



## **Bar Council response to the Legal Services Board's (LSB) Draft statement of policy on empowering consumers-consultation paper**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the LSB consultation paper entitled Draft statement of policy on empowering consumers-consultation paper.<sup>1</sup>
2. The Bar Council represents approximately 17,000 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. We support the desire of the LSB to encourage the front line regulators to regulate in a way that will assist in achieving the outcomes identified in the General Expectations section, that is to say (a) that consumers have the knowledge and capability to recognise when their problem is a legal issue and know how to get legal assistance where necessary (b) that consumers have the knowledge and capability to engage effectively with the legal services market and (c) that when choosing a legal services provider, consumers can access useful information about a provider that

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<sup>1</sup> LSB 2021, [Draft statement of policy on empowering consumers-consultation paper](#)

enables them to make an informed choice as to the provider most suited to meet their needs.

5. These are manifestly sensible aims when a consumer is dealing directly with a provider of legal services, or is shopping around in advance of deciding which legal services provider to select. The draft statement of policy also rightly recognises that what steps are appropriate will also depend on the extent to which services are commoditised, saying at 12(c)(ii):

“In considering whether specific approaches are required for providers in different practice areas within their regulated communities, regulators should consider ... the types of provider and services offered (for example some services are more “commoditised”, such as conveyancing and wills and probate, whereas in more bespoke areas, such as legal aid work, it may be more difficult to compare providers).”

6. It is critical to recognise that the vast bulk of the work done by the self-employed Bar is done on a referral basis, and that even the work that is not done on a referral basis but on a direct access basis is highly unlikely to fall into the “commoditised” category.

7. The LSB rightly emphasises the need for regulation to be evidence driven. We are not aware of any evidence base specifically in relation to consumer interactions with the Bar that the LSB has taken into account in drawing up its proposed policy. We note that the CMA’s data does not extend, or does not extend to any material extent, to services provided by barristers: we have reviewed the CMA Wave 3 survey of prices of individual consumer legal services, published in 2020.<sup>2</sup> This presents a statistical analysis of pricings offered by providers for commoditised services. Virtually all (all but five) of the 1500 respondents were solicitors’ firms. Indeed, it seems unlikely that *any* of the respondents were barristers since the paper refers to all respondents as “firms”. This is not a criticism of the research, but it underlines the fact that the Bar is simply not in the business of providing commoditised legal services direct to consumers. But it means that such research gives no proper evidential basis for policies about how the Bar should be regulated by the BSB.

8. We also note and support the emphasis in the ‘Purpose’ section of the draft statement of policy on flexibility, and the reference to Better Regulation Principles including proportionality, targeting of regulation and, we would add, cost-effectiveness. While we accept that, as stated, the LSB has had reference to these matters, we consider these are just as important for the front-line regulators and that this ought to be made clear within the body of the statement of policy itself and we

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<sup>2</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/09/Prices-of-Individual-Consumer-Legal-Services-Sept-2020-1.pdf>

make a number of suggestions in that regard in response to specific questions below. This is, not least, for reasons of limiting the further burden on legal service providers with the likely impacts of excessive regulation reducing the diversity of the profession and, ultimately, choice to the client. This would be truly counter-productive.

9. We note that there has been disagreement between the regulators as to which professions' regulators should support the Legal Choices website. We think that the right solution to those issues would be clearer if there were a stronger focus on the question of which front line regulators are regulating (and therefore funded by) providers who generally *do* provide services direct to consumers, and which regulators are not generally regulating providers who provide commoditised services direct to consumers. The BSB falls into this second category.

10. We also think it is important to recognise that the main way in which the Bar contributes to a system in which consumers can exercise their legal rights at reasonable cost is by providing, *as a referral profession*, specialist advocacy at very keen rates. If regulatory cost which is appropriate to and directed at direct-to-consumer providers is borne by barristers who will never benefit from being picked from a Legal Choices type website (because they do not appear on it and if they do, they may not be authorised to accept instructions directly from members of the public), then the ultimate result will be that consumers suffer when those regulatory costs are passed on in the fees charged to them.

11. We note several places in which the draft policy gives recognition to the fact that what it is appropriate for regulators to do will depend on the type of provider and the nature of the services offered. We make several proposals as to amendments below with this in mind. We raise one proposal for deletion of paragraph 15.

