

Making way for change at the Bar: The practical implications of the new Bar Standards Board Handbook

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This is the authors' accepted version of an article published in *Journal of Professional Negligence*, Vol 31 (3) October 2015. No adaption, alteration or manipulation whatsoever of the document is permitted without the prior written consent of Bloomsbury Publishing.

The final print version is available at:

<http://www.bloomsburyprofessional.com/uk/journal/journal-of-professional-negligence-17466709/>

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Making way for change at the Bar: The practical implications of the new Bar Standards Board Handbook

The Bar Standards Board (BSB) introduced a new handbook containing a new code of conduct in January 2014.¹ This handbook arrived at a time when the BSB was looking forward to regulating entities including alternative business structures (ABSs). This appears to have affected the handbook in two ways: the obvious effect is the inclusion of sections to cover entity regulation, but the additional effect is that the BSB has taken the opportunity to reconsider the way it regulates self-employed barristers. It has done so in a way that attempts, at least in places, to harmonise the regulation of the barrister with the regulation of the entity.² This relatively quiet launch of a new handbook has heralded some potentially very significant changes to the expectations around the practice of individual barristers. This article seeks to explore some of those changes and look at new ways that barristers can find themselves on the wrong side of a complaint, disciplinary tribunal, or fine, as well as considering potential changes to the pattern and opportunity of practice at the Bar.

The key changes discussed in this article are: increased requirements relating to chambers administration; the requirement to report serious misconduct, both the barrister's own, and that of others; and an expansion of jurisdiction to bring those formerly known as non-practising barristers under further regulation. There is also an increased scope of practice, including litigation rights and, as every silver lining has a cloud, this of course brings with it its own risks. The enforcement strategy has also been reformulated, notably including the opportunity to disqualify non-regulated persons from working with barristers. These will be discussed in turn following a discussion of the more general changes to the format of the code, namely the risk-based approach and a shift in the direction of principle-based regulation.

Risk-based approach

Whilst not explicitly included in the handbook a move to risk-based regulation was announced contemporaneously³ and came into effect in January 2014. The BSB describes its new approach to be 'an outcomes focused, risk-based and proportionate approach to all its

¹ Bar Standards Board, 'The Bar Standards Board Handbook' (2014, 1st Edition) <https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf> accessed 26th April 2015 (Hereafter 'BSB Handbook').

² Most notably in introduction of litigation rights, which are in places justified by their necessity to alternative business structures.

³ For example at the Handbook Roadshows in November 2013: Bar Standards Board, 'The New Handbook' (2013) <https://www.barstandardsboard.org.uk/media/1544028/bar_conference_presentation_6.11.13.pptx> accessed 6th January 2015.

regulatory activities'.⁴ This is manifest through both the enforcement and the supervision strategies, although is more clearly apparent in the latter.

The risk-based nature of the new enforcement approach is demonstrated by explicit statements to that effect, backed with a range of enforcement options. The BSB explains its meaning of 'risk-based' to be to 'focus our enforcement action on the issues that pose the greatest risk to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what enforcement action we should take.'⁵ Later, in describing enforcement decision making, it states that it will consider 'the risk posed to, or the impact upon, one or more of the regulatory objectives.' Breaches of the handbook not amounting to professional misconduct may be considered for administrative sanctions (and the standard of proof will be the balance of probabilities). If they are considered professional misconduct they would be referred to the Disciplinary Tribunal to be determined beyond reasonable doubt or be resolved via Determination by Consent. The BSB also has additional powers when dealing with an ABS to intervene and take control of client files or funds, or apply to the court to have ownership by a non-authorised person divested.⁶ The enforcement strategy also lists advice and supervision as alternatives to the more traditional forms of enforcement and states decisions about supervision will be based on the seriousness and nature of the complaint and the effectiveness and proportionality of supervision tools.

It is the supervision strategy⁷ that shows the strongest risk-based approach. Supervision will focus on chambers where any breach would have medium to high impact that are also considered to be likely to breach the code due to their management or administrative procedures. The most detailed guidance provided states that 'Chambers and entities that manage risks effectively can expect a low level of supervision. Those who are unable to demonstrate that they are managing risks effectively will receive more supervisory attention.'⁸ It also talks of enhanced supervision for individual barristers where there is evidence of non-compliance.⁹ The BSB audited all chambers in April 2014 by way of an Impact Audit Survey.¹⁰ Considerations for 'impact' are: the area of work, caseload, public access caseload, pupils, work likely to fall within money laundering regulations and use of an escrow account to handle client money.¹¹ The survey sought information on these areas and used the responses to class each chambers as either low, medium or high *impact*. The level

⁴ Bar Standards Board, 'Enforcement Strategy' (2014) <https://www.barstandardsboard.org.uk/media/1555518/the_enforcement_strategy_2014_-_final.pdf>, accessed 6th January 2015 at 1.

⁵ *Ibid* at 3.

⁶ *Ibid* at 8.

⁷ Bar Standards Board 2014, 'Supervision' <<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>> accessed 6th January 2015.

⁸ Bar Standards Board 2014, 'Supervision Strategy and Guidance'. <https://www.barstandardsboard.org.uk/media/1617759/supervision_strategy_and_guidance_for_website.pdf> accessed 6th January 2015 at 2.

⁹ *Ibid* at 3.

¹⁰ BSB, Supervision (n7).

¹¹ BSB, Supervision Strategy (n8) at 6.

relates not to the likelihood of a breach of the code, but instead to the impact if there were a breach. It conducted a further stage of audit from September 2014 (starting with high *impact* chambers) by way of Supervision Returns.¹² These are used to obtain information about the administration of chambers and to class chambers as either low, medium or high *risk*. Whilst the terminology used here is ‘risk’, what the BSB appears to be referring to is one of the two more commonly considered dimensions of risk,¹³ ie probability, the other being impact (as measured by the Impact Audit Survey). The BSB’s conceptualisation of risk then lies at the heart of its enforcement strategy, in the form of a tailored and empirical assessment process.

