



Consultation on the cost of authorisation of a Bar Standards Board regulated entity

Introduction

1. The Bar Standards Board (BSB) has submitted to the Legal Services Board (LSB) an application to permit the BSB to authorise (non-ABS) entities. This is available on the LSB website. If approved, it will enable the BSB to authorise entities whose owners and managers are all “authorised persons” under the Legal Services Act 2007 (LSA). The BSB proposes to authorise entities focused on advocacy, litigation, and specialist legal advice, subject to whether the BSB is considered the most appropriate regulator. The types of entity we envisage authorising are described in the policy statement attached at Annex A.
2. In due course, the BSB proposes to become a Licensing Authority for alternative business structures (ABS), which would enable us to authorise entities with lay owners and managers. This will be the subject of a later application to the LSB.
3. This consultation invites comments on the proposed fee structure for the authorisation of entities by the BSB.

The approach to fees

4. The infrastructure established to authorise and supervise entities builds upon the BSB’s existing systems and resources. However, the introduction of this activity has increased the organisation’s operating costs.
5. The BSB intends to operate entity regulation on a cost recovery basis. This is to ensure that the entire practising bar does not subsidise, through the payment of the practising certificate fee, barristers who wish to practise through an entity. The fees for the authorisation process and the subsequent annual fees will be set at a level designed to cover the BSB’s operational costs for entity regulation. Initially, the small number of expected applicants will mean that costs will exceed income. These initial losses will be recovered over subsequent years with the intention of breaking even over a three year period. The BSB anticipates that the full costs of authorisation and supervision of entities will have been recovered by 31 March 2018. This approach necessitates making assumptions about likely take-up, which have informed the fee calculations below.

The approach to authorisation of entities

6. Entity-based regulation and the delivery of legal services through entities is a new area of activity for both the BSB and the Bar. The policy statement annexed to this paper sets out the BSB’s view on the types of entities it is prepared to authorise. Within that statement there is a reasonable degree of flexibility so as not to fetter innovation or competition. The BSB’s approach to authorisation will be risk-based. This means that decisions on whether to authorise an entity will be determined by the risks that a potential entity presents to the regulatory objectives (set out in the LSA)

and what that entity is doing to mitigate or control those risks. Risk assessment will not be the only factor when taking authorisation decisions. The legal services market continues to evolve and the BSB would not wish to constrain that evolution through the decisions it takes on the authorisation of entities. Whilst cautious when taking decisions it will not be so cautious as to restrict creativity and competition. The corollary of that approach is that the level of supervision of authorised entities is likely to be enhanced – at least in the first few years of entity regulation. This is to ensure that entities function in line with the information provided at authorisation, but also so that the BSB can support new entities as they operate within a new regulatory regime.

7. The above approach is reflected in the BSB's proposed fee structure. The approach (and the fees) will be subject to review as the BSB gathers evidence about the implementation of entity regulation within the barrister's profession and its wider impact on the legal services market.

What the fees will cover

8. The BSB has undertaken detailed financial and resource planning to establish what additional costs will be incurred should the LSB approve its application to become a regulator of entities. Below is a high level break down of the anticipated annual operational costs (rounded to the nearest thousand).

Category	Cost (£)
Staff	161,000
External expertise	15,000
Executive support (including Board involvement, communications and strategy and Executive Office input)	85,000
Central services (including HR, Finance, IT, percentage of premise costs)	149,000
TOTAL	410,000

9. A more detailed description of each of the above cost categories is set out below, so as to provide greater clarity about the costs of entity authorisation.

Staff

10. The BSB's Supervision Department will manage the authorisation (and subsequent supervision) of entities. All staff within the Department will be able to undertake activities relating to the authorisation of entities. However none will be exclusively dedicated to authorisation – at least at the outset. The figure of £161,000 reflects the likely amount of staff time (across a range of levels of seniority) involved in considering applications, taking authorisation decisions, and supervising entities.

External expertise

11. This category relates to costs associated with the BSB obtaining external advice on legal or other technical matters relating to the regulation of entities.

