



# Survey on Bar Standards Board Regulation of New Business Structures

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Bar Standards Board

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July 2010

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## 1 Executive Summary

### 1.1 Introduction

- 1.1.1 The Bar Standards Board (BSB) commissioned YouGov to undertake a survey of barristers and clerks to gauge opinion on new business structures and their regulation. The survey is in part a response to the Legal Services Act 2007 that permits new business structures within the legal profession as well as the BSB's proposal in November 2009 to permit in principle Barrister Only Entities. The survey covered opinions on Alternative Business Structures (ABS), Legal Disciplinary Practices (LDP) and Barrister Only Entities (BOE) as well as asking questions about whether the BSB should regulate entities and relax the rules in relation to litigation and public access.
- 1.1.2 The survey was undertaken online and received responses from 1,913 barristers and 141 clerks. A summary of the main findings is detailed below.

### 1.2 Barristers understanding of new business structures made possible by the Legal Services Act 2007 ("The Act")

- 1.2.1 One third of barristers (34 per cent) describe their understanding of new business structures as fairly or very good but 43 per cent describe their understanding as limited. Other findings on this issue include:
- Although there is little differentiation by time at the Bar, barristers working within chambers are significantly more likely to have a better level of understanding than those working outside (37 per cent of barristers within chambers described their understanding of new business structures made possible under the Act as very or fairly good against just 19 per cent of those outside).
  - 37 per cent of those in commercial or chancery law and 36 per cent of those in common law described their knowledge as very or fairly good.



### 1.3 Interest in new business structures

1.3.1 35 per cent of barristers express interest in one or more of the proposed structures without the ability to conduct litigation. If litigation is included then this rises to 40 per cent of barristers.

- Insofar as the different types of entities are concerned, 23 per cent of barristers say that they are interested in joining a BOE, 21 per cent in an ABS and 17 per cent in an LDP.
- As time at the Bar increases so does the propensity for barristers to join a new business structure. 30 per cent of barristers who have been at the Bar for fewer than five years are interested, rising to 38 per cent of those at the Bar for more than 20 years;
- As knowledge of the new structures increases so too does likelihood to join. The exception to this is with non-white barristers who are both more likely to join a new business structure and have a more limited understanding of them.
- Barristers within employment law and criminal law are the most likely to join one of the new structures when compared to their colleagues in different practice areas (46 and 43 per cent respectively). Those in chancery or commercial law are the least likely with just under a quarter (24 per cent) saying they would.
- Clerks tend to be more interested in the new structures than barristers. Six in ten clerks are very or fairly likely to join a new structure in the next five years with particular interest displayed in ABS.

### 1.4 Barrister Only Entities

1.4.1 23 per cent of barristers are either likely or very likely to join a BOE in the next five years if it was available. However 46 per cent say that they are unlikely to join. A third of barristers are undecided.

- The greater the level of understanding that barristers have of the proposed vehicles, the more likely they are to say they will join them. A third of barristers who have a very good or good understanding of new business structures made possible under the Act say they are very likely or likely to join a BOE. At the other end of the scale only 15 per cent of those with a poor understanding are likely to join.
- Self-employed barristers working in chambers are the most likely to say they will join a BOE with employed barristers the least likely.
- Over half (56 per cent) of barristers say that being able to conduct litigation will influence their decision on whether to join. Over one third (35 per cent) say it will influence their decision a lot.
- Just over one third of clerks (34 per cent) believe that a BOE would be attractive for their chambers.

## 1.5 Legal Disciplinary Practices

1.5.1 Ten per cent of barristers are very or fairly likely to join an LDP regulated by the SRA or CLC in the next five years. Almost two thirds (65 per cent) are fairly or very unlikely and 25 per cent are neither likely nor unlikely or just do not know.

- The BSB may decide to seek to regulate LDPs in the future. This option is more popular with 14 per cent of barristers being likely to join a BSB regulated LDP.
- Support from clerks for an LDP structure is also relatively low, with 13 per cent of clerks likely to join one regulated by the SRA or CLC in the next five years.

## 1.6 Alternative Business Structures

1.6.1 Twenty one per cent of barristers are very likely or likely to join an ABS in the next five years. Almost half of the barristers interviewed, however, state they are unlikely to join an ABS (49 per cent).

- Overall, interest in joining an ABS increases with understanding of the new business structures made possible by the Act. 31 per cent of barristers with a

good understanding see themselves as likely to join a BSB regulated ABS in the next five years, if available, compared with only one in eight (12 per cent) who describe their understanding of the new structures as 'limited'. The exception to this is non-white barristers who are more likely to want to join an ABS but are also more likely to have a less defined understanding of the structures made possible by the Act.

- Only 11 per cent of barristers would be interested in an ABS regulated by a body other than the BSB.
- Over two fifths (44 per cent) of clerks are fairly or very likely to join such a structure, falling to 30 per cent if it were to be regulated by someone other than the BSB.

## **1.7 Attitudes towards the BSB as a regulator**

1.7.1 When asked in principle, which organisation would they prefer to be regulated by, 84 per cent of barristers state the BSB as their preferred regulator. The next highest response is from those who do not mind who they are regulated by (11 per cent). Only one per cent prefer regulation by The Solicitor's Regulation Authority.

- Almost two thirds (63 per cent) say that it is either very or fairly important to retain BSB regulation in new business structures.
- Support for the BSB as a regulator of the new business structures is high, with over two thirds of barristers (68 per cent) stating that it is in the public interest for the BSB to be the regulator.

## **1.8 Working with others and extending public access**

1.8.1 Given that the proposed business structures give barristers the opportunity to work with a variety of professionals the survey asked who they would be most interested in working with.

- Barristers are most interested in working with other barrister colleagues. A high proportion also express an interest in working alongside solicitors (43 per cent).

- When the concept of working with non-legal professionals is introduced, barrister interest begins to decline. Only 23 per cent express an interest in working with clerks or practice managers, or other non-lawyers.
- 56 per cent of barristers agree with the notion that clients should have direct access to barristers in all practice areas. However, only 52 per cent of self-employed barristers agreed.

## 2 Introduction

### 2.1 Background

- 2.1.1 This report presents the findings of a survey of barristers and clerks on the regulation of entities made possible by the Legal Services Act 2007 (“the Act”) and the BSB’s decision in November 2009 to permit in principle Barrister Only Entities (BOEs). The Act has enabled the creation of new forms of legal practice. Alternative Business Structures (ABS) will allow external ownership of legal businesses and multi disciplinary practices which provide a mixture of legal and non legal services. ABS are not yet in existence and are likely to come into effect in 2011. Legal Disciplinary Practices (LDPs) have been available as a vehicle since March 2009. An LDP involves a combination of different types of lawyer and in the case of an SRA regulated LDP, up to 25 per cent non-lawyers. LDPs can be regulated by the Solicitor’s Regulation Authority and the Council for Licensed Conveyancers.
- 2.1.2 The BSB has decided in principle that barristers should be allowed to form Barrister Only Entities (BOE). This will include partnerships which are not currently allowed. Currently there is no suitable regulator of BOEs and the BSB would have to amend its own constitution or obtain the necessary statutory powers if it were to begin regulating entities.
- 2.1.3 The aim of the survey was to gauge the views of barristers and clerks on the proposed new business structures and the role that the BSB should take within them. The results of the survey will inform a consultation paper on the issue to be produced by the BSB later this year.

### 2.2 Method

- 2.2.1 The research was undertaken through YouGov’s online survey system. Every barrister was emailed a personal link to the survey which was activated by clicking on it. Some barristers only had a general chambers email address and a non-personalised link was sent to this address for distribution among members of the chambers. All chambers received a letter from the Chair of the BSB encouraging them to take part in the survey and stressing its importance.

- 2.2.2 Letters were sent by the Institute of Barristers Clerks and the Legal Practice Management Association to encourage their members to take part in the clerks stream of the survey.
- 2.2.3 The questionnaire was devised in conjunction with the BSB and was subject to cognitive testing with a small number of barristers prior to going live. Two reminders were issued during the course of the fieldwork. The data are weighted by gender and employment type.

### **2.3 Respondent profile**

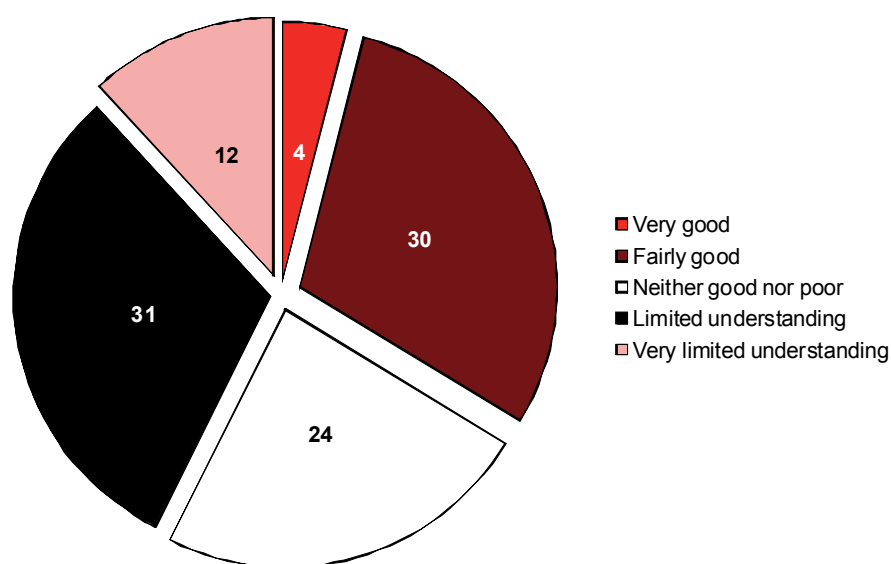
- 2.3.1 In total 1,913 barristers responded to the survey along with 141 clerks. Of the barristers interviewed, 79 per cent are self-employed members of chambers. A further one per cent are sole practitioners and 20 per cent are employed.
- 2.3.2 Of those who work in chambers, 26 per cent are in chambers of up to 40 barristers, a further 34 per cent are in chambers with between 41 and 60 barristers, 32 per cent are in chambers consisting of between 61 and 100 barristers and eight per cent are in chambers with over 100 barristers.
- 2.3.3 The majority interviewed have been at the Bar for over eleven years (69 per cent), with a further 16 per cent having been at the Bar six to ten years and 15 per cent less than five years.
- 2.3.4 Almost half of the barristers who responded said that they undertake a mixture of publicly and privately funded work (48 per cent). A third are predominately privately funded (35 per cent) and 16 per cent predominantly publicly funded.

### 3 Barristers' understanding of new business structures made possible by the Legal Services Act 2007

#### 3.1 Understanding the new structures

3.1.1 Figure 1 below shows the level of understanding of the new business structures that barristers describe themselves as having. A third (34 per cent) describe their understanding as fairly or very good, whereas 43 per cent of all barristers describe their understanding as limited.

**Figure 1: How would you rate your current understanding of the new business structures which the The Act makes possible?**



3.1.2 Although there is little differentiation by time at the Bar, barristers working within chambers are significantly more likely to have a better level of understanding than those working outside (37 per cent of barristers within chambers describe their understanding of the new structures as very or fairly good against just 19 per cent of those outside). In addition to this, knowledge of the structures increases with the size of chambers. One third of



barristers (33 per cent) working in chambers of fewer than 40 barristers describe their understanding as good, rising to 47 per cent of those working in chambers of more than 100. It should be remembered that the latter represent only a small proportion of respondents.

- 3.1.3 Knowledge remained relatively constant among barristers from different practice areas, however 37 per cent of those in commercial or chancery law and 36 per cent of those in common law describe their knowledge as very or fairly good.
- 3.1.4 Male barristers are also more likely to describe their understanding of the new structures as very or fairly good (39 per cent) compared with their female counterparts (22 per cent). Barristers with children are also more likely to describe their knowledge as good (36 per cent) whereas only 21 per cent of those with a disability did so (although this should be treated with caution due to low base sizes here).
- 3.1.5 Some barristers asked for more information on the structures and for the terminology to be more accessible. The following four comments made by different barristers are typical of some of the open text responses to the survey:

*“I think that the issues surrounding the Legal Services Act need to be more fully explained to the profession so that we can more easily make reasoned decisions as to where we would like to be in five years time.*

*“... the terminology etc used in the legislation and documentation remains fairly opaque and one has to concentrate really quite hard to understand what is being suggested.*

*“I do not really understand all of the implications and think the BSB should do more to explain it to members of the Bar*

*“There is still a lot of confusion about all these new proposals. A course on the alternatives and the proposals for regulation should be held.”*

- 3.1.6 Clerks are more confident in their understanding of the new structures. Fifty seven per cent describe their knowledge as very or fairly good, a 24 percentage point difference from their

barrister counterparts. Only 22 per cent of clerks describe their knowledge as limited or very limited.

### 3.2 Important factors in business structures

3.2.1 When making decisions about future business structures barristers are likely to take a number of important factors into consideration. For this reason barristers were asked the level of importance they place on various aspects of business practice. Figure 2 below shows that autonomy and control over their practice is the most important factor to barristers with 93 per cent stating this as fairly or very important to them. Avoiding conflicts of interest is also important (89 per cent) as is remaining a member of the Bar as a separate and independent legal profession (88 per cent). Opportunities for growth / increased income (84 per cent), improved stability and financial security (75 per cent), ability to provide a more efficient and cheaper service (67 per cent), maintaining the cab rank rule (63 per cent), facilitation of joint tendering for work (40 per cent), ability to work in management or partnership with non-barristers (36 per cent), ability to raise capital and investment (34 per cent) and access to new methods of distributing profits (30 per cent).

**Figure 2: Importance placed upon factors which might be relevant to barristers in deciding what sort of business structure is most suitable for them**



### 3.2.2 There is variation on the importance placed on business structures by subsets of barrister.

Some interesting differences include:

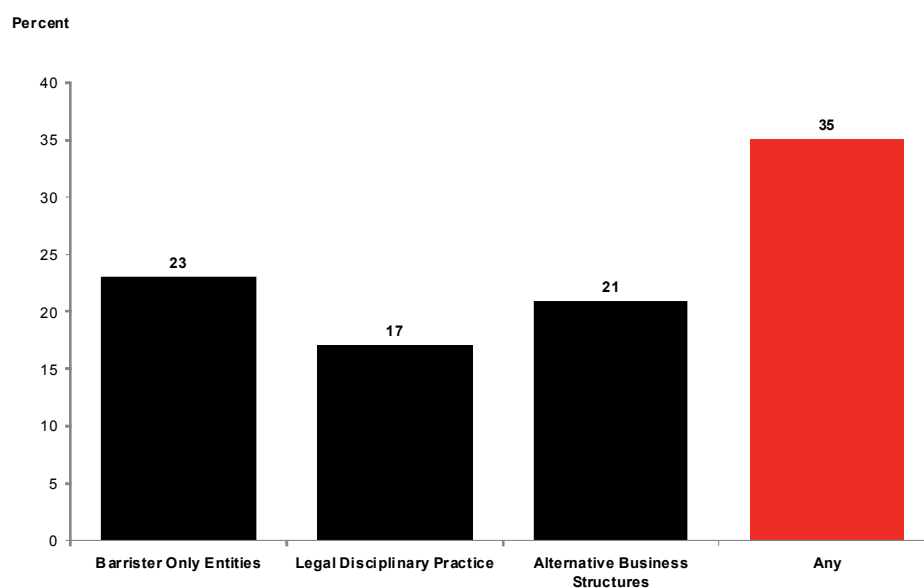
- 49 per cent of barristers with a good understanding of the new business structures find facilitation of joint tendering for work very or fairly important compared with 35 per cent of those with a limited understanding..
- 28 per cent of those working in chambers see the ability to work in management or partnership with non-barristers as very or fairly important, compared with 67 per cent of those not working in chambers;
- The importance of the ability to provide a more efficient and cheaper service increases with time spent at the Bar. This rises from 60 per cent for those who have been at the bar fewer than three years to 73 per cent of those who have been at the bar for more than 20 years;
- 46 per cent of non-white barristers find access to new methods of distributing profits as important compared with 29 per cent of their white colleagues;
- Improved stability and financial security is a more important issue with female barristers (81 per cent) than their male counterparts (72 per cent);
- Barristers with children put a higher emphasis on the ability to work in partnership with non barristers (40 per cent), the ability to provide a more efficient and cheaper service (71 per cent) and the facilitation of joint tendering for work (43 per cent) than their colleagues without children (32, 64 and 38 per cent respectively).
- Barristers with a disability have several differences from those without when looking at business practices, such as an increased emphasis on the ability to work with non barristers (54 per cent compared with 36 per cent of those without a disability) and the ability to raise capital and investment (44 per cent compared with 34 per cent). Again, however, these findings should be treated with caution due to small base sizes.

## 4 Joining a new business structure

### 4.1 Barrister interest in new structures

- 4.1.1 Barristers were asked whether they are interested in joining BOEs, LDPs or an ABS in the next five years.
- 4.1.2 Some barristers indicate that they have an interest in one structure only while others express interest in multiple structures. We can work out from the survey that 35 per cent of barristers express interest in one or more of the proposed structures. If those interested in litigation are included then 40 per cent of barristers express an interest.
- 4.1.3 Interest in each structure ranges from 17 per cent to 23 per cent of barristers (defined as those very or fairly likely to join one of the newly proposed structures within the next five years). This question was a multi-choice which means that barristers could show interest in one or more of the proposed structures.

**Figure 3: Barristers' interest in proposed business structures**



4.1.4 Interest varies within groups of barrister. Non-white barristers are significantly more likely (45 per cent) to join one of these structures in the next five years than their white counterparts (35 per cent). In addition to this, almost two fifths of men (39 per cent) are very or fairly likely to join the new structures compared with just over a quarter of women (28 per cent).

**Table 1: Interest in business structures by ethnicity and gender of barristers**

	White	Non-White	Male	Female
Barrister Only Entity	22	26	26	16
Legal Disciplinary Practice	16	23	19	12
Alternative Business Structures	21	25	24	16
Any	<b>35</b>	<b>45</b>	<b>39</b>	<b>28</b>

4.1.5 In addition to the above, there are some other interesting breakdowns of groups of barrister who are interested in joining one of the proposed structures in the next five years:

- As time at the Bar increases, so does the propensity for barristers to join a new business structure. 30 per cent of barristers who have been at the Bar for fewer than five years are interested, rising to 38 per cent of those at the Bar for more than 20 years;
- Over half (53 per cent) of barristers in chambers of 100 or more are likely to join structure new business structure in the next five years;

- Barristers within employment law and criminal law are the most likely to join one of the new structures when compared with their colleagues in different practice areas (46 and 43 per cent respectively). Those in chancery or commercial law are the least likely with just under a quarter (24 per cent) saying they would;
- Two fifths of male barristers (39 per cent) are likely to join a new structure, compared to 28 per cent of their female counterparts;
- Barristers with children are more likely to join a new business structure (39 per cent) than those without (32 per cent);
- There are no significant variations by disability

## 4.2 Clerks' interest in new structures

4.2.1 Clerks tend to be more interested in the new structures than barristers with 60 per cent being interested in one structure or more. Just under half of clerks (45 per cent) are interested in an ABS and 13 per cent are interested in an LDP.