The wording here is:

*"Regulators are expected to make meaningful contributions to cross-sector initiatives, such as Legal Choices, that are subject to appropriate mechanisms to ensure they are effective. Regulators should be able to demonstrate suitable investment, reach and impact of such initiatives following evaluation."*

This is objectionable on two grounds.

12. There has been a well ventilated disagreement between the BSB and the LSB about whether or not Legal Choices was a cost effective development or not, and further disagreement as to whether, even if it did effectively all that it aimed to do, it would be cost effective from the Bar's point of view to support a platform which, in practice, would carry details of solicitors and not barristers, because it carried details of commoditised legal services.

13. The first reason why this paragraph 15 is objectionable is because it purports to resolve by policy-making fiat a genuine disagreement between regulators. That is not an appropriate use of the power to set policy.

14. The second reason why it is objectionable is because it seems to reflect a mistaken belief by the LSB that it is in some sense a regulator of the entire legal services sector. We repeat what we said in our response to the LSB's Draft strategy for legal services regulation and draft business plan 2021-22 consultation paper.<sup>3</sup>

15. The role of the BSB is to regulate the Bar. The principal role of the LSB is to have oversight of the various front-line regulators. The LSB does not have a role as a sector regulator. The structure of the Legal Services Act 2007 is to encourage and promote a diverse legal sector in which different models for the provision of legal services may coexist and compete with each other.

16. We are therefore not persuaded that it is lawful for the LSB to compel or expect a particular regulator (for instance the BSB) to contribute financially to the cost of a particular initiative intended to resolve a perceived problem in a particular type of service provision or market (for instance, as here, the provision of commoditised legal services), which members of that profession are not engaged in. If there were a perceived problem in the market for High Court advocacy services we would expect the costs of resolving that to fall overwhelmingly on the Bar, with perhaps a modest contribution from the SRA to reflect the small number of solicitors who perform high court advocacy services, and nothing from (for instance) CILEx, since their members do not provide High Court advocacy services. But the same logic must apply to such parts of the costs of a new initiative which are directed to providing, in effect, a comparison website for providers of commoditised legal services sold directly to consumers.

17. Whether and on what terms to make contributions to the costs of cross sector initiatives are matters for the judgment of the front-line regulators, having regard to their duties under the Act. Their decisions about how to discharge those duties should not be constrained by policies.

18. Even if paragraph 15 is lawful, it is not a sensible policy because it will cut across the autonomy of the front-line regulators and risks an inappropriate transfer of the burden of regulation from one regulated profession who will benefit from it, to another that will not.

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<sup>3</sup> <https://www.barcouncil.org.uk/uploads/assets/b1033e1b-6542-4c13-958790c8a8a64981/Bar-Council-response-to-the-LSB-draft-strategy-and-business-plan-21-22.pdf>

**Q1. Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?**

19. The presentation of four categories of general expectations, outcomes, principles and specific expectations in the draft statement of policy is somewhat confusing: For example, the outcomes at paragraph 11(a) are also the central part of the general expectations; general expectations are intended to be flexible, however the specific expectations are intended to be prescriptive. We would suggest that the policy statement be separated into (i) outcomes (ii) principles and (iii) expectations, rather than having the four sometimes overlapping categories. The provisions currently at 11(b) and (c) about having effective measures to address non-compliance and for regulators to report back to the LSB in relation to steps taken can be included in (iii) the expectations section of the policy. 11(d) can be included as a foundation to the 'principles' in 12.

20. As to the three outcomes listed at 11(a), we consider that all three are laudable outcomes and, subject to the caveats suggested below, we suggest that they are retained as drafted.

21. The first caveat is that, as described in the consultation paper by reference to the work of the CMA, the focus of the statement of policy is on consumers. We consider this ought to be stated at the outset of the statement of policy and suggest that the following underlined words are added to paragraph 11:

*"The LSB expects regulators, insofar as they are regulating providers who provide services directly to consumers, to"*

22. A second caveat is that the outcomes stated ought to reflect the limits of regulation to effect change in the public legal education field; and that any regulation to effect social change needs to be both proportionate and cost-effective. The LSB will, of course, recognise that there are many external factors, well beyond the control of the regulators, that will influence whether or not the listed outcomes are achieved. For example, a consumer's recognition that a problem is a legal one is a matter primarily for general public education and requires a policy solution led by the Government. Similarly, the availability of legal assistance for consumers of limited financial means is principally a matter for Government through spending on Legal Aid, third sector law centres and Citizens Advice, and access to justice measures implemented by the Courts and Tribunals Services. In relation to the listed outcomes regulation can only ever have a secondary role even in relation to providers who provide services directly to Consumers. We consider it is important that the LSB acknowledges this in its statement of policy so that the regulators themselves understand the context in which they are asked to consider their existing rules and potential changes to rules.

