consumers whilst not unduly restricting competition.
63. The OFT repeats the point made in its response to the first consultation paper that it is not convinced that it is justifiable to forbid barristers to conduct litigation and to handle clients' money.

Personal Injuries Bar Association (PIBA)

64. The response begins by stating that the consultation paper does not sufficiently recognise the intolerable pressure under which the independent Bar has recently been placed. There has been a loss of confidence in the self-employed model, which the proposals in the consultation paper will do nothing to dispel. Now is not the time to create further instability in the Bar. The Chambers model is the most effective way of delivering quality advocacy and advisory services, and as such is in the public interest. The public interest would not be well served by allowing barrister-only partnerships, or by allowing barristers to practise through a LDP. Before embarking on changes in the Code of Conduct the BSB should commission a study of the level of demand for allowing barristers to provide their services through a LDP.
65. If the model of barrister-only partnerships becomes widespread there is a serious risk of increased conflicts of interest, the efficacy of the cab-rank rule being reduced, and consumer choice being restricted. Barrister-only partnerships should be permitted only on the basis of very strong arguments, which the consultation paper has failed to advance. The BSB should gather evidence on what is the best way of promoting the regulatory objectives of the Legal Services Act, which are not limited to the promotion of competition. In any event, the prohibition on barrister-only partnerships is easily justifiable under competition law. It is also a mistake to assume that there is unlikely to be significant pressure to form partnerships: indeed, some purchasers of barristers' services might require them to enter into partnerships.
66. Similar criticisms apply to the BSB's approach to LDPs. Barristers should not be encouraged to become managers of LDPs; if they are allowed to do, they should be subject to the cab-rank rule.

Professional Negligence Bar Association (PNBA)

67. After an exposition of the provisions of the Legal Services Act the response states that the wording of Q.1 in the consultation paper is inappropriate and betrays a fundamental error: it should have read “Whether those who have qualified as a barrister should be entitled to practise as managers of LDPs by reason of that qualification.” Barristers as such are not appropriately qualified to act as managers of LDPs because they have no training in the handling of clients’ money. Such training is essential in the interests of consumers. The comments in the consultation paper regarding these matters are inadequate and unconvincing. To forbid barristers to practise as managers of LDPs without adequate training in the handling of clients’ money would not infringe competition law.
68. The cab-rank rule is of great importance for consumer choice. It should therefore apply, as the consultation paper suggests, to barrister-only partnerships if these are permitted. If barristers practise as managers of LDPs (after appropriate training) they cannot be subject to the cab-rank rule. Paragraph 601 of the Code of Conduct should be strengthened as proposed in the consultation paper.
69. To allow barrister-only partnerships would reduce competition and restrict consumer choice. The BSB accepts that this would be so if such partnerships became common, but argues that this is unlikely. However, if few barristers wish to enter partnerships, forbidding them to do so would not appreciably restrict competition. The Opinion of Mr Peter Roth QC does not face up to this argument. Nor are the possible advantages mentioned in that Opinion and in the consultation paper convincing.

Professional Practice Committee (PPC)

70. The response states that a fundamental question is whether practice at the self-employed Bar should continue to be on a referral basis and with barristers subject to the cab-rank rule. LDPs with barrister managers are likely to be unattractive if the LDP’s services have to be provided on a referral basis. But it will be difficult to maintain a requirement which applies to some self-employed barristers (individual practitioners and members of barrister-only partnerships) but not to others. The commercial interests of partners in barrister-only partnerships are also likely to make practice on a referral basis unattractive to them.
71. The continued existence of the independent Bar is fundamental to the proper administration of justice and the rule of law. Barristers should not be allowed to practise as managers of LDPs or in barrister-only partnerships.
72. More specifically, the BSB is mistaken in its belief that the Legal Services Act creates a presumption in favour of allowing barristers to practise in new business structures. The Act lays down a number of regulatory objectives against which possible changes should be considered. The BSB should ask itself whether the changes proposed in the consultation paper will further the objectives better than maintaining the existing state of affairs. Barristers should be allowed to practise as an employee of a LDP, but not as a manager. A barrister who is a manager of a LDP will be responsible for activities in which he is untrained, and which the BSB cannot regulate. A barrister wishing to be a manager of a LDP should requalify as a solicitor.
73. Either barristers should be prohibited from becoming shareholders in LDPs other than those in which they are employed, or they should be prohibited both from acting for or against such LDPs and from recommending them to clients.
74. The cab-rank rule should apply to all self-employed barristers. If this is impossible in the case of LDPs then barristers should not be allowed to become managers of them. If they are so