4.2.2 Just over one third of clerks (34 per cent) believe that a BOE would be attractive for their chambers.

## 5 Barrister Only Entities

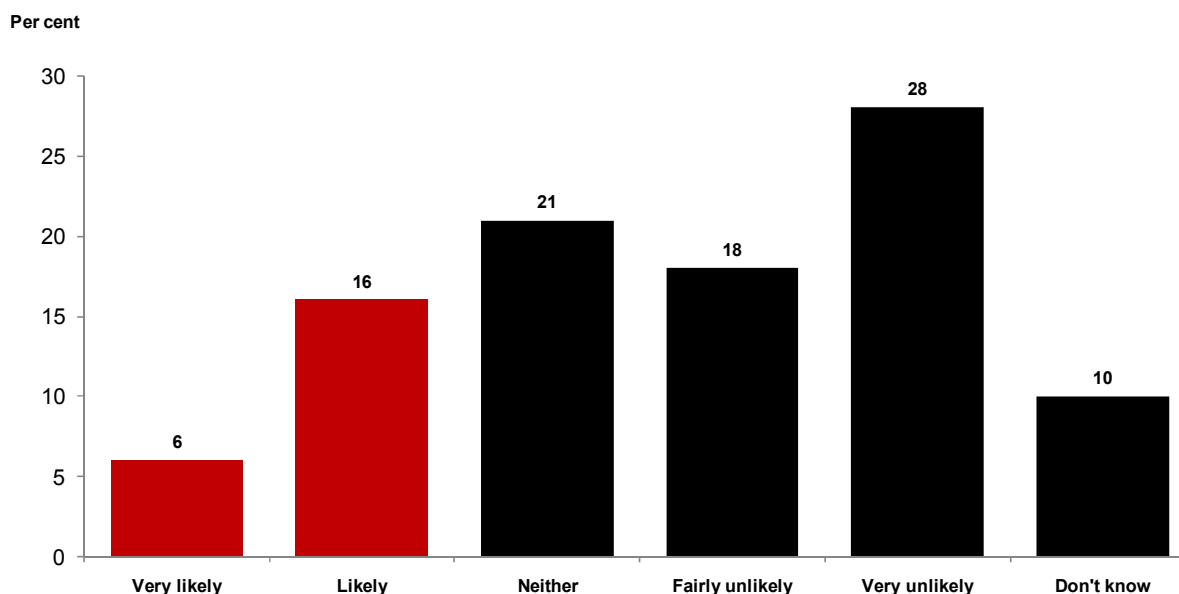
### 5.1 Introduction

5.1.1 In this section the views of barristers and clerks are analysed in relation to BOEs A BOE is defined as a partnership, a limited liability partnership or a company in which only barristers are partners, directors or owners.

### 5.2 Likelihood of joining a BOE

5.2.1 It was seen earlier that 23 per cent of barristers are either likely or very likely to join a BOE in the next five years if it was available. However, as the chart below shows, a greater proportion (46 per cent) say that they are unlikely to join.

**Figure 4 : If this business structure was available how likely would you be to join a BOE?**



5.2.2 The survey suggests that there may not be solid support for joining a BOE. Some might see it as a step too far for the Bar:



*“In my opinion, these changes are the death knell of the Bar. It is difficult to see any distinction between a solicitor and a barrister under these proposals. Self employed barristers will be forced to compete with BOE’s or ABI’s (sic) etc... in the provision of front line services for fear of losing work. Barristers will no longer be specialist advocates or even independent from the client. The principle arguments justifying the very existence of the Bar, therefore, will disappear. There will inevitably be a sustained corrosion of the integrity of the Bar and the system for the provision of legal services will descend into a free for all.”*

5.2.3 However, there are two reasons for believing that support could increase. First, nearly one fifth of barristers (21 per cent) say that they are neither likely nor unlikely to join and a further 10 per cent do not know. This means that about one third of barristers are undecided. Second, the more informed a barrister is the more they say that they are likely to join.

5.2.4 Depth of understanding is an important determinant of likelihood to join. The survey shows that the greater the level of understanding that barristers have of the proposed vehicles the more likely they are to say they will join them as the table below shows.

**Table 2 : Likelihood to join a BOE by depth of understanding of new business structures made possible by the Act**

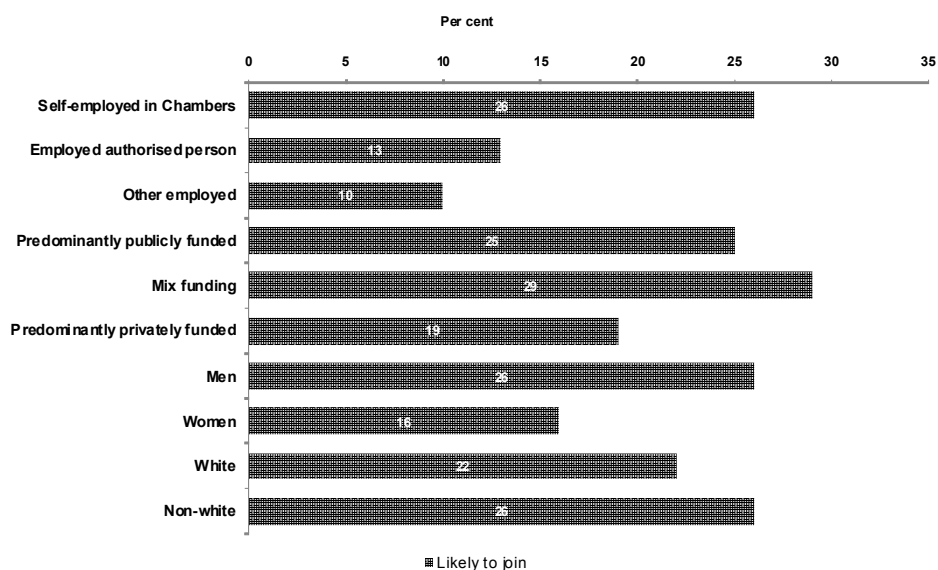
	Good understanding	Neither good nor poor	Poor understanding
Likely	33%	22%	15%
Not sure/Don't know	25%	32%	35%
Unlikely	42%	46%	50%
Total %	100%	100%	100%

5.2.5 A third of barristers (33 per cent) who have a very good or good understanding of new business structures made possible by the Act say they are very likely or likely to join a BOE. At the other end of the scale only 15 per cent of those with a poor understanding believe that they are likely to join. Half of these barristers say that they are unlikely to join.

5.2.6 The message from this table is the need for barristers to be given more detailed information about how a BOE would work operationally. It is clear from the survey that many barristers are making judgements based upon partial information.

5.2.7 The likelihood of joining a BOE differs between mode of practice. Self-employed barristers working in chambers are the most likely to say they will join a BOE with employed barristers, especially 'other employed' barristers (likely to be those employed in government or in-house counsel) the least likely. Barristers whose clients are a mix of private and publicly funded are the most likely of all groups to join. Interestingly, men are more likely than women to say they will join as the figure shows.

**Figure 5 : Percentage likely or very likely to join a BOE by barrister type**



5.2.8 In addition to the above, the likelihood of joining a BOE increases with time at the Bar. This rises from 18 per cent of those who have been at the Bar for fewer than five years, to one quarter (25 per cent) of those who have been at the Bar for 20 or more years;

- Barristers practising predominantly in the area of public law are the most likely to join a BOE (30 per cent), with interest from barristers in criminal and employment law also showing a high level of interest (28 per cent each). Only 14 per cent of barristers within commercial or chancery law would join this structure in the next five years;
- Only 18 per cent of barristers with a disability are interested in joining a BOE in the next five years (although caution should be taken here due to low base sizes);
- There are no interesting findings by chamber size or whether barristers have children.

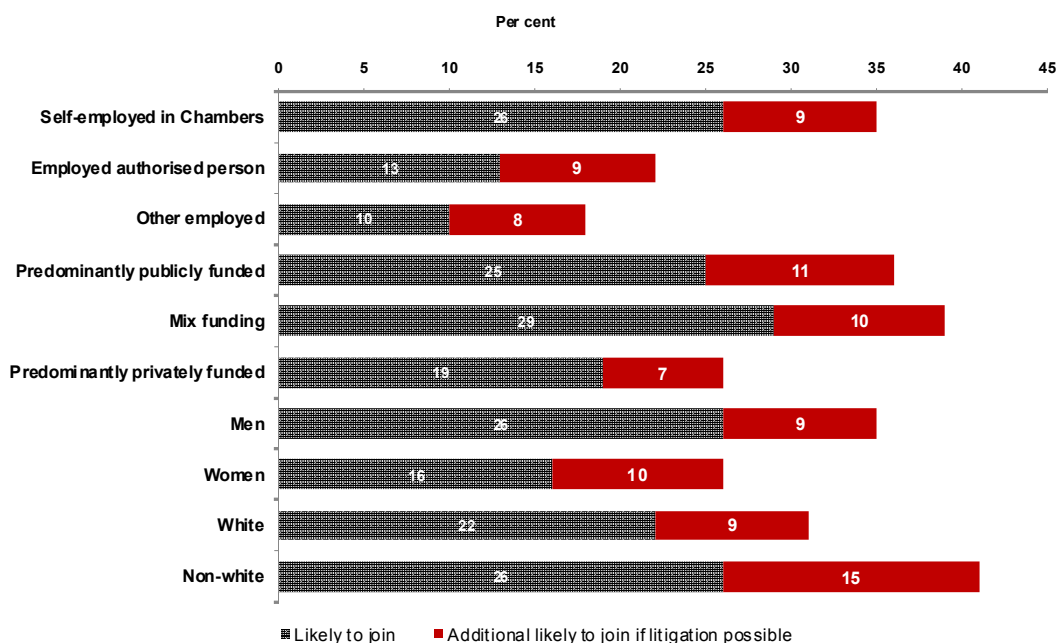
5.2.9 A significant majority of those who say they are likely to join a BOE (82 per cent) would want to work in a dual capacity, for the BOE and also as a self-employed barrister in chambers.

### **5.3 Conducting litigation and likelihood to join BOEs**

5.3.1 The ability to conduct litigation within a BOE is an important driver of intention to join one in the next five years. Over half (56 per cent) of barristers say that being able to conduct litigation will influence their decision on whether to join. Over one third (35 per cent) say it will influence their decision a lot.

5.3.2 Just how much the ability to undertake litigation will impact on likelihood to join can be seen from the chart below.

**Figure 6 : Additional percentage of barristers likely to join BOE if litigation is included**



5.3.3 For each type of barrister, the proportion who are likely to join a BOE in the next five years increases if litigation is permitted. For example the proportion of non-white barristers who are likely to join a BOE increases by 15 percentage points (to 39 per cent) if there was the opportunity to conduct litigation.

## 5.4 What do clerks think?

5.4.1 Just over one third of clerks (34 per cent) believe that a BOE would be attractive for their Chambers. Slightly fewer (32 per cent) believe it to be a bad idea. As with barristers, there is a significant proportion of clerks who are undecided on the issue with 34 per cent saying they do not know or that they have no feelings either way.

## 6 Legal Disciplinary Practices

### 6.1 Introduction

6.1.1 This section looks at the views of barristers and clerks towards the idea of joining an LDP. Analysis is undertaken for currently existing LDPs regulated by the Solicitors Regulation Authority (SRA) or the Council for Licensed Conveyancers (CLC), and ones that could possibly be regulated by the BSB in the future.

6.1.2 A precursor to ABS, an LDP is a firm offering only reserved legal services, with up to 25 per cent non-lawyer owners. These firms have been regulated by the SRA and CLC since 31 March 2009.

### 6.2 Likelihood of joining an SRA or CLC regulated LDP

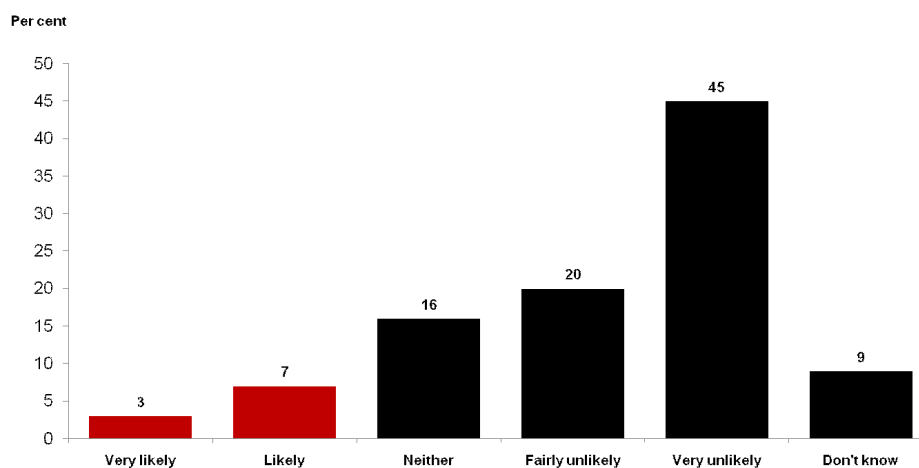
6.2.1 Barristers were asked how likely they would be to join an SRA or CLC regulated LDP in the next five years. The chart below shows that only 10 per cent of barristers are very or fairly likely to join such a structure in the next 5 years. Almost two thirds (65 per cent) are fairly or very unlikely and 25 per cent are neither likely nor unlikely or just do not know.

6.2.2 Certain groups of barrister are more likely to join LDPs regulated by the SRA and the CLC in the next five years than others:

- 27 per cent of barristers employed by authorised persons are likely to join LDPs regulated by the SRA or the CLC in the next five years compared with nine per cent of their colleagues who are both self-employed and employed by others;
- 13 per cent of barristers who receive a mix of public and private funding for their work are likely to join one of these structures compared with ten per cent of their predominantly publicly funded colleagues and nine per cent of their predominantly privately funded colleagues;
- Barristers working in common law are more likely than any other practice area to consider joining an SRA or CLC regulated LDP in the next five years;

- Male barristers and those with children are more likely than their colleagues to join an LDP regulated by the SRA or the CLC in the next five years (12 per cent of those male or with children against eight per cent of those without or female);
- 14 per cent of barristers working in chambers of more than 100 barristers are likely to join this structure;
- Non-white barristers are six percentage points ahead of their white colleagues in the likelihood to join a SRA or CLC regulated LDP (16 per cent of non-white barristers against ten per cent white);
- There are no significant variations by disability or time at the Bar.

**Figure 7: If this business structure was available how likely would you be to join an LDP regulated by the SRA or the CLC?**

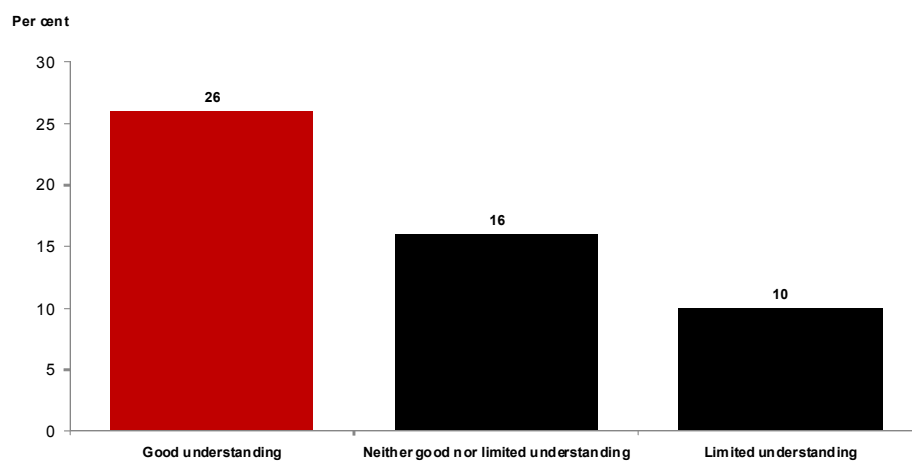


### **6.3 Likelihood of joining an LDP regulated by the SRA, CLC or the BSB**

- 6.3.1 The BSB may seek to regulate its own form of LDP in the future. Barristers were asked how likely they are to join an LDP in the next five years if it is regulated by the BSB. This option is more popular with 14 per cent of barristers being likely to join a BSB regulated LDP and 55 per cent unlikely. A more comprehensive analysis of this can be found later in the report in section 9 when we explore the support for the BSB as a regulator.
- 6.3.2 In total, 17 per cent of barristers are either fairly or very likely to join any form of LDP (regulated by the SRA, CLC or BSB) in the next five years. As can be seen in the previous chapter, support for this is six percentage points lower than that for BOE and four percentage points lower than the idea of ABS (discussed in the next section).
- 6.3.3 Although it is difficult to compare the support for LDPs against the support for BOEs (as respondents were asked about interest in LDPs regulated by the BSB or regulated by other approved regulators), it still remains true that support for the structure increases with understanding of the new business structures made possible by the Act. As the figure below shows, 26 per cent of those who describe their understanding of the act as very or fairly good are likely to join an LDP in the next five years, compared with only ten per cent of those with a limited understanding of the act.



