

Employed barristers working through agencies/corporate vehicles

Interim statement

Introduction

1. The BSB issued a consultation in October seeking views on amending the definition of employed barrister (non-authorized body). The consultation specifically sought views on broadening the definition of employment for barristers working in-house for organisations that are not authorised law firms. The aim of the amended definition is to give more flexibility for barristers and their employers, allowing them to work through agencies and other corporate vehicles.
2. Since issuing the consultation, we have received a number of queries from barristers currently working in ways which may constitute a technical breach of the rules. The purpose of this statement is to provide guidance to barristers in that situation, whilst the BSB considers amending its rules.

Current rules/issue

3. Employed barristers can work in a variety of bodies, some of which are authorised to provide reserved legal activities under the Legal Services Act 2007. Employed barristers hold practising certificates that enable them to provide reserved legal activities; however the type of body in which they are employed dictates to whom they can provide those services.
4. Employed barristers working in non-authorized bodies are currently not able (without seeking a waiver) able to supply legal services to clients of their employer by virtue of rS39 of the BSB Handbook. rS39 limits the people to whom such barristers can supply legal services. Ordinarily they will only be able to supply legal services to the employer. Therefore a barrister employed by an agency or working through their own corporate vehicle would only be able to supply legal services to that agency or company.
5. Employed barristers working in-house for non-authorized bodies are also prevented from providing reserved legal services to the public, as that would constitute a breach of s15 of the Legal Services Act 2007.
6. The BSB has agreed in principle that barristers should be allowed to work through agencies or corporate vehicles, and has granted waivers on a case by case basis where the risks of doing so appear to be low. However, as part of the recent consultation, we have sought views on whether a change to liberalise the rules would lead to any increased risk to clients in situations where the regulator would no longer be able to look at each case individually.
7. During the consultation period, it has become apparent that some barristers and/or employment agencies may unintentionally be working in a way that technically breaches rS39 of the Handbook. The proposal in the consultation would regularise their position. We will decide whether to amend the rule after considering responses

to the consultation. Any rule change would then be subject to approval by the Legal Services Board (LSB).

BSB interim position

8. The BSB will be analysing consultation responses from December 15th with a view to submitting a rule change application to the LSB by February/March 2016. Once a rule change application has been submitted it could take up to three months for the LSB to consider it.
9. In the interim period the BSB will take a risk-based approach to any barristers who may be in technical breach of rS39. Should the BSB receive any complaints about such a breach, we will undertake a risk-based assessment, including consideration of whether:
 - a. any actual harm has occurred to clients as a result of the breach;
 - b. whether any other Handbook rules have been breached (for example, rules requiring adequate insurance); and
 - c. whether any reserved legal services have been provided in breach of s15 of the Legal Services Act 2007.
10. In the absence of these factors, any breach is likely to be considered low risk and continuing to practise in this way will not be treated as a further or aggravating breach of the Handbook¹.
11. Barristers working through agencies or corporate vehicles should cease to act if the factors above are present or where there is otherwise a risk of harm to clients or the regulatory objectives as set out in the Legal Services Act 2007.

Further information

12. Barristers who require further information about the current rules and the way in which they are allowed to work should contact the Bar Council Ethical Enquiries Line on 020 7611 1444 or Ethics@BarCouncil.org.uk. Any queries about this statement should be directed to the Professional Standards team at the BSB at the following email address ProfessionalStandards@BarStandardsBoard.org.uk

Bar Standards Board

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¹ It should also be noted that the BSB cannot give waivers retrospectively. Barristers to whom this guidance applies should follow this guidance rather than seek a waiver.