

**THE RESPONSE OF THE CHANCERY BAR ASSOCIATION
TO THE CONSULTATION ON THE PROPOSED NEW BAR BUSINESS MARK**

1. The first point that we would make is that consultation on the new Bar Business Standard was inadequate. We only learned of the consultation through the attendance of an officer of the Association at GMC on 18 June 2012, when the final proposals of the scheme were approved on limited notice by GMC. The consultation period expires on 29 June.
2. It is not acceptable for the Bar Council to “consult” by sending the material to a few selected consultees only and putting the material on the website. The consultation material was not sent to Heads of Chambers nor sent to the SBAs, at least not the civil specialist SBAs. We do not understand why not. Please ensure that all future consultations are sent to us.
3. We were unable to find a consultation paper as such on the Bar Council website, only the schedules comprising a series of standards, competencies, outcomes and examples of how to demonstrate compliance. It was only as a result of having the GMC paper at Annex 7 of the agenda of 18 June that we had any explanation of the material on the website.
4. As to this, we are concerned that a Bar-wide quality mark embraces a significant element of corporate entity business ethos (see Strategic Development and Operational Management standard, *passim*). A point we have made in our response to the BSB consultation on the BSB Handbook and Entity Regulation is that the traditional self-employed Bar, operating on the chambers model, is put at risk by treating sets of chambers as if they are indistinguishable from corporate entities providing legal services. The BSB’s proposals threaten the independence of individual members of chambers and could well have the effect of making it more difficult, and ultimately impossible, for barristers in the same chambers to appear against each other. If that were to happen, the substantial public benefit provided by the self-employed, chambers model of practice would be likely to be lost and the regulatory objectives would be prejudiced.
5. We make that point again here. The Bar Business Standard focuses to a substantial degree on business strategies for the advancement of chambers’ business: see, under the “Leadership & effective management improves the performance of Chambers” strategic competence, outcomes 1-3 and examples a) and e); under the “Business strategy for improving the performance of Chambers is clear, concise and understood by all” strategic competence, outcomes 2, 4 and 5 and examples b) and e); under the “Learning & development is planned to meet Chambers aims and objectives” strategic

competence, outcome 1; under the “Vision/Mission/Values” strategic competence, outcomes 1, 2 and 6 and examples a), b), c) and f), and under the “Continual review of performance to deliver improvements to services” strategic competence, example k).

6. These overall business strategies for chambers clearly impinge on the independence of self-employed practitioners in chambers. Any client reading this material would struggle to understand how a barrister in chambers could appear against or in front of another barrister in the same chambers. That is a problem that already exists with certain clients, but it would be considerably exacerbated by the current proposals.
7. Of course, self-employed barristers can benefit from being in a successful set of chambers, but their participation in chambers’ activities is a matter of individual choice and discretion, not a requirement for obtaining the quality mark for sets of chambers at the Bar. Certainly they do not get involved in the standard of practice of other members of chambers or seek to benefit or obtain a benefit from the business success of other members, save to the limited and indirect extent of sharing of expenses. It is of paramount importance that that degree of independence is not prejudiced by a requirement to demonstrate a working together to achieve business success for chambers as a whole and seeking to achieve its “mission” or “vision”.
8. For this reason, we do not like the proposal to call the standard “the Bar Business Mark”. We do not like the fact that one of the core duties proposed by the BSB is that a barrister must “manage your business effectively”. Most barristers regulated by the BSB have a profession and a vocation, even a practice, but not a business. It is the strength of the current model of practice that barristers do not see themselves as businesses, unlike large law firms. Given the proposed transitional arrangements for introducing a replacement standard (paras 33-36 of the Paper before GMC), there is no reason for not maintaining the existing name “BarMark”.
9. Allied to the point we make above is a concern that the BSB’s regulatory approach will treat possession of the Bar Business Mark as a short cut to regulatory assessments that it will have to make under its proposed new regime of risk assessment and monitoring. We have heard it said that the BSB intends to treat possession of the Mark as a basis for treating a set of chambers as of low regulatory risk. That is inevitably likely to lead to the converse approach that absence of the Mark will be taken as some evidence that a set of chambers should be treated as a higher regulatory risk. Although some sets of chambers will want to obtain the new Mark, other sets should not be driven too obtain it for fear of being treated as a greater regulatory risk.
10. The origins of BarMark were a need to demonstrate to professional and lay clients that a set of chambers had appropriate systems in place to be dependable in the delivery of services to lay clients and be able to deal efficiently with professional or corporate clients. We understand why sets of chambers doing publicly funded or local

