

Non-Practising Barristers Supplying Legal Services – Guidance on New Rules

This note seeks to inform non-practising barristers of changes to the rules affecting them, which will come into effect from 31 July 2005.

The General Rule

Any barrister who does not hold a practising certificate, for whatever reason, is a non-practising barrister. The general rule is that a non-practising barrister must not hold him- or herself out as a barrister in connection with the supply of legal services. Under transitional provisions, non-practising barristers who were offering legal services on 31st July 2000 have been entitled to use the title “barrister” in connection with the supply of legal services, provided that it is qualified by the words “not [or non-] practising”. These provisions expire on 31st July 2005.

The Bar Council has been reviewing these rules and agreed new provisions. Copies of these provisions are attached.

Exceptions to the General Rule

The new provisions will take effect from 31 July 2005 and will allow certain non-practising barristers to hold themselves out as barristers, provided that they comply with certain requirements.

The following categories of non-practising barrister may take advantage of the new provisions:

- Those who were called to the Bar before 31 July 2000
- Those who are also qualified and practising as members of another “authorised body”
- Those who supply legal services outside England and Wales

The following are the requirements that need to be fulfilled in order to be in compliance with the new rules:

- i) You must notify the Bar Council of your intention to supply legal services and provide full details of your employer and/or the premises from which you intend to supply legal services*; and
- ii) You must be insured against claims for professional negligence up to at least £250,000*; and
- iii) You must provide a written “health warning”, explaining your status, to any potential client, employer or third party.

(* not required in the case of members of other authorised bodies)

Further Detail of The Provisions

I am registered with the Bar Council as supplying legal services as a “barrister (non-practising)”. Can I just continue to do so?

No. The transitional provisions allowing certain barristers to supply legal services as a “barrister (non-practising)” end on 31 July 2005. After that date, all non-practising barristers must either comply with the new provisions, or stop using any title containing the word “barrister”.

What about those called since 31 July 2000?

The new provisions are an acknowledgement of the fact that barristers called before 31 July 2000 could have taken advantage of the previous provisions allowing them to supply legal services as a “barrister (non-practising)”. Those called since that date would have been fully aware, at the time of their Call, that they would not be able to hold themselves out as barristers until they qualified for a practising certificate. For this reason, the new rules do not apply to those called since 31 July 2000 (unless they are members of other authorised bodies or supply legal services overseas), although a working-group has been set up to give further consideration to the position of those in this group.

What are “authorised bodies”?

“Authorised bodies” are bodies that are authorised under the Courts and Legal Services Act 1990 (as amended) to grant rights of audience or rights to conduct litigation. The following are currently authorised bodies: the Law Society, the Institute of Legal Executives, the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys. If you are practising as a member of any of these bodies, you may hold yourself out as a barrister in addition to your other qualification, provided that you comply with the “health warning” requirement. (NB There is no requirement for this category to notify the Bar Council or to obtain insurance.)

I am qualified and practise as a lawyer in another country, but also use the title “barrister”. Do I need to comply with the new rules?

The new rules do not affect rule 4(e) of the International Practice Rules, which allow barristers qualified and practising as lawyers in jurisdictions other than England and Wales to hold themselves out as barristers, provided that:

- i) they are undertaking international work substantially performed outside England & Wales; and
- ii) they do not give advice on English law; and
- iii) they do not supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law).

If you meet these requirements, you may use the title “barrister” alongside the title under which you primarily practise, without needing to comply with the

new requirements. If not (e.g. if you are only qualified as a lawyer in England and Wales or if you give advice on English law), you must comply with the new provisions in order to hold yourself out as a barrister.

What notification do I need to give to the Bar Council of my intention to supply legal services under the new provisions?

Please use the form enclosed with these guidelines.

How do I arrange insurance?

You should consult a broker specialising in professional indemnity insurance. We understand that the following insurance companies provide such insurance, but there are likely to be many others that do so also:

SBJ Ltd
www.sbj.co.uk
Contact Martyn
Shorrock
020 7816 2000

TLO Ltd
Contact Vernon Taylor
v.taylor@tloinsurance.co.uk
020 7839 0472

*Scott Taylor Associates
LLP*
www.stainsurance.co.uk
Contact Martin Taylor
01638 577887

What must be included in the “health warning”

The warning must cover all of the following:

- i) your status and the fact that you do not hold a practising certificate under the Bar’s Code of Conduct; and
- ii) the limitations on the legal services you may undertake; and
- iii) that you are not fully regulated by the Bar Council; and
- iv) the absence of available compensatory powers for any inadequate professional service you may render.

