

## **Entity Regulation Focus Groups**

### **Background and Methodological Framework**

This work builds on a baseline study on Entity Regulation carried out by IES. In doing so, the research approach incorporates some of the key methodological and conceptual learnings of the earlier study.

Drawing from the research findings, a qualitative approach was called for in the form of focus group discussions. The primary purpose of these discussions was to understand the potential for professionals in the legal sector to set up entities under the BSB. By employing a qualitative approach the aim was to listen to more detailed aspirations among the profession to set up entities. The focus groups were advertised on the BSB website along with the use of social media platforms. All individual focus groups were audio-recorded and transcribed.

The key questions aimed in the groups were;

- The meaning of 'entity based regulation'
- The interest across the profession on setting up an entity
- If so, how soon would they consider establishing this entity?
- The type of structure or model
- Types of support expected from the BSB

Participants included practising Barristers, clerks, practice managers, accountants and chief executives. In all, 16 people took part in the consultations across the south eastern circuit and the south western circuit. There was a desire from the regulatory policy team and the research team to achieve a geographical spread across all circuits however the event in the Northern Circuit had no willing participants and as a result was cancelled. This could indicate that there is a lack of knowledge around the circuits and there are regional variations that the BSB needs to address through its communications strategy. It was clear from the engagement that the participants were also keen to seek out information that would help them in their thinking.

It is noted the focus groups were a forum for exchange of information and had limited participants. Nevertheless this small sample did bring some understanding for the BSB, at a high level, of the types of models that are being considered and enable the BSB to use this information to review its capabilities and capacities. It is further noted that the participants were not willing to share details in a public forum of their possible ventures. However, it has given the BSB the opportunity to identify those that are willing to have further discussions with the BSB.

This paper sets out the high level models and the key themes that emerged from the focus groups.

## **Key Themes arising from the focus groups**

Much of the discussions across all focus groups were questions around on how to set up an entity and the type of entities or models that the BSB would allow. Generally, the participants in the focus groups were aware of the opportunities to gain from setting up an entity but appeared to lack an understanding of the types of models that could be used or permitted by the BSB. As a result, the focus groups used the sessions to seek as well as to provide information.

### **1. Timeline / timing**

**Many questions centred on how quickly the BSB would be able to authorise and how much time participants would have to prepare for the new regime**

- *“A timing issue in terms of how quickly chambers, I think, are going to have to change to accommodate that”*

### **2. Options**

**The focus groups did recognise that there were different options but the regulatory requirements or impacts were less clear**

#### **2.1. Difference with sets of chambers**

There was some confusion as to the difference between a barrister-only entity and a set of chambers and what it would imply for its management and regulation.

#### **2.2. Opportunities for non-lawyer owners**

There was a clear interest by non-lawyers to set up entities. However they were unclear as to whether they would be able to initiate and lead the setup of entities themselves.

### **3. Types of models**

Participants recognise that there is a potential shift, for some, to a more business type environment that is implied by a move to entity from the traditional model of how the profession conducts its business.

- *“So we're looking specifically at direct access work. I suppose my interest is how that is likely to end up being regulated if we chose to move forward not as a conventional set of chambers but as more a business type environment where I'm managing or administrating it and my members are still practicing law but obviously we would be slightly outside the standard model for the Bar.” (Focus group participant)*
- *“A proper corporate structure to do all this”.*

Participants recognised the potential range of options:

- *“Overall, the types of entities are varied and complex.” (Focus group participant)*

#### **3.1. Models emerging from the discussion**

These are high level views of models that were being considered by the participants or their clients. The participants were reluctant to provide details in the forum but were comfortable in sharing concepts. These models should be viewed with that in mind.

### **3.1.1. Barrister solicitor model**

Barristers working with solicitors, either in a joint entity or where the barristers' entity works for the solicitors firm and provide specialist advocacy services. The view of the focus group was that this is most likely to be in the area of legal aid work.

### **3.1.2. Barrister owner with paralegal support model**

Barristers' entity that is able to employ paralegals to undertake most of the administrative tasks to support barristers who undertake public access and litigation work.

### **3.1.3. Practice manager owner model**

A non-lawyer manager and/or owner of the entity working with barristers. The barristers would not have managerial roles in respect of governance or finances.

This model would be an ABS and could not yet be licenced by the BSB.

### **3.1.4. Barrister spouse model**

A limited company with the barrister and spouse as owners and managers. Discussions indicated that there were some spouses who were lawyers and would fall in the proposed BSB entity regime.

There was also discussions around a model where a spouse is not necessarily always a lawyer. This example would also be an ABS model that cannot yet be licenced by the BSB.