23. We are also conscious, as is the LSB, that the statement of policy will, in some respects, add to the regulatory burden, and that many providers, certainly barristers, are going through a very difficult financial time. In our work to inform our submission to the Independent Review of Criminal Legal Aid, the Bar Council identified that there are 11% fewer specialist criminal juniors and 22% fewer specialist criminal QCs than in 2015/16. The LSB will not wish to reduce the diversity or availability of providers and, therefore, will be conscious about not overburdening providers and regulators.

24. Taking both of the above points in mind, therefore, we suggest that the preamble to the listed outcomes is expanded upon to state:

*“Pursue the following outcomes within the parameters of reasonable regulation and in a cost-effective and proportionate way”*

25. A third caveat in relation to outcome (iii) is that this reads differently and more prescriptively than (i) and (ii). It is, therefore, proposed that it is revised to be articulated as a general outcome to be achieved through a variety of approaches suitable to each profession. We suggest that the listing of specific required information that should be provided is to be avoided. This would bring this outcome in line with the aspirational outcomes at (i) and (ii). It would then reflect the diversity of the sector and the differences in what may be appropriate. As explained below (at paragraph 28) while it is accepted that in commoditised areas of legal practice readily publicly available information on “price” and “quality” may well be a proportionate and cost-effective means of pursuing the outcome of enabling a consumer to make an informed choice of provider, this is not suitable for all professions in every case and certainly not for the Bar. This also reflects a point made repeatedly (and correctly) by the LSB in the consultation paper that the achievement of outcomes needs to be assessed in a flexible manner, mindful of the diverse range of providers. One way to do this would be to delete the specific information listed, which we suggest is dealt with in the ‘expectations’ section of the policy instead. In other words, delete *“about a provider’s services, price, quality, regulatory status and access to resolution of complaints.”*

26. As already acknowledged in the overview, the general expectations are otherwise clear and reasonable. A lot of the information specified is already being provided by the BSB and the chambers, entities and sole practitioners that fall within their regulation. However, some of the specific expectations are onerous and compliance with them may be challenging. We will detail these in our response to question 4 below.

## **Q2. Do you agree with the proposed principles to be adopted?**

27. In terms of the principles, we agree that the focus must be on small businesses and consumers, as this was the focus of the CMA, on whose evidence the LSB is making these plans.

28. We agree with the LSB where it recognises at 12(b) that it is appropriate for different regulators to take different approaches and also the acknowledgement at 12(c)(ii) that the more bespoke areas of work lend themselves less well to comparison, precisely because they are tailored to a client's specific and unique circumstances and needs, that often change over time as the legal issues progress including bespoke advisory services and, of course, advocacy services. We suggest that this applies to the vast majority of the work carried out by the Bar and propose to add the underlined words in 12(c)(ii) to build in proper flexibility for the regulators:

*... whereas in more bespoke areas, such as legal aid work and advocacy services, it may be more difficult to compare providers).*

29. This will make explicit the important factor that the CMA approach is directed at (and based solely on evidence about) commoditised services sold direct to consumers, and not specialist advocacy services provided on referral by a professional client (typically a solicitor).

30. If the LSB adopts the above proposal that the structure of the policy statement is simplified into 'outcomes', 'principles' and 'expectations' it may well be appropriate for the reference to the CMA's 2016 market study and the 2020 review to be listed as a new sub-paragraph 12(e), for example:

*'In relation to the above principles, regulators may have regard to the CMA's 2016 legal services market study and 2020 review as to the effective functioning of the legal services market and promotion of competition in the interest of consumers.'*

## **Q3. Do you agree with the proposed expectation around public legal education?**

31. Proper public legal education is a policy goal that the Bar Council in its representative role fully shares. We also support the proposition that regulation of the professions should support such an aim. However, we are strongly of the view that regulation can only be a (very) small part of the solution to the problem of a lack of decent public legal education which is, essentially, a public policy issue for the Government.

