

Regulatory shake up

Is Bar entity regulation a threat to law firms? **Michael Stacey** considers the issues



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Following approval by the Legal Services Board (LSB), the Bar Standards Board (BSB) will begin regulating entities from January 2015. The first authorisations are likely to be granted in April. Initially only 'lawyer only' entities will be authorised, with ownership and management in the hands of barristers, solicitors and other regulated lawyers. However, the BSB also has ambitions to become an ABS licensing authority in the future, allowing non-lawyer management and ownership.

Integrated working

This marks a significant development for the BSB, which has previously only regulated individual barristers (whether self-employed, in-house or employed at SRA firms). The existing regulatory requirements relating to Chambers rely on imposing additional requirements on individual barristers (effectively on heads of Chambers).

There has been a shift in recent years towards more integrated working between solicitors, barristers and other regulated lawyers, usually within SRA regulated entities. Law firms increasingly recruit barristers to carry out work they would previously have referred to the self-employed bar. The growing prominence of solicitor-advocates with higher rights of audience, coupled with the direct access and litigation rights now available to barristers, have blurred the distinction between the branches of the profession.

Could the BSB's entry into the entity regulation market pull things in the opposite direction, leading barristers to retreat to the Inns and prepare for battle with solicitors in a war for clients?

The answer is 'probably not'. The BSB's approach is limited in scope and is unlikely to lead to significant additional competitive pressures for solicitors' firms.

- The BSB says it will focus on entities specialising in the activities traditionally provided by barristers – primarily advocacy, litigation and specialist legal advice – which it is already experienced in regulating.
- BSB-regulated entities will not be able to hold client money, limiting the ability of BSB regulated entities to do transactional work on any significant scale. (Although the BARCO escrow service which has been developed by the Bar Council can be used).
- The BSB intends to regulate entities "whose structure is simple and transparent, with work being closely overseen by authorised individuals and minimal risk of divergent interests between owners and managers".
- The focus of the regulatory approach is placing

responsibility on authorised individuals, much like the existing BSB regulatory model. It relies on a contractual approach to enforcement, in the absence of statutory powers for the BSB to regulate entities.

The BSB hopes that entity regulation will enable barristers "to pool resources and share the risks of investing in their own business, without having to change regulators... encouraging innovation in the legal sector by allowing barristers to meet clients' needs more effectively by structuring their businesses in different ways".

However, the signs are that most of the interest from the Bar is currently in establishing single-person entities as a vehicle for self-employed practice within a traditional Chambers model. The focus is therefore on potential tax advantages for individual barristers, rather than innovation for the benefit of consumers.

Independent practice

The extent to which barristers will come together to form incorporated Chambers will depend on their willingness to sacrifice the benefits of independent practice, particularly where conflicts of interest are concerned: barristers from the same Chambers are able to act on both sides of a case, providing a significant advantage over law firms.

They are unlikely to sacrifice this independence without a strong commercial imperative: the self-employed model has served the Bar well, with Chambers binding barristers loosely in an unincorporated association.

For niche advocacy practices, including those that are solicitor led, BSB regulation may offer a cost-effective and lighter-touch approach than SRA entity regulation, although individual solicitor-advocates would still be subject to SRA regulation unless they convert to the Bar.

The vision of the Legal Services Act was regulatory competition: a multiplicity of regulators enabling providers to 'shop around' for a regulator to suit their needs, balancing the flexibility afforded under its rules, the compliance burden, and costs. Whether this model is sustainable in the longer term is in serious doubt, and many, including the former LSB Chairman, David Edmonds, have called for a single regulator.

The BSB's vision is of specialist regulators complimenting each other, rather than competing. It remains to be seen which approach will prevail, but the Bar will not abandon its independence and traditions without a fight. **SJ**



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