



Why is the Bar Standards Board regulated entities take up so low?

By David Webster, partner in the Corporate & Commercial Team at Russell-Cooke

The Bar Standards Board has been able to regulate entities since April 2015. In the run up to the introduction of the new regulatory regime, the BSB forecast that it would be regulating around 400 single-person entities in the first year of operation. As at early February this year, the total number of BSB regulated entities (of all types) stood at 39.

What are some of the key factors behind this limited take up?

It was always envisaged by the BSB that the vast majority of entity regulation applications would be for single barrister entities. The BSB had envisaged 400 single person entities being regulated in year one, but only 12 with more than one barrister, and of those only 2 being expected to involve more than 15 barristers.

Two of the main attractions for barristers considering incorporating their practice through a single member entity were the prospects of limited liability and the potential for receiving fee income in a more tax efficient manner.

The latter consideration was based on the UK tax regime as it stood in late 2014. Despite fee income payable to limited companies being subject to two layers of taxation (corporation tax on profits and then income tax on dividends / employment income when extracted from the company), a tax saving could still be made in many instances by using a company.

However, in the July 2015 Budget and subsequent Autumn Statement, the Chancellor announced changes to the taxation regime for dividends. Under the new regime (although the legislation remains in draft at the time of writing) the first £5,000 of dividend income will be tax free, but all taxpayers will pay income tax on dividends in excess of that figure at an additional rate of 7.5% above what they currently pay. In most cases this is likely to remove any material tax saving in practising through a limited

company, at least until the BSB is able to regulate entities with non lawyer shareholders (at which time non lawyer spouses may be introduced as shareholders to facilitate an overall reduction in the family tax bill).

Some have also no doubt questioned whether the limited liability offered when operating through a company represents an actual rather than a merely theoretical benefit. A barrister's main creditor will be Chambers (in respect of Chambers rent) but most Chambers allowing members to operate through a company will require the member concerned to guarantee the obligations of the entity. Negligence claims represent the main other risk, but compulsory PI insurance provides protection here.

The requirement to file publicly accessible annual accounts at Companies House may also be a factor dissuading some from incorporating their practice.

I am also aware of a number of Chambers taking a policy decision not to allow members to practice through Chambers via a limited company. Given the marginal benefits of incorporating, it does not appear, at least under the present regime, that the adoption of such a policy has resulted in many barristers moving to a more accommodating set. This could become a more significant issue as and when the BSB starts regulating Alternative Business Structures, when there will be more potential benefits of practising through an entity (for example by ~~facilitating third party funding for the practice~~).

It is perhaps unsurprising that the number of multi-barrister regulated entities is currently extremely low. Whilst such a structure can offer benefits, this type of arrangement represents a fundamental move away from the self-employed barrister model and for that reason uptake was always likely to be low, at least initially. Migrating to such a structure involves addressing a number of difficult issues, such as profit sharing and distribution, managing conflicts of interest and the management of the entity itself. These and other considerations may well

have dissuaded many from seriously contemplating this as an option. It may take a few trailblazers to succeed with such an approach before this changes.

The BSB's fee income from entity regulation has fallen well short of projections – as of November 2015 it was forecasting £7,000 of income from entity regulation in 2015 compared to a budget of £258,000. However this has not dissuaded it from proceeding with its application to become a regulator of alternative business structures, expected to take effect from October this year.

It may be that take-up for this initiative is similarly limited (the latest forecasts from the BSB suggest they are envisaging regulating around 20 ABS' in the first year of the new regime),

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or that BSB becomes a broader professional regulator, not solely concerned with the Bar. Indeed, at least one entity already regulated by the BSB (Evolve Family Law) is essentially a solicitor's practice. The Bar Counsel's escrow service BARCO is also proving popular with solicitor's firms. This ~~is an interesting counterpoint to the trend of barrister led entities becoming registered as Alternative Business Structures regulated by the Solicitors Regulation Authority.~~

Although the BSB's appetite to embrace regulatory change appears to be undiminished, it may be that – with some notable exceptions - the Bar itself is less convinced of the benefits.

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