



THE LEGAL SERVICES ACT 2007
IMPLICATIONS FOR THE REGULATION OF THE BAR IN ENGLAND AND
WALES

RESPONSE TO THE CONSULTATION PAPER ISSUED BY THE BAR
STANDARDS BOARD IN FEBRUARY 2008
BY THE WORKING GROUP ON BEHALF OF THE GENERAL
MANAGEMENT COMMITTEE OF THE BAR COUNCIL AND THE BAR
COUNCIL OF ENGLAND AND WALES

EXECUTIVE SUMMARY

- A) The first objective of the Legal Services Act is the protection and promotion of the public interest. That is what the Bar has done for centuries and will continue to do through the mechanism of the three interlocking aspects of the “cab rank rule” described at paragraph 12 below. To ensure this it will be necessary to maintain the independence of barristers. Barristers in self-employment provide an essential, highly skilled, pool of advocates for use by the general public irrespective of means. The services provided by the Bar are competitively priced at lower unit costs than the Bar’s competitors, solicitors.
- B) Our guiding principle has been the public interest, defined as being the need for the public to have access to high quality advocacy and advisory services from those practising in England or Wales whether nationally or internationally.
- C) We recognise that the Legal Services Act 2007 has as one of its purposes that legal professional services must be provided in a way which is competitive.

Any rules must not inhibit the method by which such services are provided, if such methods are otherwise in the best interests of the client and fulfil the regulatory objectives and professional principles in Section 1 of the Act.

- D) In this paper we reach the following principal conclusions:
- i) That the referral model of advocacy provided by the self-employed Bar fulfils an essential public service and is generally likely to remain the best model for the provision of such services judged by the public interest as we define it.
 - ii) Nevertheless, some of the prohibitions in the Code of Conduct which prohibit other models for the provision of services by barristers should be removed. In removing such prohibitions we do not advocate that other models should necessarily be used, nor do we think it likely that they will be.
- E) We do not consider it likely that partnerships of barristers will serve the public interest or that the market will dictate that such partnerships develop. Pressure to alter the professional model by which the Bar currently delivers its services to the public is already coming from the Legal Services Commission which has signalled an intention to enter into block contracting arrangements. The Bar Council has set out in detail its opposition to Best Value Tendering in its Response to the Legal Services Commission's Consultation Paper "Best Value Tendering of Criminal Defence Services". It remains opposed to Best Value Tendering because it is not in the public interest. We consider that such tendering, if it were ever to be introduced, could properly be met through models of delivery of service which did not involve either joint partnerships of solicitors and barristers or fusion of barristers and solicitors. Nor do we consider it necessary or desirable for there to be a single regulator. On the contrary we consider that the Bar Standards Board should be able to regulate the services of barristers in such a way as will permit them to enter into contracts in the public sector.
- F) We are grateful to the Bar Standards Board for embarking on this consultation and for engaging in a debate with the profession both through the consultation

paper and in various seminars held around the country. We look forward to further dialogue with them after a discussion of this paper in the General Management Committee and in the Bar Council itself.