



**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Consultation Response: BEIS - Reforming the Framework for Better Regulation

1. The Bar Standards Board (BSB) is grateful for the opportunity to contribute to the Government's consultation on regulatory reform.
2. The BSB is the independent regulator of barristers in England and Wales and is one of the front line regulators of legal services, established by the Legal Services Act 2007. The Legal Services Board, also established by the Legal Services Act, provides independent scrutiny and oversight of the BSB (and the other front line regulators) in pursuit of shared regulatory objectives (see below). There is, therefore, an additional step for us in regulatory policy making which requires us to get approval on any policy from our regulator, the Legal Services Board.
3. In exercising our regulatory functions, we must act in a way that is compatible with our statutory regulatory objectives and which we consider most appropriate for the purposes of meeting those objectives. These are:
 - protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of legal services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of citizens' legal rights and duties; and
 - promoting and maintaining adherence to the professional principles.
4. Any regulations we introduce or implement are subject to approval by our regulator the LSB, who requires us to demonstrate how we have given regard to Better Regulation principles as well as impacts of our new or amended regulations on the profession. Applications to the Legal Services Board for introducing regulator or amending to our regulatory arrangements also require a process similar to that of an Impact Assessment and includes questions on monitoring and evaluation.
5. The concepts discussed in this consultation are, therefore, familiar to the BSB. With that in mind, we offer our thoughts below on the themes explored in the consultation. If you think it would be helpful, we can make ourselves available to discuss our responses or to participate in further discussions on this subject.

Our response

A common law approach/Principles-based regulation

6. Principles-based regulation can, as noted in the Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) report, provide regulators with greater flexibility when compared with more prescriptive approaches, particularly in areas where legislation is required.
7. The BSB already employs an outcomes-focused and principles-based regulation. We utilise a risk-based approach to ensure that regulatory interventions are targeted and proportionate. For example, we have a Handbook of rules which sets out the code of conduct the Barristers must follow. The Handbook is outcomes based and principles focussed, with rules used only where necessary.
8. Two more examples of this approach are those relating to the education and training requirements for qualifying as a barrister and the ongoing learning and development or Continuous Professional Development (CPD) scheme for barristers.

Proportionality

9. We agree that the principle of proportionality must be at the heart of regulatory activity. We are already required to give regard to Better Regulation Principles (proportionality being one them) when introducing or amending regulations.

Competition and innovation

10. One of the BSB's regulatory objectives is to promote competition in the provision of services. Therefore, we do not think there is any need to amend the statutory objectives. This obligation requires us to ensure that our regulatory arrangements are flexible enough to support new entrants to the market and facilitate new business models whilst addressing risks to the achievement of other regulatory objectives.
11. Whilst not explicit in the statutory objectives for regulators of legal services, we believe the promotion of innovation to be implicit in the objective to promote competition. Our understanding and application of this objective is that legal services providers should be free to respond to commercial pressures and make use of innovative solutions and that regulations will only be brought in where they are necessary in pursuit of the regulatory objectives and the better regulation principles.

Regulatory sandboxes

12. We support the idea of regulatory sand and scale-boxes to encourage innovation in sectors which may be seen as risk averse. We have a proven track record of piloting changes to our regulatory arrangements, which do not require any legislative change. By providing real-world pilots and support to participants, we can showcase the benefits of adopting more innovative approaches. We are also keen to work closely with other regulators in this area and would welcome further

discussions with Government, should there be areas of common interest. Most recently, for example, we have been collaborating with other regulators on innovative uses of lawtech, which was funded through a grant provided by the Ministry of Justice. More information on this available [here](#).

Regulator accountability

13. As mentioned above, the BSB is accountable to the Legal Services Board as an oversight regulator, who is accountable to Parliament and sponsored by the Lord Chancellor. Performance monitoring and deep dive reviews of legal services regulators are currently performed by the Legal Services Board. If additional flexibility is delegated to regulators, we see it to be the role of the Legal Services Board to hold us accountable on delivery under the current framework, as set out in Legal Services Act 2007. The Legal Services Board does this by reporting on regulatory performance of the regulators against set themes, which are published annually. The Legal Services Board also sets out strategic priorities for particular policy areas and the outcomes for the legal sector to which we need to give regard. There is a risk of duplication and lack of clarity if Parliament also decided to do the same.
14. In addition to the role the Legal Services Board serves, deep dive reviews of legal services can and have been undertaken by others. A recent example of this has been the Competition and Market Authority's 2016 [Market Study of Legal Services](#), to which the BSB (and other regulators) have responded. There has also been an [Independent Review of Legal Services Regulation](#), published in 2020, which was led by Professor Stephen Mayson.
15. Should proposals be brought forward that significantly alters the provisions of the Legal Services Act which involve reforming the accountability structure of the legal services regulators, we would welcome further discussions and consultation.

Regulatory offsetting

16. Given the regulatory framework for legal services in England and Wales, we think that the Legal Services Board is well placed, in its role as an oversight regulator, to judge the appropriateness of any proposed regulation. Furthermore, new regulation may be required to promote the objectives of competition and innovation in the sector.

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