allowed, it would be desirable to strengthen paragraph 601 of the Code of Conduct; but that would be a poor substitute for the cab-rank rule.

75. Similarly the cab-rank rule should apply to both barrister-only partnerships and their members. There would be serious practical difficulties in this (and they are among the reasons for not allowing barrister-only partnerships). But the rule is of fundamental importance in the regulation of barristers, and should be applied as widely and uniformly as possible.

St Johns Buildings

76. The response says that it does not represent the views of Chambers as a whole but those of the members with whom the author was able to speak. It agrees generally with the BSB's approach to barristers practising as managers of LDPs, but suggests that the BSB should aim to regulate LDPs with a substantial barrister majority. A situation could arise in which publicly-funded Chambers are forced to bring in a solicitor so that they can bid for block contracts. If this can be done only if the organisation is regulated by the SRA, the barrister members would be unlikely to continue to be regulated by the BSB.
77. The proposed amendment to paragraph 205 of the Code of Conduct does not go far enough. Provided that the cab-rank rule and other appropriate limitations on the way in which an independent barrister can practise are retained there should be no restriction on the types of body through which practising barristers can offer their services. By the same token, the other proposed amendments to the Code do not go far enough to place the Bar on a level playing field with its solicitor competitors. The response suggests changes to a number of particular paragraphs in the code of Conduct, some of which relate to matters discussed in Part V of the first consultation paper. It says, however, that it is essential to maintain the cab-rank rule, which is now the defining feature of the Bar.
78. The response does not discuss barrister-only partnerships.

St Philip's Chambers

79. The response comes from the Commercial Group at the Chambers. It makes the general point that it would not be appropriate for the BSB to prevent by regulation what Parliament has permitted by legislation. It therefore agrees with the BSB's proposals (subject to some reservations) regarding barristers practising as managers of LDPs. It also agrees that barristers should be permitted to practise in barrister-only partnerships, and that they should be subject to the cab-rank rule. The BSB should become a licensed regulator of LLPs and limited companies. But barristers who do not wish to practise in new structures should not bear the costs of regulating them. The various regulators should adopt shared service agreements under the umbrella of the LSB.

Simmons, John

80. This respondent says that the Criminal Bar is facing a very serious situation because of the purchasing policy of the Crown Prosecution Service and the proliferation of in-house advocates. Solicitors frequently do things that are forbidden to independent barristers, and are in consequence enjoying an unfair competitive advantage. The consultation paper completely fails to recognise these facts, and many of the statements in it are utterly unrealistic.

81. Barristers should be permitted to practise in partnerships and these should not be restricted to the provision of advocacy and advice. They should be subject to the cab-rank rule.

Solicitors Regulation Authority (SRA)

82. The SRA response welcomes the general conclusions of the consultation paper in relation to making changes to permit barristers to become managers in LDPs. It refers back to the point made in the SRA's response to the first consultation paper regarding entity regulation.
83. The response observes that although the provisions of the Legal Services Act are silent as regards barrister participation in LDPs, the amendments made in the Act to the Administration of Justice Act 1985 specifically permit barristers to participate as managers in recognised bodies regulated by the SRA. It suggests that some of the detailed rules proposed in the consultation paper may be unnecessary, and that they should be discussed with the SRA. It also suggests that a number of the safeguards suggested in the consultation paper could be dealt with by appropriate client care rules.
84. The response also supports the BSB's provisional conclusions regarding barrister-only partnerships.

