

Mr C Nichols
Bar Standards Board

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| Date 17 December 2010 | Email | david.stallibrass@oft.gsi.gov.com |

Dear Chris,

BSB consultation on regulating entities

Thank you for providing us with the opportunity to respond to your consultation. Whilst we do not feel best placed to express detailed views on the specific matter raised by your proposals, the OFT would raise the following general points.

As you are aware, the OFT has a statutory duty under the Legal Services Act 2007 (LSA07) to review applications for Licensing Authority status and provide the Legal Services Board (LSB) with such advice as we 'think fit' regarding whether the application should be granted. In providing our advice we have to consider whether any given application, if granted, would, (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent¹.

The OFT's default position, in this regard, is that applications to become a Licensing Authority, unless there is compelling evidence to show a significant detriment to competition through foreclosure and/or a substantial degradation of consumer protection, is unlikely to raise any substantive concerns since it is likely to increase choice for consumers and professionals.

¹ Schedule 10 Part 1 section 4(2) LSA07

Complimentary to fulfilling this statutory role, the OFT has an overriding objective to ensure that there are no unnecessary barriers to competition or consumer protection in the legal service market. In this regard, under Part 4 Section 57 of the LSA07, the OFT also has the power to investigate and produce a report when we have concerns over the regulatory arrangements of an approved regulator. Accordingly, it is important to make you aware of the types of issues that, when reviewing your application, may cause the OFT to advise the LSB against granting the application or lead the OFT to conducting such an investigation under the LSA07. These issues will include, but are not limited to:

- Whether there are unnecessary barriers on whom an alternative business structure can choose to be its Licensing Authority. For example, from either the requirements of the prospective Licensing Authority (from how it proposes to regulate the business entity) or the Approved Regulator (from how it proposes to regulate individual legal service providers within the business entity).
- Whether there are unnecessary barriers on whom individual legal service providers can choose to be their Approved Regulator. Again, as described above, from either the requirements of the prospective Licensing Authority or the Approved Regulator.
- Whether the proposed Licensing Authority unnecessarily precludes the entity from carrying out any reserved or unreserved legal activities.
- Whether the proposed entity regulation provides consumers of legal services with certainty over who regulates the entity, who regulates the individual legal service providers within the entity, and who should be contacted when there are questions or complaints. In this regard, the OFT is in favour of maximum applicable protection where consumer protection is concerned. By this we mean, where regulation for the entity and the individual legal service providers differ, the rules with the highest regulatory standards of consumer protection take precedence.

- Whether non-lawyer ownership of the entity is unnecessarily restricted. The OFT considers that outside investment is important in leveraging synergies with other professionals and may help entities find more innovative ways of providing legal services.

Where an application to become a Licensing Authority includes any of the above factors or restrictions, the OFT would expect them to only be permissible when evidently justified by one of the objectives set out in the LSA07. Where they are not, the OFT may advise the LSB accordingly and/or use its powers under LSA07 to investigate further.

Thank you for the opportunity to consider the issues in your consultation and sincerely hope our response will help. If you would like to discuss any of the points raised further, please let me know.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Stallibrass', with a stylized flourish at the end.

David Stallibrass
Director, Services.