Whilst the BSB is collecting data on both impact and probability, interaction between these elements does not seem to be considered. This leaves chambers where a breach would have low impact relatively unsupervised even if the likelihood of a breach is high. Impact is used as a gateway (and initially at least also in timetabling the supervision returns) so that those identified as ‘low impact’ will only have proactive supervision if evidence arises from another source (presumably from complaints or referral which would be used as indicators of risk).¹⁴ As the BSB itself states, those categorised as low risk (in addition to those categorised as low impact) ‘will largely be left to “get on with it” and receive relatively little supervision attention’¹⁵ and the basic level of supervision for all individual barristers is said to consist of the authorisation process, theme based supervision (the example of CPD requirements is given) and involvement in ‘thematic reviews’,¹⁶ the latter being assessment and management in relation to particular requirements, areas of work, or business practices.¹⁷ Interestingly, the BSB appears to envisage this will reduce the amount of time it spends supervising sole practitioner chambers, which it identifies as being more than half of all chambers, but having a very small share of the overall market.¹⁸ It might be thought that the sole practitioner status itself would be an indicator that further supervision would be beneficial given the lack of peer support available, particularly given that with respect to early practice the BSB uses peer support to mitigate against risk.¹⁹

The risk-based approach then brings the potential for lighter penalties for breaches that have little impact, but also introduces a higher level of supervision for a subset of chambers leaving the rest of chambers under a regime that is relatively unchanged.

Outcome-focused, principle-based or rule-based?

Outcomes are a conspicuous introduction to the new handbook, but their unenforceability means that they (along with guidance) play a more nuanced role than in the equivalent

¹² BSB, Supervision (n7).

¹³ E.g. Julia Black and Robert Baldwin, ‘When risk based regulation aims low: Approaches and challenges’ (2012) 6 *Regulation & Governance* 2 at 4.

¹⁴ BSB, Supervision Strategy (n8) at 6.

¹⁵ BSB, Supervision (n7).

¹⁶ BSB, Supervision Strategy (n8) at 3.

¹⁷ *Ibid* at 12.

¹⁸ *Ibid* at 6.

¹⁹ See the section on ‘Supported practice and the “Three year rule”’ below.

framework for solicitors. The new handbook consists of a number of different types of statement or rule. These are as follows:

- Core Duties (10 duties set out at the beginning of the code, and referred to throughout, defined as ‘the core elements of professional conduct’²⁰)
- Outcomes (set out at the beginning of each section, but not generally referred to elsewhere)
- Rules
- Guidance (offering guidance on the core duties and rules)
- Regulations (largely relating to enforcement, and otherwise similar to rules)

Of those, only the Core Duties and the Rules are enforceable. Neither guidance nor outcomes are mandatory. Whilst the guidance is not enforceable *per se*, if there is a breach of another part of the code then non-compliance with the guidance would need to be explained. Outcomes are not mandatory but the impact on these outcomes will be considered when the BSB is considering how to respond to breaches of other parts of the code.²¹

This more reticent approach to outcomes-focused regulation is deliberate, and driven by a belief that the context of a barrister’s work is unsuitable for a solely outcome-focused regime. At the stage of the March 2012 consultation on the New Handbook the BSB had turned its face against a strong outcome-focused approach, explaining that it felt retention of a rule-based approach was needed in the context of provisions relating to conduct towards the court and situations where barristers must take action potentially contrary to their clients’ interests. It cited the need for clarity for barristers to act in tight timeframes, and clarity for clients to base their expectations upon.²²

Whilst the new handbook does not fully embrace an *outcome*-focused approach, it does incorporate elements of the broader approach of *principle*-based regulation, particularly when the core duties are also taken into account. That is to say that whilst the outcomes are unenforceable, they do act as norms and furthermore there are other principles (notably the core duties) which are both normative and enforceable, but which do not have the specificity of rules. The outcomes provide what Black refers to as ‘Formal principle-based regulation’.²³ Formally they exist in the handbook as norms set out in general terms, which should be met, but which are not actively enforced. The core duties on the other hand share

²⁰ BSB Handbook (n1) at 10 (Rule I6.1); The core duties, listed at p22, are: an overriding duty to the court (CD1) and duties to: act in clients’ best interests (CD2); act with honesty and integrity (CD3); maintain independence (CD4); refrain from behaviour diminishing public trust and confidence (CD5); maintain client confidentiality (CD6); meet a standard of competence (CD7); refrain from *unlawful* discrimination (CD8); co-operate and be open with regulators (CD9) and manage one’s practice competently (CD10).

²¹ *Ibid* at 10-12 (Rule I6).

²² Bar Standards Board, ‘Consultation paper – New Handbook and Entity Regulation: Part one’ (2012) <https://www.barstandardsboard.org.uk/media/1393764/consultation_part_1_1_final.pdf> accessed 17th February 2015.

²³ Julia Black, ‘Forms and paradoxes of principles-based regulation’ (2008) 3(4) *Capital Markets Law Journal* 425 at 434.

the formal nature, in that they are set out in the handbook, but they also have what Black describes as a substantive nature in that they are actively enforced, and the BSB can take enforcement action upon breach of one of these general norms of professional practice.²⁴ This principle-based approach represents a change for the Bar, which is used to being governed by a set of fairly detailed and specific rules.

There is also a third place that principle-based regulation creeps in, and that is tied in with the risk-based approach outlined in the section above. In the supervision strategy, unlike in the handbook, the emphasis is placed on chambers' ability to meet core duties *and outcomes*.²⁵ Furthermore, these principles are given meaning through a dialogue between the BSB and chambers, whereby chambers are expected to have considered the application of the outcomes and core duties and to explain this in their supervision returns, and the BSB is expected to give guidance as necessary. The interpretative exercise here, based on duties and outcomes, is bound to become consequentialist and purposive rather than literal and formal, as chambers are required to justify and reflect upon their approach in light of the potential consequences of their policies and practices, rather than based on formal compliance with detailed rules. These are key characteristics of a substantive principle-based approach.²⁶ Furthermore the approach to enforcement, again outlined above, has the responsive character familiar to principle-based regulation, which takes into account elements of risk and consequence.

This combination of rule and principle-based regulation may meet particular needs of the Bar. As Black²⁷ points out, principles provide congruence between communicated objective and promoted behaviour.²⁸ That is to say they communicate and promote regulatory objectives much more effectively than simple rules, but as the BSB has also pointed out, they can lack the clarity needed in time pressured environments where individual practice decisions can have critical impact. On the other hand, one of the problems with simple rules is that they can encourage those who are regulated to work with loopholes, workarounds or creative compliance.²⁹ They can also, due to their rigidity in the face of the world's unpredictability, fail to achieve their aims. Principle-based approaches can avoid these issues to some extent. However they also introduce problems of interpretation, and whilst 'interpretive communities' can develop, they can also fracture leading to a multiplicity of interpretations.³⁰ This might be seen as a particular risk for the Bar given the increasingly specialised nature of practice and also the potentially diversifying forms of practice that may develop under entity regulation. The layered approach taken in the Handbook may however mitigate some of these concerns. The principle-based approach here is buttressed by a set

²⁴ *Ibid* at 438.