**Figure 8: Proportion of barristers likely to join an LDP by level of understand of the new business structures**



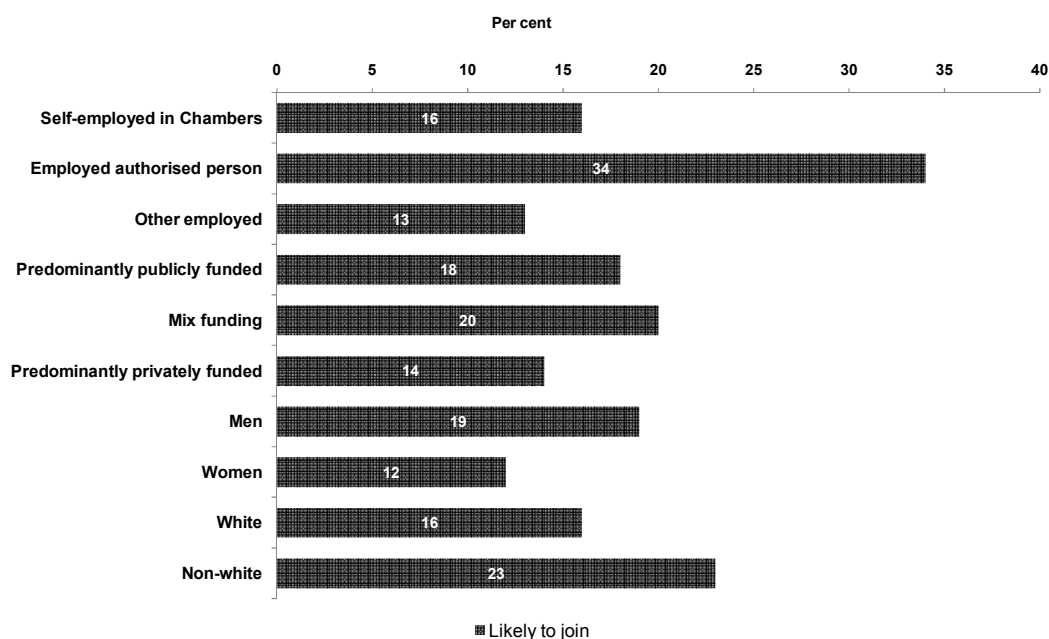
6.3.4 There are differences by barrister type in the level of interest. The figure shows the proportion of barristers for each group who are either fairly or very interested in joining an LDP in the next five years.

6.3.5 The differences here strengthen the trends mentioned in relation to SRA and CLC regulated LDPs:

- The percentage of barristers employed by authorised persons likely to join an LDP (34 per cent) is more than twice the percentage of those self-employed in chambers likely to join an LDP (16 per cent).

- On the other hand those who fall into the other employed barrister category (most likely to be working in Government or as in-house counsel) are much less likely to want to join an LDP (13 per cent) when compared with other types of barristers,
- One fifth (20 per cent) of barristers in receipt of a mixture of publicly and privately funded work are likely to join an LDP in the next 12 months. This is slightly higher than those predominantly receiving public funding (18 per cent) and significantly higher than those predominantly completing privately funded work (14 per cent);
- Only 11 per cent of barristers working in chancery or commercial law would join this structure in the next five years;
- Barristers with children are five percentage points above the average, with 19 per cent wanting to join this structure in the next five years;
- Non-white barristers are seven percentage points apart from their white colleagues in the likelihood of joining an LDP (23 against 16 per cent);
- There are no significant variations by disability, time at the Bar or size of chambers.

**Figure 9: Percentage likely or very likely to join an LDP by barrister type**



6.3.6 Over two thirds of those likely to join an LDP in the next five years would want to practise in a dual capacity, carrying out work for the LDP and also in a self-employed capacity in chambers.

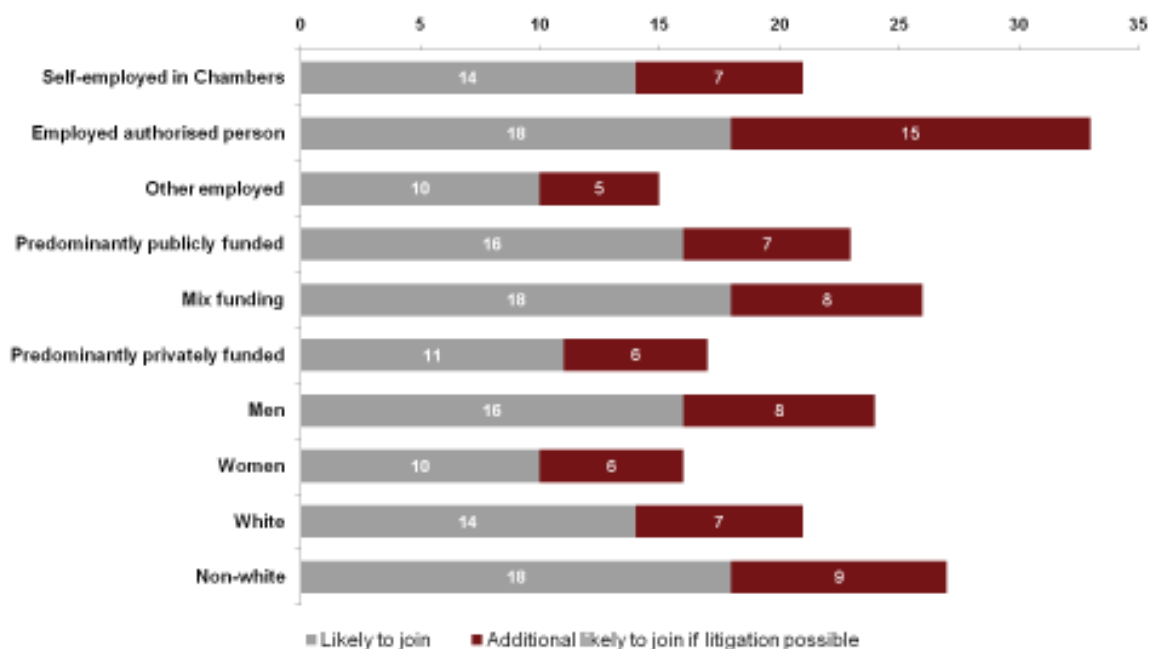
## 6.4 Conducting litigation and likelihood to join BSB regulated LDPs

6.4.1 Approaching half (49 per cent) of barristers state they would be further influenced in joining an LDP if they are offered the ability to conduct litigation within a BSB regulated structure. Half of these report that they would be influenced a lot by this (25 per cent).

6.4.2 The figure below shows the breakdown by barrister type of the likelihood to join a BSB regulated LDP and the extra interest given the ability to litigate. Barristers employed by authorised persons are particularly more likely to join a BSB regulated LDP if the

opportunity to litigate is possible, with 15 per cent more barristers in this group very or fairly likely to do so. An additional nine per cent of non-white barristers state the same.

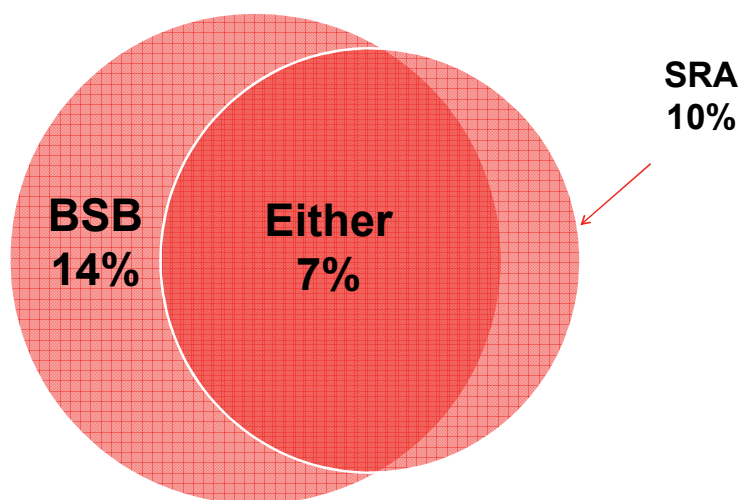
**Figure 10 : Additional percentage of barristers likely to join BSB regulated LDP if litigation is included**



## 6.5 Regulation of Legal Disciplinary Practices by BSB

6.5.1 As can be seen in the figure below, a larger proportion of barristers (14 per cent) would be interested in an LDP if it is regulated by the BSBs than those interested if it were regulated by the Solicitors Regulation Authority or the Council for Licensed Conveyancers (10 per cent).

Figure 11: Comparison of interest in joining an LDP if regulated by the BSB, SRA / CLC or either



6.5.2 However, not all barristers are particularly concerned with who the regulator should be but see the BSB doing it as part of a wider commitment to developing the Bar:

*“Personally I am ambivalent about which would regulate me in an LDP or ABS, but if the Bar really means what it says about one, strong Bar then it should embrace that role,”*

## 6.6 What do clerks think?

6.6.1 Support from clerks for an LDP structure is also relatively low, with 13 per cent of clerks likely to join one regulated by the SRA or CLC in the next five years (only three per cent being very likely to do so). In addition to this, 45 per cent state they are unlikely to. There is also a large group (43 per cent) who either do not know or have no strong feelings either way about the proposal.

## 7 Alternative Business Structure

### 7.1 Introduction

7.1.1 This section looks at attitudes towards the ABS regime which is expected to be permitted in statute from October 2011. As defined by the Legal Services Act 2007 (see Part V), an ABS is a body which provides reserved legal services where at least one of the owners or managers is entitled to provide such services and another is not. Examples could include firms in which the owners are a combination of lawyers (authorised persons such as barristers, solicitors and licensed conveyancers) as well as persons who are not authorised in respect of reserved legal activities (finance, HR and IT partners or other service providers such as estate agents). They could also include externally owned bodies such as a firm of lawyers owned by an insurance company or public shareholders.

### 7.2 Likelihood of joining a BSB regulated ABS

7.2.1 Barristers were asked how likely they were to join a BSB regulated ABS over the next five years. The chart below shows that five per cent are very likely and 15 per cent fairly likely to do so. A further 31 per cent are undecided as to whether they would join a BSB regulated ABS, the same proportion as were unsure about BOEs. Almost half of the barristers interviewed, however, state they were unlikely to join an ABS (49 per cent).

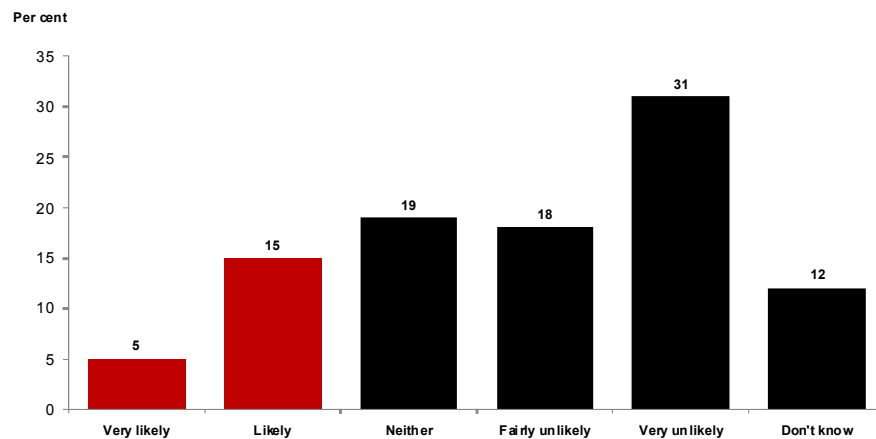
7.2.2 One barrister commented on the opportunities that ABS could provide:

*“ABS will open the doors to Barristers to diversify their services”*

7.2.3 While the counter argument focused on a perceived dilution of the Bar:

*“The BSB should join with the Bar Council in opposing the implementation of ABS. This is the slippery slope towards an amalgamation of the professions. Losing the Bars' independence will lead to a lack of transparency, trust and quality of service.”*

**Figure 12: If this business structure was available how likely would you be to join an ABS regulated by the BSB?**



7.2.4 Table 3 below shows, as is the case with BOEs and LDPs, interest in the structures increases with understanding of the new business structures made possible by the Act. It can be seen that almost a third (31 per cent) of barristers with a good understanding of the structures see themselves as likely to join a BSB regulated ABS in the next five years, compared with only one in eight (12 per cent) of their colleagues who describe their understanding of the new business structures as 'limited'.



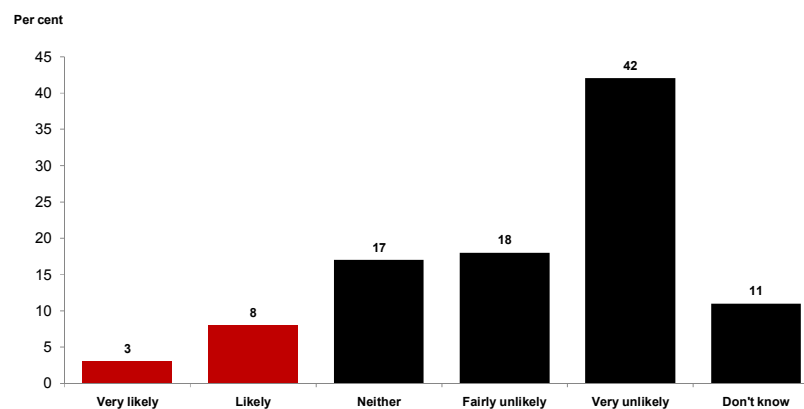
**Table 3: Likelihood to join an ABS by depth of understanding of new business structures under the Act**

	Good understanding	Neither good nor poor	Poor understanding
Likely	31%	18%	12%
Not sure/Don't know	24%	34%	34%
Unlikely	44%	47%	54%
Total %	100%	100%	100%

### 7.3 Likelihood of joining an ABS regulated by another body

- 7.3.1 In addition to asking barristers whether they would be interested in joining an ABS regulated by the BSB in the next five years, they were asked whether they would be interested in joining one regulated by another approved regulator.
- 7.3.2 Given this option, only 11 per cent of barristers would be interested in this structure. This is nine percentage points lower than the proportion who would be interested in joining an ABS regulated by the BSB. A further 61 per cent of barristers stated they would be very or fairly unlikely to join an ABS regulated by someone other than the BSB, in the next five years, showing a high level of support for the BSB as a regulator.

**Figure 13: Likelihood to join an ABS regulated by a body other than the BSB**



7.3.3 Likelihood of joining an ABS regulated by a body other than the BSB over the next five years rises with barrister's knowledge of the structures. 27 per cent of barristers describing themselves as having a very good knowledge of the new business structures are likely to consider joining an ABS over the next five years, as are 15 per cent of those with a fairly good understanding.

7.3.4 When looking at the interest in new business structures by subsets of barrister, the following is apparent:

- Those interested in one new structure seem to also be interested in others. 42 per cent of those likely to join an LDP over the next five years also state that they are likely to join an ABS regulated by a body other than the BSB. Almost a quarter of those interested in the BOE structures say the same (24 per cent);
- Barristers working in common law show a relatively high level of support for an ABS structure regulated by a body other than the BSB, with 14 per cent of barristers in each type stating they would be very or fairly likely to join one in

the next five years. 13 per cent of criminal law barristers also show an interest . Publicly funded barristers show the lowest interest with only one in twelve (eight per cent) stating they are likely to join one in the next five years;

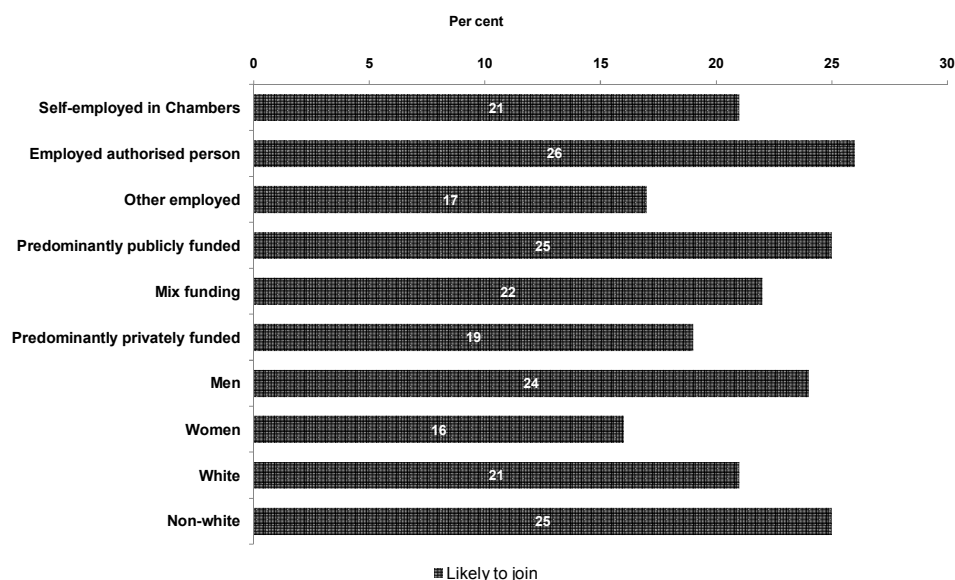
- Although the trend doesn't continue with other sized practices, 15 per cent of barristers in chambers with over 100 barristers are likely to join an ABS regulated by someone other than the BSB, as are 13 per cent of male barristers (compared with only seven per cent of women);
- Lastly, 16 per cent of barristers employed by an authorised person are interested in joining the structures;
- There are no significant variations by disability, ethnicity or time at the bar.

7.3.5 The figure overleaf below shows the interest in joining an ABS (regardless of regulator) over the next five years by subset of barrister.

7.3.6 Some of the patterns remain the same: as with interest in joining LDPs and BOEs, male barristers are again more likely to join an ABS than their female colleagues (24 per cent against 16 per cent) as are non-white barristers (25 per cent) compared with their white counterparts (21 per cent).

7.3.7 Some patterns differ however. The idea of joining an ABS is most attractive to those predominantly receiving public funding (25 per cent), those with mixed funding are slightly more likely than average to join an ABS in the next five years (22 per cent), whereas those who are predominantly privately funded fall slightly below average (19 per cent).

**Figure 14: Percentage likely or very likely to join an ABS (regardless of regulator) by barrister type**



7.3.8 As with LDPs, two thirds (67 per cent) would want to work in a dual capacity, employed by or managing an ABS but continuing to carry out some work in self-employed practice. 17 per cent would want to work solely within the ABS.

## 7.4 Conducting litigation and likelihood to join a BSB regulated ABS

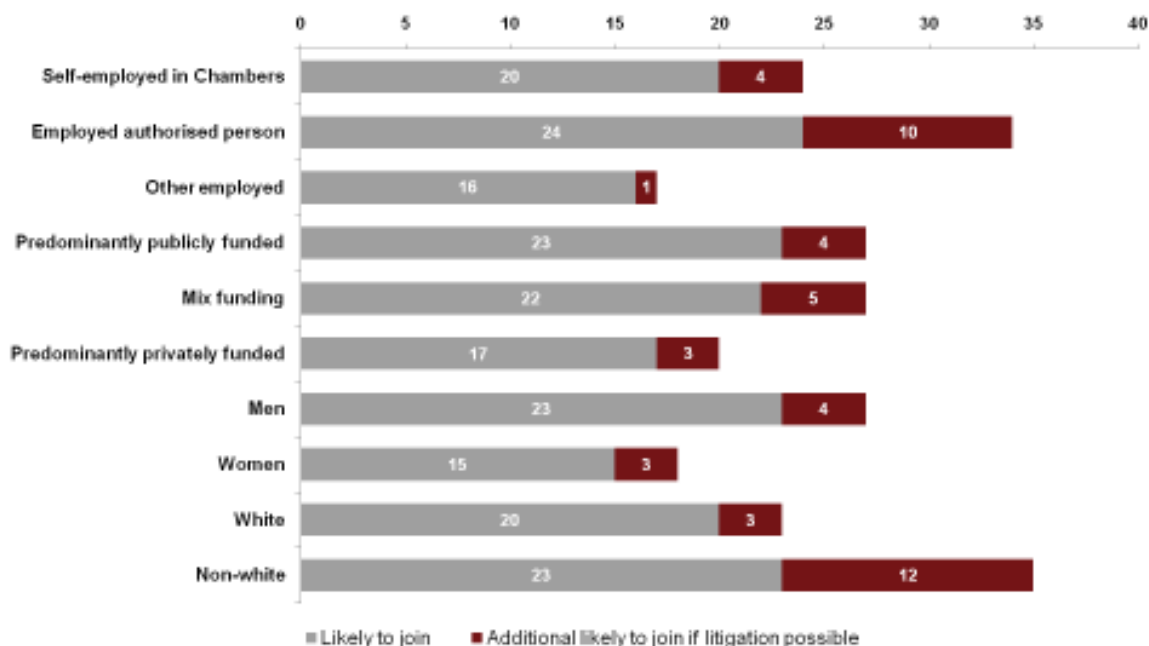
7.4.1 The ability to conduct litigation is less of a driver for barristers to join an ABS than it was for BOEs (although slightly more than for LDPs). When asked, 47 per cent of barristers say they would be influenced to join an ABS if they were permitted to conduct litigation. One third (36 per cent) of barristers are not at all influenced by this and 17 per cent say they are not sure.

