



# Employed Bar A-Z

## Contents

Employment in Government Service .....	2
Entities .....	2
Finding Support When Things Go Wrong .....	3
How does the Queen’s Counsel system apply to the employed Bar? .....	3
How to Develop Advocacy Skills at the Employed Bar .....	4
Promotion within a corporate structure .....	5
Regulatory Issues .....	6
Rights of audience.....	6
The right to conduct litigation.....	7

The Employed Bar A-Z Toolkit has been written by members of the Bar Council’s Employed Barrister's Committee and Young Barristers’ Committee, with input from Bar Council staff.

If there are things you would like us to cover in future updates, or if you would like to comment on the material that is here, [please let us know](#).

## Employment in Government Service

A barrister employed in the Government Legal Service is subject to and must have regard to the Civil Service Code and to the Code governing lawyers in the Civil Service. A barrister employed in the CPS is subject to and must have regard to guidance issued to Crown Prosecutors by the Service.

## Employers and the Code of Conduct

Occasionally, an employer may ask a barrister to do something which runs counter to the barrister's duty under the BSB Handbook's Conduct Rules. The Handbook is paramount. If this situation should arise, the barrister should inform the employer of its duties under the Handbook and that he cannot do anything which breaches his duty under the Handbook. If the barrister is still concerned, he should contact the Bar Council's Ethical Enquiry Service on 020 7611 1307 or [email us](#).

## Entities

In April 2015, the Bar Standards Board authorised the creation and regulation of entities –businesses providing legal services regulated by an Approved Regulator. An entity may be barrister-only or lawyer-owned. As at October 2015 the BSB had received interest from 158 prospective entities and had authorised 36. 33% of these were already practising as entities. Most applications have been from single person entities in London. The BSB also authorised 'BSB Licensed Bodies' which are also referred to as Alternative Business Structures ("ABS") are owned and managed jointly by authorised individuals and others. For more information on entities please see the entities section on the [BSB website](#).

It is hoped that entities will provide barristers with greater flexibility and security. An entity can contract for work without the need for a professional client, and if attached to chambers, can market and bid for work and then funnel that work to members of chambers. A single-person entity is a self-employed barrister who has incorporated as a company.

A barrister who becomes an owner or manager of an entity or who is employed in an entity, whether full or part-time, must register for an employed or dual-capacity practising certificate (and put in place a protocol to avoid conflicts of interest, as required by rS18 of the BSB Handbook).

As a result, it is expected that there will be a significant increase in the number of barristers registered as employed. This may also herald the development of new

policies from the regulator or government and an increase in the employed Bar's collective bargaining power.

The employed Bar may also in future find itself instructing advocates operating as entities.

There is detailed information on the creation and operation of entities on the [Bar Council Ethics and Practice Hub](#).

And detailed guidance on equality and diversity principles as they apply to entities on the [BSB Website](#).

### Finding Support When Things Go Wrong

Employed barristers should in the first instance seek help and support within the support networks of the employer organisation, such as line management chains and mentoring groups. Many organisations will also have confidential internal reporting systems if discretion is required.

Where that is not possible, or not appropriate, there are several impartial third-party sources of help. For example, the Bar Council and Bar Standards Board offer ethical and other support services, and the charity Law Care offers comprehensive support for all lawyers.

There is a dedicated Bar Council Equality and Diversity helpline which can provide assistance on the equality and diversity rules in the BSB Handbook, and advice to the profession on any Equality and Diversity, parental leave or harassment issue. Phone: 020 7611 1321.

You may also find the following links useful:

<https://www.wellbeingatthebar.org.uk/>

<http://www.lawcare.org.uk/>

### How does the Queen's Counsel system apply to the employed Bar?

Historically, due to the extent to which applications for Queen's Counsel (QC) were based on courtroom advocacy experience, non-CPS employed barristers have tended not to fall within the scope of the eligibility criteria.

In recent years, however, the QC application criteria have been broadened to cover more than just typical self-employed barristers, and the QC Appointments Panel

Guidance makes it clear that the advocacy undertaken need not have been solely traditional courtroom advocacy:

*“Advocacy includes both written and oral advocacy before the higher courts, arbitrations and tribunals and equivalent bodies. The advocacy may be in written or oral form but must relate to developing and advancing a client’s or employer’s case to secure the best outcome for the client in a dispute. That outcome may, for example, be secured through arbitration, court determination or a settlement agreement. Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or in negotiation. There is no specific requirement as to the amount of written or in-court advocacy, so long as there is sufficient evidence for the Panel to reach a conclusion as to excellence in respect of each aspect of advocacy.”*

[Source: <http://www.qcappointments.org/about-us/introduction/>]

With this in mind, employed barristers who feel they might meet the criteria for applying to become a QC should consult with their employer to see whether an application might be supported.

See, generally, <http://www.qcappointments.org/>.

## How to Develop Advocacy Skills at the Employed Bar

All barristers are subject to the same rules on compulsory training during pupillage and in the early years of practice.

Employed barristers are also required to comply with the mandatory continuing professional development requirements set out at Part 4, Section C of the BSB Handbook. See generally <https://www.barstandardsboard.org.uk/for-barristers/cpd.html>

One of the main differences between employed and self-employed barristers is that with the principal exception of those employed by the Crown Prosecution Service, employed barristers tend not to undertake courtroom advocacy as part of their everyday job as often as their self-employed counterparts.

