

BSB approves fundamental changes

The Bar Standards Board has paved the way for fundamental changes in barristers' working practices by giving approval for barristers to supply legal services through the legal structures known as Legal Disciplinary Practices (LDPs). The BSB has taken significant decisions in order to open up the legal services market so that consumers have access to even better value, quality, legal services in fulfilment of the Regulatory Objectives of the Legal Services Act 2007.

The BSB formed an Alternative Business Structures Working Group in 2007 to consider how barristers might become involved in LDPs and ABSs. The work of that group has been thorough and detailed, including three consultations on various aspects of the possible impacts of the Legal Services Act. The reports of the Group were considered by the Board at its meeting on Thursday 17 November and the Board accepted the following recommendations:

- Barristers should be permitted to become managers of LDPs, regulated by the SRA without having to requalify as solicitors.
- The decision to permit barristers to be managers of LDPs should apply only in principle to LDPs which include up to 25% non-lawyer managers. The Board recognises that LDPs which contain one non-lawyer manager will be redefined as ABSs in the context of the regime for licensable bodies (ABSs) that is expected to be effective in 2011. However, any wider decision to permit barristers to work in ABSs should be deferred until the effects of the transitional LDP regime can be reviewed and assessed and following further consultation in 2010.
- Barristers should be permitted to practise in more than one capacity at the same time e.g. as both managers of LDPs and as independent practitioners. Detailed guidance will be developed in relation to this.
- A number of possible conflict of interest issues arise if barristers become shareholders in LDPs. Barristers should be discouraged from such investments until proper guidance in relation to conflicts and perceptions of conflicts of interest is developed by the BSB.
- Barristers should be permitted in principle to form barrister-only partnerships (BoPs), pending the creation of an appropriate regulator for such entities, currently not in existence, and consultation by the BSB in relation to becoming such a regulator.
- Barristers should be permitted in principle to practise through other barrister-only companies and limited liability partnerships (LLPs). However, further work is required to determine if the BSB should regulate these entities.
- The cab-rank rule will apply to barrister only partnerships, as well as the self-employed Bar. The BSB considers that all advocates should be subject to the cab-rank rule and will be raising this issue with other regulators.
- The Board should consult on whether or not it should become an entity regulator of the new legal entities, and, as part of this consultation, look at whether a modified cab-rank rule can be applied to barristers practising as managers of LDPs undertaking advocacy work.

The BSB accepted that the proposed amendments to Code of Conduct should now be submitted for approval to facilitate the recommendations it has agreed. The code changes will have to be referred to the Ministry of Justice or the Legal Services Board for approval. The BSB will be issuing guidance to support the changes as soon as possible. The recommendations will take practical effect when the approval process is completed.

Review of CPD

A CPD Working Group, chaired by Derek Wood QC, has been setup to conduct a comprehensive review of the continuing education and professional development of practising barristers (in respect of both new practitioners and established practitioners). This follows reviews of the Vocational and Pupillage stages of barristers' training, which were also chaired by Derek Wood QC.

The Group will consider and make recommendations in relation to

principles:

1. the need for a mandatory requirement of continuing education and professional development of practising barristers;
2. the nature, extent, content and structure of any such requirement;
3. the means of satisfying any such requirement and any limitations thereon;
4. the need to be aware of the changing environment and changing needs following the Legal Services Act (or those in ABSs);

specific areas:

1. whether to introduce compulsory equality and diversity training as part of the new practitioners' and/or established practitioners' programme (in accordance with Recommendation 44 of the Neuberger Report) and, if so, the nature, extent and content of any such requirement;
2. whether to introduce compulsory advocacy and/or ethics training as part of the established practitioners' programme and, if so, the nature, extent and content of any such requirement(s);
3. Whether there are any other topics which should be introduced as a compulsory part of the training.

quality assurance of CPD:

1. the regulations and procedures for the accreditation of course providers and courses including criteria for the removal or refusal of accreditation of providers;
2. the funding arrangements applying to the accreditation process;
3. the monitoring of course providers and courses by means of a robust, risk based approach including developing a sustainable, flexible monitoring system;
4. the appropriateness of CPD delivery online (including consideration of online methods) and how it should be quality assured; and
5. the guidance for practitioners on the CPD requirements and their satisfaction.

The Working Group will carry out extensive consultation with the Inns (COIC and Education Committees), Circuits, practising barristers and other bodies that it may consider relevant. It is also anticipated that, when conducting its review, consideration will be given by the Working Group to the nature, extent, content and structure of other professions' continuing education and professional development obligations. The major review of CPD is scheduled to commence in January 2010 and the CPD Working Group expects to report to the BSB by December 2010.