7.4.2 This has translated into an increased interest in the ABS structure and an extra four per cent of barristers are very or fairly likely to join a BSB regulated ABS in the next five years if this were the case. The figure below shows a breakdown of barristers interested in joining a

BSB regulated ABS and the additional interest given the opportunity to conduct litigation within one.

7.4.3 The largest group of barristers who are more likely to join a BSB regulated ABS if the option of litigation is added are non-white barristers, 12 per cent of whom would then be very or fairly likely to join an ABS in the next five years. An extra 10 per cent of barristers employed by an authorised person would also be likely to join an ABS in the next five years in the same conditions.

**Figure 15: Additional percentage of barristers likely to join BSB regulated ABS if litigation is included**



## 7.5 What do clerks think?

7.5.1 As with barristers, clerks are more enthusiastic about joining an ABS if the BSB were to be regulating them. Over two fifths (44 per cent) of clerks are fairly or very likely to join such a

structure, falling to 30 per cent if it were to be regulated by someone other than the BSB. In total, 45 per cent of clerks are likely to join an ABS in the next 5 years, over double the interest given by barristers on the issue (21 per cent).

## **8 Business factors influencing the likelihood to join new business structures**

### **8.1 Introduction**

8.1.1 Earlier in the report a number of factors that barristers consider to be important to their business practice were discussed. This discussion was at a general level. In this chapter these business factors are further analysed by how likely barristers are to join a new business structure. This will help to identify some of the key business drivers influencing the choices barristers make.

### **8.2 New business structures in general**

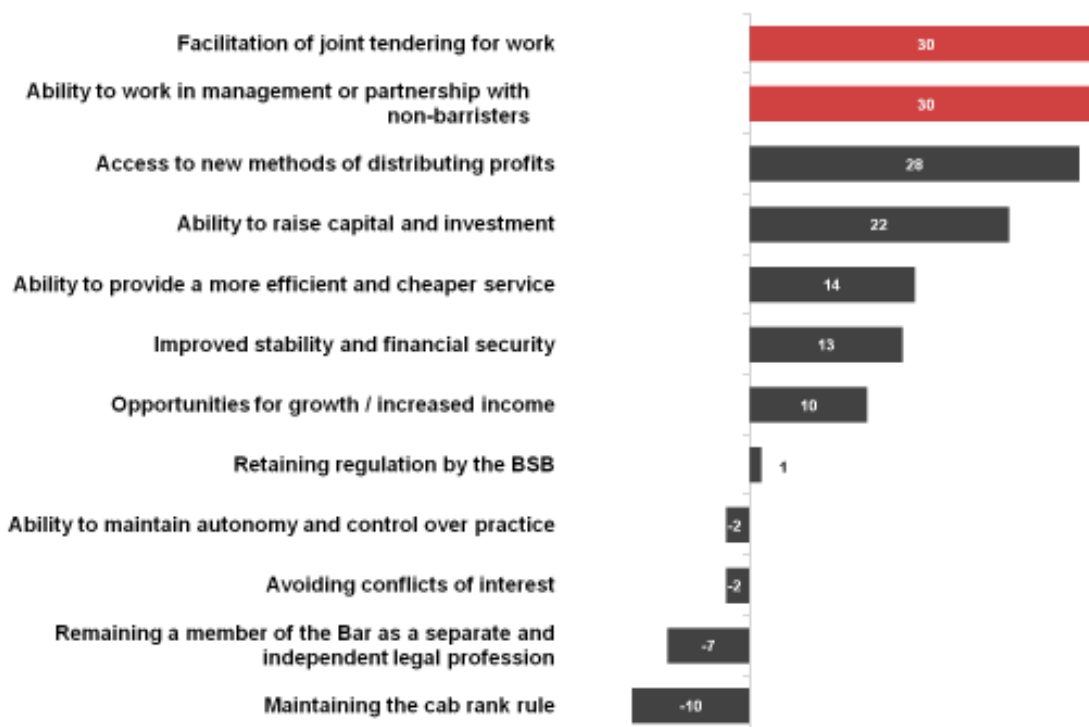
8.2.1 As would be expected, there is a correlation between a barrister's interest in a new business structure and the importance they place on various factors of a business. The chart overleaf shows the net difference between barristers interested in any type of alternative model proposed (BOE, LDP or ABS) and barristers uninterested in any kind of new business structure.

8.2.2 It can be seen that the facilitation of joint tendering for work, and the ability to work in management or partnership with non-barristers are particularly important business factors for a barrister interested in a new business structure, as is access to new methods of distributing profits.

8.2.3 Barristers interested in new business structures (regardless of type) are less likely than those not interested to place importance upon maintaining the cab rank rule and of remaining a member of the Bar as a separate and independent legal profession.

8.2.4 The chart shows the net difference between those who are interested in new business structures compared with those who are not interested. For each factor the proportion of those interested who said the factor was important has had the proportion of those not interested who said it is an important factor subtracted from it. This gives a net score for each factor. A positive net score means that the factor is more important for those interested in a new business structure. A negative score means that the factor is of more importance to those who are not interested in a new business structure.

**Figure 16: Net difference between the importance placed on business factors for barristers likely to join a new business structure (regardless of type) and their colleagues who are unlikely to**



### 8.3 Business factors relating specifically to BOEs, LDPs and ABS

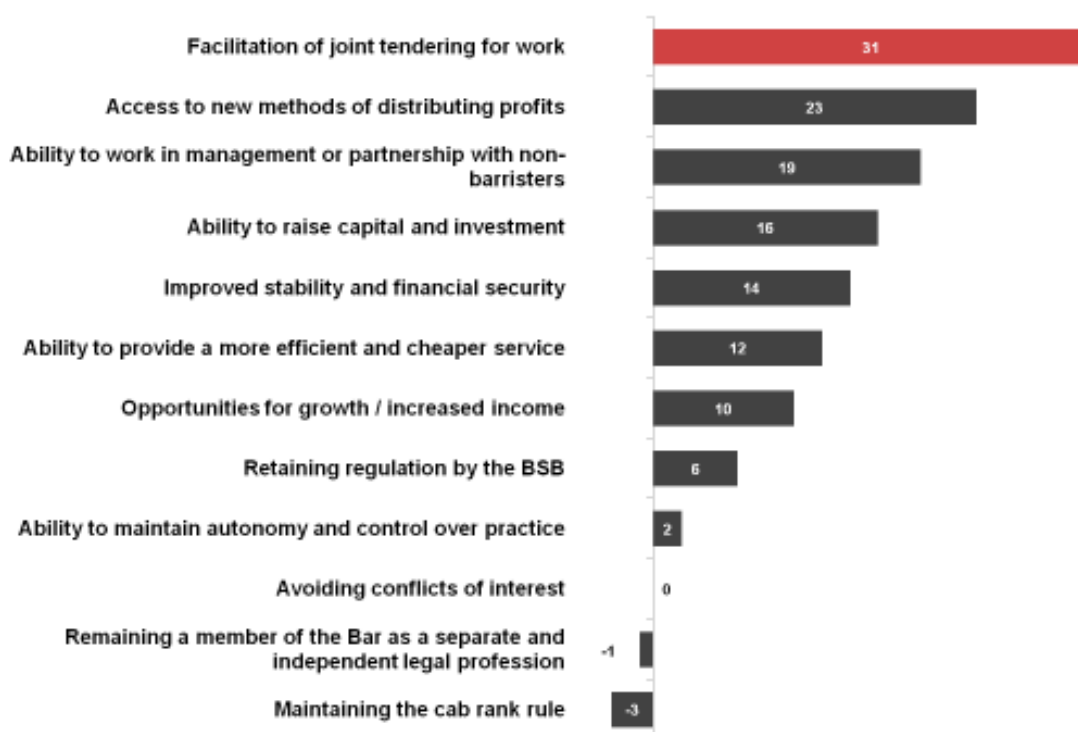
8.3.1 Due to there being many differences between the three business structures, this section looks at the interest in each new business structure separately, showing the different levels of importance placed upon different business factors.

8.3.2 The chart overleaf shows the net difference for each business factor between those interested in a BOE and those not interested in a BOE. As with interest in the different proposed business structures generally, those interested in BOEs are more likely than those not to place a high level of importance on the facilitation of joint tendering for work. Access to new methods of distributing profits is also an important issue to these barristers.



8.3.3 The lower net scores in the chart suggests that barristers interested in BOEs are less likely to place importance on the maintenance of the cab rank rule or on remaining a member of the Bar as a separate and independent legal profession.

**Figure 17: Net difference between the importance placed on business factors for barristers likely to join a BOE and their colleagues that are unlikely to**

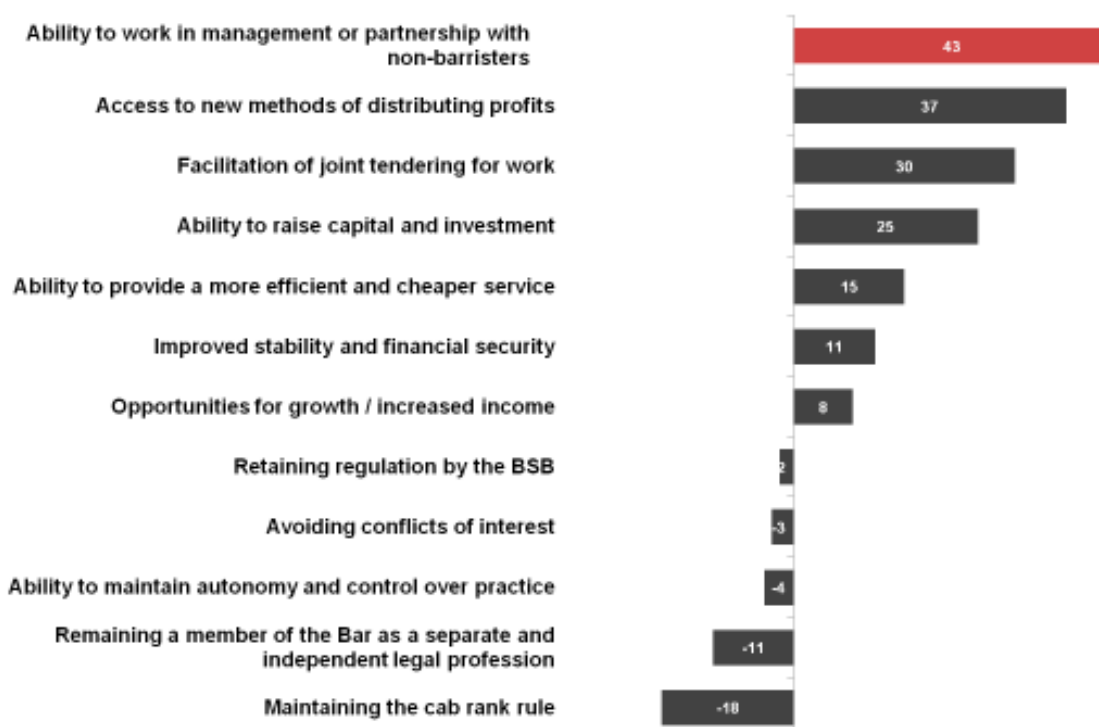


8.3.4 A higher level of importance is placed upon the ability to work in management or partnership with non-barristers among those interested in LDPs. This is much higher

among this group than other groups interested in new business structures. Again, accessing new methods of distributing profits is also important to these barristers.

8.3.5 Barristers interested in LDP structures are also the most likely of any barrister group interested in different business structures to place a low level of importance on the maintenance of the cab rank rule and of remaining a member of the Bar as a separate and independent legal profession.

**Figure 18: Net difference between the importance placed on business factors for barristers likely to join an LDP and their colleagues who are unlikely to**



8.3.6 The picture for those barristers interested in ABS is very similar to those interested in LDP structures. They are also more likely to place importance on the ability to work in partnership with non-barristers and in access to new methods of distributing profits.

**Figure 19: Net difference between the importance placed on business factors for barristers likely to join an ABS and their colleagues who are unlikely to**



8.3.7 For all three models, the net importance placed upon each of the factors reflects the business structures they are interested in. It has been shown that barristers interested in LDPs and ABS are more likely to place importance on working with non-barrister partners for example, this being one of the key differences in these new structures.

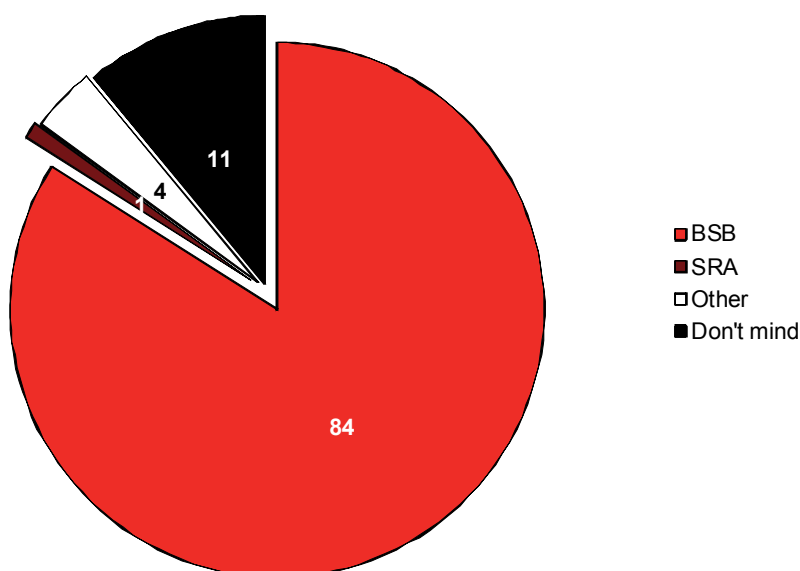
## 9 The Bar Standards Board as regulator

### 9.1 Attitudes towards BSB as a regulator

9.1.1 Several questions were asked about the BSB as a regulator, and whether respondents would like to see the BSB regulating the proposed new business structures.

9.1.2 When asked in principle, which organisation they would prefer to be regulated by, 84 per cent of barristers say the BSB is their preferred regulator. The next nearest response to this is from those who do not mind who regulates them (11 per cent). Only one per cent prefer regulation by The Solicitor's Regulation Authority.

**Figure 20: In principle, which of the following organisations would you prefer to be regulated by?**



9.1.3 There are slight variations in the level of support for the BSB as a regulator among different groups of respondent:

- Support for the BSB as regulator differs within practice area. For example, 89 per cent of those working in personal injury law, 88 per cent within common

law and 87 per cent of those in family law prefer to be regulated by the BSB. This compares to only 80 per cent of those working in criminal law;

- 86 per cent of barristers within chambers support the BSB compared to 76 per cent of those working outside of chambers;
- Those with a good understanding of the new business structures are more likely to support the BSB (86 per cent) than those with a limited understanding (82 per cent);
- 85 per cent of white barristers support the BSB against 80 per cent of their non-white colleagues;
- Female barristers are also more likely to support the BSB (86 per cent) than their male counterparts (83 per cent);
- Those with children are slightly less likely to support the BSB as a regulator, with 83 per cent in support compared to 85 per cent of their colleagues.
- 87 per cent of barristers with a disability would prefer to be regulated by the BSB (although caution should be taken due to a small base size);
- There are no interesting differences by the size of chambers barristers practice within or the time they have spent at the Bar.

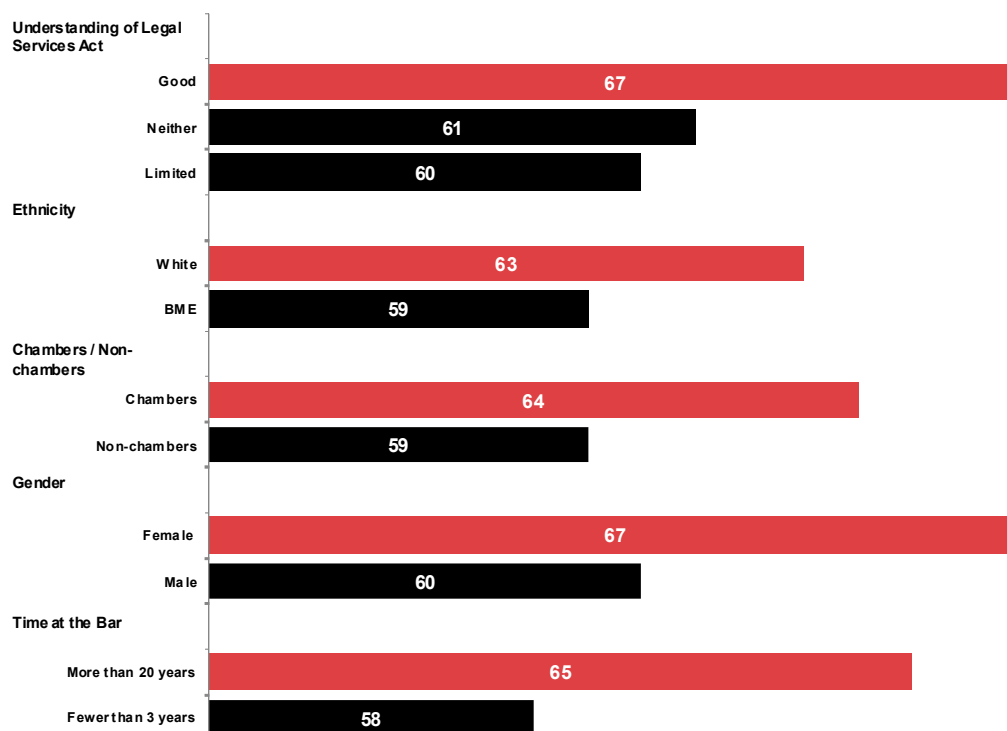
## 9.2 The importance of the BSB being the regulatory body

9.2.1 Almost two thirds of barristers (63 per cent) say that in deciding which business structure is most suitable for them, it is either very or fairly important that they retain BSB regulation. In fact, 68 per cent of barristers believe it to be in the public interest for the BSB to regulate new business structures. Only 14 per cent see it as fairly or very unimportant. A further fifth (22 per cent) believe it is neither important nor unimportant.