32. We, therefore, support the expectation set out at paragraph 14, but wish to make clear that any measures to be imposed by the regulators must be appropriate, proportionate and cost-effective. We do not expect, for example, a regulator to stipulate *as a matter of professional conduct* that hard-pressed individual barristers must themselves carry out or support a programme of public legal education. That is well beyond the remit of regulation and would not be proportionate. We, therefore, make a request to the LSB and a proposed amendment to the draft statement of policy.

33. The request is to invite the LSB to explain what it means by the promotion of this objective within the parameters of proportionate and cost-effective regulation. What does an effective programme of activity of a regulator to support this expectation look like? We note that no examples are given in the draft statement of policy or the consultation paper. We accept, of course, that it is not for the LSB to stipulate such programmes of activity. Nevertheless, we consider that when this is considered practically speaking it is difficult to identify what sort of activity properly belongs within the realm of regulation.

34. Turning to the proposed amendment: If, as we suggest, it is difficult to identify programmes of activity within regulation to effect the change sought, the maximum discretion ought to be allowed to regulators as to how this expectation is to be met. Flexibility is required and, therefore, we suggest that the words “put in place an effective programme of activity to” are replaced by “demonstrate support for”. This would build in suitable flexibility, whilst ensuring that the regulators must have reference to this regulatory objective. It is a matter for the regulators in their very different areas to determine how public legal education can be promoted.

35. As stated above, we do not consider that paragraph 15 is appropriate and, respectfully, that it exceeds the role of an oversight regulator. Collaboration cited at 12(d) for the purposes of increased effectiveness is logical, however where that collaboration is costly and deemed not to be effective by the regulator in question, the position should not be forced upon the regulator. It is correct that any joint project such as Legal Choices needs to demonstrate that it is an effective tool and provides value for money, given the ultimate funding for it is derived from the practising certificate fees levied on authorised persons and entities.

**Q4. Do you agree with the expectations set out in the statement of policy around minimum levels of information about price, service and quality?**

**Information about Price**



36. The Bar Council agrees with the focus and flexible approach suggested at paragraphs 16 and 17 of the draft policy statement.

37. It is already established that barristers publish the types of fee structures they use on their websites. What will continue to be difficult is publishing estimated or standardised prices for the majority of their work, due to the bespoke and varied nature of it whereby it is only possible to provide a realistic and useful estimate following an initial discussion with the client to establish what their legal problem is and the scope of the work they wish to be undertaken. The clients of self-employed barristers, acting on referral, that constitute the predominant business model of the Bar, will rely on solicitors to make recommendations and interpret prices. Therefore, detailed published information on price of these barristers is of little if any practical use to potential clients.

38. The wide range of prices for what might on the face of it constitute a similar service (say a half day summary judgment application) may be attributable to legitimate factors as opposed to indicating a lack of competition in the market. For example, at the Bar, a QC will typically command a higher fee than a less experienced junior. The price varies with the level of experience and the value that comes with additional experience. Other variable factors include (but are not limited to) the value of the case; the importance of the issue to the parties and in the public interest; the complexity of the matter in relation to fact, technical content and law; how voluminous the documentation may be; the specialist nature of the subject-matter; the price of insurance for the barrister practising in the particular area; and there are other factors.

39. The BSB introduced in 2019 more detailed requirements on the provision of price estimates for public access barristers working in specific areas of law. We agree with this risk-based approach that is proportionate due to the targeting of barristers working in areas where clients approach them directly and where there is not an informed intermediary, typically a solicitor. Where, as is the case for well over 90% of independent barristers' work, there is an informed intermediary solicitor instructing, there is no need for further intervention.

### **Information about quality**

40. We have no issue with the provision of information about disciplinary sanctions and details of cases published by the Legal Ombudsman, given that it is information already in the public domain. We, therefore, support draft paragraph 18.

41. In terms of information about quality, we consider it challenging for there to be an objective way of demonstrating the quality of legal work done, quality of customer

service, and outcomes in our sector. Legal Services are credence goods, where there is an implicit asymmetry of information between the lawyer and client.

