

To:	Legal Services Board	
Date of Meeting:	21 January 2016	Item: Paper (16) 05

Title:	Statement of policy on section 15(4) of the Legal Services Act 2007: regulatory arrangements for in-house lawyers	
Workstream(s):	Breaking down regulatory barriers	
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Status:	Official	

Summary:

At its meeting in September 2015, the Board agreed to publish a statement of policy regulatory arrangements relating to in-house lawyers.

This followed the thematic review of regulatory restrictions on in-house lawyers and the extent to which these are consistent with section 15 of the Legal Services Act 2007 (the Act). Section 15 outlines the circumstances in which an employer would need to be authorised for provision of reserved legal activities by its employees.

In accordance with the requirements of section 50 of the Act, we consulted on the draft statement of policy from 23 September 2015, inviting representations by 18 November 2015. We received seven representations.

We have had regard to these representations in preparing the final statement of policy. Some non-material changes have been made to the draft as a result of the responses we received. The decision document, including a summary of representations, and proposed final statement of policy are at Annex A.

Recommendation(s):

The Board is invited to:

- (1) **note** the content of the decision document, including the statement of policy
- (2) **approve** its publication
- (3) **delegate** the agreement of any final drafting changes to the Chairman and Chief Executive.

Risks and mitigations

Financial: N/A

Legal: The decision document describes the representations made on the draft statement of policy and how the Board has responded (as required by section 50(3) of the Act). The Legal Director has

	confirmed that no material changes have been made to the draft statement of policy issued in September, so no additional representations need to be sought at this time.
Reputational:	There has been widespread support for this approach and the principles outlined in the draft statement.
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:	✓		Chair regarding additional comments on pro bono
Consumer Panel:		✓	LSCP responded to earlier stages of the thematic review
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Statement of policy on section 15(4) of the Legal Services Act 2007: regulatory arrangements for in-house lawyers

Recommendation

1. The Board is invited to:
 - note the content of the decision document
 - approve its publication
 - delegate the agreement of any final drafting changes to the Chairman and Chief Executive.

Background

2. In September 2015, the Board agreed to use its powers under section 49 of the Legal Services Act 2007 (“the Act”) to issue a statement of policy setting out the high-level principles that the Board will consider relevant in relation to regulatory arrangements for in-house lawyers. This decision was taken following a review of current approaches to regulating in-house lawyers by the approved regulators, and stakeholders’ responses to a discussion paper.
3. Under section 49(2) of the Act, the LSB may prepare and issue a statement of policy with respect to any matter. A statement of policy can set out in a clear and transparent way the areas that we will be particularly mindful of when we exercise our statutory functions.
4. For the purposes of this work, our powers in relation to reviewing and approving regulatory arrangements that pertain to section 15(4) of the Act are likely to be the most relevant. A statement of policy provides regulators with an early steer of what is likely to be of particular importance to us when they submit rule changes or new regulatory arrangements pertaining to section 15(4), but also allows us some discretion to be flexible in our approach.
5. The Bar Standards Board and Solicitors Regulation Authority both signalled their intent to review their approaches to regulating in-house lawyers in 2016–2017. Issuing a policy statement under section 49 would not fetter our discretion to take a different approach in the future. The statement of policy makes clear that it is also intended to provide a basis for LSB to maintain a watching brief and to build upon our evidence base in this area.
6. Under section 50 of the Act, the LSB must publish a draft statement of policy and allow representations to be made on it. The LSB published a consultation paper on the draft statement of policy on regulatory arrangements for in-house lawyers on 23 September 2015, with a deadline for representations of 18 November 2015.

Summary of representations and LSB response

7. We received representations from the following organisations:
 - The Bar Council
 - Bar Standards Board
 - CILEX
 - CILEx Regulation
 - GC100
 - Lawyers in Charities
 - The Law Society.
8. Section 50(3) requires the Board to have regard to the representations made on the draft statement. We note and welcome the broad support that respondents gave to the decision to issue a statement of policy in this area and for the principles we had identified.
9. The widespread support for the statement of policy provides additional support to the Board's decision in September 2015 to take this approach. The representations made support the view that the LSB should issue a statement of policy in this area.
10. Some individual comments were made about specific principles, suggesting alternatives to the four principles proposed in the draft statement. The arguments made in favour of change do not, in our view, outweigh the analysis and responses to earlier stages of the thematic review and the final statement of policy retains the four principles from the initial draft (with some minor drafting amendments).
11. Some respondents suggested that improvements could be made to the statement's preamble to clarify how the LSB intends to use the statement of policy in its future statutory decision making processes. We agree and this has been added in new paragraph 5.
12. One respondent highlighted particular issues experienced by in-house lawyers when undertaking pro bono activities. While pro bono services are not within the scope of the thematic review, we have added a paragraph to the preamble to clarify that nothing in the statement of policy should restrict or deter the provision of pro bono services by in-house lawyers within the current legislative framework.
13. Finally, we received some comments that referred to topics and issues beyond the scope of the statement of policy, such as the breadth and focus of legal services regulation. We intend to follow these up separately with the relevant organisations.
14. The decision document provides further discussion on the individual points raised (see Annex A).

'Next steps'

15. Subject to the Board's agreement, the decision document and statement of policy will be finalised and published. We will alert all respondents to the

February 2015 discussion paper and the draft statement of policy to its publication.

21.01.2016