



Bar Council response to the 'Unregulated Providers of Legal Services' consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Issues Commission's consultation paper on the 'Unregulated Providers of Legal Services'.¹
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 (BSB).

¹ [Consultation](#)

Question 1: Should the IBA undertake work at all on the unregulated provision of legal services? Is such work suitable for a bar organisation? Some feel that that bars should offer guidance on the provision of legal services regardless of who or what is providing them. Others feel that a bar's role is to look after its regulated member lawyers alone.

4. Our view is that the IBA is a membership organisation whose primary role should be to promote its members interests. The IBA should focus on helping to maintain the high standards of regulated professionals and legal services providers and will in turn, serve to protect consumers of legal services and the general public. The principles already produced for the regulated sector properly fit within this role. We are concerned, however, that the development of a set of principles that apply to the unregulated sector may be straying outside the IBA's core function. We are not supportive of any initiative that gives the IBA the appearance of having a regulatory role. That said, we acknowledge that some other member Bars' may find this work helpful.

5. Consumers may not understand the difference between a set of best practice principles and a Code of Conduct against which an individual's conduct can be measured and sanction applied by the regulator if it falls below the standard required. One of our concerns about this work is that it has the potential to blur the lines between the regulated and unregulated sectors. As such, it could cause confusion to consumers of legal services about the regulatory status of the provider being instructed. Those consumers may perceive that the IBA is endorsing unregulated providers that subscribe to the set of principles. This would not be in the public interest.

6. Additionally, there is a risk that providers may imply or claim (whether deliberately or inadvertently), that they are subject to regulation by the IBA. This would be misleading for consumers.

7. In our experience, there are unequal levels of protection available for the consumer amongst the unregulated sector when compared to regulated legal professionals. Unregulated providers are often uninsured and unqualified and can sometimes pose a serious risk to the consumer. We firmly believe that regulated providers are the best placed to provide legal services. In England and Wales, only barristers with practising certificates can carry out reserved legal activities as detailed

in the Legal Services Act 2007 and hold out as a 'barrister' whilst providing legal services. This means that titles, such as 'barrister', provide the consumer with a clear signal that the professional whom they are instructing is regulated, insured and will deliver a high quality of work as well as abiding by a code of conduct. In addition, membership of the barristers' profession fosters a professional ethos, mutual support and encourages high professional standards to be maintained. It is difficult, therefore, to justify the Bar's support for an initiative which lends support to the unregulated sector.

Question 2: If the IBA should undertake such work, should the product be in the form of principles, guidelines or best practices (in other words, some form of recommendation) or be restricted to being merely a report containing information? Some feel that it is not for the IBA to offer recommendations at all, not being a regulatory body, and certainly not in a field which includes non-lawyers. Others believe that its member bars look to the IBA for guidance in difficult areas covering legal services, including in those areas where unregulated providers are providing legal services.

8. Notwithstanding our scepticism about the appropriateness and utility of the IBA undertaking such a piece of work, if the work were to proceed, we would prefer that it be limited to a report. This would enable the individual Bar Associations to choose how they wished to use the principles, if at all. This is more in alignment with the IBA's role of supporting its members. Further, it would allow for a diversity of approaches and recognises the differing views taken by individual Bar Associations on this matter.

Question 3: If the IBA should undertake such work, should the product cover both lawyers and non-lawyers in the same document? Some believe that it is wrong to include a highly regulated profession in the same conclusions covering those without any regulation (or at least without a lawyer's regulation), because it detracts from the role of a bar in promoting only those who have satisfied its conditions for regulation. Others feel that bars also have a public interest role, and should on appropriate occasions include all providers of legal services, regardless of regulation, in their conclusions.

9. Were any recommendations to be drafted, we suggest that the end product should be separate documents for lawyers and non-lawyers. This would help avoid some of the confusion that we are concerned may occur amongst consumers.

10. Putting any form of guidelines or principles for lawyers and non-lawyers in the same document, could cause further confusion for consumers, leading to an erroneous presumption that there is not a significant difference between those regulated and unregulated providers. This could create problems for consumers such as poor-quality legal advice, poor standards of service or delays. If the provider were not required to have professional indemnity insurance in place, the consumer may have limited protection and means of redress if things go wrong. Therefore, providing information for lawyers and non-lawyers in the same document, would be not only confusing but also potentially risky for consumers who did not fully understand the implications of obtaining legal services from unregulated providers.

Question 4: Do you have any other comment on this document, and in particular on the proposed 'IBA principles on the provision of legal services', which are its only formal conclusion?

11. Broadly speaking, the general (i.e. non-legal technology) principles mirror those that barristers are already held to by the Bar Standards' Board Handbook and which they would wish to demonstrate in their daily practices. The legal technology principles seem sensible and proportionate.

Bar Council

05 February 2020

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