42. We have already expressed concerns about reliance on a client's view of the quality of legal work done. This appears as a specific expectation at 19(a)(i). As we stated in our response to the LSB's consultation on quality indicators earlier this year:

"Lay client satisfaction is a very doubtful metric of substantive quality because when assessing outcomes, clients find it very difficult to disentangle the relative impact of the quality of their case and the quality of the way in which that case was represented. A client's perception of this is often different from a Judge's. Part of being a good advocate and complying with ethical obligations and duties to the court is resisting pressure to put forward irrelevant information and unarguable points before the court, even though the client may urge the barrister to do this. We outlined this concern and others in our response to the LSB's Strategic plan and 2021-22 Business plan<sup>4</sup>."<sup>5</sup>

43. The error and success rates detailed at 19(b)(i) are not appropriate to apply to the type of work done by barristers. Barristers rarely engage in the areas of work where error rates are recorded and we disagree with the use of success rates as a metric for reasons outlined in our response to the quality indicators consultation paper, namely:

"Success rates are not an acceptable metric of good service because the cab rank rule in the BSB Handbook means that barristers cannot pick winning cases. To introduce such an indicator would be at odds with barristers' ethical obligations and may wrongly incentivise other legal professionals not bound by such a rule to select those pieces of work that they thought they had the greatest chance of success. This could hamper access to justice for clients whose cases have a less certain outcome."<sup>6</sup>

44. As we have previously submitted, also in our response to the quality indicators paper, the independent Bar is principally a referral profession, typically instructed for bespoke work by informed solicitors. In any event, there are quality marks represented by the award of the designation Queen's Counsel, appointment as part-time Judges, or being placed on an Attorney General's panel of junior counsel. There is also a fairly sophisticated set of annually updated directories using web-based

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<sup>4</sup> <https://www.barcouncil.org.uk/uploads/assets/b1033e1b-6542-4c13-958790c8a8a64981/Bar-Council-response-to-the-LSB-draft-strategy-and-business-plan-21-22.pdf>

<sup>5</sup> [Bar Council response to the Legal services Board's \(LSB\) Quality indicators in the legal services market: Discussion paper](#), 2021: 4

<sup>6</sup> [Bar Council response to the Legal services Board's \(LSB\) Quality indicators in the legal services market: Discussion paper](#), 2021: 4

review such as Chambers & Partners, Legal 500, and Who's Who Legal, that provide further publicly available information about how individual barristers are rated in the market. Some of our members have issues about the accuracy or fairness of comments about them in these directories, but given that (i) the directories are in the private sector and (ii) participation is voluntary, barristers can choose to engage with them so far as they wish to do so. The online offering of these directories is, we understand, free to view and, therefore, to this extent, the consumer interest is served. The informed intermediary solicitor frequently instructs a variety of barristers and ceases to use barristers that she is no longer satisfied provides the best service. The Bar generally provides a highly competitive market where, as the saying goes, "you are only as good as your last case". The Bar Council considers that, given the nature of practice at the independent referral Bar, there is sufficient information available as to quality.

45. We note that the consultation paper states at paragraph 66 that "We are not specifying any particular quantitative data be made available as we consider what constitutes useful information will differ depending on regulators and practice areas as appropriate." We respectfully agree.

46. Overall, then, we generally understand that the LSB intends paragraph 19 of the draft policy statement to have flexible application, but we note that compared, for example, to paragraph 17, the wording is prescriptive. To ensure that, correctly, the focus on flexibility is maintained we, therefore, invite the LSB to add the words "whether and" before "what further information", alternatively, "(if any)" after "further information."

### **Information about service, redress and regulation**

47. In terms of information required about service, this is mainly uncontroversial due to the fact the Barristers' Register is already very comprehensive in the breadth and detail of information displayed.

48. We note that stages of services and timescales will depend on the specific tasks that a barrister is instructed to undertake following an initial conference typically between a solicitor and barrister to map out the needs and work that is required. Such information is inevitably case-specific.

49. At 20(h) it is stipulated that regulators are expected to ensure that barristers provide details of their Professional Indemnity Insurance cover. Barristers are subject to a regulatory obligation not to mislead clients, in accordance with rC19 of the BSB Handbook<sup>7</sup>. This rule requires barristers not to mislead clients about, amongst other

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<sup>7</sup> BSB [Handbook](#)

things, the extent to which they are covered by professional indemnity insurance. They are also required by conduct rule rC76 to ensure that they have adequate insurance (taking into account the nature of their practice) which covers all the legal services a barrister supplies to the public. We therefore consider that the conduct rules in the Handbook already act as an appropriate safeguard for clients and allow them to access sufficient information about barristers' insurance.