²⁵ BSB, Supervision Strategy (n8).

²⁶ Black (n23) at 439.

²⁷ *Ibid* at 438.

²⁸ Julia Black, Martyn Hopper and Christa Band, 'Making a success of Principles-based regulation' (2007) 1 *Law and Financial Markets Review* 191 at 194.

²⁹ See for example: Doreen McBarnet, 'After Enron will "Whiter than white collar crime" still wash?' (2006) 46 *British Journal of Criminology* 1091.

³⁰ Black (n23).

of detailed rules which are less open to varied interpretation and which are themselves the main focus of regulation. Principles in the form of core duties supplement this approach reducing the possibility of workarounds, and in the form of core duties, outcomes and risk-based enforcement and supervision they have the potential to mitigate the rigidity of hard rules and maintain a focus on regulatory aims.

Chambers

The new regime recognises the importance of chambers in a way that was not apparent in the old regulatory regime, and consequently intervenes in the relationship between barrister and chambers more readily. It can be seen above that in the supervision strategy and guidance the risk-based approach focuses at chambers level and reminds the reader that chambers must be compliant with the regulatory requirements including the requirement to have appropriate risk management procedures in place.³¹ The consequences of appropriate chambers management are said to be that ‘...the BSB will need to take less enforcement action and consumers’ interests will be protected and promoted. This is why all self-employed barristers, including sole practitioners, are under a duty to ensure that their chambers are administered competently and efficiently.’³² To these ends there are new rules which give individual barristers a duty to take ‘reasonable steps to ensure’ the competent and efficient running of chambers including ensuring that chambers staff are competent and aware of relevant handbook provisions, that proper arrangements are in place for pupils, conflict management and confidentiality, and that there are risk management procedure and systems for ensuring compliance with certain rules.³³ Some of these duties, such as the need to ensure competent and efficient running of chambers, were previously duties that fell solely on the head of chambers.³⁴ Others, such as risk management and competence of staff are completely new. This change of focus should not be surprising: as early as 1988 Abel³⁵ emphasised that the ongoing increase in the average size of chambers was likely to lead to them becoming more important to the then professional associations; however it appears to be the exercise of considering entity regulation that has increased the BSB’s focus on the environment in which barristers practice.

In line with this increased recognition of the relevance of chambers to the practice of the self-employed barrister, employees of chambers are also brought within the remit of regulatory oversight. These employees fall under the umbrella term ‘relevant persons’ which includes all regulated persons *and* all direct or indirect employees of authorised

³¹ BSB, Supervision Strategy (n8) at 2.

³² *Ibid* at 5.

³³ BSB Handbook (n1), Rule rC89.

³⁴ Old rule 404.1-404.2: Bar Standards Board, ‘The Code of Conduct of the Bar of England & Wales’ (2013, 8th Edition) <https://www.barstandardsboard.org.uk/media/1541992/code_of_conduct_22_october_2013.pdf> accessed 26th April 2015.

³⁵ Richard L Abel, *The Legal Profession in England and Wales* (Oxford, Basil Blackwell, 1988) at 105.

persons.³⁶ This would therefore include clerks at all levels and chambers managers or administrators. Under the Enforcement Regulations the Disciplinary Tribunal has the power to make a Disqualification Order where it believes the disqualification condition has been met.³⁷ A disqualification order disqualifies a relevant person from one or more activities and prohibits any BSB authorised person from appointing or employing them. The condition to be met for this order to be made is that the relevant person has ‘caused, or substantially contributed to, a BSB regulated person breaching a relevant duty’ and that it is ‘undesirable’ that they should be able to engage in the activity which is prohibited.³⁸ The potential impact for members of staff who may have developed a very specific specialised skill set is clearly great, and here we see an example of how the new handbook has very practical implications for a broader audience.

Reporting of misconduct

The new handbook requires a far more candid relationship between members of the Bar and their regulator, and the BSB make it clear that it expects to be notified of more serious breaches not just by clients or judges, but by barristers themselves. Rule rC65 requires each barrister to report to the BSB whenever they have been charged with an indictable offence or are convicted of a non-minor criminal offence; when they are subject to disciplinary action or intervention by an approved regulator; any bankruptcy, directors disqualification, or certain arrangements with creditors; authorisation by another regulator; or when they have committed what they believe to be serious misconduct.³⁹ If the barrister himself fails to notify the BSB then Rules rC66-69 provide a new framework relating to the reporting of others’ misconduct. The new rule is that any barrister, including unregistered (formerly non-practising) barristers and pupils, must make a report to the BSB whenever they ‘have reasonable grounds to believe that there has been serious misconduct by a barrister or a registered European lawyer.’⁴⁰ There are also rules about not making or threatening to make such a report ‘without a genuine and reasonably held belief’ that the rule applies⁴¹ but that conversely no one should be victimised for making a good faith report.⁴² Whilst these safeguards attempt to prevent strategic reporting, both the self-reporting duty and the duty to report others represent a significant change in the way that barristers relate to their regulator, and indeed to each other.

³⁶ BSB Handbook (n1), at 15 (rI7.6) and 275; There is a nesting of terms which can be represented with the following simplified definitions. Barristers (and in due course entities) are ‘authorised persons’, authorised persons *and* unregistered barristers are ‘regulated persons’; regulated persons *and* employees of authorised persons are ‘relevant persons’.

³⁷ BSB Handbook (n1), Rule rE158.2.

³⁸ *Ibid* at 196 (rE158) and 262.

³⁹ Minor offences are defined as including fixed penalty offences under the Road Traffic Offenders Act 1988, an offence dealt with under any scheme similar to fixed penalty systems, and parking offences: BSB Handbook (n1) at 270.

⁴⁰ BSB Handbook (n1), Rule rC66.

⁴¹ *Ibid*, Rule rC67.

⁴² *Ibid*, Rule rC69.