South Eastern Circuit

85. The response disagrees with the proposal to allow barristers to supply legal services to the public as managers of LDPs. This would be contrary to the public interest. Barristers who wish to work in a LDP can either do so as employees or requalify as solicitors. If barristers were to become managers of LDPs the tendency to retain advocacy services in-house would be reinforced; this would reduce competition in the market for legal services. It would also be confusing to consumers if barristers were subject to the regulatory regime for LDPs rather than the existing regime for barristers. Nor should barristers be allowed to be shareholders in LDPs. In both areas the safeguards proposed in the consultation paper would be unenforceable.
86. The response also disagrees with the suggestion that barrister-only partnerships should be permitted. The retention of the rule against partnerships would be in the public interest. Clients of a partnership would not be able to rely on the personal responsibility of its members, since these would be agents for one another. The response recognises that developments in public funding may require regulatory changes, such as creating the possibility of engaging in block contracting; but such changes need not extend to wholesale changes in the types of business organisation through which barristers may provide their services. It would be wrong to proceed on the assumption that Chambers are unlikely to enter into partnerships. The BSB is mistaken in adopting this assumption and on this basis giving such weight to the Opinion of Mr Peter Roth QC.
87. The response concludes with a request for a face-to-face meeting with the BSB so that the Circuit may explain and debate its views.

Technology and Construction Bar Association (TECBAR)

88. The response repeats the point made in TECBAR's response to the first consultation paper that although it regards the provisions of the Legal Services Act as undesirable, it accepts that they form the background against which the BSB must formulate its proposals. Barristers should be allowed to become managers or employees of LDPs; but the standards and duties expected of them must be no lower than those that apply to the independent Bar. Barristers should not be allowed to be shareholder in LDPs because of the possibility that a conflict of interest will arise.
89. Barristers should not be permitted to practise in barrister-only partnerships. If the BSB's assumption that few will be attracted to such practice is right, there is no need to allow it: if it is wrong, to allow such practice would reduce consumer choice because of conflicts of interest. If barrister-only partnerships are permitted they should be restricted to the provision of advocacy and advice services. (Although the response opposes the introduction of barrister-only partnerships it answers several of the questions in the consultation paper on the basis that they will be permitted.)

Western Circuit

90. The response says that the position of the Circuit on the broad issues raised in the consultation paper remains as set out in its response to the first consultation paper. (*Note: that response said that a majority of members of the Circuit favoured allowing barristers to provide legal services as managers of LDPs and as members of partnerships.*) However, its main point is that Rule 205 should be changed so as to permit not only partnerships but also any business model that barristers may wish to devise provided that it is not contrary to the principles in the Legal Services Act and is regulated. The justification for the Bar is that it provides specialists in advocacy and advice. They are essential, given the reliance of the legal system in England and Wales on oral advocacy. However, they will always be a minority of the legal profession. But they need to be able to respond to the way in which purchasers of their services (and especially the Government) are behaving. As things now stand, the Bar is under heavy financial pressure; and it and the public interest in the administration of justice are suffering. For instance, the payment of a standard fee for all work, whether simple or complex, means that complex work, which is the natural province of the Bar, is not remunerative. Solicitors can "cherry pick": barristers cannot. Nor can barristers enter into block contracts for privately-funded work.
91. Preservation of the existing Rule 205 will not do. There is an imperative in the Legal Services Act to promote competition when this does not impinge on the other regulatory objectives. And from the standpoint of the Bar the status quo is ill-suited to the 21st century, and is losing market share. To allow only partnerships would not be an adequate response, and there is no reason to promote these as a preferred business model. If barristers were allowed to form partnerships, but not other forms of association, the Legal Services Commission would offer only block contracts, and barristers would be forced into partnerships in order to bid for them. This would seriously restrict consumer choice because of the conflicts of interest that it would generate. To allow a self-employed barrister to take on work through a contracting company would be a better solution. The company would not require regulation, as it would not be carrying out a reserved legal activity. Hence the inability of the Bar Council to regulate entities is no obstacle.
92. The best solution would therefore be to revoke Rule 205. This would not lead to an unprincipled free-for-all.