



**THE BAR STANDARD BOARD'S  
CONSULTATION ON THE COST OF AUTHORISATION  
OF BSB REGULATED ENTITIES:**

**CRIMINAL BAR ASSOCIATION'S RESPONSE**

**INTRODUCTION**

1. On 11<sup>th</sup> September 2014 the Criminal Bar Association (“CBA”) received an email from the Bar Standards Board (“BSB”). The BSB explained that it had, on that same day, issued an open consultation paper outlining its ideas; *“on how much we should charge for authorising entities”* and explaining that *“entities are organisations that provide advocacy, litigation and other expert legal advice services and which, in this instance, are owned and managed by barristers and other lawyers.”*
2. A very short time was allowed for the CBA to respond; the deadline is 10<sup>th</sup> October 2014. The CBA has been unable to canvass its membership on the BSB’s proposals on fees. This is regrettable. The CBA expect that it will be the criminal Bar that are likely to be most interested in, and most affected by, this issue. We are of the view that a month is too short a period of time to respond. Nonetheless, we have here set out, in short order, the CBA’s response. We request that the BSB consider extending the consultation period in order to ensure a full and properly representative response could be drafted. We at the CBA would be happy for the BSB to engage directly with the criminal Bar and would assist the BSB to undertake a fuller survey of its membership.
3. The BSB applied earlier this year to the Legal Services Board (“LSB”) to become a regulator of entities and hopes to formally start that oversight from January 2015. Comment on the substantive merits of that course is naturally beyond the scope of this document. However, the fact that new entities may include Barrister Only Entities (“BOEs”) informs our thinking on the issue of the costs of regulation.

## **THE BSB's APPROACH**

4. The Consultation document notes that the BSB intends to operate entity regulation on a cost recovery basis (para 5). This is to ensure that the increase in the cost of BSB regulation is not funded by the entire practising Bar, (within the practising certificate fee). The CBA agree with this approach. The CBA also agree that an initial fee (application and authorisation) and an annual fee are appropriate.
5. The BSB has apparently undertaken “detailed financial and resource planning” work (Consultation para 8) to establish what the additional costs will be. The CBA are not privy to the BSB's detailed calculation methods and are not in a position to agree or disagree with the projected additional costs. We would welcome sight of that work as part of a longer and more detailed consultation process. The stated figure is £410,000 (para 8). It is not clear from the Consultation document if this is an extra £410,000 per year or whether this is just the start up year one cost. The CBA assume that the cost suggested is an annual cost.
6. The CBA broadly agree with the principle that the larger or more complex the entity the higher should be the fee (paras 15 and 17) – though see ‘CBA Suggestion’ below. The CBA also agree with the BSB that take up of the new entities is likely be slow, at least initially. The BSB has tried to estimate how many persons/entities will start new entities in years one, two and three.
7. The CBA do not know the source of the BSB's figures in para 15 but suggest that they can be no more than educated guesses at best. That said the CBA can do no better without further time or access to the BSB's own research. However, it is the estimated take up figure in paragraph 15, which informs the suggested fees in paragraph 25. Thus we caution that if these take up figures are wrong then applicants could find themselves significantly over-paying, or the BSB running into difficulties.

## **THE CBA SUGGESTION**

8. The BSB have a proposed fee structure based on the size of the entity; i.e. from single person to 15+ persons. Whilst this maybe appropriate for the initial application fee and authorisation fee, it is not appropriate for the annual fee. More weight needs to be given to the economic strength of new entities, especially in the early years.
9. Crime is clearly what the CBA know best. Take for example a criminal set of Chambers of say 20 plus members who decide to form some kind of BOE. That BOE may be strong in

number but not earn anywhere near as much as, for example, as a commercial set with half as many members that also becomes a BOE.

10. The recent changes to the way the practising certificate is paid for is a recognition that, in that case, year of Call is not the best way to calculate the fee – the level of fee income is. We suggest the same approach is taken in respect of these future entities. Banded levels of earnings is a much a fairer way of distributing costs.
11. The CBA suggest that the mechanism for setting fees should be reflective not just of the size/complexity of the entity in terms of headcount and regulatory risk, but also its financial size. Purely by way of example for a single person entity there could be different fees for those with turnovers of £50,000, £100,000 and £200,000. Those figures would of course be liable to upward amendment as the size of the entity increased.
12. We would also suggest a review after the first 2 or 3 years to assess whether the fee levels work properly. It will take that long for entities to get up and running and start earning money and it may be at that point that a more forensic approach to fee calculation can be taken.

October 2014

**Eleanor Laws QC**  
**David Wood**  
**Jonathan Lennon**