The test of 'reasonable grounds to believe that there has been serious misconduct' has been quite carefully defined in the handbook. Firstly, in relation to serious misconduct a non-exhaustive list of examples is given in the guidance, these include dishonesty, being drunk or high on drugs in court, conduct posing a serious risk to the public, encouraging untruthful or misleading evidence, or misleading the court or an opponent. Failing to comply with the rule on reporting the serious misconduct of others is also itself included on the list as serious misconduct. In relation to defining 'reasonable grounds to believe', comparison with the equivalent provision for solicitors demonstrates how the BSB has felt the need to offer a degree of definition due to the nature of practice at the Bar. The outcome for solicitors is that they 'report to the SRA promptly, serious misconduct...'⁴³ Here we see a significant difference between the outcomes based approach of the SRA and the hybrid approach of the BSB. For solicitors there is no indication as to the level of belief or knowledge of the misconduct. It is simply stated that the target outcome is that serious misconduct (not the belief or suspicion thereof) gets reported. Even the SRA's (non-mandatory) indicative behaviours only add that having a whistleblowing policy may indicate compliance, and that suing someone making a complaint for defamation, unless you can 'properly allege malice' would indicate non-compliance.⁴⁴ This can be compared with the BSB guidance which, after giving an indicative list of examples, outlines circumstances that should be taken into account when considering whether one has 'reasonable grounds to believe'. These include whether an individual's instructions might have a bearing on the assessment, any opportunity provided to explain their conduct, any explanation offered or possible, and any raising of the conduct or otherwise in litigation. After considering all the circumstances, including those above, the barrister must consider whether they have 'a reasonably credible case'.⁴⁵ Therefore although this duty is new territory for the Bar, fairly detailed guidance has been given on the interpretation of the rule.

There are also a number of exceptions to this rule. Firstly, the rule is made subject to the duty to keep client affairs confidential. Secondly, there is no need to report misconduct that you are aware has already been self-reported or that you learn of from public sources, where you believe it likely that the facts will have come to the attention of the BSB. Thirdly, there is no obligation to report misconduct where 'the events which led to you becoming aware of that other person's serious misconduct are subject to *their* legal professional privilege'. This would of course cover any barristers who have been instructed to advise or represent the offending barrister. Those advising on the Bar Council advice line are also exempt when working on that line. These exceptions carve out the necessary space to avoid conflicts with other duties, as far as possible. They also attempt to maintain the workability of the advice line.

⁴³ Solicitors Regulation Authority 'SRA Handbook' (2014).

<<http://www.sra.org.uk/solicitors/handbook/code/content.page>> accessed 30th March 2015, at Outcome O10.4.

⁴⁴ *Ibid* at IB10.10 and IB10.12 respectively.

⁴⁵ BSB Handbook (n1), at guidance gC97-98.

The impact of this change on the working practices of the Bar has been considered to some extent. The guidance⁴⁶ recognises that without the exemption for those working on the ethical line, the public interest would not be served by preventing BSB authorised persons from seeking advice. This was an issue raised in the June 2012 consultation.⁴⁷ In addition the Bar Council had sought (but failed to achieve) a further exemption for Heads of Chambers. This is part of the reason that the threshold for reporting appears to have been raised from 'misconduct' to 'serious misconduct'. This it was hoped would allow barristers to discuss 'marginal breaches of the rules with their colleagues'.⁴⁸ It remains at least questionable, however, the extent to which barristers wishing to seek advice from colleagues or their head of chambers, particularly at an early career stage, would feel comfortable enough with that distinction to risk conversations which might have otherwise had a beneficial effect on that barrister's development, and on the client's situation.

Unregistered barristers⁴⁹

The BSB has used the occasion of the new handbook to significantly alter the way non-practising barristers, now known as unregistered barristers, are regulated. By way of background, the qualification process for barristers in England and Wales means that there are individuals who are called to the Bar (and hence obtain the title 'Barrister') who are not yet qualified to practice. Following call to the bar ('Call') they must secure and complete a 12 month pupillage. The first six months of pupillage (the 'first six') is spent shadowing a pupil supervisor and other members of chambers. In the second six months (the 'second six') this can be continued to a degree, but the second six pupil is expected to be carrying out their own work under some supervision. So there is a period, post-call but pre-pupillage where an individual is a 'barrister' but not authorised to practise. Additionally competition for pupillage is particularly high, for example in the year 2009/10 there were 1852 new calls to the bar, 2841 pupillage applications (those not obtaining pupillage immediately have 5 years post-BPTC to attempt to complete a pupillage), and only 460 pupillages.⁵⁰ The combination of these factors means that there are a large number of individuals who reach the stage where they have the title 'Barrister', but remain without authorisation to practise.

The old position was fairly straightforward. Prior to the January 2014 handbook these barristers were simply not allowed to call themselves barristers whilst providing any legal services. To do so would be considered to be 'holding out' as a barrister. Whilst they could refer to themselves as BVC or BPTC⁵¹ graduates or 'lawyers' they were not permitted to use

⁴⁶ *Ibid* at gC101.

⁴⁷ Bar Standards Board, 'New Handbook and Entity Regulation & Supervision and Enforcement: Consultation Report' (2012) <https://www.barstandardsboard.org.uk/media/1438535/handbook_entity_regulation_consultation_report_dec_2012.pdf> accessed 26th April 2015.

⁴⁸ *Ibid* at 22.

⁴⁹ This is discussed further in: Marc Mason, 'UK: Room at the Inns – The Increased Scope of Regulation under the New Bar Standards Board Handbook for England and Wales' (2014) 17(1) *Legal Ethics*, 143.

⁵⁰ The Bar Council, 'Statistics', <http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/statistics/> accessed 16th March 2015.

⁵¹ Bar Vocational Course and Bar Professional Training Course respectively, the BVC is the old qualification.

the term barrister. This only applied when legal services were being delivered and these individuals could call themselves barristers when for example writing legal publications, or acting as a mediator.⁵² If disclosure of their status became unavoidable, the guidance required that they were to make clear that they were not practising as barristers, that they were not subject to the same rules, and that complaints could not be made to the Legal Ombudsman. But if the question did not arise then they were to quietly deliver unreserved legal services without speaking the word 'barrister'.