A suggested health warning is attached to these guidelines. However, it is not compulsory to use the suggested warning, so long as you include all the compulsory elements.

To whom must I supply the health warning, and when?

If you are already employed to supply legal services, you must give the warning to your employer before you start holding yourself out as a barrister under the new rules. For any future employment, you should give the warning before commencement of the employment.

Whether employed or self-employed, you must give the warning to anyone to whom you propose to supply legal services, prior to any agreement to supply such services.

During the course of supplying legal services, you must give the warning to any third party, as soon as you first deal with them.

What title may I use?

So long as you have complied with all of the relevant requirements, you may use the title “barrister”.

Can I use the title “barrister” on my business card?

If you use it in connection with the supply of legal services, you should only provide the card to clients or third parties in connection with those services if you have given them the “health warning”.

What are the limitations on what I can do?

Essentially, you must not undertake work that you could only do because you are a barrister. In essence this includes:

- exercising rights of audience as a barrister (this applies particularly in those courts where such rights are restricted – the magistrates’ courts, the county courts, the Crown Court, the High Court, the Court of Appeal and the House of Lords)
- exercising a right to conduct litigation (including issuing proceedings, acting as an address for service etc)
- such conveyancing and probate services as are restricted under the Solicitors Act 1974
- providing immigration advice or representation unless you are registered with the Office of the Immigration Services Commissioner

Does this mean that I cannot appear as an advocate?

No. You have exactly the same rights as any other member of the public and there is nothing to prevent you appearing on behalf of a client in tribunals where rights of audience are not restricted or, with the permission of the court, in one the higher courts. You must not, however, claim to have a right of audience and, if seeking leave, should not mislead the court as to your status.

Does the work I do constitute “legal services”?

The Code of Conduct gives the following definition of “legal services”:

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

- (a) sitting as a judge or arbitrator or acting as a mediator;*
- (b) lecturing in or teaching law or writing or editing law books articles or reports;*

- (c) *examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;*
- (d) *communicating to or in the press or other media;*
- (e) *exercising the powers of a commissioner for oaths;*
- (f) *giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;*
- (g) *in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust.*

If all the work that you do falls outside the definition of “legal services”, you may hold yourself out as a barrister without complying with the new provisions.

What additional rights do the new provisions give me?

None. The new provisions only allow you to use the title “barrister”. They do not make you a practising barrister and do not entitle you to exercise any of the rights (e.g. rights of audience) that are only exercisable by practising barristers.

What rules of professional conduct apply to me?

The Code of Conduct still covers you and the Bar Standards Board can consider complaints against you. While it is true that many of the rules that apply only to practising barristers (notably paras. 302-307 and Parts IV- VII), you should note that you are still covered by paragraph 301 of the Code and that there are a number of circumstances (for example, acting where there is a conflict of interest, misleading a court or failing to act in good faith) which would be very likely to put you in breach of that paragraph. While the Bar Standards Board does not have the power to take action against a non-practising barrister for inadequate professional service, it is possible that seriously poor service to a client or succession of clients might justify an action for misconduct under this paragraph also.

Who Should I Contact With Queries?

Please contact the Bar Standards Board, 289-293 High Holborn, London WC1V 7HZ; tel 020 7611 1444. Queries should be directed as follows:

Queries regarding the requirements of the new rules and the notification procedure:

Cordelia Lean
The Education, Training & Records Department
CALean@BarStandardsBoard.org.uk

Queries regarding the extent to which non-practising barristers are subject to the Code of Conduct and complaints procedures:

For complaints enquiries contact the Complaints Department
For queries regarding the Code of Conduct contact the professional ethics department of the Bar Council on 0207 242 082.

Part II - Practising Requirements

New Paragraph 206

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

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

(i) He provides in writing to the Bar Council details of the current address(es) with telephone number(s) of the office or premises from which he does so, and (if he is employed) the name address telephone number and nature of the business of his employer.

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

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

206.2 A barrister whenever called who is deemed to be practising by virtue of paragraph 201(a)(i) outside England and Wales and who is not subject to paragraph 4(e) of the International Practice Rules shall not be subject to the rules in this Code applying only to practising barristers provided that he complies with the provisions of paragraph 206.1.

Part VIII - Miscellaneous

Insert after 808.3

808.4 A barrister who is a member of another authorised body and currently entitled to practise as a member of that body shall not be deemed to be practising as a barrister if he holds himself out as a barrister provided that before supplying legal services to any person or employer, and when first dealing with any third party in the course of supplying legal services, he informs them fully and comprehensibly in writing (a) of his status and the fact that he does not hold a practising certificate under this Code, (b) of the relevant limitations under this Code on the legal services he may undertake,

(c) that he is not fully regulated by the Bar Council, and (d) of the absence of available compensatory powers for any inadequate professional services he may render.