9.2.2 The figure overleaf shows that those with a good understanding of the new structures and female barristers are the most likely to say that it is important to retain the BSB as their regulating body (67 per cent of each group). Those who have been at the Bar the least

amount of time (fewer than three years) are the least likely to find it important – that said more than half still did so (58 per cent).

**Figure 21: Importance placed upon retaining regulation of the BSB by barrister type**



9.2.3 In addition to the above, other differences can be seen by subgroup of barrister:

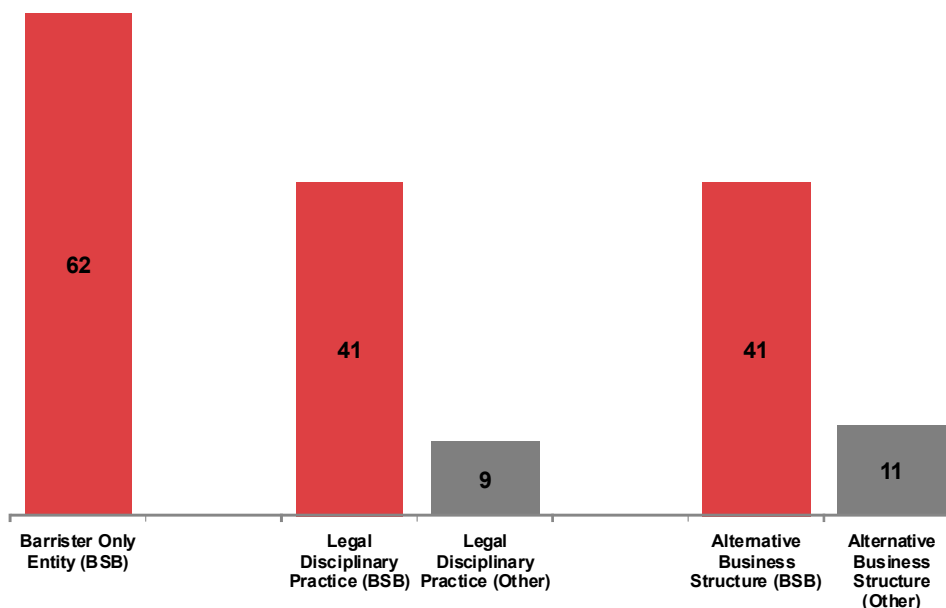
- Almost three quarters of barristers working in chambers with over 100 others feel it is very or quite important to retain the BSB as their regulating body;
- 70 per cent of barristers working in family law feel it is important to retain regulation by the BSB. This compares with 60 per cent of their colleagues from both chancery and commercial law and public law;
- Barristers with children are less concerned about the retention of the BSB as their regulator (60 per cent) than their counterparts without children (65 per cent).

### 9.3 General interest in BSB regulated practices with litigation

9.3.1 As a way of bringing together the importance of litigation and entity regulation barristers were asked to select up to three models that appeal to them. As can be seen in the figure below, options regulated by the BSB are more appealing to respondents than those regulated by others.

9.3.2 Over two fifths of barristers (41 per cent) are interested in LDP and ABS practices when regulated by the BSB, whereas less than ten per cent in each category are interested when regulated by other bodies. This supports earlier findings that suggest that BSB regulated structures are likely to receive more support than those regulated by other bodies and that litigation is a key driver of support.

**Figure 22: If all of the following options were available and you were permitted to conduct litigation in all of the structures, which three would be most appealing to you?**



9.3.3 Table 4 below shows the feeling towards the new business structures by different subsets of barrister. Although the pattern remains the same as above (in that barristers are more attracted towards structures regulated by the BSB than by others), this pattern becomes stronger in certain subsets. For example, barristers who describe themselves as having

neither a good nor a limited understanding of the new business structures are much more likely to consider a BSB regulated LDP. They are, however, among the least likely to be concerned whether an ABS is regulated by the BSB or another regulator.

9.3.4 Those in chambers are more likely to support an ABS regulated by the BSB (30 per cent interested with a BSB regulator against nine per cent with another regulator) than those not in chambers (49 and 19 per cent respectively).

**Table 4: Interest in proposed structures (if litigation were available in each) and regulatory body by barrister type**

	Barrister Only Entity	Legal Disciplinary Practice (BSB)	Legal Disciplinary Practice (Other)	Alternative Business Structure (BSB)	Alternative Business Structure (Other)
Good understanding	62	41	12	46	12
Neither good nor limited understanding	64	47	9	38	12
Limited understanding	60	37	7	39	10
White	62	41	9	41	10
BME	57	44	12	43	15
Chambers	68	40	7	39	9
Non-chambers	37	44	16	49	19
Male	63	41	10	41	13
Female	60	40	7	42	8

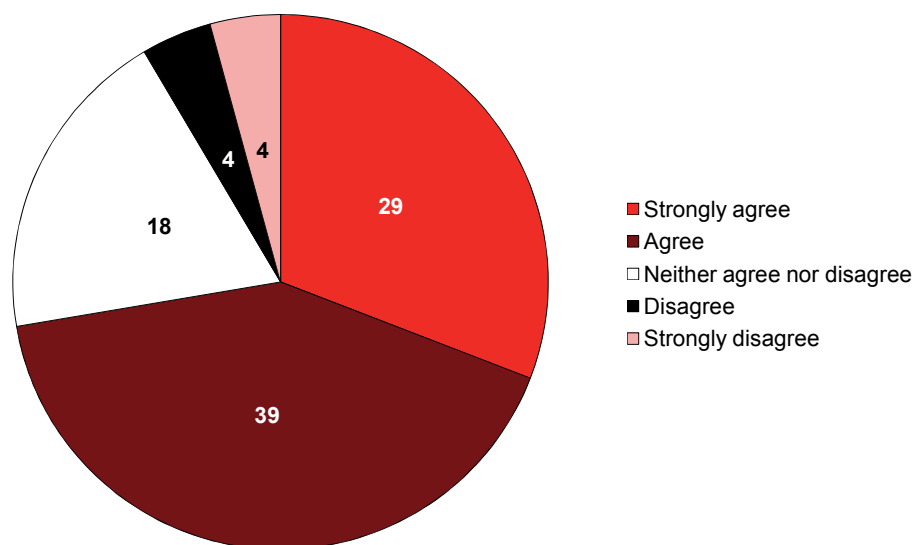


## 9.4 Whether it is in the public interest for BSB to regulate new business structures

9.4.1 Barristers were asked the extent to which they agreed, in principle, that it is in the public interest for the BSB to regulate the new structures considered within the questionnaire.

9.4.2 The figure below shows that support for the BSB as a regulator of the new business structures is high, with over two thirds of barristers (68 per cent) stating they agree or strongly agree. Only one in twelve (eight per cent) disagree that it is in the public interest for the BSB to act as a regulator of these alternative structures.

**Figure 23: In principle, do you agree or disagree that it is in the public interest for the BSB to regulate new business structures?**



9.4.3 Some subgroups of barrister are more likely than others to see it as being in the public interest for the BSB to regulate the newly proposed structures. For example:

- 76 per cent of barristers interested in BOE structures think it is in the public interest for the BSB to act as a regulator of new structures. 74 per cent of

those interested in LDPs and 70 per cent of those interested in ABS also agree that it was in the public interest for the BSB to act as a regulator of alternative structures;

- Three quarters (75 per cent) of those working in European law agree that it is in the public interest for the BSB to act as a regulator of new business structures, as did 72 per cent of those practising public law and 71 per cent of those practising criminal and personal injury law;
- White barristers are slightly more in agreement over these issues than their non-white colleagues, 70 per cent of these barristers agree against 67 per cent of non-white barristers;
- As the time barristers have been at the Bar increases, so does support for the BSB as a regulator. Only 64 per cent of those who have been at the Bar for up to five years agree with the statement. This rises to 68 per cent of those who have practiced for six to 20 years and peaks at 71 per cent for those who have been at the Bar for over 20 years;
- Support also rises in line with the size of chambers a barrister works in. This rises from 67 per cent among those working in chambers of up to 40, to 72 per cent among those working in chambers of over 100 barristers;
- Differences are not so marked when comparing whether barristers worked in chambers or are employed, by gender, disability or whether they have children.
- Three fifths (60 per cent) of clerks agree that it is in the public interest for the BSB to act as regulator for the newly proposed business structures. Just 12 per cent of clerks disagree that it is in the public interest for the BSB to regulate any new business structure and 23 per cent neither agree nor disagree.

## **10 The importance of litigation**

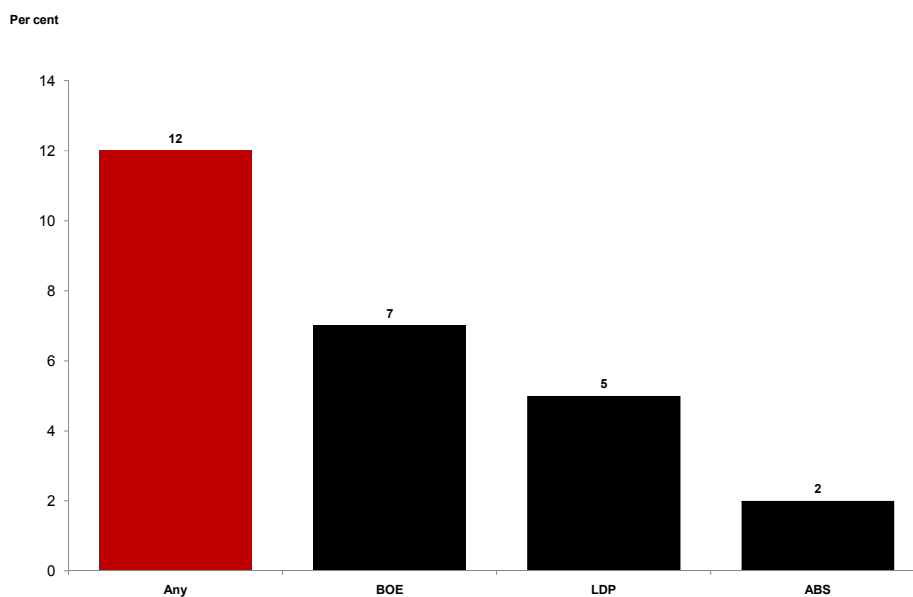
### **10.1 Introduction**

10.1.1 When looking at the level of interest barristers have in all three new business structures, it can be seen that the ability to conduct litigation can potentially increase the popularity of a structure. This has been mentioned in conjunction with each structure type, but will be pulled together in this chapter in order to identify specific groups of barrister who show more interest in structures given the ability to litigate, those put off by the addition of litigation and attitudes towards whether self-employed barristers should be permitted to litigate.

### **10.2 Interest of barrister in new business structures with the ability to conduct litigation**

10.2.1 The figure below shows the proportion of barristers who are not interested in joining each of the new structure types until the opportunity to conduct litigation is added. One in eight (12 per cent) of all barristers are interested in joining any form of structure only with the ability to litigate being proposed. The figure is highest in relation to BOEs (seven per cent) and lowest for ABS (two per cent).

**Figure 24: Additional proportion of barristers interested in joining structure types if permitted to conduct litigation within them**



10.2.2 It is worth noting, however, that the ability to conduct litigation has turned some people away from each new business structure (as will be explored in depth below).

10.2.3 When broken down into types of barrister, interest in the ability to conduct litigation varies significantly. Some of these differences are highlighted below:

- Barristers working in chambers with more than 100 others are the most likely group to be interested in a structure with the ability to litigate (55 per cent). This does not, however increase with the size of chambers a barrister works in;
- 47 per cent of barristers from an ethnic minority are interested in joining a new business structure given the ability to litigate within it;
- 46 per cent of those employed by authorised persons would be likely to join a new business structure given the ability to litigate. This compares with 37 per

cent of their colleagues employed in chambers and 25 per cent employed in other ways;

- 44 per cent of barristers working in criminal or employment law are interested in the structures with the ability to litigate. Those working in commercial or chancery law are much less likely though (26 per cent);
- Barristers with children are four per cent more likely to join a new business structure with the ability to litigate than those without (38 against 34 per cent).

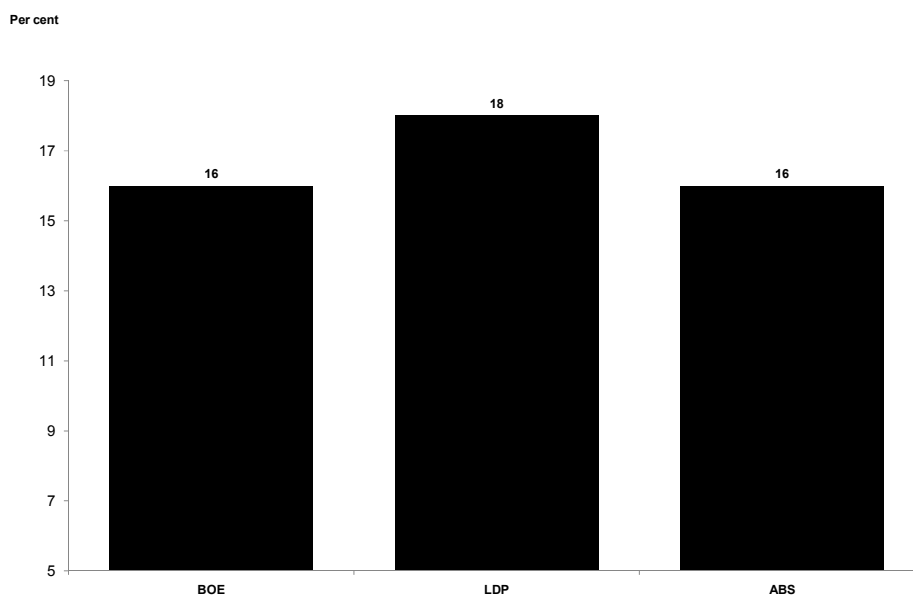
### **10.3 The extent to which the ability to conduct litigation can put barristers off new business structures**

10.3.1 Within this report, a lot of investigation has been made around the extent to which the ability to conduct litigation has made new business structures more attractive to barristers not interested in them before. There are barristers, however, who were previously interested in business structures but are then put off by the addition of litigation. This section now looks at the profile of barristers who lose interest in a structure when the opportunity to conduct litigation is added.

10.3.2 Overall, nine per cent of barristers have expressed an interest in joining a new business structure within the next five years but withdrawn their interest when the opportunity to conduct litigation is suggested.

10.3.3 When looking at the individual structures proposed, the proportion put off by the ability to conduct litigation is relatively similar. Sixteen per cent of all those who said they are interested in an ABS were subsequently put off when the idea of doing litigation was introduced. The same proportion are put off the BOE model and 18 per cent put off of the idea of joining an LDP structure.

**Figure 25: Proportion of barristers who were interested in proposed structures but would be put off if the ability to litigate was permitted**

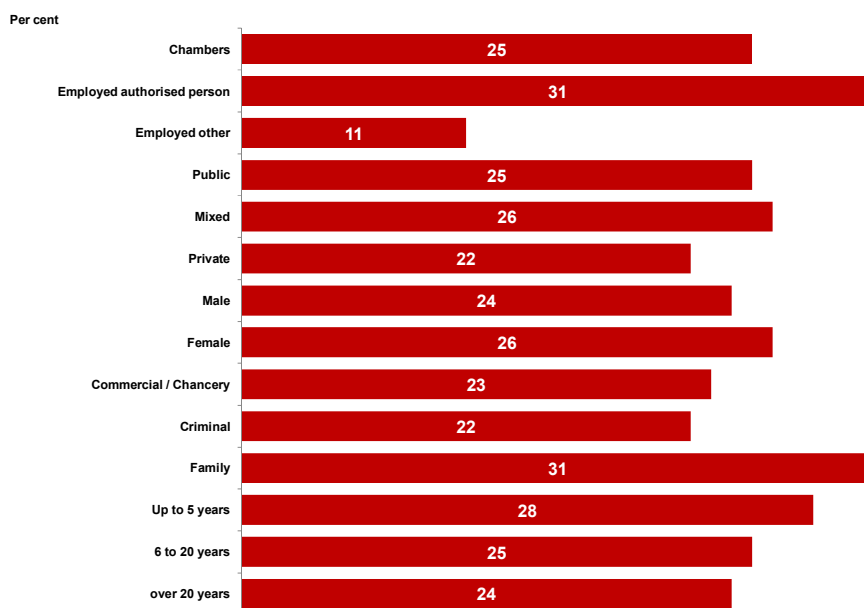


10.3.4 The figure below breaks down those who have been put off by the idea of joining any structure by types of barrister. This figure is based on all who have said they would join any one (or more) of the proposed structures within the next five years. Not all breakdowns can be shown due to low base sizes.

10.3.5 Barristers practising family law are particularly likely to be put off by the idea of joining a new business structure when the ability to conduct litigation is proposed. 31 per cent of those who said they would join new business structure state this, as do the same proportion of barristers employed by an authorised person.

10.3.6 As time at the Bar increases, the likelihood to be put off by the addition of the ability to litigate decreases. 24 per cent of those who have been at the Bar for over 20 years are put off by the ability to conduct litigation against 28 per cent of those who have been at the Bar for less than five years.

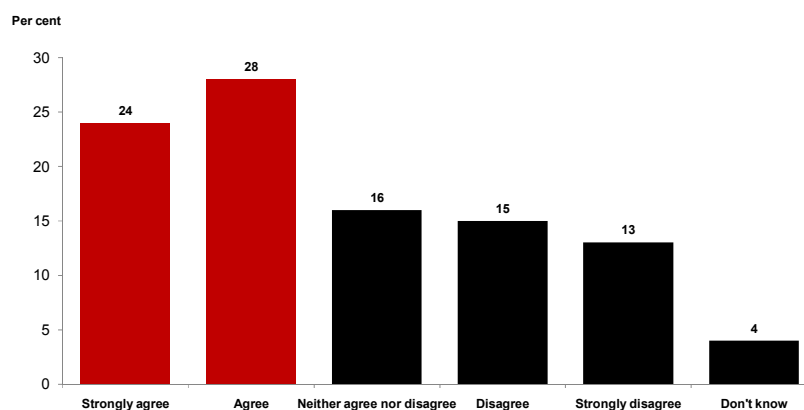
**Figure 26: Proportion of barristers who were interested in any proposed structure but are deterred by ability to conduct litigation, by barrister type**



## 10.4 Interest in conducting litigation for self-employed barristers

10.4.1 Barristers were asked whether they agree or disagree that self-employed barristers should be permitted to conduct litigation. Just over half (52 per cent) agree that self-employed barristers should be permitted to conduct litigation, whereas over a quarter (28 per cent) disagree. A further 20 per cent are neutral about the idea, either answering that they neither agree nor disagree, or that they do not know.