**Q5. Do you agree with the expectations around making information available to consumers?**

50. We are pleased that the LSB has chosen the market led approach as opposed to trying to create its own Digital Comparison Tool (DCT), an idea we were not supportive of. This is still relatively uncharted territory for the Bar and we will watch the BSB pilot on DCTs with interest. Legal services, especially at the more bespoke end, cannot be easily compared in the same way that more commoditised areas of law can.

51. At 23(d) it is stated that details of PII cover ought to be included in one location, e.g. the Barristers' Register. We think it is sufficient for the introductory paragraph on the webpage hosting the Barristers' Register<sup>8</sup> to state that all barristers are required, as a condition of holding a practising certificate, to also hold adequate professional indemnity insurance. We, therefore, do not agree that this ought to be listed as a specific requirement. It would be a considerable additional compliance burden for providers and for the BSB for this information to be included in the Barristers' Register and to be updated, at least, every year. It is also very doubtful that it would add to a consumer's choice as the insurance information at most provides a present snapshot of the position and the insurance provided by the Bar Mutual is on a 'claims made', rather than 'claims arising' basis. Surely what consumers simply need to know is that there is insurance provision to a minimum level. If more is sought/required, then that is a matter that can be requested.

52. Although it is not being consulted on now, because it is mentioned in the consultation document at paragraph 89, we reiterate that a single register developed by the LSB would be duplication, highly likely to be unwieldy and would be costly. Further, we do not believe it would add to consumer choice with already readily available information on the Barristers' Register operated by the BSB and Chambers' websites.

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<sup>8</sup> <https://www.barstandardsboard.org.uk/for-the-public/search-a-barristers-record/the-barristers-register.html>

**Q6. Do you agree with our proposed plan for implementation?**

53. Yes.

**Q7. Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?**

54. Any measures that in substance add to the work required of the regulator or authorised entities, without reducing the burden elsewhere, such as may be proposed in relation to public legal education, will have a cost impact and/or reduce the time available for hard-pressed barristers to carry out fee-earning work. At present the greater representation of more diverse practitioners is in the less well paid legally aided sector (measures are being taken by authorised entities and the Bar Council to address this). The well-known lack of available public funding, delays in payment and unilaterally reduced fees in this sector, and the recent impact of the COVID-19 pandemic means this section of the Bar is at rock bottom in terms of earnings and morale and many, having suffered years of, at best, getting by, are threatening to leave the profession. We consider it essential that burdens are not added to our members without corresponding alleviation elsewhere. Interventions that require an increase in practising certificate fees or require an individual practitioner to carry out additional work for compliance reasons is likely to have a detrimental impact and reduce the diversity of the Bar.

**Q8. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?**

55. We warmly welcome the comments made in paragraphs 99 to 102 of the consultation paper and fully endorse the recognition that there is a risk of an increased burden on providers, the need for flexibility in the policy statement, and the emphasis on proportionality. We note, however, that these matters, while addressed in general terms in the introductory 'Purpose' section of the draft statement of policy, are not referred to at all in the substance of the statement of policy from paragraph 10 onwards and would repeat the request made above that they are stated in the body of the statement of policy.

56. It is disappointing that there are no suggestions in the draft statement of policy towards reducing the burden and cost of regulation. It is inevitable, therefore, that each intervention will result in increased costs. It may be useful to understand that many Chambers have only a few members of staff whose role will be principally

clerking barristers, accounting and running the Chambers. They carry out compliance matters additionally. Where there is a need for greater information provision or for keeping it up to date, that is time taken away from other essential tasks or for sole practitioners, time away from serving the clients.

57. Any requirement for engagement with DCTs or other matters relating to quality and price will be immensely time-consuming and costly. Barristers and their staff will inevitably need to spend huge amounts of time and cost in relation to online comparison websites, monitoring feedback received and, in particular, addressing any bad reviews and false reviews. We cannot see how, given the nature of independent referral practice, this in truth benefits the consumer.

58. There will evidently be a cost to the regulator of adding certain new bits of information to the Barristers' Register, particularly when the information is owned by another organisation, e.g. the Legal Ombudsman or the Bar Tribunal and Adjudication Service.

## **Bar Council**

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