Partly as a result of this, there has been an increasing focus in recent years on how advocacy training can be better geared towards barristers employed in law firms, industry and government. These barristers, whilst rarely ‘on their feet’ in court, are nevertheless called upon to present oral arguments persuasively in a variety of contexts, from speaking at board meetings to briefing Ministers and conducting advocacy before internal decision-making bodies.

Employed barristers who are due to undertake their New Practitioners' Programme should check whether their Inn offers advocacy training specifically for the employed Bar. If it does not, then it may be possible to be added to a reserve list at one of the Inns that does. Currently, such training is offered jointly by Middle Temple and Gray's Inn (contact Middle Temple at the address below). Inner Temple do not do so at present but may reintroduce it. Lincoln's offer exercises applicable to all, including a session on tribunal advocacy.

See generally:

<https://www.graysinn.org.uk/education>

<https://www.lincolnsinn.org.uk/members/education-training/>

<http://www.middletemple.org.uk/education-and-training>

<http://www.innertemple.org.uk/education>

### Promotion within a corporate structure

Rather than rising through the ranks of pupil, junior and QC, employed barristers tend to be bound by the promotion rules of the organisation they work in (although see the section on how the Queen's Counsel system applies to the employed Bar, below).

In law firms, this will generally mean that employed barristers are on a par with their solicitor colleagues, rising through the usual succession of roles such as associate, senior associate, partner, etc. Similar arrangements will apply in industry. All will depend on the workplace policies of the entity in question, which employed barristers should consult for specific information.

**The Government Legal Service (GLS)** employs both barristers and solicitors and does not distinguish between them in terms of their role or for the purposes of career progression. The specific corporate structure within which GLS lawyers operate varies from department to department; however, most departments generally adopt the same system of "grades" as does the rest of the Civil Service. The numbers of lawyers working at a grade and their specific roles will depend upon the size and function of the department concerned, as will the criteria for promotion.

Finally, in the Crown Prosecution Service, the first level entry point for a fully qualified solicitor or barrister is the Crown Prosecutor role. The next level is Senior Crown Prosecutor with further succession to the more specialised roles of Crown Advocate (or Specialist Prosecutor), Senior Crown Advocate and Principal Crown Advocate. Senior Crown Prosecutor, Crown Advocate and Specialist Prosecutor are on a par in terms of their job weight.

## Regulatory Issues

**There is useful guidance on authorisation to practise issues on the [Bar Standards Board Website](#).**

### Rights of audience

Employed barristers holding valid practising certificates and with three years' standing hold all of the same rights of audience as their self-employed counterparts. However, their employers may have policies or practices which restrict the scope of what may be available, particularly in terms of higher court advocacy. Employed barristers should therefore check with their employer or prospective employer before seeking to exercise any of these rights.

Barristers (employed or self-employed) with less than three years' standing may only supply legal services to the public or exercise any right of audience by virtue of authorisation by the BSB (Rule S20, BSB Handbook). In practice what this means is to have or get full rights of audience or to supply legal services to the public, the employed barrister must be working with or have worked with a qualified person (someone who meets the definition in the BSB Handbook at Rule S22) for three years. This requirement is a relatively easy one for self-employed barristers, but much more difficult for employed barristers, especially those that work for non-authorised bodies. The consequence of this is that if there is no one at the non-authorised body who can act as a qualified person and a newly qualified barrister goes straight into employment for that non-authorised body from pupillage, the barrister will not gain any years' standing during that employment and will not have rights of audience. Without three years' standing, the barrister will not be able to become a sole practitioner under a self-employed practising certificate or be authorised for public access.

The Civil Procedure Rules (see Part 39.6) permit employees of companies who are authorised by the company and have the permission of the court to represent the company at trial. Unregistered (non-practising) barristers and employed barristers without the appropriate rights of audience may take advantage of this provision as employees of the company, if they do not hold themselves out as barristers.

## The right to conduct litigation

Employed barristers should take note that they may need to apply to the Bar Standards Board (BSB) for the right to conduct litigation. What constitutes 'litigation' is a question of law, and is therefore not specifically defined by the BSB, but as a rule of thumb, it will be things such as:

- Issuing any claim or process or application notice
- Signing off on a list of disclosure
- Instructing expert witnesses on behalf of a lay client
- Accepting liability for the payment of expert witnesses, and
- Any other 'formal steps' in the litigation of a sort that are currently required to be taken either by the client personally or by the solicitor on the record.

Note, however, that this list is not exhaustive, and so barristers wishing to know for sure should first consult the BSB's guidance document which can be found [here](#), and then if necessary, consult the Bar Council's Ethical Enquiries Service on 020 7611 1307 or by [email](#). It should be noted that the BSB will not advise on a case-by-case basis as to whether something amounts to conducting litigation.

Employed barristers undertaking what may traditionally have been considered typical solicitors' duties, such as issuing proceedings and generally litigating cases, should take note of this requirement, and check with their employer whether they need to apply. Some employers, including most government departments, have statutory cover for their lawyers to conduct litigation, but this will not be the case, for example, in many law firms. Barristers can apply online for authorisation to conduct litigation on the [BSB website](#).