Executive support

12. When considering full operational cost recovery, in addition to the cost of resourcing the authorisation function of the BSB, a proportion of the total cost of executive and central services support needs to be taken into account.
13. The figure of £85,000 is the proportion of the cost of the BSB's executive function (including Board and Director General input) that is attributable to entity regulation. This is calculated using the percentage of total BSB staff time involved in entity regulation.

Central services

14. This category of costs relates to the corporate services provided to the BSB in relation to HR, IT and finance. It also includes a percentage of the costs of the premises. The figure is a proportion of the overall cost to the BSB, and is calculated using the percentage of total BSB staff time involved in entity regulation

The types of entity

15. The policy statement at Annex A sets out the types of legal service that the BSB would be prepared to authorise an entity to undertake. In effect, this opens entity regulation to the entire Bar. However, our market research suggests that a relatively small percentage of barristers or Chambers wish, at least initially, to seek authorisation as an entity. Therefore, the level of the fee has been based on a conservative estimate of the number of applicants. The table below sets out the anticipated number of applications over the first three years of operation. Applicants have been divided into a range of categories so that the BSB can operate a tiered fee structure. The larger or more complex the entity the higher the fee. The fee level is directly proportionate to the amount of resources needed to deal with an application and, if authorised, supervise that entity.

Entity category	Year one	Year two	Year 3
Single person entity	200	300	400
2-5 person entity	2	4	3
6-15 person entity (simple)	1	4	3
6-15 person entity (complex)	5	5	4
15 + person entity	1	2	2

16. For the purposes of determining the category that an entity comes within a 'person' is an authorised person/individual as defined within the BSB Handbook.
17. The 6-15 person entity category has been split into simple and complex subcategories. This is because it is possible to have within this category both a very

straightforward entity (which broadly replicates the chambers model), and a complicated entity (which seeks to involve both barristers and solicitors or is structured in an unconventional manner). The more complex entity will involve substantially more resource time and this is reflected in the proposed fee structure. The BSB will provide guidance on what constitutes complex and simple, so that applicants understand which category they will fall within. For example, the BSB is likely to view an entity with a large number of employees, but with only a small number of authorised persons, as complex because of the regulatory risks it presents and the enhanced supervision arrangements that would be required as a result. It will be open to the BSB to change its initial assessment of that category should further information come to light during the application process which suggests the entity should be in the complex (or simple) category. The price difference between simple and complex will be charged or refunded as necessary.

18. It will be possible for the complexity of the entity to be increased or decreased once authorised. This will depend on whether its structure is modified or other issues come to light. In those circumstances, the subsequent annual fee would be revised in line with the new category of that entity. Again, any decision on that change would be with reference to the guidance referred to in paragraph 17 above.

The application and authorisation process

19. Applicants seeking authorisation as a BSB-regulated entity will be required to complete an on-line application form. This form will seek information that will determine whether or not an applicant should be authorised.
20. The application will seek the information relating to entities as set out in section E of Part III of the BSB Handbook and which addresses the fundamental business structure and governance of the entity. In addition, the BSB will require further information on such issues as management of conflicts of interest, financial control, risk management, supervision of employees, and compliance with general regulatory requirements in respect of equality and diversity and complaints handling. This information will enable the BSB to establish what risks that entity presents and what they are doing to mitigate and control them.
21. Applicants will need to provide evidence that they meet the fundamental Handbook requirements. They must demonstrate how they will manage the other regulatory issues, highlighted in paragraph 20 above, before the BSB takes a decision on whether to authorise the entity. Guidance will be provided to assist applicants on completing the application form.