The new rules completely change this position, and change the nature of the relationship between these individuals and their legal service clients.⁵³ They require any such barrister, now termed an 'unregistered barrister', to declare this status to any 'inexperienced client' before providing any legal services. There are exemptions where they are doing so as an employee of a regulated body, under authorisation from another regulator, in a legal advice centre⁵⁴, or under rules relating to foreign lawyers⁵⁵ or registered European lawyers.⁵⁶ In doing so they must explain that they are not acting as a barrister, that they are not subject to relevant parts of the BSB Handbook and that the BSB will only consider complaints under the parts that do apply. They are also to explain that they are not covered by professional indemnity insurance (unless they are so covered), and that whilst the client has a right to complain, this is not to the Legal Ombudsman. The unregistered barrister must then get written confirmation that this explanation has been given. The term 'inexperienced client' is further clarified by the rules as anyone who would have been able to complain to the Legal Ombudsman if the barrister were authorised. This includes all individuals and businesses with fewer than 10 employees and turnover not exceeding €2 million, as well as charities and associations with net annual incomes of less than £1 million and trusts with asset values of less than £1 million. This will therefore cover a very large range of clients.

The application of the substantive provisions of the code to unregistered barristers has also increased. Previously unregistered barristers were only subject to the first fundamental principle found in old rule 301 that they must not engage in conduct that was dishonest, discreditable or prejudicial to justice, nor could they engage in conduct or an occupation where this would diminish public confidence or otherwise adversely affect the reputation of the Bar. Now all Core Duties and some further rules apply. When providing legal services the unregistered barrister is now under duties to act in the best interests of their client, with competence, honesty, integrity and independence whilst maintaining confidentiality and adequate practice management, and not discriminating unlawfully. The duty to act independently is expressed both as general and as a duty to the court. But even when not providing legal services of any kind the unregistered barrister is subject to rules and duties

⁵² Bar Standards Board, 'Holding Out as a Barrister' (2011) <https://www.barstandardsboard.org.uk/media/1555510/1-holding_out_as_a_barrister.docx> accessed 16th March 2015.

⁵³ BSB Handbook (n1), Rules rC144-145, and outcome oC34.

⁵⁴ *Ibid*, Under Section S.B9.

⁵⁵ *Ibid* at Rules rS12-rS13.

⁵⁶ *Ibid* at Rules rS12 and rS14; All of these must still however take care not to mislead the client under rC19.

relating to not diminishing trust and confidence or undermining perceptions of honesty, integrity and independence; and maintaining an open relationship with the BSB including access to information and premises, reporting of criminal charges, convictions, bankruptcy, serious misconduct or disciplining and the serious misconduct of other barristers. They are also to ensure that the duties to the court and to act honestly and independently take precedence over duties to their client.⁵⁷ This is a substantial change for a group that may not be used to engaging with their regulator, and who very conceivably may not be aware of these changes. Their ongoing submission to this regulation is not dependent on any active step on their part, such as annual registration or payment of an authorisation fee. They simply need to have been called to the Bar, and to have not been subsequently disbarred.

There may also be an opportunity arising out of these changes. Individuals who previously were only very minimally regulated and devoid of title, are now lightly regulated and endowed (or foisted?) with title. This may provide opportunities for new ways of practising for these individuals, who may be able to present this as a level of protection for consumers and a level of integrity for courts in a changing legal landscape where those outside of (or in this case at the limits of) the traditional legal professions are playing an increased role. For example the House of Commons Justice Committee recently recommended consultation on formal regulation of McKenzie friends⁵⁸, after hearing support for their increased use from the Legal Services Consumer Panel, President of the Family Division and the Master of the Rolls. The latter however was more cautious, expressing concern about their lack of duty to the court in particular.⁵⁹ The Legal Services Consumer Panel also report a number of risks around the use of fee charging McKenzie friends, for example adding the risk of ‘agenda-driven McKenzie Friends’, breaches of privacy and poor quality advice.⁶⁰ This is an area where unregistered barristers operating in this way have an advantage (albeit one resulting from the imposition of a range of handicaps) in that they do in fact have a duty to the court, as well as particular duties to clients and therefore may already be able to offer some reassurance both to the client and to the court.⁶¹

⁵⁷*Ibid*, Rule rC1.1 provides the list of rules applying to unregistered barristers, rC2 sets out when they apply. The description above relates to core duties CD5 and CD9 and rules C8, C16, and C64-70, which apply at all times, and rules C3.5, C4 and C19 and the remaining core duties which apply whilst delivering legal services; Mason (n49) at 143.

⁵⁸ Defined in the report as someone who ‘supports a litigant in person by providing moral support, taking notes, helping with case papers and (quietly) giving advice in court’ who may be granted rights of audience by a court. Justice Committee, *Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (HC 2014-15, 311) at 47.

⁵⁹ *Ibid* at 48.

⁶⁰ Legal Services Consumer Panel, *Fee-charging McKenzie Friends*, (April 2014)

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2014%2004%2017%20MKF_Final.pdf accessed 23rd March 2015.

⁶¹ Webley recommends that the solicitors profession take measures to absorb those who have not yet undertaken a training contract in a similar manner: Lisa Webley, ‘Legal Professional De(Re)Regulation, Equality, and Inclusion, and the Contested Space of Professionalism Within the Legal Market in England and Wales’, (2015) 83 *Fordham Law Review* 2349 at 2361.

Supported practice and the ‘three year rule’

The rules also change the early years of practice for those who do obtain practising certificates, by expanding on existing rules. Newly qualified barristers exercising rights of audience (or litigation in the case of employed barristers) were, prior to the introduction of the new handbook subject to a requirement that the early years of practice were what might be called ‘supported practice’.⁶² Those exercising a right of audience with fewer than three years standing were only allowed to do so practising from a place where there was a qualified person available to provide guidance. The qualified person needed to be someone who has practised as an authorised person as their primary occupation with full rights of audience for the previous two years, and who has also practised for at least six of the previous 8 years.⁶³ For employed barristers conducting litigation the rule was the same save that the qualified person needed to have had a full entitlement to exercise a right to conduct litigation for the past two years instead of rights of audience, and that there was a reduced period of 1 year supported practice if the barrister only provided legal services to their employer. For barristers engaged in public access work then the qualified person also needed to be registered as a public access barrister (although not for a defined period).⁶⁴ For barristers engaged in activity other than litigation, public access or the exercise of rights of audience there was no supported practice requirement. This effectively meant that each time a barrister began to exercise one of the three types of practice they would do so with a senior colleague available to support them, although if they had an entirely advisory practice they would avoid this requirement. The new rule rS20 is much wider. This requires practice to be supported if the barrister is exercising a right of audience, conducting litigation *or supplying legal services* to the public. Note that this refers to ‘legal services’ not ‘reserved legal services’ so becomes a very wide definition not limited to the reserved legal services listed at s12 of the Legal Services Act 2007.