SUGGESTED INFORMATION NOTICES

1. Information Notice to be given before supplying legal services to a client

The suggested form of information notice to be given by barristers without practising certificates to those to whom they intend to supply legal services is as follows:

“I hold the degree of barrister, but I do not have a practising certificate, because [I have not completed the training required by the Bar Standards Board or I do not comply with the Bar Standard Board’s rules for practising barristers]. This limits the work I am allowed to do. It also limits the rights you will have against me and against the Bar Standards Board.

I cannot appear in court on your behalf. I cannot conduct litigation or immigration work for you.

I am not fully regulated by the Bar Standards Board. This means that, although the Bar Standards Board can consider a complaint against me, it cannot require me to pay you compensation for inadequate professional service. The Bar Standards Board will also not pay you compensation itself for any wrongdoing on my part. Full details are available at www.barstandardsboard.org.uk

This form of information notice must be given in writing to any person to whom a barrister without a practising certificate is intending to provide legal services before any such legal services are provided. The information notice must be explained in an appropriate fashion to any person who may not reasonably be expected to understand it fully for themselves.

An information notice need be given only once to a person intending to employ a barrister without a practising certificate prior to the commencement of that employment.

2. Information Notice to be Given to Employers

The following revised form of information notice may be given by barristers without practising certificates to a firm of solicitors or a legal department by whom they are about to be employed:-

“I hold the degree of barrister, but I do not have a practising certificate, because [I have not completed the training required by the Bar Standards Board or I do not comply with the Bar Standards Board’s rules for practising barristers]. This limits the work I am allowed to do. It also limits the rights you will have against me and against the Bar Standards Board.

I cannot appear as a barrister in court. I cannot conduct litigation or immigration work as a barrister.

I am not fully regulated by the Bar Standards Board. This means that, although the Bar Council can consider a complaint against me, it

cannot require me to pay compensation for inadequate professional service. The Bar Standards Board will also not pay compensation itself for any wrongdoing on my part. Full details are available at www.barstandardsboard.org.uk

The Notice need only be given if the barrister intends to use the title in conjunction with his/her work for the organisation.

3. Information Notice for those who have re-qualified as Solicitors

The following revised form of information notice may be given by barristers without practising certificates, who have re-qualified as solicitors, to a firm of solicitors or a legal department by whom they are about to be employed:-

"I hold the degree of barrister, but I have re-qualified as a solicitor, and I am practising as a solicitor. I do not have a practising certificate from, and am not fully regulated by, the Bar Standards Board. This means that, although the Bar Standards Board can consider a complaint against me, it cannot require me to pay compensation for inadequate professional service or pay compensation itself for any wrongdoing on my part. The primary rules governing my conduct are those of the Law Society."

4. Information Notice to be given to third parties before supplying legal services

The suggested form of information notice to be given by barristers without practising certificates to those third parties with whom they deal in the course of supplying legal services is as follows:-

"I hold the degree of barrister, but I do not have a practising certificate, because [I have not completed the training required by the Bar Standards Board or I do not comply with the Bar Standards Board's rules for practising barristers]. This limits the work I am allowed to do. I cannot appear as a barrister in court. I cannot conduct litigation or immigration work as a barrister. I am not fully regulated by the Bar Standards Board but they can consider a complaint against me."

The notice must be given in writing to any person with whom a barrister without a practising certificate is dealing in the course of supplying legal services at the time of the first such dealings. The information notice must be explained in an appropriate fashion to any person, who may not reasonably be expected to understand it fully for themselves.

NON-PRACTISING BARRISTERS

Notification of Intention to Supply Legal Services (Rule 206)

Personal Details:

Surname
Previous name (if any)

Other Names
Title (Mr/Ms etc)

Address

Telephone No
Fax

E-mail

Inn
Date of Call

Please indicate how you intend to supply legal services:

- Employed, supplying legal services to your employer only
- Employed, supplying legal services to clients of your employer
- Self-employed, supplying legal services to your own clients

Please give the following details of the place from which you will be supplying legal services (if different from details given above):

Name of employer/organisation: (where applicable)			
Address:			
Telephone:		Fax:	

1. Have you taken out professional indemnity insurance?

Yes No

2. Please give full details of your insurer and the extent of your cover.

(You may wish to supply a copy of your certificate of insurance or insurance policy, but please do not send us originals)

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3. I confirm that the information I have given is true.

Signed

Date

Please return this form to

The Records Office
Rule 206 Notifications
General Council of the Bar
289-293 High Holborn
London
WC1V 7HZ