**Figure 27: Do you agree or disagree that self-employed barristers should be permitted to conduct litigation?**



10.4.2 There are some interesting patterns of support for self-employed barristers being allowed to conduct litigation that emerge when looking at subsets of barrister:

- The percentage of employed barristers who agree with the statement is larger than those self-employed in chambers. 71 per cent of those employed by others agree with the statement (only seven per cent disagreeing) and 69 per cent of those employed by authorised persons agree that self-employed barristers should be permitted to conduct legislation. This compares to only 48 per cent of those barristers who themselves are self-employed and working in chambers. This could imply that self-employed barristers and those working in chambers are concerned about maintaining the Bar's specialism in advocacy.
- Barristers practising criminal law are more likely to agree that self-employed barristers should be permitted to conduct litigation (58 per cent) as well as those working in public law, and areas otherwise unclassified (57 per cent of barristers from each of these areas agreeing with the statement). Those



working in common law are the most likely to disagree with the statement (37 per cent) as are personal injury barristers and those in commercial or chancery law (36 per cent of these groups disagreed with the statement);

- Those interested in the proposed new business structures are more likely to agree with the statement. 70 per cent (18 percentage points above the average) of those interested in ABSs are in favour of permitting self-employed barristers to conduct litigation, as are 69 per cent of those interested in LDPs and 63 per cent BOEs;
- Non-white barristers hold more interest in the idea of self-employed barristers being permitted to conduct litigation with 69 per cent agreeing with the statement. Likewise, 63 per cent of those with a disability also agree;
- Lastly, barristers with children are marginally more in support of self-employed barristers conducting litigation with 55 per cent agreeing with the statement, compared to 50 per cent of those without children;
- There are no significant patterns when analysing by gender, time at the Bar or size of Chambers.

10.4.3 Not everyone is in favour of barristers being permitted to undertake litigation. Many of the open responses to the survey raise concerns about the perceived threat that this would pose to the independent Bar:

*“Permitting barristers to conduct litigation would remove one of the Bar’s most attractive (to clients) features, namely the ability to provide advocacy and specialist advice at low cost. Conducting litigation would involve huge increase in overheads, in particular in higher Professional Indemnity Insurance premiums and employment of support staff that would inevitably be passed on to clients. If widely taken up, the combined effect of the new business structures and allowing barristers to conduct litigation would lead to a fused profession and the end of the independent Bar”*

## 10.5 Clerks views on barristers conducting litigation

10.5.1 Clerks are generally more in favour than barristers of barristers being permitted to conduct litigation. 62 per cent of clerks agree that barristers should be permitted to conduct litigation

in entities regulated by the BSB, seven percentage points higher than the proportion of barrister that agree themselves.

10.5.2 Not every clerk is in agreement however:

*“I think it very dangerous for barristers to be involved in litigation especially those who have a mainly advocacy based practice. I think it is far too dangerous that deadlines for claims etc could be missed due to a heavy burden of workload”*

10.5.3 A further 18 per cent of clerks neither agree nor disagree with the statement and 15 per cent disagree (compared to 21 per cent of barristers disagreeing with this statement). An additional four per cent do not know.

10.5.4 Support among clerks for self-employed barristers being permitted to conduct litigation (without mention of the regulating body) is lower than within an entity regulated by the BSB. 55 per cent of barristers agree that self-employed barristers should be permitted to conduct litigation, one fifth (21 per cent) neither agree nor disagree and a further fifth (21 per cent) disagree. Clerks were closer to barristers on this issue with only a three percentage point difference in agreement (52 per cent of barristers agreed with the statement). Male barristers are eight percentage points more likely to agree that self-employed barristers should be permitted to conduct litigation.

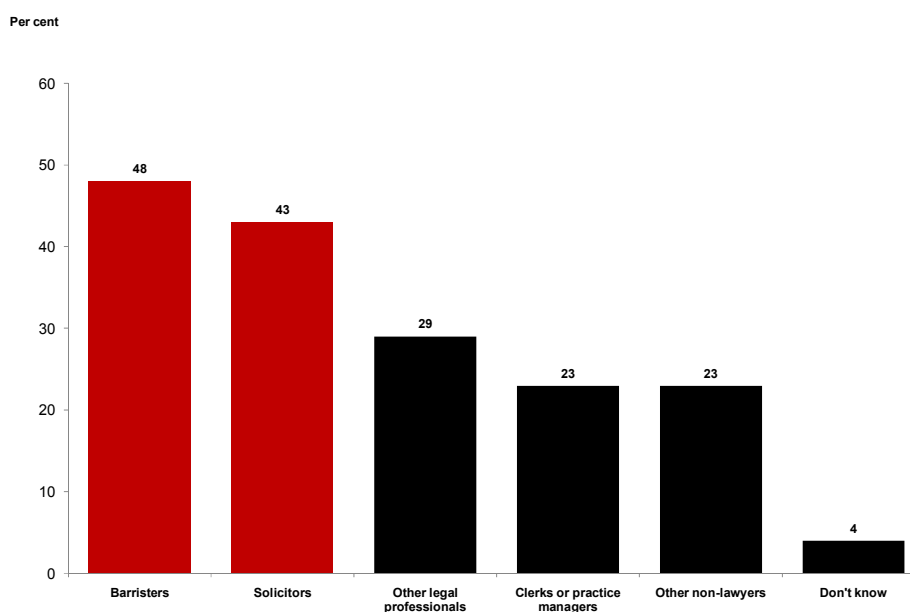
## 11 Working with others

### 11.1 Who would barristers work with?

11.1.1 Given that the new business structures allow barristers the opportunity to work with a variety of professionals, barristers were asked with whom they would be most interested in working.

11.1.2 The chart below shows that barristers would be most interested in working in management with other barrister colleagues, indeed almost half of barristers feel this way (48 per cent). A high proportion also express an interest in working alongside solicitors (43 per cent). When the concept of working with non-legal professionals is introduced, barrister interest begins to decline. Having said that, nearly one quarter (23 per cent) of barristers express an interest in working with clerks or practice managers, or other non-lawyers.

**Figure 28: If you were considering becoming a manager of any new business structure, what other categories of professional would you be interested in becoming a manger or owner with?**



11.1.3 Perhaps unsurprisingly, those barristers interested in different business structures are more likely to want to work with each type of professional than the average. In particular:

- Over three quarters of barristers interested in LDPs would consider working in partnership with solicitors (76 per cent), 71 per cent are interested in working with other barristers and over half (53 per cent) would consider working with other legal professionals;
- 73 per cent of barristers interested in working within an ABS would like to work in partnership with other barristers, they are also the most likely group to be interested in working with other non-legal professionals (46 per cent) and clerks or practice managers (40 per cent);
- Logically, barristers interested in BOE structures are most interested in working with other barristers (69 per cent), although this group also express an interest in working in partnership with solicitors (61 per cent) or other legal professionals (34 per cent).

11.1.4 In addition to looking at barristers interested in other business structures, there are some differences among other groups of barrister. For example:

- Barristers practising commercial / chancery law are less likely than average to work with any other professional. Most notably, only 40 per cent want to work in a new business structure with their barrister colleagues, unlike those practising common law who are particularly likely to show an interest in working with other barristers (54 per cent);
- Barristers working in Public Law are particularly enthusiastic about the prospect of working in partnership with others. 40 per cent are interested in working with other legal professionals, 31 per cent with other non-legal professionals and 49 per cent in working with solicitors;
- Barristers employed by authorised persons, working predominantly with public clients, or that are male are also more likely to be interested in each professional for potential partnership;
- There are no significant differences when looking at barristers by length of time at the Bar, number of barristers sharing chambers, whether they have children, a disability or are from an ethnic minority.

## **11.2 Which professionals would clerks be interested in becoming a manager or owner with?**

11.2.1 Seven out of ten clerks (71 per cent) are interested in becoming an owner or manager of a new business structure with barristers. In addition to this, 62 per cent of clerks are interested in working with other clerks or practice managers, although only 28 per cent are interested in working with other non-lawyers. Four per cent of clerks did not know who they would want to work with and 11 per cent would not consider becoming a manager or owner of any new business structure.

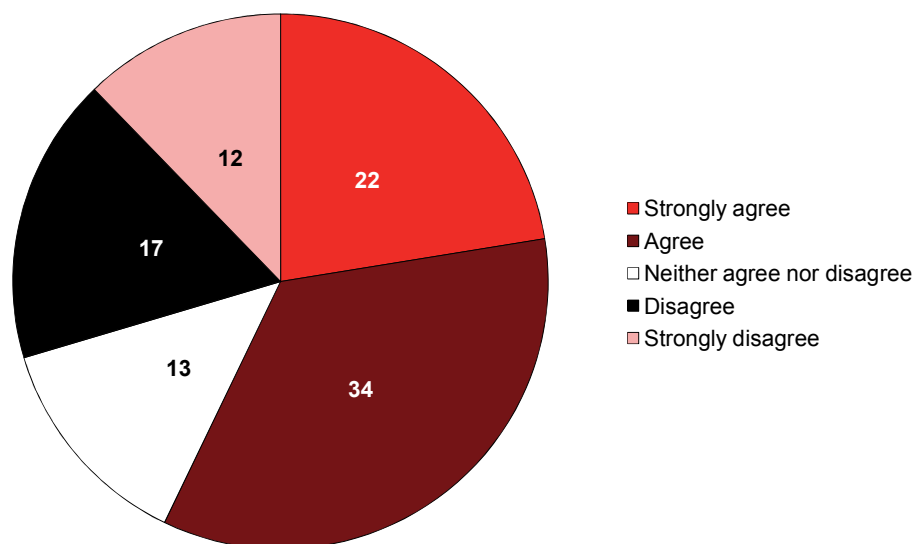
## 12 Extension of public access

### 12.1 Barrister views on the extension of public access

12.1.1 Barristers were asked about the extent to which they agreed that public access should be extended by asking about their level of agreement to the following statement: “Do you agree or disagree that lay clients should be able to have direct access to barristers in all fields, subject to relevant provisions regarding training?”.

12.1.2 The figure below shows that a majority of barristers agree with this proposed extension of public access, although this majority is not overwhelming at 56 per cent. A further 29 per cent disagree with the statement and 15 per cent remain neutral to the idea.

**Figure 29: Do you agree or disagree that lay clients should be able to have direct access to barristers in all fields, subject to relevant provisions regarding training?**

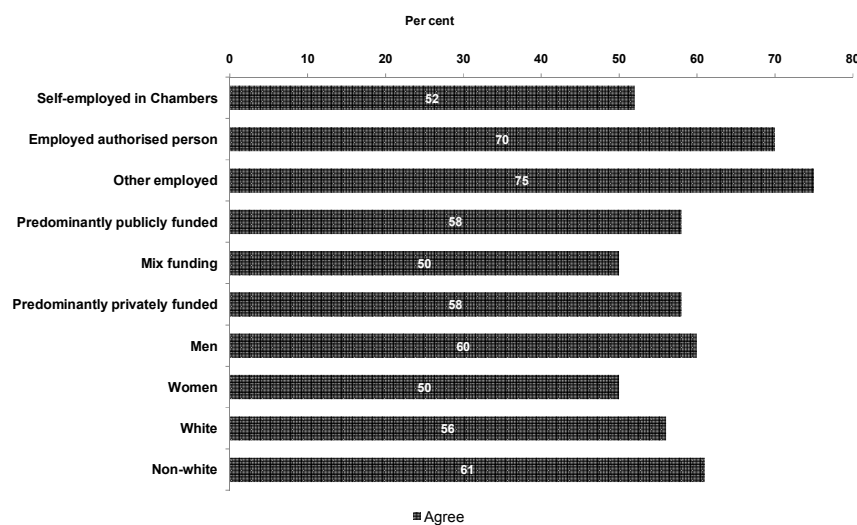


12.1.3 As can be seen from the chart below, barristers that are employed are more likely to be in favour of an extension to public access with 75 per cent of those employed by others agreeing with the statement as well as 70 per cent of those employed by authorised persons. This is against 52 per cent of self-employed barristers or those in chambers.

12.1.4 Publicly and privately funded barristers are equally as likely to support an extension of public access with 58 per cent of each group in support. Those with a mixture of funding are more sceptical, with only half (50 per cent) supporting the idea.

12.1.5 Male barristers are more in support of the extension than their female colleagues (60 per cent against 50), as are non-white barristers against their white counterparts (61 against 56).

**Figure 30: Support of the extension of public access by barrister type**



12.1.6 In addition to these groups of barrister, there are some other interesting differences among subsets of barrister:

- Interest in the extension of public access is higher among those who support new business structures. 75 per cent of those who would be likely to get involved in an LDP agree with the statement, as do 73 per cent of those interested in an ABS and 68 per cent of those in BOE;

- 68 per cent of disabled barristers support the extension of public access, against 56 per cent of their colleagues;
- Those barristers working in family law are less likely to show an interest to the extension with only 44 per cent agreeing with the statements;
- There are no interesting findings when investigating differences between the length of time barristers had been at the Bar, the number of barristers within chambers and whether barristers have children or not.

## **12.2 Clerks views on extending public access**

12.2.1 When asked the extent to which they agreed that lay clients should be able to have direct access to barristers in all fields, subject to relevant provisions regarding training, almost three fifths (59 per cent) of clerks agree. This is three percentage points higher than among barrister (56 per cent). One quarter (23 per cent) of clerks disagree with this statement (7 per cent strongly disagreeing) and 16 per cent neither agree nor disagree.

12.2.2 Agreement is slightly higher among female clerks with 65 per cent agreeing to the statement compared with 57 per cent of their male colleagues. In addition to this, as the length of time worked as a clerk / practice manager increases, agreement decreases. It drops from 74 per cent amongst those who have been clerks for ten years or less, to 56 per cent of those in the role for 11 to 20 years and 52 per cent of those working as clerks for more than 20 years.



## 13 Demographic differences among barristers

### 13.1 Introduction

13.1.1 Throughout the report the variation of responses among different groups of barristers has been shown. This section draws some of these together in order to build a picture of different groups of barrister.

### 13.2 Employment type

- Self-employed barristers working in chambers are more likely to rate their understanding of the new business structures made possible by the Act as very or fairly good (37 per cent compared with 19 per cent from their employed counterparts);
- When asked about factors relevant to their deciding on suitable business structures, self-employed barristers are more likely to prioritise: the ability to maintain autonomy and control over the practice (97 against 77 per cent of those employed); opportunities for growth of practice / increased income (87 against 72 per cent) and maintaining the cab rank rule (67 against 48 per cent);
- Self-employed barristers are more likely to join a Barrister Only Entity (26 against 11 per cent);
- Less likely to join a Legal Disciplinary Practice regulated by the SRA or CLC (9 against 15 per cent).
- Are more likely to work in a dual role with being self-employed if they were to join a BOE, LDP or ABS (78 per cent on average of all three against 45 per cent for employed barristers);
- Find the need to maintain the BSB as their primary regulator more important than their employed colleagues (91 per cent against 77).

### 13.3 Gender

13.3.1 Of the barristers interviewed, 66 per cent are male and 34 per cent female. The following shows some of the variations in opinion by gender:

- Female barristers are more likely to place a greater importance on improved stability and financial security in deciding which business structure is most suitable for them (81 per cent of female barristers against 72 per cent of male barristers);
- If they did join a BOE, they would be more likely to practice in a dual capacity than men (88 against 80 per cent);
- Women are less likely to join an ABS than men, whether it is regulated by the BSB (15 per cent against 23) or by another regulator (7 against 13 per cent).

## 13.4 Ethnicity

13.4.1 Barristers interviewed were asked their ethnic origin. Of those who responded, 91 per cent were of any white background and nine per cent of any Black, Asian, Mixed or other ethnicity. Five per cent refused to give their ethnicity.

- Barristers from a non-white background are less likely to rate their understanding of the Act as fairly or very good (26 per cent against 34 per cent of their white colleagues);
- When asked about the relevant business factors in deciding appropriate business structures, non-white barristers are more likely to prioritise the ability to raise capital and investment (45 against 33 per cent) and the ability to work in partnership with non-barristers (48 against 35 per cent).

## 14 Conclusion

- 14.1.1 The study has gauged the opinion of barristers and clerks on new business structures made possible by the Act. It has discussed the response of barristers and clerks to BOEs, LDPs and ABS.
- 14.1.2 BOEs are the most favoured of the new business structures closely followed by ABS. Current mode of practice has a big influence over choice. Barristers employed in chambers are the most likely to think of joining a BOE while barristers employed by authorised persons (for example law firms) are twice as likely (compared with self-employed barristers) to join an LDP. Support for ABS was more even across the different practice types.
- 14.1.3 It is fair to say that at this stage support for any new business structure is limited to a minority of barristers. It is a significant minority nonetheless and one that could potentially grow. The key issue underpinning a barrister's likelihood to join a new business structure is, not surprisingly, their understanding of what the new business structures are. Understanding has a positive relationship with likelihood to join. The more knowledge a barrister has of the new business structures made possible by the Act the more likely they are to express a desire to join.
- 14.1.4 It should also be remembered that some barristers are against the idea of new business structures due to the impact it will have on the Bar and their concerns should be taken into account.
- 14.1.5 There is an important role for the BSB in getting the message across to enable barristers to make more informed decisions. Many barristers have either no knowledge or a limited one of the new business structures made possible by the Act. There is a need for the BSB to provide further detail on each of the new business structures, what they see as the advantages and disadvantages of each, how they relate to the business factors that are important to barristers (for example keeping the cab rank rule) and how each structure would work in practice.
- 14.1.6 Knowledge of new business structures and support for them is uneven across demographic variables. For example there are significant differences for women and non-white barristers.

It is not clear from the research why non-White barristers are more likely to want to join a new business structure but at the same time are more likely to state that their understanding of the new business structures is more limited. It will be important to ensure that the follow up consultation on new business structures targets these groups in an effective way by, for example, going through relevant interest groups to promote the consultation.

- 14.1.7 A further issue that derives from the research is the widespread support for the BSB to be the regulator in relation to new business structures. Many believe this to be in the public interest. The level of support for the BSB as the regulator of choice legitimises its consideration of extending its regulatory function to new business structures.

