



Bar Standards Board (BSB) Consultation on the Development of Authorisation to Practice Arrangements

- Q.1 Do you agree with the arrangements described in Proposal 1? Do you have any suggested alternatives and/or improvements to the proposal?

The Commissioner agrees with the arrangements described in Proposal 1 for annual renewal of authorisation.

- Q.2 Do you think it is reasonable for barristers who do not comply with the practising requirements in a timely manner to no longer be authorised to practise (and therefore be removed from the Barristers' Register)?

Yes.

- Q.3 Do you agree that it is not necessary to have an appeal mechanism against withdrawing authorisation to practise and removal from the Register?

Yes, for the reasons set out in the discussion paper.

- Q.4 Is it appropriate to have a one month grace period?

Yes, it would be unfair for clients to be deprived of representation because their barrister has failed to apply on time for renewal authorisation. The "late-payment surcharge" should be sufficient to encourage barristers not to take responsibility for applying in time.

- Q.5 Do you agree with the arrangements described in Proposal 2? Do you have any suggested alternatives and/or improvements to the proposal?

The Commissioner agrees with the arrangements described in proposal 2. The Bar's proposed approach to CPD and renewal authorisation is similar to that of the OISC. An OISC regulated adviser who has not completed his or her CPD requirement is not automatically refused renewal authorisation but may be the subject of a complaint investigation.

The Commissioner also supports the further option of noting on an individual's Register entry that the individual is not CPD compliant. This would help clients make a fully informed choice about instructing the individual and provide an additional incentive to comply.



Q.6 Do you think that Proposal 2 provides adequate regulatory safeguards for users of legal services?

See answer to question 5.

Q.7 Do you think that non-compliance with the CPD requirements should result in non-authorisation to practise?

See answer to question 5.

Q.8 Do you think that noting on a barristers' individual entry on the Register that compliance with the CPD requirements is outstanding would provide more incentive to comply with the requirements in a timely manner?

See answer to question 5.

Q.9 Do you foresee any problems in the proposals for the administration of barristers' practice? Will they present difficulties for chambers or employers? If yes, how could any problems or difficulties be resolved?

The Commissioner agrees that barristers should not be allowed to delegate authority to other individuals to complete and sign renewal applications on their behalf, but others could be allowed to collate and submit forms from multiple applicants.

Q.10 Do you agree that the transitional arrangements under rule 1102 should be brought to an end?

Yes.

Q.11 Do you agree that no other changes need to be made to the rights of employed barristers in categories 2(b) and (c) above?

Yes.

Q.12 Do you agree that if individuals have not provided the necessary information to allow the BSB to determine their level of authorisation, it should be assumed that they are not authorised to exercise a right of audience? If not, please explain why.

Yes.



Q.13 Do you agree that barristers' authorisations and permissions should be listed on practising certificates and on the Barristers' Register? If not, please explain why.

Yes.

Q.14 Do you agree that employed barristers should only be authorised to conduct litigation if they comply with all the requirements to do so?

Yes.

Q.15 Do you agree that all barristers with practising certificates should be authorised to provide reserved instrument activities, probate activities and the administration of oaths? If not, what should be the basis for deciding which barristers should be authorised to carry out those activities?

The Commissioner agrees that all barristers with practising certificates should be authorised to provide reserved instrument activities, probate activities and the administration of oaths.

Q.16 Do you agree that all barristers with practising certificates should be authorised to provide immigration advice and services? If not, what should be the basis for deciding which barristers should be authorised to carry out those activities?

The Commissioner agrees that all barristers with practising certificates should be authorised to provide immigration advice and services.

Q.17 Do you think additional rules are needed to regulate these activities?

The Commissioner considers that it would be helpful to make clear that practising barristers cannot also practice under OISC regulation. Some do not appear to appreciate this and have applied to the OISC for regulation.

Q.18 Is clearer guidance on holding out and requiring a client or potential client to sign a disclaimer in a prescribed form an adequate safeguard to ensure that members of the public are properly informed of the status of barristers who are not permitted to practise?

As the BSB has rejected the option of deferring the call to the Bar until completion of pupillage, the proposals in the paper appear to be the best way forward. However, the Commissioner has concerns about some of the detail of the proposals.



1. Terminology – the BSB has rejected the term “non-practising barrister” as misleading because some non-practising barristers in fact provide legal services. However, the term “barristers not permitted to practise” could be considered equally misleading since some of those barristers will be permitted to provide legal services.

For example, an OISC regulated non-practising barrister will be permitted to provide immigration advice and services.

On balance, the Commissioner prefers the term “non-practising barrister” as it at least has the advantage of familiarity.

2. Content of disclaimer – the Commissioner considers that some of the contents of the proposed disclaimer will not apply to OISC regulated non-practising barristers.

For example, an OISC regulated non-practising barrister is required by the OISC to have Professional Indemnity Insurance and the OISC may consider a complaint of poor service against them. The individual may also have more training and experience *in immigration advice and services* than an authorised barrister.

The Commissioner would urge the BSB to make clear in its guidance that non-practising barristers should avoid using any terminology which might give the impression that they are practising as a barrister; in particular using the term “chambers “ to describe their business premises.

- Q.19 If you disagree, please explain why and provide details of alternative proposals to protect the public in these circumstances.

N/a

- Q.20 Do you agree that the disclaimer should only be given when an individual has reason to believe that the client knows that they are a barrister? If not, please explain why

Yes. The Commissioner agrees that requiring the disclaimer to be given where there is no reason to believe that the client is aware that their adviser is a qualified barrister would undermine the prohibition on holding out as a barrister.

- Q.21 If you consider that the disclaimer should be given in all cases when a barrister without practising rights provides legal services to the public, is there a risk that this would undermine the prohibition on holding out as a barrister and if so how could this risk be mitigated?



N/a.

Q.22 Do you agree with the above proposals for revised arrangements for barristers registered under paragraph 206 or 808 of the Code? If not, why not and what alternative proposals would you suggest?

Yes.

Q.23 Do you agree that the arrangements described in paragraph 137 are an adequate safeguard to the public? If not, please explain why and give alternative suggestions.

Yes.

Q.24 Do you agree that barristers who are not permitted to practise should be allowed to describe themselves as a “barrister who is not permitted to practise” to their employer or potential employer only?

Yes.

Q25 Are any of the proposals likely to have a greater positive or negative effect on some groups compared to others? If so, how could this be mitigated?

No comment.

A handwritten signature in black ink, which appears to read 'Suzanne McCarthy', is positioned above the printed name.

Suzanne McCarthy
Immigration Services Commissioner

1 June 2010