authority funded work need to have some indication of compliance with these requirements, and other sets wish to be able to demonstrate that. BarMark does therefore serve an important function. It should however be restricted to systemic and quality of service matters, and not become an indication of a successful, quasi-corporate business management and development.

11. This is particularly so as we are alarmed to note that the tenderers for assessing and auditing the new scheme have no experience of working with the Bar. With the best will in the world, we do not see how these assessors can possibly appreciate fully the subtleties of self-employed practice at the Bar, faced with corporate governance standards of the kind that have been produced. Parts of these standards, and most of the Strategic Development and Operational Management standard, demonstrate a lack of understanding of the importance of independence of practitioners in chambers, and yet the authors of these draft standards, the LPMA, are going to be partly responsible for training the assessors.
12. We therefore urge the Bar Council to think again about introducing a new Bar Business Mark by reference to the “strategic competencies” set out in the Strategic Development and Operational Management standard. It would be better to continue with BarMark using, essentially, the competencies and outcomes contained in the other draft standards, though subject to the following specific points on those standards.

Client Care standard. “Commitment to quality of service and client care”: We suggest that outcome 3 is re-written as “Overall responsibility for setting the standard for and monitoring Chambers’ client care is defined”. For many sets of chambers doing work that is not highly sensitive, lockable storage facilities are simply unnecessary. “Transparency of information on fees”: it is not always the case that clients can be, or wish to be, advised of the basis on which fees will be calculated before any work is undertaken. Some clients do not ask for “the best possible estimate of costs” before any work is undertaken, and in some circumstances this is unnecessary. The outcome is therefore too prescriptive. Outcome 4 (clients are advised of the basis on which charges will be made in the event of abortive work) is not understood as a prescriptive outcome. “Fair and effective complaints handling”: outcome 3 should refer to the Guidance issued by the BSB, not impose a prescriptive outcome that does not have regard to that Guidance, which in many respects qualifies what the outcome states.

Case Management standard. “Professional diary and casework management, etc.” The example in paragraph g) is rather obscure in referring to organising training for statutory and regulatory changes in this regard. “The service needs and expectations of professional and lay clients expectations are met [sic]”: outcome 1: how could a pupil or junior tenant in specialist chambers ever be offered for work if this outcome is to be met? This needs re-drafting. What are the “statutory and legislative requirements [sic]” referred to in outcome 5? “The business strategy for developing

barrister practices is clear and has measurable objectives”: delete the word “business” and delete outcomes 1-3, which are redolent of the business entity approach that is inappropriate. Further, example h), it is not chambers’ responsibility to train barristers in relation to regulatory changes and developments in the legal market. “Continual review of performance”. We doubt whether example b) is anything other than having practice management meetings. Is that what is meant or is there something more subtle than that?

Financial management. “Chambers’ financial affairs are properly managed, etc.”: example l) is not an example of the kind of financial management that should be relevant to obtaining the Mark, and the requirement for independent audit of accounts is a nonsense. No chambers accounts are audited; their accounts are prepared by accountants who rely on information provided by chambers. We are surprised that the draftsmen of the standards do not understand this, and it shows how their thinking is determined by corporate governance.

Human Resources and Pupillage. “Learning and development is planned and managed to achieve the objectives of Chambers”. This too is too corporate in its focus: this standard should limit itself to staff and pupils, not “the development of barristers to achieve the objectives of chambers”.