There is some ambiguity in the drafting of the rules as to which type of barrister the requirements apply to. The term used when setting the target of this rule is ‘barristers’, not as might be expected ‘practising barristers’. The former is defined in the definitions section as including unregistered barristers. The section in which this rule is to be found also states that it applies to ‘BSB regulated persons’ not ‘BSB authorised persons’, again including unregistered barristers. Based solely on an interpretation of the rules, this would appear to suggest that unregistered barristers must comply with this rule. This would be quite surprising given the inclusion of unreserved legal services, and would restrict unregistered barristers from being able to conduct work that could be conducted by any member of the public. There is some support however for the conclusion that this is a mistake in drafting. This comes from looking at rule rS16 in the same section which would have even starker consequences. This rule states ‘You may only... supply other legal services in the following

⁶² Sometimes referred to as the ‘three year rule’.

⁶³ Rule 203.1 dealt with rights of audience: BSB, Code of Conduct (n34).

⁶⁴ Bar Standards Board, Employed Bar Conduct of Litigation Rules

[https://www.barstandardsboard.org.uk/regulatory-requirements/the-old-code-of-conduct/annexes-to-the-code/annexe-i-employed-bar-conduct-of-litigation-rules-\(1\)/](https://www.barstandardsboard.org.uk/regulatory-requirements/the-old-code-of-conduct/annexes-to-the-code/annexe-i-employed-bar-conduct-of-litigation-rules-(1)/) accessed 23rd March 2015.

capacities' before presenting a list that does not include unregistered barristers. This would render the rules relating to unregistered barristers redundant and cannot have been the intended consequence. Thus it seems to be fairly safe to assume that unregistered barristers are not subject to the requirement that they have a period of supported practice.

The emphasis of the supported practice rule has changed in the new handbook, possibly reflecting a subtle shift in the perceived value of the rule, away from the specific to the general. This can be seen by looking in particular at the supported practice rule for litigation. The difference lies in the type of experience considered relevant. Where the old rule required supported practice for barristers with fewer than one to three years (depending on the client base) experience *of litigation*, the new rule bases it on three years standing without specifying a requirement that this involve litigation.⁶⁵ Two things to note here: first, the requirements for employed barristers only providing services to their employers have arguably become more stringent, now requiring three years of supported practice rather than one;⁶⁶ secondly, and more relevantly, any barrister who had been practising, but not litigating, for three years could seemingly practise free of this rule from the moment they are first authorised to conduct litigation. The guidance for applicants is again useful in determining whether this is an oversight or an intended position. The guidance in paragraph 14 states 'In order to be eligible to apply for authorisation to conduct litigation you will need to hold a current practising certificate.' Paragraph 15 goes on to state 'There is an *additional requirement* which applies *if* you are a less experienced barrister. If you are a self-employed barrister under three years standing [etc.]... you will need to confirm that you have a 'qualified person' in your place of practice...'.⁶⁷ Again, as this appears to be addressed to new applicants it would suggest that the 'additional requirement' is only for those with fewer than three years standing generally, rather than those with fewer than three years standing of litigation practice in particular. As a policy change this would be congruent with the other change to the litigation supported practice rule by which the qualified person no longer needs to have been entitled to conduct litigation for the last two years, and instead now only needs to be currently so entitled.⁶⁸ A more experienced barrister then could obtain a litigation extension, begin litigating without any support from a more experienced *litigator*, and on the same day become the 'qualified person' providing support to a litigating barrister of under three years standing. This does seem like a strange compromise. The

⁶⁵ BSB, Code of Conduct (n34): Rule 2(c) defined standing for the purpose of those rules as requiring that the barrister has been entitled to exercise a right to conduct litigation for a period of that number of years (albeit possibly under a different regulator). The only definition of 'years' standing' in the new handbook is one based on the number of years in which the barrister has been entitled to exercise a right of audience: BSB Handbook (n1) at 277.

⁶⁶ Although the guidance for applicants directly contradicts this in paragraph 15 specifying a one year period for those who only supply legal services to their employer. It should be born in mind that the rules, and not the guidance are enforceable.

⁶⁷ Bar Standards Board, 'Authorisation to Conduct Litigation – guidance for applicants' (2014) <https://www.barstandardsboard.org.uk/media/1564863/litigation_authorisation_-_guidance_for_applicants.doc> accessed 2nd March 2015, emphasis added.

⁶⁸ New rule rS22.3.a.iii (BSB Handbook (n1)) compared to old Employed Bar Conduct of Litigation Rules (n64) rule 3(b).

three year rule points to the collegiate nature of practice at the bar and the recognition that competence is developed through practice and therefore requires a degree of support during the early stages of practice. The older rules for employed barristers seem to apply that principle on a skill-by-skill basis, so when a new skill was exercised it was on a supported basis regardless of the broader experience of the barrister. The new rules however adopt a different approach, limiting the supported basis for practice to the first three years of practising in any way. It is not clear whether this is a pragmatic approach to ensuring rapid uptake isn't slowed by a lack of 'qualified persons' to offer support, or whether it is a deeper change of position on the value of compelling supported practice shifting from being skill based to culturally based, imbuing the junior barrister with a recognition of the value of collegiate practice throughout their career, rather than simply supporting them whilst they obtain a particular skill.

Litigation rights

One of the most widely cited differences between barristers and solicitors, after the now removed restriction on solicitors exercising rights of audience, is the restriction on barristers from exercising litigation rights. This is clearly why the then Chair of the BSB described the removal of this restriction as 'one of the most significant changes... brought about this year – and indeed during my time as chair...'.⁶⁹ In looking at what this rule change means it is useful to consider what the old restriction actually meant, for both self-employed, and employed barristers.