## 15 The questionnaires

### BARRISTER SURVEY: PAPER VERSION

#### Introduction

Welcome to this survey on new business structures for barristers.

We have tested the survey and found that, on average it takes around 10-15 minutes to complete. This time may vary depending on factors such as your internet connection speed and the answers you give.

We have included a glossary of terms which may be unfamiliar. Any word in the survey that has a hyperlink is linked to the glossary. Just click on the link, and the glossary will open in a new window.

#### [Q1] Which of the following best describes your practice?

Please mark an X in one of the boxes below

	Tick
Self-employed barrister – member of chambers	
Sole practitioner	
Barrister employed by any <a href="#">authorised person</a>	
Other employed barrister	

#### Background to survey

New business structures are becoming available to barristers. It is vital that the BSB understands whether you want to adopt any of these new structures, whether for all or just a part of your work as a barrister, and whether you would prefer the BSB to be the regulator of any new business structure you might adopt.

The BSB also wants to gauge possible interest in further relaxations on the ways in which self employed barristers practise, including in relation to the conduct of litigation and public access, prior to considering whether such moves would be in the public interest.

The Legal Services Act 2007 ("the Act") creates the possibility of barristers participating in new business structures, including becoming managers alongside other lawyers and non-lawyers, and, in due course, becoming managers or employees in bodies that provide a mix of legal and other services, or which may be wholly externally owned.

Barristers are now, as a result of decisions taken following two consultations, permitted to practise in ways that until recently were prohibited under the Code of Conduct. They can already join together with solicitors and up to 25% non-lawyer managers in partnerships, LLPs or companies. In principle, the decision has also been taken to allow barrister only entities. In due course, the BSB will need to decide whether to let barristers join the other types of business structure which will become available when the full "Alternative Business Structures" regime comes into force under the Act.

These new structures are required by the Act to be regulated if they are supplying advocacy or litigation services or other regulated types of legal services. This is required in addition to the individual lawyers within the structure being regulated by whichever regulator they get their practising certificate from.

The question therefore arises as to whether the BSB itself should regulate any new business structures. At the moment, barristers wanting to manage and own an entity in combination with other lawyers or (so far as currently permitted) non-lawyers must go to another regulator, such as the SRA, to regulate their business structure. The effect of that is that the BSB has only a residual role in relation to individual barristers within such structures, with most day to day regulation being done by the other regulator. On the other hand, the BSB is the only available regulator of barrister only entities (but it is as yet unclear how many barristers want such entities). Whether the BSB should itself regulate any of these business structures is still to be decided and will be the subject of a consultation to be launched later this year.

The purpose of this survey is to inform preparation of that consultation paper by gauging the interest of the profession in each potential new form of business structure, and establishing the importance that the profession would place on the BSB remaining its primary regulator in any new structures that are or may be permitted. It is important for the BSB to get as clear a picture as possible of what barristers want and expect in the future, since there would be little point in the BSB's undertaking entity regulation if it is not wanted or needed by those whom the BSB regulates.

The question of whether or not the BSB should regulate entities that may include non-barristers and whose services might go beyond advocacy and legal advice raises issues of fundamental importance to the future of the Bar as a separate and independent branch of the legal profession, specialising in advocacy and advice.

The BSB is keenly aware of its responsibilities in relation to the [regulatory objectives](#) in the Act. In addition, the BSB must protect the public interest in maintaining the independence and high standards of the Bar, whilst allowing the Bar to take full advantage, so far as consistent with the public interest, of the opportunities created by the Act to compete in the fast-changing market for legal services.

**[Q2] How would you rate your CURRENT understanding of the new business structures which the Legal Services Act makes possible?**

Please mark an X in one of the boxes below

	Tick
Very good understanding	
Fairly good understanding	
Neither good nor poor	
Limited understanding	
Very limited understanding	

**[Q3] In principle, which of the following organisations would you prefer to be regulated by?**

Please mark an X in one of the boxes below

	Tick
The BSB	
The Solicitors Regulation Authority	
Another regulator	
Don't mind	



**[Q4] Below are some factors which might be relevant to barristers in deciding what sort of business structure is most suitable for them. Please say how important you PERSONALLY consider each of the following factors to be.**

**In the online survey the answer categories are randomised.**

Please mark an X in one box on each row of the grid.

	Very important	Fairly important	Neither important nor unimportant	Fairly unimportant	Very unimportant	Don't know
A) Ability to maintain autonomy and control over practice (personal independence)						
B) Opportunities for growth of practice / increased income						
C) Maintaining the cab rank rule						
D) Avoiding conflicts of interest						
E) Retaining regulation by the BSB						
F) Improved stability and financial security						
G) Access to new methods of distributing profits						
H) Ability to provide a more efficient and cheaper service						
I) Ability to raise capital and investment						
J) Facilitation of joint tendering for work						
K) Remaining a member of the Bar as a separate and independent legal profession						
L) Ability to work in						



management or partnership with non-barristers						
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**[Q5] If you were considering becoming a [manager](#) of any new business structure, what other categories of professional would you be interested in becoming a manager or owner with? Please tick all that apply.**

Please mark an X in as many boxes as apply below

	Tick
Barristers	
Solicitors	
Other legal professionals	
Clerks or practice managers	
Other non-lawyers	
Don't know	
None of these	
I would not consider becoming a manager or owner of any new business structure	



The following questions are about various different business structures which may be permitted in the future. Please take the time to read through the information provided on each business structure.

Please note that the structures explained on the following pages are separate and in addition to the possible option of [ProcureCo](#).

### **Barrister Only Entity (BOE), regulated by the BSB**

A Barrister Only Entity (BOE) would be any entity whose management and ownership were to be made up only of barristers operating as a unit – either in partnership or another corporate structure. It would allow new methods of profit sharing and could be used as a vehicle to enable block-contracting with large purchasers of legal services.

In November 2009 the BSB decided in principle that barristers should be able to practise in BOEs. It also agreed that the cab rank rule should apply to barristers in a BOE, while accepting that conflicts of interest are likely to be more prevalent in BOEs than in purely self-employed practice.

The Bar Council has suggested that BOEs could form adjuncts of traditional chambers of self-employed barristers, with individual barristers practising both as self-employed members of chambers on some matters and partners or managers of a BOE on other matters. This idea is likely to be explored in the next consultation that the BSB issues on entity regulation. If it were to prove feasible, a BOE adjunct might be owned and controlled by a set of chambers or by certain members of chambers, or could even be made up of barristers from a number of different sets of chambers. It might also be possible for a single set of chambers to have connections (through its members) to a number of different BOEs.

The BSB is also considering whether barristers in a BOE should be permitted to conduct litigation.

### **[Q6] If this business structure were available, how likely would you be to join a Barrister Only Entity (BOE) in the next five years?**

Please mark an X in one of the boxes below

	Tick	Route
Very likely		<i>Go to Q7</i>
Fairly likely		<i>Go to Q7</i>
Neither likely nor unlikely		<i>Please skip to Q8</i>
Fairly unlikely		<i>Please skip to Q8</i>
Very unlikely		<i>Please skip to Q8</i>
Don't know		<i>Please skip to Q8</i>

**[Q7] If you did join a [Barrister Only Entity \(BOE\)](#) in the next five years, would you be more likely to work only within the BOE, or to also work in self-employed practice (in a dual role)?**

Please mark an X in one of the boxes below

	Tick
Would work only within the BOE	
Would also work in self-employed practice (in a dual role)	
Don't know	

**[Q8] To what extent would the ability to conduct [litigation](#) within a BOE influence your decision to join, or not join a BOE in the next five years?**

Please mark an X in one of the boxes below

	Tick	Route
A lot		<i>Go to Q9</i>
A little		<i>Go to Q9</i>
Not at all		<i>Please skip to next page</i>
Not sure		<i>Please skip to next page</i>

**[Q9] You mentioned that the ability to conduct litigation within a BOE is likely to influence your decision on whether or not to join one in the next five years.**

**If BOEs offered barrister members the opportunity to conduct litigation, how likely would you be to join a BOE in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

### Legal Disciplinary Practice (LDP), regulated by the Solicitors Regulation Authority (SRA) or Council for Licensed Conveyancers (CLC)

Since 31st March 2009 the SRA has been permitted to regulate entities managed by a mix of legal professionals with up to 25% non-lawyer managers and owners. These LDPs can be set up as partnerships, limited liability partnerships or public or privately limited companies, but can only provide [reserved legal services](#). They must also include at least one solicitor to be regulated by the SRA. Similarly, the CLC can regulate bodies made up of legal professionals and non-lawyer managers as long as they only provide reserved legal services and contain at least one licensed conveyancer.

In November 2009 the BSB decided that barristers should be able to become [managers](#) of SRA or CLC regulated LDPs and on 26 March 2010 the LSB approved changes to the Code of Conduct to permit this. These rule-changes added provision to the effect that a barrister acting as manager of an LDP would not be subject to the cab rank rule, which was felt to be unworkable in an SRA-regulated LDP. Barrister managers of SRA regulated LDPs are also able to conduct litigation.

#### [Q10] How likely are you to join a Legal Disciplinary Practice (LDP) regulated by the SRA or CLC in the next five years?

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

### Legal Disciplinary Practice (LDP), regulated by the BSB

In the future the BSB might also seek to regulate its own form of LDP. These could be defined by the BSB, for example in terms of membership or function and could potentially be set up as a partnership, a limited liability partnership or a public or privately limited company.

The managers and owners of BSB regulated LDPs could include any mix of the eight legal professions recognised in the 2007 Act (solicitor, barrister, notary, legal executive, licensed conveyance, patent attorney, trade mark attorney and law costs draftsman) and could provide any [reserved legal services](#) but not any other kinds of service. However, the BSB could place restrictions on the services that LDPs it might regulate could provide. For example, it might provide that it would only authorise LDPs that provide only traditional barrister services or it might decide to authorise LDPs which would provide both advocacy and litigation services.

An LDP could be used as an adjunct to Chambers in the same way as a BOE could be used for this purpose.

**[Q11] If it were available, how likely would you be to join a Legal Disciplinary Practice (LDP) regulated by the BSB in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

**Please answer Q12 if you ticked 'Very Likely' or Fairly likely' to Q10 or Q11, otherwise please skip to Q13**

**[Q12] If you did join a Legal Disciplinary Practice (LDP) in the next five years, would you be more likely to work only within the LDP, or to also work in self-employed practice (in a dual role)?**

Please mark an X in one of the boxes below

	Tick
Would work only within the LDP	
Would also work in self-employed practice (in a dual role)	
Don't know	

**[Q13] To what extent would the ability to conduct [litigation](#) within a BSB regulated [LDP](#) influence your decision to join one in the next five years?**

Please mark an X in one of the boxes below

	Tick	Route
A lot		<i>Go to Q14</i>
A little		<i>Go to Q14</i>
Not at all		<i>Please skip to next page</i>
Not sure		<i>Please skip to next page</i>

**[Q14] You mentioned the ability to conduct litigation within a BSB regulated LDP is likely to influence your decision on whether or not to join one in the next five years.**

**If BSB regulated [LDPs](#) offered barrister members the opportunity to conduct litigation how likely would you now be to join one in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

### **Alternative Business Structures (ABS)**

It is anticipated that the Alternative Business Structure (ABS) regime under the Act will be implemented by October 2011. It is expected that [Approved Regulators](#) will apply to become [Licensing Authorities](#) in order to licence and regulate ABSs. ABSs will be able to provide a mixture of legal and other services. In such entities, lawyers would be permitted to work as partners and owners alongside non-lawyers. An essential feature of ABSs as defined by the Act is that they must have at least one non-lawyer manager or owner.

The BSB has not yet decided that barristers should be permitted to become employees, [managers](#) or owners of ABSs. However, if the BSB were to permit this, the range of such entities in which barristers could participate could potentially include, for example:

- A set of chambers setting up as a company and taking its clerks or practice manager into the management;
- A multi-disciplinary partnership between solicitors, barristers and other professionals, perhaps to provide a one-stop shop for consumers for certain related issues e.g. family law solicitors and barristers working alongside accountants or probate, accountancy and funeral services being offered from the same ABS;
- A law firm/chambers converting itself into a public company and issuing shares;
- A major insurance company or supermarket offering legal services direct to clients.

The SRA has made its intention to become a Licensing Authority clear. It is anticipated that the SRA will permit ABSs in a reasonably broad sense, in line with what is permitted under the Act. It is possible that other regulators will also seek to become Licensing Authorities. The BSB will consult on the issue of what role barristers should be permitted to play in ABSs.

The BSB will also consider whether it should seek to become a Licensing Authority under the Act. This would allow the BSB to regulate ABSs within its own rules and guidelines, which might allow it to specify conditions on management or ownership and services that could be provided.

An ABS could be used as an adjunct to Chambers in the same way as a BOE could be used for this purpose. The BSB is also considering whether barrister members of an ABS should be permitted to conduct litigation.

**[Q15] If it were available, how likely would you be to join an Alternative Business Structure (ABS) regulated by the BSB in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

**[Q16] And if it were available, how likely would you be to join an Alternative Business Structure (ABS) regulated by another regulator in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

**Please answer Q17 if you ticked 'Very Likely' or Fairly likely' to Q15 or Q16, otherwise please skip to Q18**

**[Q17] If you did join an [Alternative Business Structure \(ABS\)](#) in the next five years, would you be more likely to work only within the ABS, or to also work in self-employed practice (in a dual role)?**

Please mark an X in one of the boxes below

	Tick
Would work only within the ABS	
Would also work in self-employed practice (in a dual role)	
Don't know	

**[Q18] To what extent would the ability to conduct [litigation](#) within an [ABS](#) influence your decision to join, or not join an ABS in the next five years?**

Please mark an X in one of the boxes below

	Tick	Route
A lot		<i>Go to Q19</i>
A little		<i>Go to Q19</i>
Not at all		<i>Please skip to Q20</i>
Not sure		<i>Please skip to Q20</i>

**[Q19] You mentioned the ability to conduct litigation within an ABS is likely to influence your decision on whether or not to join one in the next five years.**

**If ABSs offered barrister members the opportunity to conduct litigation how likely would you be to join an [ABS](#) in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	



**[Q20] If ALL of the following options were available and you were permitted to conduct litigation in all of the structures set out in the options, which THREE would be most appealing to you? (please tick up to three)**

**In the online survey the answer categories are randomised.**

Please mark an X in up to three boxes below

	Tick
Self-employed practice	
Employed practice	
<a href="#">Barrister Only Entity</a> , regulated by the BSB	
<a href="#">Legal Disciplinary Practice</a> , regulated by the BSB	
<a href="#">Legal Disciplinary Practice</a> , regulated by another regulator	
<a href="#">Alternative Business Structure</a> , regulated by the BSB	
<a href="#">Alternative Business Structure</a> , regulated by another regulator	

**[Q21] If you were considering becoming a [manager](#) of any new business structure, how important would you consider it for that structure to be regulated by the BSB?**

Please mark an X in one of the boxes below

	Tick
Very important	
Fairly important	
Neither important nor unimportant	
Fairly unimportant	
Very unimportant	
Don't know	
I would not consider becoming a manager or owner of any new business structure	



## Public Interest

Having had regard to the issues explored in the previous questions, we are keen to know your views on whether or not, as a matter of public interest the BSB should regulate new business structures.

**[Q22] In principle, do you agree or disagree that it is in the public interest for the BSB to regulate new business structures?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

## Conduct of litigation

The Act also creates the need for review of the services that barristers are permitted to provide.

Under the Bar's current rules, barristers in self-employed practice are not allowed to conduct litigation, though employed barristers are permitted to do so, and barristers are able to do so as managers of [Legal Disciplinary Practices](#) (LDPs) regulated by the SRA. Until very recently the prohibitions in the Code were wider than the narrow range of steps that legally constitute the conduct of litigation, which, for example, includes the formal issuing of proceedings, but excludes the conduct of correspondence related to litigation. The Board's decisions in November 2009 to relax the rules concerning correspondence, collecting evidence and interviews at police stations remove some, but not all, of the rules prohibiting barristers in self employed practice from offering services which have traditionally only been undertaken by solicitors. These rule changes were approved by the LSB on 31 March 2010 (further information can be found on the LSB's website at [http://www.legalservicesboard.org.uk/what we do/regulation/applications.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm)).

More radical steps, on which no view has yet been taken, is whether it could also be in the public interest to permit barristers within [Barrister Only Entities](#) (BOEs), any other entities the Board might regulate and also self-employed barristers, to conduct litigation without any restriction. Such steps could raise fundamental questions about the Bar's remaining a separate profession specialising in advocacy. Nevertheless, it would help us to know the likely take-up of BSB regulated entities in which barristers could conduct litigation as well as advocacy and specialist advice, as well as the level of interest among self-employed barristers in being able to do so.

**[Q23] Do you agree or disagree that barristers should be permitted to conduct litigation in entities regulated by the BSB?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

**[Q24] Do you agree or disagree that self-employed barristers should be permitted to conduct litigation?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

## Public Access

It has been suggested that in light of new business structures, where barristers could be working in partnership with solicitors, the restrictions on lay clients having direct access to barristers and on barristers conducting litigation through the Public Access Scheme should be reconsidered.

The LSB recently approved extensions to the Public Access Scheme, which allow certain barristers to be instructed directly by lay clients without the need for an instructing solicitor or other intermediary. There are a number of associated restrictions and safeguards and notably the scheme does not allow a barrister to carry out the functions of a solicitor; in practice, functions such as filing documents and communicating with the court must be completed by the lay client.

The recent extensions mean that publicly funded work is the main outstanding exception from the Public Access Scheme. This category of work was originally excluded from the scheme due to Legal Services Commission requirements. It has been suggested that this exclusion should be removed if the LSC contract terms can be renegotiated.

