

**BSB consultation on litigation authorisation application fees**

Introduction

1. The new BSB Handbook will permit all barristers to apply to be authorised to conduct litigation. The Handbook comes into force on 6 January and the BSB expects to start considering applications for authorisation to conduct litigation from 22 January. This is a short consultation on the application fees which we intend to charge to applicants.
2. Applicants will be able to apply for authorisation to conduct litigation via the Barrister Connect website and will be able to pay online, via a payment screen.
3. We believe it is fair that individual applicants bear the specific cost of the application process rather than a small increase in the practising certificate fee, as this is an optional add on to the practising certificate authorisation and the cost should not be shared with those practitioners who choose not to make use of this process. We are currently consulting on this basis, although we do intend to keep the charging structure under review in the future if necessary.
4. This payment is intended to cover the procedural and administrative costs of considering an application. It is not a fee for authorisation to conduct litigation and will be payable whether the application is successful or not. The BSB will consider whether, from 2015-16 onwards, there should be an additional element of the practising certificate fee for those authorised to conduct litigation, based on its assessment of the risks and its experience of supervising litigation. There will be no such charge for 2014-15.
5. Further details about conducting litigation will be available on the BSB website by 6 January 2014, where we will also be publishing detailed guidance for applicants.

How to respond

1. If you wish to respond, please complete the response form at the end of this document and email it to:

professionalpractice@barstandardsboard.org.uk

Alternatively, you can post completed forms to:

Professional Practice

The Bar Standards Board

289-293 High Holborn

London

WC1V 7HZ

**The deadline for responses is Wednesday 15 January 2014.**

Application fees

1. The BSB has calculated what we believe to be a fair fee per application, reflecting the costs of the process of considering an application. We have based the fee on the anticipated staff resources required per application. These are discussed below.

**The BSB proposes that the application fee should be £90 per application.**

1. An application for authorisation to conduct litigation is intended to be a one-off event and, once authorised, a barrister will be authorised for the duration of their practice. Initially, ongoing authorisation to conduct litigation will be included in the general practising certificate fee, but this will be reviewed based on the BSB’s experience of regulating this activity.

**Q.1 Do you agree that the BSB should charge an application fee which reflects the administrative costs of processing applications for authorisation to conduct litigation?**

**Q.2 Do you agree that the fee proposed (£90) is reasonable?**

Background

1. The BSB has decided to remove the prohibition on self-employed barristers conducting litigation, after reviewing and assessing the risks involved. However, we have also taken into account evidence of the level of demand amongst the profession to be authorised to conduct litigation. We have considered evidence collected as part of a number of public consultations, less formal consultation with members of the profession, and by examining data collected as part of specific research exercises.

*Research, consultation and evidence*

1. The BSB has considered evidence collected as part of the following consultations:
* Regulating Entities (2010)
* Review of the Code of Conduct (2011)
* New BSB Handbook and Entity Regulation (2012)
1. BSB consultation documents and reports are available here: <https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/>.
2. Additionally, we have considered evidence collected as part of the following pieces of research, which included questions on conducting litigation:
	* [Survey on Bar Standards Board Regulation of New Business Structures (2010)](https://www.barstandardsboard.org.uk/media/1087321/bsbbusinessstructuressurvey2010.pdf)
	* [The Biennial Survey (2011)](https://www.barstandardsboard.org.uk/media/1385164/barristers__working_lives_30.01.12_web.pdf)
	* [Bar Barometer: Trends in the profile of the Bar (2012)](https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf)
3. We have also undertaken specific research on barristers’ interests in participating in entities and conducting litigation in that context (questionnaire sent to a sample of the Bar, 2013).
4. We have taken into account the evidence from these consultations and research exercises in calculating estimates for the number of barristers who may wish to seek authorisation to conduct litigation.

BSB staff resources

1. The majority of the costs associated with the application process arise from staff time spent assessing and processing applications, in addition to sampling evidence and updating records. The following is a summary of the work we expect to be required to process applications.

*Assessing applications*

1. BSB staff will check the details entered by applicants on the application form and make an assessment of the extent to which an applicant meets the criteria for authorisation.
2. Applicants are expected to self-assess the suitability of their skills, knowledge and experience of litigation to enable them to conduct litigation, as well as checking that they have appropriate systems and procedures in their place of practice, and know how to make use of them.
3. Following receipt of an application, BSB staff will spend time checking the mandatory and discretionary authorisation criteria. These checks will normally include:
* Practising status and number of years’ standing;
* ‘Qualified person’ details (where the applicant requires guidance in practice);
* Insurance;
* The completion of public access and/or litigation courses;
* Qualifications;
* Any prior authorisation to conduct litigation;
* The administrative and management systems in the applicant’s place of practice and the extent to which they are proportionate to the type and volume of litigation work anticipated.
1. Additionally, we propose that a proportion of applications will be subject to additional checks on a randomly sampled basis. We may ask for further evidence, and seek confirmation of the information provided in the forms (such as copies of policies and procedures for administrative matters, including absences from practice and case management). It may also involve some contact with applicants via telephone or email to check further details.
2. We propose to undertake simple random sampling of returned questionnaires, subject to the following adjustments:
* A higher percentage of early applications will be sampled, which will help us to identify risks at the earliest opportunity;
* A higher percentage of applications from individual barristers who are the only individual in their Chambers authorised to do litigation may be sampled, because we identify specific risks in this model of practice.

*Records and updating*

1. BSB staff will need to update records and take other necessary administrative steps, following consideration of an application. This includes communicating with the applicant, including notifying them of the result of the application; revising and issuing a new practising certificate; updating the Barristers’ Register; updating BSB’s records for the place of practice.

*Supervision*

1. We intend that the application process for conducting litigation will dovetail with the BSB’s new approach to supervision (see this summary for further details of the supervision strategy: <https://www.barstandardsboard.org.uk/media/1543147/bar_standards_board_supervision_strategy.pdf>).
2. Litigation will be a new service provided for the first time (at least by self-employed barristers) and as such we expect to treat it initially as a high risk area of practice for supervision purposes, until we have collected more extensive data on the risks. We anticipate that practices which conduct litigation may create additional demand for our supervision resources, including staff time. If this proves to be the case, the BSB will consider introducing an additional element in the practising certificate fee for those who intend to undertake the conduct of litigation. Initially, however, there will be no additional authorisation fee.

**CONSULTATION RESPONSE FORM:**

**BSB consultation on litigation authorisation application fees**

**About you**

**Name:**

**Contact details:**

**Are you responding on behalf of an organisation (if so, please provide details)?**

**Are you content for your response to be made public?**

**Do you intend to apply to conduct litigation?**

**Q.1 Do you agree that the BSB should charge an application fee which reflects the administrative costs of authorisation to conduct litigation?**

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**Q.2 Do you agree that the fee proposed (£90) is reasonable?**

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