The range of work that is being made available here is perhaps more limited than the pronouncement from the Chair would suggest, but nonetheless provides scope for an important change in the dynamic of the relationship between the legal professions. The term litigation has been construed rather narrowly. In the guidance for applicants litigation is defined 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.'⁷⁰ The latter item, whilst being slightly tautologous, leaves space for the definitions found in statute⁷¹ and case law,⁷² which define litigation narrowly as the formal steps required in issuing, commencing, prosecuting or defending proceedings. This does not include correspondence or signing of statements of truth.⁷³ However, whilst the range of tasks specifically prohibited prior to this change was small, they were tasks that were required in almost every case. This meant that in any case these steps would either have to

⁶⁹ Ruth Deech, 'Chair's Statement' in Bar Standards Board, 'Annual Report 2013/14' (2014) <https://www.barstandardsboard.org.uk/media/1606527/bsb_annual_report_2013-14.pdf> accessed 2nd March 2015.

⁷⁰ BSB, Guidance for applicants (n67).

⁷¹ Sch 2 Para 4 of Legal Services Act 2007.

⁷² *Agassi v Robinson (Inspector of Taxes)* [2005] EWCA Civ 1507.

⁷³ *Agassi v Robinson (Inspector of Taxes)* [2005] EWCA Civ 1507; *O'Connor v Bar Standards Board* [2012] All ER (D) 108 (Aug).

be carried out by the litigant (in a public access case) or by a solicitor (in either the traditional case or a public access case). In the traditional case where counsel is instructed on behalf of the client by the solicitor the decision as to whether to instruct counsel, at what stage, and to what extent, would then rest with the solicitor. The right to conduct litigation therefore, even if it is a fairly limited right, has practical consequences and can influence who gets to carry out the non-reserved legal services.

For self-employed barristers (ie the majority of barristers, those working from chambers), the restriction could be found in old rule 401 which prohibited the conduct of any litigation, as well as management, administration or general conduct of a client's affairs.⁷⁴ There were also partial restrictions on conducting correspondence with other parties (unless in the client's best interest, with adequate systems and insurance), and attendance at a police station without a solicitor (without further training). Employed barristers were not so restricted, and under old rule 504 had the right to conduct litigation in relation to any proceedings in any court provided they complied with the Employed Barristers (Conduct of Litigation) Rules. These rules primarily imposed a requirement that the barrister must have spent twelve weeks under the supervision of a qualified person, and must be working, for the first year (or three if providing services other than to his employer), in the place of practice of a qualified person as described above. There were additional requirements relating to CPD in this period. This concession to employed barristers was however in the context that employed barristers were only allowed to provide any services to their employer and a number of specified others⁷⁵, unless doing so free of charge (or as an employee of the Legal Services Commission) to members of the public, or as an employee of a 'Legal Advice Centre' to clients of that centre. Consequently, litigation as a paid service to clients was impermissible for members of the Bar.

The new handbook now makes this work available to the Bar for the first time, by changing the rule from a prohibition to an accreditation requirement. The new form of the restriction can be found in rule rS24. This is one of several 'scope of practice rules' which set out the scope of practice for different types of barristers, and is within the section applying to the self-employed barrister. This particular rule says that such a barrister may only provide legal services on instructions from clients other than a professional client or a licensed access client⁷⁶ if these services fall under the public access rules, or where the matter relates to the conduct of litigation under a litigation extension.

For employed barristers it is likely, but not altogether clear, that the same rule applies. It is noteworthy that the scope of practice rules for employed barristers working for non-authorized bodies (rules rS38- rS39) or authorized bodies (rS31-37) contain no mention of litigation extensions. They simply list the types of person to whom an employed barrister can provide legal services without making distinctions between types of service. It is

⁷⁴ BSB, Code of Conduct (n34) at para 401(b)(ii).

⁷⁵ These included other employees or directors in employment related matters, and particular arrangements for government lawyers, justices' clerks, and trade association lawyers.

⁷⁶ In which case the licensed access rules apply.

arguable therefore that by a strict reading of the rules the requirement for a litigation extension does not apply to employed barristers, who as long as they are only providing legal services to a permitted category of person, are unrestricted in *which type* of legal service they are providing. The structure of the rules supports this reading. Rule rS24, applying to self-employed barristers starts 'You may only supply legal services if you are appointed or instructed by the court or instructed:.. [.1] ...'by a professional client...' and gives no restrictions on this, rS24 goes on '[.2] by a licensed access client, in which case you must comply with the licensed access rules... [or .3] by or on behalf of any other client provided that...' and it is here that the rule introduces the litigation extension requirement where the matter relates to litigation (under rS24.3.b). Here then the additional requirement for a litigation extension is only applied when acting 'for any other client', and seemingly not when acting for a professional client or a licensed access client. This can be compared to the structure of the rules for employed barristers (rS36 and rS39) which state '...you may only provide legal services to the following persons:' The rule then goes on to list the persons to whom legal services may be supplied, with no form of wording at any point to suggest the type of legal services are restricted. However, whilst the rules, standing alone, give no indication that employed barristers must obtain a litigation extension, guidance external to the handbook suggests otherwise. Both the website⁷⁷ and guidance for applicants⁷⁸ make clear that both self-employed and employed barristers may apply for authorisation to conduct litigation. In any case it would be difficult for confusion to arise given that each barrister's practising certificate and register entry⁷⁹ both list the reserved legal activities that the barrister is authorised to carry out. Therefore, whilst the rules themselves are ambiguous as to the qualification needed for employed barristers to conduct litigation, the intention of the BSB appears to be that the same rules apply to all barristers. As such a now unified system is in place for entitlement to conduct litigation regardless of practice type.

The requirements in order to obtain a litigation extension have similarities, but also notable differences, to the old Employed Bar Conduct of Litigation Rules. There are four requirements: You must have a practising certificate that is not provisional; have requisite years of experience or support; have administrative systems in place; and have the required procedural knowledge.⁸⁰ The requirements for administrative systems and procedural knowledge are new. The most obvious explanation for the introduction of the former is the lower likelihood of systems already being present for self-employed barristers and the difficulties of managing the demands of litigation alongside self-employed advocacy and

⁷⁷ Bar Standards Board, 'Authorisation to Conduct Litigation' <<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/authorisation-to-conduct-litigation/>> accessed 2nd March 2015.

⁷⁸ BSB, Guidance for applicants (n67).

⁷⁹ Bar Standards Board, The Barristers' Register <<https://www.barstandardsboard.org.uk/regulatory-requirements/the-barristers'-register>> accessed 3rd March 2015.