### **3.1.5. Corporate vehicle for corporate clients**

A corporate vehicle that works on direct access principles to deliver work directly to corporate clients.

### **3.1.6. Dual capacity model**

Barristers may want to retain the flexibility of the self-employed model and may choose to work both through an entity and remain as part of chambers. The issues around this model are also discussed further in this paper.

### **3.1.7. Chambers entity model**

Moving a chambers in to a corporate vehicle, so that there is a collective ownership with formal governance structures as well as a move to greater branding and marketability.

## **3.2. Advantages of going through specific routes?**

Some participants were unsure about the advantages of going through a specific route in establishing an entity. Discussions included participants sharing views on the different models and the benefits. Participants seemed to find those discussions useful and helped to draw out the motivations for setting up entities.

## **4. Motivation for setting up an entity**

Several types of motivation emerged.

### **4.1. Survival**

- *“The ABS is probably the saviour for most of the Bar because in three years' time there won't be as many Barristers or chambers as there are now”*

## 4.2. Changing legal landscape

- “The ABS is probably the saviour for most of the Bar because in three years' time there won't be as many Barristers or chambers as there are now”

## 4.3. Financial incentives

- “The ability for Barristers to structure themselves in a different way so as to save themselves money” “most of them are tax-driven, it's as simple as that, if they can mitigate and reduce their liabilities of the Legal Aid”
- “it also gives them much more flexibility in terms of timing of when they pay tax and what they use the limited company for as well”
- “there's nothing to preclude individuals all becoming entities with the potential tax advantages that that could bring”
- “As I said at the outset, two drivers for me. One is the potential tax savings” “The driver is financial”

## 4.4. Gain market share

- “I can do it cheaper in an entity than a city firm. It's a lifeblood potentially for the Bar.”

## 4.5. Identity / Marketing

Participants were motivated by establishing a name, whether through a corporate brand or their own:

- “As I said at the outset, two drivers for me. (...) harvesting the benefit of having corporate brand”

Others are considering the options of setting up an entity on their own, :

- *“It may be that my personal position is that I'm in a group of between 10 and 15 solicitors and Barristers looking to set something up. If it was possible to be regulated by you I could, if not it could be SRA, it doesn't matter. But at the same time at the back of my mind I think well maybe I won't do that, maybe I'll do something of my own. Maybe I'll be literally on my own, direct access and try and market myself that way. If I did, then I'd prefer to be regulated by my own body if that was a more simple way of doing it. I think you have to move quite quickly even so.”*

## 4.6. Tax incentives

Participants were particularly motivated to understand more about setting up entities for the ‘significant tax breaks’ trading as a limited company; lowering their tax liability;

- *“You'll have some very smart boys and some very big commercial or chancery or tax sets and they'll be looking at this now and they'll be setting up - if they've not already set up their own limited companies to do this through. So at that top end of the Bar, maybe 15 or 20 sets that do this work, there'll be some very progressive thinking going on. They'll be doing it for all sorts of reasons.” (Focus group participant)*

## 4.7. Testing the market

Others have suggested starting setting up an entity on a small scale whilst testing the waters:

- *“No, we would start fairly small. We've not done any legal work in the sense of charging legal work, but we've test bedded it with friends of people who are corporates effectively on an idea; do you think this is an idea? So we've already been to the market and said to them we're thinking of doing this, what do you think? So we've test bedded that over the last year and a bit. But there's been no legal work delivered, it's much as what you're doing, a focus group of people”(Focus group participant)*

For most people setting up an entity went beyond a barrister-only entity with some suggesting grouping with others in specialist areas and bespoke services while others were more specific with practice managers setting up their own entity and employing Barristers, as indicated above.

- *“As I said at the outset, two drivers for me. One is the potential tax savings (...) harvesting the benefit of having corporate brand”*

## **5. Operation in dual capacity**

One of key questions raised by the participants during the focus groups; involved setting up an entity and the affect this could have for relationships in chambers.