The LSB also recently approved changes to the Code of Conduct to allow barristers to undertake certain activities that they were previously forbidden from undertaking. This includes undertaking correspondence, attending police stations and collecting evidence and taking witness statements (further information can be found on the LSB's website at [http://www.legalservicesboard.org.uk/what we do/regulation/applications.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm))

### **[Q25] Do you agree or disagree that lay clients should be able to have direct access to barristers in all fields, subject to relevant provisions regarding training?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

**[Q26] Please use the box below for any further comments you would like to make on any of the business structures or issues discussed in the survey. If you do not have any further comments, please leave the box blank.**

**Finally, we just need to ask a few questions about yourself and your role. The information that you are asked to provide is collected to enable the BSB to meet its statutory duties to promote equality and eliminate discrimination. This data will assist the BSB in its analysis of the relationship between the issues covered in this survey and the demographic characteristics of barristers surveyed.**

**This information will assist the BSB in its equality impact assessment of the different options in relation to the regulation of entities. Please note that survey results are confidential and anonymous, they will only be analysed on an aggregated level.**

**[QD1] Which of the following areas of law do you practice in? If you practice in more than one area, please tick the area you practice in MOST often.**

Please mark an X in one of the boxes below

	Tick
Chancery/ Commercial Law	
Common Law	
Criminal Law	
Employment Law	
European Law	
Family Law	
Personal Injury and Clinical Negligence	
Public Law	
Other	

**[QD2] How long ago were you called to the Bar?**

Please mark an X in one of the boxes below

	Tick
Up to 3 years	
4 to 5 years	
6 to 10 years	
11 to 20 years	
More than 20 years	

**[QD3] How many barristers work in your chambers?**

Please mark an X in one of the boxes below

	Tick
Up to 20	
21 to 40	
41 to 60	
61 to 100	
Over 100	

**[QD4] Is the work you PERSONALLY do publicly funded, privately funded or a mixture of both?**

Please mark an X in one of the boxes below

	Tick
Predominantly publicly funded	
Mixture of publicly funded and privately funded	
Predominantly privately funded	

**[QD5] And is the work done by your chambers publicly funded, privately funded or a mixture of both?**

Please mark an X in one of the boxes below

	Tick
Predominantly publicly funded	
Mixture of publicly funded and privately funded	
Predominantly privately funded	

**[QD6] Are you...**

Please mark an X in one of the boxes below

	Tick
Male	
Female	

**[QD7] Do you have a child or children aged under 18?**

Please mark an X in one of the boxes below

	Tick
Yes	
No	

**[QD8] Please tick one of the boxes from the groups below to indicate your ethnic background**

Please mark an X in one of the boxes below

	Tick
<b>White:</b>	
White British	
White Irish	
Any other White background	
<b>Mixed:</b>	
White and Black Caribbean	
White and Black African	
White and Asian	
Any other Mixed background	
<b>Asian or Asian British:</b>	
Indian	
Pakistani	
Bangladeshi	
Any other Asian background	
<b>Black or Black British:</b>	
Black Caribbean	
Black African	
Any other Black background	
<b>Chinese/Other:</b>	
Chinese	
Other	
Prefer not to answer	





The Disability Discrimination Act defines a person as having a disability if he or she 'has a physical or mental impairment, which has a substantial long term, adverse effect on your ability to carry out normal day-to-day activities'. Long term means 12 months or more.

**[QD9]Based on this definition, do you consider yourself to have a disability?**

Please mark an X in one of the boxes below

	Tick
Yes	
No	
Prefer not to answer	

**Thank you for your time.**

**The results of this survey will be published once they have all been collected and analysed. The BSB will keep the profession informed as to when this is likely to be.**

**A consultation paper on entity regulation will also be published on the BSB website later this year.**

## CLERKS SURVEY: PAPER VERSION

### Introduction

Welcome to this survey on new business structures.

We have tested the survey and found that, on average it takes around 10-15 minutes to complete. This time may vary depending on factors such as your internet connection speed and the answers you give.

We have included a glossary of terms which may be unfamiliar. Any word in the survey that has a hyperlink is linked to the glossary. Just click on the link, and the glossary will open in a new window.

### [Q1] Which of the following best describes your practice?

Please mark an X in one of the boxes below

	Tick
Self-employed barrister – member of chambers	
Sole practitioner	
Barrister employed by any <a href="#">authorised person</a>	
Other employed barrister	
Clerk or practice manager	

### Background to survey

The Legal Services Act 2007 ("the Act") creates the possibility of barristers participating in a number of new business structures, including becoming managers alongside other lawyers and non-lawyers, potentially in bodies that provide a mix of legal and other services. Clerks and practice managers may also join new business structures. It is vital that the BSB understands the likelihood of you becoming involved with any of these new structures and, if you do, whether you would prefer the BSB to be the regulator of that business structure.

The BSB also wants to gauge possible interest in further relaxations on the ways in which self employed barristers practise, including in relation to the conduct of litigation and public access, prior to considering whether such moves would be in the public interest.

The role that barristers should be able to play in new business structures has already been the subject of two consultations. These new structures are required by the Act to be regulated and the further question as to whether the BSB itself should regulate any new business structures is also still to be decided and will be the subject of a consultation to be launched later this year.

This question raises issues of fundamental importance to the future of the Bar as a separate and independent branch of the legal profession, specialising in advocacy and advice. The BSB is keenly aware of its responsibilities in relation to the regulatory objectives in the Act. In addition, the BSB must both protect the public interest in maintaining the independence and high standards of the Bar, and also allow the Bar to take



full advantage, consistent with the public interest, of the opportunities created by the Act to compete in the fast-changing market for legal services.

The purpose of this survey is to gauge the interest of barristers, clerks and practice managers in each potential new form of business structure, and to establish the importance that the profession would place on the BSB remaining its primary regulator in any new structures that are or may be permitted. It is important for the BSB to get as clear a picture as possible of what the profession wants and expects in the future, since there would be little point in the BSB undertaking entity regulation if it is not wanted or needed by those whom the BSB regulates.

**[Q2] How would you rate your CURRENT understanding of the new business structures which the Legal Services Act makes possible?**

Please mark an X in one of the boxes below

	Tick
Very good understanding	
Fairly good understanding	
Neither good nor poor	
Limited understanding	
Very limited understanding	

**[Q3] If you were considering becoming a [manager](#) of any new business structure, what other categories of professional would you be interested in becoming a manager or owner with? Please tick all that apply.**

Please mark an X in as many boxes as apply below

	Tick
Barristers	
Solicitors	
Other legal professionals	
Clerks or practice managers	
Other non-lawyers	
Don't know	
None of these	
I would not consider becoming a manager or owner of any new business structure	

The following questions are about various different business structures which may be permitted in the future. Please take the time to read through the information provided on each business structure.

Please note that the structures explained on the following pages are separate and in addition to the possible option of [ProcureCo](#).

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The Bar Council has suggested that BOEs could form adjuncts of traditional chambers of self-employed barristers, with individual barristers practising both as self-employed members of chambers on some matters and partners or managers of a BOE on other matters. This idea is likely to be explored in the next consultation that the BSB issues on entity regulation. If it were to prove feasible, a BOE adjunct might be owned and controlled by a set of chambers or by certain members of chambers, or could even be made up of barristers from a number of different sets of chambers. It might also be possible for a single set of chambers to have connections (through its members) to a number of different BOEs.

The BSB is also considering whether barristers in a BOE should be permitted to conduct litigation.

### **[Q4] How attractive do you think the Barrister Only Entity (BOE) model would be for your chambers?**

Please mark an X in one of the boxes below

	Tick
Very attractive	
Fairly attractive	
Neither attractive nor unattractive	
Fairly unattractive	
Very unattractive	
Don't know	

### **Legal Disciplinary Practice (LDP), regulated by the Solicitors Regulation Authority (SRA) or Council for Licensed Conveyancers (CLC)**

Since 31st March 2009 the SRA has been permitted to regulate entities managed by a mix of legal professionals with up to 25% non-lawyer managers and owners. These LDPs can be set up as partnerships, limited liability partnerships or public or privately limited companies, but can only provide [reserved legal services](#). They must also include at least one solicitor to be regulated by the SRA. Similarly, the CLC can regulate bodies made up of legal professionals and non-lawyer managers as long as they only provide reserved legal services and contain at least one licensed conveyancer.

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### **[Q5] How likely are you to join a Legal Disciplinary Practice (LDP) regulated by the SRA or CLC in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

### Legal Disciplinary Practice (LDP), regulated by the BSB

In the future the BSB might also seek to regulate its own form of LDP. These could be defined by the BSB, for example in terms of membership or function and could potentially be set up as a partnership, a limited liability partnership or a public or privately limited company.

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An LDP could be used as an adjunct to Chambers in the same way as a BOE could be used for this purpose.

### [Q6] If it were available, how likely would you be to join a Legal Disciplinary Practice (LDP) regulated by the BSB in the next five years?

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

### Alternative Business Structures (ABS)

It is anticipated that the Alternative Business Structure (ABS) regime under the Act will be implemented by October 2011. It is expected that [Approved Regulators](#) will apply to become [Licensing Authorities](#) in order to licence and regulate ABSs. ABSs will be able to provide a mixture of legal and other services. In such entities, lawyers would be permitted to work as partners and owners alongside non-lawyers. An essential feature of ABSs as defined by the Act is that they must have at least one non-lawyer manager or owner.

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- A set of chambers setting up as a company and taking its clerks or practice manager into the management;
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An ABS could be used as an adjunct to Chambers in the same way as a BOE could be used for this purpose. The BSB is also considering whether barrister members of an ABS should be permitted to conduct litigation.

**[Q7] If it were available, how likely would you be to join an Alternative Business Structure (ABS) regulated by the BSB in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

**[Q8] And if it were available, how likely would you be to join an Alternative Business Structure (ABS) regulated by another regulator in the next five years?**

Please mark an X in one of the boxes below

	Tick
Very likely	
Fairly likely	
Neither likely nor unlikely	
Fairly unlikely	
Very unlikely	
Don't know	

**[Q9] If ALL of the following options were available, which TWO would be most appealing to you? (please tick up to two).**

**In the online survey the answer categories are randomised.**

Please mark an X in up to two boxes below

	Tick
<a href="#">Legal Disciplinary Practice</a> , regulated by another regulator	
<a href="#">Alternative Business Structure</a> , regulated by the BSB	
<a href="#">Alternative Business Structure</a> , regulated by another regulator	
Remain in traditional chambers structure	



**[Q10] If you were considering becoming a [manager](#) of any new business structure, how important would you consider it for that structure to be regulated by the BSB?**

Please mark an X in one of the boxes below

	Tick
Very important	
Fairly important	
Neither important nor unimportant	
Fairly unimportant	
Very unimportant	
Don't know	
I would not consider becoming a manager or owner of any new business structure	

### Public Interest

Having had regard to the issues explored in the previous questions, we are keen to know your views on whether or not, as a matter of public interest the BSB should regulate new business structures.

**[Q11] In principle, do you agree or disagree that it is in the public interest for the BSB to regulate new business structures?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

## Conduct of litigation

The Act also creates the need for review of the services that barristers are permitted to provide.

Under the Bar's current rules, barristers in self-employed practice are not allowed to conduct litigation, though employed barristers are permitted to do so, and barristers are able to do so as managers of [Legal Disciplinary Practices](#) (LDPs) regulated by the SRA. Until very recently the prohibitions in the Code were wider than the narrow range of steps that legally constitute the conduct of litigation, which, for example, includes the formal issuing of proceedings, but excludes the conduct of correspondence related to litigation. The Board's decisions in November 2009 to relax the rules concerning correspondence, collecting evidence and interviews at police stations remove some, but not all, of the rules prohibiting barristers in self employed practice from offering services which have traditionally only been undertaken by solicitors. These rule changes were approved by the LSB on 31 March 2010 (further information can be found on the LSB's website at [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/applications.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm)).

More radical steps, on which no view has yet been taken, is whether it could also be in the public interest to permit barristers within [Barrister Only Entities](#) (BOEs), any other entities the Board might regulate and also self-employed barristers, to conduct litigation without any restriction. Such steps could raise fundamental questions about the Bar's remaining a separate profession specialising in advocacy. Nevertheless, it would help us to know the likely take-up of BSB regulated entities in which barristers could conduct litigation as well as advocacy and specialist advice, as well as the level of interest among self-employed barristers in being able to do so.

### **[Q12] Do you agree or disagree that barristers should be permitted to conduct litigation in entities regulated by the BSB?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

**[Q13] Do you agree or disagree that self-employed barristers should be permitted to conduct litigation?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

### Public Access

It has been suggested that in light of new business structures, where barristers could be working in partnership with solicitors, the restrictions on lay clients having direct access to barristers and on barristers conducting litigation through the Public Access Scheme should be reconsidered.

The LSB recently approved extensions to the Public Access Scheme, which allow certain barristers to be instructed directly by lay clients without the need for an instructing solicitor or other intermediary. There are a number of associated restrictions and safeguards and notably the scheme does not allow a barrister to carry out the functions of a solicitor; in practice, functions such as filing documents and communicating with the court must be completed by the lay client.

The recent extensions mean that publicly funded work is the main outstanding exception from the Public Access Scheme. This category of work was originally excluded from the scheme due to Legal Services Commission requirements. It has been suggested that this exclusion should be removed if the LSC contract terms can be renegotiated.

The LSB also recently approved changes to the Code of Conduct to allow barristers to undertake certain activities that they were previously forbidden from undertaking. This includes undertaking correspondence, attending police stations and collecting evidence and taking witness statements (further information can be found on the LSB's website at

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/applications.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm))



**[Q14] Do you agree or disagree that lay clients should be able to have direct access to barristers in all fields, subject to relevant provisions regarding training?**

Please mark an X in one of the boxes below

	Tick
Strongly agree	
Agree	
Neither agree nor disagree	
Disagree	
Strongly disagree	
Don't know	

**[Q15] Please use the box below for any further comments you would like to make on any of the business structures or issues discussed in the survey. If you do not have any further comments, please leave the box blank.**

**Finally, we just need to ask a few questions about yourself and your role. The information that you are asked to provide is collected to enable the BSB to meet its statutory duties to promote equality and eliminate discrimination. This data will assist the BSB in its analysis of the relationship between the issues covered in this survey and the demographic characteristics of barristers surveyed.**

**This information will assist the BSB in its equality impact assessment of the different options in relation to the regulation of entities. Please note that survey results are confidential and anonymous, they will only be analysed on an aggregated level.**

**[QD1] For how long have you worked as a clerk/practice manager**

Please mark an X in one of the boxes below

	Tick
Up to 3 years	
4 to 5 years	
6 to 10 years	
11 to 20 years	
More than 20 years	

**[QD2] How many barristers work in your chambers?**

Please mark an X in one of the boxes below

	Tick
Up to 20	
21 to 40	
41 to 60	
61 to 100	
Over 100	

**[QD3] And is the work done by your chambers publicly funded, privately funded or a mixture of both?**

Please mark an X in one of the boxes below

	Tick
Predominantly publicly funded	
Mixture of publicly funded and privately funded	
Predominantly privately funded	

**[QD4] Are you...**

Please mark an X in one of the boxes below

	Tick
Male	
Female	

**[QD5] Do you have a child or children aged under 18?**

Please mark an X in one of the boxes below

	Tick
Yes	
No	

**[QD9] Please tick one of the boxes from the groups below to indicate your ethnic background**

Please mark an X in one of the boxes below

	Tick
<b>White:</b>	
White British	
White Irish	
Any other White background	
<b>Mixed:</b>	
White and Black Caribbean	
White and Black African	
White and Asian	
Any other Mixed background	
<b>Asian or Asian British:</b>	
Indian	
Pakistani	
Bangladeshi	
Any other Asian background	
<b>Black or Black British:</b>	
Black Caribbean	
Black African	

Any other Black background	
<b>Chinese/Other:</b>	
Chinese	
Other	
Prefer not to answer	

**The Disability Discrimination Act defines a person as having a disability if he or she ‘has a physical or mental impairment, which has a substantial long term, adverse effect on your ability to carry out normal day-to-day activities’. Long term means 12 months or more.**

**[QD10]Based on this definition, do you consider yourself to have a disability?**

Please mark an X in one of the boxes below

	Tick
Yes	
No	
Prefer not to answer	

**Thank you for your time.**

**The results of this survey will be published once they have all been collected and analysed. The BSB will keep the profession informed as to when this is likely to be.**

**A consultation paper on entity regulation will also be published on the BSB website later this year.**

## 16 Glossary

### **Authorised person**

An individual or firm authorised by an approved regulator to undertake a reserved legal activity.

### **Regulatory Objectives:**

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

### **Licensing Authorities**

Approved regulators who have had their licensing rules approved by the Legal Services Board and are able to license Alternative Business Structures.

### **Reserved legal services**

These are specified in section 12 of the Act as the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths. All of these terms are defined in detail in Schedule 2 of the Act.

### **Litigation**

Under the Bar's current rules, barristers in self-employed practice are not allowed to conduct litigation, though employed barristers are permitted to do so, and barristers are able to do so as managers of Legal Disciplinary Practices (LDPs) regulated by the SRA. Until very recently the prohibitions in the Code were wider than the narrow range of steps that legally constitute the conduct of litigation, which, for example, includes the formal issuing of proceedings, but excludes the conduct of correspondence related to litigation. The Board's decisions in November 2009 to relax the rules concerning correspondence, collecting evidence and interviews at police stations remove some, but not all, of the rules prohibiting barristers in self employed practice from offering services which have traditionally only been undertaken by solicitors. These rule changes were approved by the LSB on 31 March 2010.

### **Managers**

This definition includes (a) a member of a body corporate whose affairs are managed by its members; (b) a director of a body corporate where (a) does not apply; (c) a partner; and (d) a member of the governing body of an unincorporated body. It could therefore cover a partner in a partnership, a member of an LLP and a director of a company.



**Barrister Only Entity (BOE)**

Partnerships, limited liability partnerships and companies in which only barristers are partners, directors or owners.

**Legal Disciplinary Practice (LDP)**

A precursor to Alternative Business Structures, an LDP is a firm offering only reserved legal services, with a limited proportion of non-lawyer owners. These firms have been regulated by the SRA and CLC since 31 March 2009.

**Alternative Business Structure (ABS)**

ABSs are defined in Part 5 of the Act as licensable bodies that provide reserved legal activities but where one or more of the managers or owners of that body are not authorised to carry on reserved legal activities in their own right. Examples could include firms in which the owners are a combination of lawyers (authorised persons such as barristers, solicitors and licensed conveyancers) as well as persons who are not authorised in respect of reserved legal activities (finance, HR and IT partners or other service providers such as estate agents) They could also include externally owned bodies such as a firm of lawyers owned by an insurance company or public shareholders.

**ProcureCo**

As proposed by the Bar Council, this type of entity would only procure legal services from others; it would not supply legal services itself and therefore is intended not to require regulation under the 2007 Act. A ProcureCo could enter into contracts with purchasers of legal services to procure the services of barristers, solicitors and potentially non-lawyers, such as police-station agents and paralegals, in order to provide clients with a full composite of services, including initial client contact, litigation, advice and advocacy. It is not possible for the BSB to state in general terms which arrangements would achieve these purposes.

**Approved Regulators**

A body entitled to regulate people undertaking Reserved Legal Activities (see section 20 of the Act). The Bar Council, the Law Society, the Council for Licensed Conveyancers, the Institute of Legal Executives, the Chartered Institute of Patent Attorney and the Institute of Trade Mark Agents are all Approved Regulators (see schedule 4 to the Act).