



Bar Council response to the consultation paper on the cost of licensing of a Bar Standards Board regulated Alternative Business Structure

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board consultation paper entitled 'Cost of licensing of a Bar Standards Board regulated Alternative Business Structure (ABS)'.¹

2. The Bar Council represents over 15,000 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. The licensing of Alternative Business Structures (ABSs) is the latest in a series of reforms, following the authorisation of the first lawyer-only entities in April 2015. The Bar Council is supportive of the BSB's application to regulate ABSs that deliver the legal services typical of the self-employed Bar, namely advocacy, litigation and specialist legal advice.

5. In summary, the Bar Council takes the view that

- It is right to operate ABS regulation on a full-cost recovery basis.
- A 'sliding scale' whereby fees are higher for larger ABSs is appropriate.
- The rates need to be competitive with those charged by other regulators for ABS authorisation.

¹ Bar Standards Board (2015) Cost of licensing of a Bar Standards Board regulated Alternative Business Structure.

Question 1: Do you have any comments on the BSB's proposed approach to ABS fees?

6. The Bar Council fully supports the Bar Standards Board's intention to operate ABS regulation on a full cost recovery basis. It is right that the practising Bar does not subsidise barristers, lawyers or lay people who wish to set up an ABS. It is appropriate for those who derive the benefit of ABS regulation through the setting up of such a structure to cover the cost of its regulation.

7. We agree that a 'sliding scale' fee structure according to the number of persons in the ABS is the most appropriate factor for calculating the cost to be passed on to the applicant. This should ensure proportionate fees are paid according to each application. If the BSB finds that, increasingly, it is regulating ABSs with considerably more than 16 persons, it should review the fee structure. It may be appropriate to add new fee levels since an ABS with 50 persons, for example, should not pay the same fee as an ABS with 16 persons.

8. The Bar Council notes that the fees proposed for ABS regulation are considerably higher than those that are charged for lawyer-only entities. The Bar Council assumes that the higher cost is associated with the higher level of regulatory risk that may ensue because of the possibility of non-lawyer ownership/management.

9. Whilst the Bar Council appreciates and supports the principle of full-cost recovery for ABS, we urge the Bar Standards Board to regularly review fees and to set them at a rate that is competitive with the fees charged by other regulators so far as possible. The principle of full cost recovery should, however, take precedence. The Bar Council agrees that the initial fees should be tiered according to the number of persons per entity. The recurring fee for annual authorisation could be set taking into consideration the annual turnover of the ABS. This is consistent with how the SRA sets its fees for ABS regulation.

Question 2: In particular, do you have any views on the apportioning of fees between application, authorisation and annual fees?

10. It makes sense to have a separate application and authorisation fee to limit the financial outlay of applicants that do not gain authorisation. The application fee should be set at a level that is not prohibitively high and does not deter potential ABSs from applying for authorisation.

Bar Council

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