The fee structure

22. The BSB proposes that the fee structure be separated into three elements:
- An application fee – payable by all applicants
 - An authorisation fee – payable by those who have been successful in their application and wish to be authorised by the BSB. The fee will cover the cost of regulating that entity in its first year of authorisation
 - An annual fee – payable by those authorised entities who wish to retain their authorisation. This fee covers a review of the entity and the on-going cost of supervision of authorised entities

23. The table below sets out the proposed fee structure. These fees are set using the estimated number of applicants in the table at paragraph 15 and are designed to enable the BSB to recover operating costs by March 2018 (the end of the 2017-18 financial year). As outlined in paragraph 5 above, given the number of applications initially anticipated, operational costs are likely to exceed income generated through authorisation fees. Instead of setting the fees to recover costs on annual basis, which would lead to disproportionately high fees in the first year of operation, the BSB will seek to recover operational costs over a three year period. This allows for the initial cost deficit to be offset by income generated over the full three year period, which means that the BSB will 'break even' by 31 March 2018.
24. It will be seen from the proposed structure that the total authorisation fee and the annual fee increase depending on the entity's size and complexity. This ensures the operational costs of authorisation and supervision of entities are borne proportionately by those who require the greatest level of BSB resources.
25. The fee structure also reflects the regulatory resource required at each stage. So the authorisation fee (which covers the regulation of that entity in its first year of authorisation) is less than the annual fee (which covers both the on-going regulation of that entity and an annual review of that entity).

Entity category	Application fee (£)	Authorisation fee (£)	Total authorisation fee (£)	Annual fee (£)
Single person entity	260	330	590	390
2-5 person entity	725	875	1600	1000
6-15 person entity (simple)	1000	1200	2200	1450
6-15 person entity (complex)	1350	1600	2950	2000
15 + person entity	1950	2300	4250	2900

Other costs

26. In addition to the fees listed above, the BSB may wish to carry out additional checks to establish whether the owners or managers of a potential entity have any adverse financial findings such as bankruptcies, IVAs, and County Court Judgments. Where this is necessary, the fee will be £75 per owner/manager.
27. Should an entity wish to conduct litigation it will need to be authorised to do so. This will be part of the general entity authorisation process but will require additional administration. Entities wishing to be authorised to conduct litigation will need to pay an additional fee of £90 (which is the same fee as for individual barristers seeking authorisation to conduct litigation).
28. The BSB has put in place staff with a wide range of skills and experience to consider applications for authorisation. So it is anticipated that the vast majority of applications

will be processed internally. However, if an entity application is particularly complex, unusual, or raises technical issues outside of the expertise of the BSB staff, then the BSB will seek external advice. The applicant will bear the cost of this external expertise. Before commissioning any external assistance, the BSB will discuss doing so with the applicant.

29. All fees will be reviewed annually as part of the BSB's budgeting process. The first review will apply to fees charged from 1 February 2016. The fees set out in this paper are based on all of the estimated numbers in the table at paragraph 15 applying. It will therefore be important to review fees if the take up is fewer or more than anticipated.

30. The BSB will also review its approach to setting the annual fee once we have more data from implementation from which to judge whether they are accurately reflecting where costs are incurred. In doing so, the BSB will consider the possible use of turnover or risk profile for ongoing fees (rather than the number of authorised persons), and whether they would prove better predictors.

Authorisation period

31. In order to aid administration it is proposed that authorisation should be granted until January 31 of the following year, irrespective of the point in the year that the entity is authorised. This means the authorisation fee will be pro-rated depending on when the authorisation decision is taken. This will be done on a quarter year rather than monthly basis. The table below shows the authorisation fee pro-rated throughout the year.

Entity Category	1 Feb – 30 April	1 May – 31 July	1 August – 31 October	1 November – 30 January
Singe person entity	330	250	165	80
2-5 person entity	875	660	435	220
6-15 person entity (simple)	1200	900	600	300
6-15 person entity (complex)	1600	1200	800	400
15+ person entity	2300	1725	1150	575

Practising Certificate fees

32. In addition to any authorisation or annual fee associated with authorisation as an entity, individual barristers will be required to pay the Practising Certificate fee. Barristers employed within a BSB authorised entity will be deemed to be employed barristers and will pay that Practising Certificate fee.

Question

Do you have any comments on the BSB's proposed approach to entity fees?

In particular, do you have any views on:

- a. the proposed entity categorisation and the assumptions made around the associated complexity of each category?
- b. the apportioning of fees between application, authorisation and annual fees?

Response to consultation

33. Responses to the consultation should be sent to:

entityregulation@barstandardsboard.org.uk.

34. The deadline for responses is **10 October 2014**.