



## **Bar Council response to the Legal Services Board discussion paper “Are regulatory restrictions in practising rules for in-house lawyers justified?”**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Services Board discussion paper entitled “Are regulatory restrictions in practising rules for in-house lawyers justified?”<sup>1</sup>. The discussion paper invites regulators to explain their approaches and the evidence for any restrictions on in-house lawyers.
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar’s high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

### **Overview**

4. The Bar Council responds to this discussion paper in its capacity as the representative body for barristers. Accordingly, it proposes to leave responses to the first three questions to the Bar Standards Board.
5. The Bar Council is pleased to be part of a discussion about bringing regulation of legal services in line with the spirit of the Legal Services Act 2007.
6. The Bar Council does not believe that there are any material inconsistencies for in-house lawyers as regards how they are treated by the specialist, frontline regulators which are insurmountable in practice, but it agrees that it would be useful to address any unavoidable inconsistencies, so far as consistent with the proper regulation of each regulated community

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<sup>1</sup>[http://www.legalservicesboard.org.uk/Projects/thematic\\_review/pdf/S15 \(In House Lawyers\) Discussion Paper \(Feb 2015\).pdf](http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/S15_(In_House_Lawyers)_Discussion_Paper_(Feb_2015).pdf)

by those regulators. The same applies to any differences of approach between the regulators to those who are properly to be regarded as “connected to” a non-authorised employer. It suggests that it would not be appropriate for the Bar Standards Board – or any other frontline regulator – to try to achieve this without first engaging with its own regulated community, particularly in-house barristers and other employed barristers. It is not persuaded that the Legal Services Board’s discussion paper is a suitable mechanism to seek to explore difficulties and opportunities at a practical level in a developing legal market, or that it is likely to secure a sufficient degree of understanding.

7. The Bar Council believes that it is also for the frontline regulators to ensure that non-connected clients of in-house lawyers who are providing services which are not reserved activities are as well protected as clients of other regulated lawyers who are providing such services, and have a proper understanding of their rights: to give just a few examples, this may extend to clarity as regards who will provide those services, who is legally responsible for them, the extent of any relevant regulation (which will not cover the employer), complaints procedures, and the terms on which the services will be provided. If any current prohibition is removed, then each regulator will need to identify the extent to which that new freedom needs to be subject to specific requirements in these respects. This is important because the nature of the relationship of the client to the lawyer may well be different if the client is neither the employer nor a connected person. The requirements set by each regulator, in the context of each profession, need to be consistent (so far as appropriate in context) with those applicable to others whom they regulate, so the detail in this regard is very much a matter for each frontline regulator.

8. Any steps taken and any revisions made will need to take into account the wide range of structures and supervision that may affect in-house lawyers, as well as the contextual differences between the various professions. This can best be achieved by the frontline regulators working cooperatively with each other, and with their respective regulated communities.

9. The Bar Council is confident that the Bar Standards Board will seek to address the matters to which the Legal Services Board has helpfully drawn attention, that it will do so in an appropriate, efficient and cost-effective way, and that it will give this appropriate priority bearing in mind its other priorities and available resources.

**Bar Council**  
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