



Representation, Education and Support for Employed Barristers

PRESIDENT: The Rt. Hon. LORD HOFFMANN, PC

CHAIRMAN: LUCINDA ORR

BACFI response to the Legal Services Board Discussion Paper:

"Are regulatory restrictions in practising rules for in-house lawyers justified?"

Introduction

1. This is the response from the Bar Association of Commerce Finance and Industry ("**BACFI**") to the Legal Services Board Consultation paper entitled: "*Regulation of In-house lawyers*". The consultation paper primarily invites regulators to explain their approaches and the evidence for any restrictions on in-house lawyers.
2. BACFI is a recognised specialised Bar Association with c.200 members. BACFI represents the interests of employed and non practising barristers providing legal services in commerce, finance and industry - the CFI Bar. It also welcomes student members and members of the Inns of Court who are interested in a career outside private practice in chambers. BACFI was founded in 1965 and merged in 2004 with the Employed and non practising Barristers' Association (ENPBA). BACFI provides representation, education and support to barristers working in a commercial environment and works to promote "One Bar", to ensure that the status and interests of our members are fully recognised and taken into account by the Bar Council, the Bar Standards Board (BSB) and the Legal Services Board (LSB).

Response

3. The LSB has posed 5 wide ranging questions:
 1. What is the rationale to support your current approach to regulating in-house practice?
 2. If you have specific regulatory arrangements, how have you assured yourself that there is compelling evidence to support those arrangements?
 3. Having reflected on your specific regulatory arrangements, are there any areas you intend to remove or review?

4. What is your experience of current arrangements for in-house lawyers?

5. What, in your view, could be improved?

The first three questions are for Regulators, with the final two questions being for "*interested parties*". As such, BACFI does not address the first three questions, but seeks to address questions Q.4 and Q.5 in the below.

4. BACFI welcomes the opportunity for a discussion about the regulation of legal services. As the specialist Bar Association for employed barristers, BACFI is particularly keen to stress the "One Bar" ethos and that employed and self-employed barristers' regulation be as similar as possible.
5. This would reflect the fact that self-employed and employed barristers are both subject to the same legal professional training at the start of their careers, the same requirements in their first three years of practice, and the same requirements under the continuing professional development programme. Barristers are now much more likely to move between self-employed practice and employed practice and back and forth again during the course of their careers. Indeed, it is now possible for a barrister to work in chambers as a self employed practitioner, for a few days of the week, and in-house on other days of the week. Competence cannot be determined solely by the nature of the employment on one day depending on the mode of payment.
6. Furthermore, a significant number of BACFI's membership, for example, are non-practising barristers working in-house who are on the Solicitors' Roll. The different regulations imposed by the Regulators can cause anomalies. However, we do not believe that they are not so great that they cannot be overcome.
7. We are concerned at the disparity of arrangements for in-house practice between some of the legal Regulators. This can cause confusion between consumers of legal services, as to why some in-house lawyers can provide unreserved legal activities whereas others cannot. In line with the outcome focused regulatory objectives that the LSB uses as its statutory organising principles, we are keen to ensure that competition is promoted in the legal services. Whilst similarly, recognising that in-house lawyers have different requirements and pressures, we would welcome any move to harmonise the approach by front-line regulators.
8. Lastly, any suggested amendments to the current regulation will need to be alive to the wide range of structure and supervision under which in-house lawyers operate.

Conclusion

9. BACFI would welcome the opportunity to meet with the LSB to discuss this area further, should they wish to do so, and awaits with interest any proposals, in due course.

24 April 2015