⁸⁰ BSB Handbook (n1), Rule rS47.

there is some indication of this in the consultation papers.⁸¹ After the first barrister in any particular place of practice has authorisation, this requirement becomes spurious provided that the same procedures are being adopted by those who follow.⁸² If there is no other barrister who has already become authorised then this is assessed by checklist and supporting evidence. The checklist includes procedures for dealing with absence; case management and recording including conflict checks, disclosure and strategy recording; secure filing systems linking matters, clients and documents; and training of junior staff.⁸³ The guidance for applicants explains that procedural knowledge must be up to date, and it is for the applicant to show how this knowledge has been obtained as the BSB does not accredit courses. It also suggests that prior experience of litigation, including but not limited to actually conducting litigation (authorised perhaps by another regulator) within the last three years would be relevant. There is no professional statement or day one standard as such, but applicants are invited to consider knowledge in the following areas: Pre-action; issue and acknowledgment; statements of case; interim remedies; judgment without trial; track allocation; case management; disclosure; offers to settle; preparations for trial; evidence; costs; and enforcement.⁸⁴ Interestingly, completion of the Bar Professional Training Course⁸⁵ (BPTC) within the last three years is considered sufficient to meet this requirement. This has the effect that newly qualified barristers (provided they have taken no more than a year out of the qualification process after the BPTC) will automatically be entitled to a litigation extension if they qualify into chambers where there is at least one barrister with a litigation extension who is experienced enough to act as a 'qualified person'.⁸⁶ Provided that there is a sufficient initial uptake this is likely in due course to make the right to conduct litigation the norm rather than the exception. It also has the potential to radically change the nature of the early years of practice, particularly in more hierarchical chambers where more junior members may risk being allocated (or being left) the more routine aspects of litigation.

Conclusion

The introduction of the new liberalised framework for legal service delivery by the Legal Services Act 2007, which in turn introduced an expanded role for the BSB as an entity regulator may have been the impetus for overhauling the regulatory framework of the Bar. However, the new Bar Standards Board Handbook brings other changes that, whilst not as radical a departure from current practice for the Bar as the introduction of entities, still have

⁸¹ e.g. Bar Standards Board, 'Regulating Entities Consultation' (2010) <https://www.barstandardsboard.org.uk/media/938873/regulating_entities_-_consultation_paper_-_151010.pdf> accessed 3rd March 2015 at 34.

⁸² BSB, Guidance for applicants (n67) at 5.

⁸³ Bar Standards Board, Litigation Application, <<https://www.barristerconnect.org.uk/applications/litigation/>> accessed 26th April 2015.

⁸⁴ BSB, Guidance for applicants (n67) at 5.

⁸⁵ The required taught professional course which precedes pupillage.

⁸⁶ Unless each of the qualified persons are already supporting three less experienced barristers.

an important impact on the way that barristers, widely defined, practice. There are potential changes for all barristers, whether established practitioners, relatively new practitioners or even those who have not yet completed pupillage and indeed those who never will.

Established practitioners are perhaps the group who will be able to choose to avoid much of the change. They may or may not wish to consider changing their practices to avail themselves of opportunities offered by litigation rights. If they do then they will find themselves potentially practising new skills after a fairly light touch accreditation process. However, they too will need to become accustomed to the new risk-based, principle-based approach of the BSB, and it is the impact on the BSB's supervision strategy that is most likely to be apparent here. This is however only likely to be felt by those practising from chambers deemed to be medium or high impact, so will be felt disproportionately across different practice areas. The introduction of a requirement to report serious misconduct means more experienced members of chambers, and perhaps heads of chambers and pupil supervisors in particular, may find themselves faced with an uncomfortable lack of flexibility in their dealings with less experienced barristers who come to them seeking advice.

The change in relation to reporting is likely to be of concern to those at the more junior end of the Bar too, although they will be approaching it with quite different concerns. Decisions described above as being 'uncomfortable' for more senior practitioners are likely to feel more appropriately described as career threatening or highly anxious for very junior barristers and pupils who become aware of misconduct of their senior colleagues. There may also be anxiety about the provisions giving them responsibility for the competence of chambers staff, particularly where BSB involvement can lead to disqualification of staff, including clerks, from working with barristers. There is the scope here for some very difficult dilemmas here for newly qualified barristers, and they may find themselves reluctant to approach senior colleagues for guidance with these if they perceive a risk that those colleagues will have to make a report (bearing in mind that non-reporting is also serious misconduct). The scope of their work could also be very easily expanded given that they may qualify for a litigation extension from day one, depending on their chambers.⁸⁷ This brings both opportunity and risk for junior practitioners who may be able to expand their client base by offering a more complete service to members of the public, but may also find themselves under pressure to take more routine litigation work. Newly qualified barristers are of course also the only group to whom the increased scope of the supported practice rules would apply. This is unlikely to be noticed by most of this group, although it does close some less conventional paths for those who do not secure tenancy following pupillage, and they may be more likely to have to relinquish their authorisation to practise if they cannot comply with this rule.

Those who do either relinquish their practising certificates, or never obtain them, yet remain called to the Bar are also likely to find their position changed significantly under the new regime. Some of those, who have been providing some form of legal services for years

⁸⁷ Their ability to use these rights to assist the public directly will of course depend on them completing public access training and complying with public access rules.

without using their title, will suddenly find themselves under new obligations. There is also a risk that they will remain unaware of this, having grown distant from the professional body that perhaps refused them admission. They will now be under a range of new obligations. Some of these will have subtle impacts on their practice; others will have real and frequent impact, not least the requirement to change the information they provide to clients, and indeed how they refer to themselves. Whilst this is likely to be viewed by some of these barristers as onerous, with the right approach it could present new opportunities and provide them with a competitive advantage as against other participants in the expanding unregulated end of the legal services market.

Finally there is another group who may find themselves surprised to come under BSB regulation: those who work with barristers, such as clerks and chambers managers. The extent to which they feel the weight of the rules on their daily practice is likely to depend on the approach the BSB and the Disciplinary Tribunal take to enforcement, but a disqualification order if made, provides a very real threat.

The new handbook then, as well as creating new types of entity and practice, also has the ability to change daily practice in a variety of ways for different groups of barristers, and further has the potential to change the dynamics of a range of players within the inevitably changing environment of the Bar.