The complexities of setting up entities that run alongside or within chambers and how they operate together were discussed;

- *“So that's one of the things that I think is quite plausible, and it's one of the things that I think it's worth exploring a bit, is how is the operation of chambers affected if you're suddenly dealing with 33 individual self-employed sole traders and 33 limited companies, some who have employees and some that don't? How does that affect the clerking, the umbrella, how does that affect our VAT or our corporation tax, all of that other”(Focus group participant)*

The division of labour and the roles of profession were further discussed;

- *“The interesting aspect is how that work will be divided between us entity/non-entity, whether that will fall to the clerks. It'll have to be dealt with within the entity itself when the work comes in and that's one of the challenges that I think we're trying to work our way through at the moment” (Focus group participant)*

## **6. Uncertainty among the profession**

Much of the discussion with stakeholders on economic factors focused on the Criminal Bar. A sense of urgency to set up an entity was apparent for this practice area in particular:

- *“The criminal Bar has been sitting waiting, waiting, waiting and part of our frustration is there are elements of the criminal Bar that are now dying on their feet for obvious reasons, with the cuts that we're all going through. Actually there is the willingness and the inventiveness there to allow us to market ourselves and the skills that we require.” (Focus group participant)*

Others noted that the market might be waiting for the first movers in the market and that there is apprehension given the current climate of change and uncertainty in some parts of the Bar

- *“The members of chambers are most agitated and most concerned about their future at the Bar as the criminal prosecutors, for obvious reasons, because there's a completely unique set of circumstances and challenges, and because of the shake-*

*up in legal aid, and particularly as solicitors, so if you think about the defence side of their clients, the picture is uniquely challenging. I think that, to be blunt, the ABS structures and the rest are that people just don't know what the future looks like. Everyone's waiting for everyone to react at the moment.” (Focus group participant)*

## **7. Perceptions of the BSB/ Support from the BSB**

### **7.1. Perceptions of the BSB**

Overall there was a strong sense of frustration and urgency for the BSB to inform, educate and offer the opportunity to embark on setting up an entity. The disappointing role of support from the BSB was expressed:

- *“The last time they spoke to the BSB, which I think was not in 2013 but in 2012, they seemed no closer to realising their goal. So that's a good and potentially lucrative source of income that has been stymied by lack of progress which hopefully will be addressed soon.” (Focus group participant)*

For many, participants expected the BSB to inform the profession of their options and simplify entity regulation;

- *“Certainly, I am interested in this because, if nothing else, the opportunity of affording limited liability to Barristers seems to me a perfectly sensible thing to do and something that is, in terms of managing, certainly part of our job is managing risk or helping people manage risk well. That's, to me, a no-brainer. It's something that Barristers should, at least, be presented with an opportunity to consider.” (Focus group participant)*

Furthermore, the participants were eager to see the BSB share ideas or models in the public sphere to help them make informed decisions;

- *“Have you got examples of that where conceptually, people have talked about that practically? Can you share any of those? Can you share an example of what that might be like?” (Focus group participant)*

For some participants it was clear attending the focus group was an opportunity to network and develop a support network

- *“From my angle I want to know what it is that I would have to comply with to get that kind of authorisation” (Focus group participant)*

### **7.2. Educate on entity management implications**

- “Barristers don't understand basic principles of management”

### **7.3. Educate on entity**

- “How are we going to get them [to a position where they can] actually understand what being an ABS means and it isn't something that just looks like a chambers”
- “People don't know what they're doing, don't know anything about entity regulation.”
- “If I said to most of the people I was in chambers with this morning I'm coming to have a chat. Their first question would be what's entity regulation?”
- “If there was a simplified way of you saying you can do X and be regulated by us, people would go for it.”

#### 7.4. Educate on legal context

- “What are the legal structures that actively support these models?”

#### 7.5. Support forward thinking

- “what would you like any entity you get into to do for you?” “Half of them say I want to carry on as I am, 40 per cent say I don't understand the question and 10 per cent are nutters.”

#### 7.6. Support change management

- “There's got to be some fundamental and empirical changes to the way that chambers are structured before any of this is going to succeed”

#### 7.7. Readiness (lack thereof)

- “I think you've a lot of ground work to be doing actually. There's a lot of misunderstanding out there about what all this means.”

#### 7.8. Clarify terms and conditions / context

- “But I'm not sure that's what you envisage by entity regulation, that's what I'm asking really.”

#### 7.9. Role of BSB vis-à-vis SRA – BSB behind

- “several firms of barristers that have come together as an LLP, but regulated by the SRA. So barristers can already do it.”

#### 7.10. Role of BSB vis-à-vis SRA – Cost

- “We were told we could go down the SRA route two years ago, but the reason we decided not to go down the SRA route, one was cost, which is one issue, cost.”

#### 7.11. Regulatory risk management

- “the key is we would try to keep the footprint obviously within our experience to ensure that there's a much lower regulatory risk, quite frankly, so we could control it and ensure that what we're doing is accurate.”

#### 7.12. Educate on benefits

- “What I don't know is what - the tax advantage, it is...” “So there's not a drive, because most people don't understand it, or they're not aware that it's going on”

### 8. Key Recommendations

The messages from the focus group suggest that the BSB needs to focus on four key priorities:

- Inform
- Educate
- Support
- Regulatory risk management