



28 March 2012

Our ref: ICAEW Rep 44/12

Mr Chris Kenny
Chief Executive
Legal Services Board
7th Floor
Victoria House
Southampton Row
London WC1B 4AD

Dear Chris

Request for Advice; proposed Changes to the operation of the Bar Standard's Board Code of Practice - the Cab Rank Rule

ICAEW welcomes the opportunity to respond to your *Request for Advice* dated 25 January 2012, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

Our comments and response are contained in the Appendix to this letter.

Yours sincerely

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Chief Executive

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APPENDIX

1. The Cab Rank Rule itself is a fundamental and successful building block of the legal system in England and Wales, and its benefits for consumers and practitioners alike should be retained.
2. The current arrangements for payment of counsel fees appear anachronistic and it is disappointing that agreement for review could not be reached by the parties over the years. The current proposals, whilst not perfect, are at least a step in the right direction.

Question 1

The New Contract Terms – the original proposed terms and revised terms received from the BSB are on the LSB's website (see link in footnote). We would be interested in your views on whether it is appropriate for such Terms to be included in regulatory arrangements. Is there anything in particular (either in the terms themselves or the proposed way in which they would be applied) that the LSB should consider in relation to the impact on consumers, solicitors, other lawyers and alternative business structures of introducing such terms in conjunction with the Cab Rank Rule?

3. ICAEW has no difficulty with the concept of incorporating the New Contract Terms (NCT) as part of a suite of regulatory provisions. We believe it is in the interests of justice that professionals properly instructed should have an entitlement to sue for unpaid fees on clear terms.

Question 2

Bearing in mind the regulatory objective to promote competition in the provision of legal services, are there any competition concerns raised by the principle of having standard terms and/or the way in which these particular terms are drafted and/or their application in conjunction with the Cab Rank Rule?

4. ICAEW sees no competition issues of concern in how the NCT are drafted. These are not compulsory terms. A solicitor and barrister can;
 - accept the NCT in which case the cab rank rule will apply
 - accept a barrister's bespoke terms in which case the cab rank rule will apply
 - negotiate their own arrangements, which if successful will result in an adequate alternative to the cab rank rule. Neither client nor solicitor will be disadvantaged as the solicitor will be able to use their barrister of choice.
5. The question therefore appears to be what happens if independent agreement cannot be reached but we are not aware of examples of this arising. To ensure they do not, we assume that the BSB will have ability and mechanisms in place to review barristers' bespoke terms if they operate as a barrier to competition and operation of the Cab Rank Rule in practice. Provided these mechanisms exist then we see no reason why the proposals cannot be introduced for the reasons, and with the monitoring proposals, set out in our response to Question 4 below.

Question 3

The impact on individual solicitors and their clients of being put on the List of Defaulting Solicitors and whether that impact is proportionate. Are there any issues concerning the process for putting solicitors on, and removing them from, the List of Defaulting Solicitors that we should take into consideration?

6. Firms that do not pay bills incurred in professional practice are potentially more of a problem for the administration of justice than the proposed action of the Bar Standards Board. In our opinion the operation of the NCT linked to the cab rank rule may operate to discourage such practices and instead allow those operated on sounder footings to fill gaps created, with consequent benefits for the administration of justice and consumer access to it.
7. As far as individual clients are concerned, individuals within firms do not work in isolation. A problem with one client is likely to be replicated across the firms and/ or can be drawn out at the investigative stage. We do not consider individual firm clients are unduly prejudiced by decisions made in the context of the whole firm for the reasons set out in the preceding paragraph.
8. Furthermore, a defaulting solicitor appearing on the proposed List of Defaulting Solicitors can **still** instruct barristers if specific agreement is reached which is quite different to current arrangements with the Withdrawal of Credit Scheme. If there are extenuating circumstances then they can be identified.

Question 4

Whether, and how, the proposed change improves barristers' ability to resolve disputes about payment taking account of the existing mechanisms for resolving such disputes that are currently available to barristers, and whether it is a proportionate way to achieve this outcome.

9. Current arrangements for resolving disputes appear unsatisfactory. Given this issue has been unresolved for a number of years, then it may be better to introduce something that;
 - will change the current and unsatisfactory status quo, and
 - more closely reflect the commercial realities with the advent of ABS
10. And then monitor the results with a view to refining and introducing suitable arrangements to apply across future ABS regulated by other regulators at a later date.
11. If law firms instruct accountancy firms or vice versa, then there are simple and legitimate contractual expectations that fees will be met. We do not see why this expectation should continue to be denied to the Bar, although we sympathise with the LSBs position in having to navigate the issue without an adverse impact on the Cab Rank Rule.

Question 5

Whether there are any particular aspects of the proposed change in addition to those highlighted above that the LSB should consider.

12. Accountants routinely instruct barristers direct, however we are not aware of difficulties raised by members of the Bar concerning non-payment of fees. We do not know whether this is a result of

the smaller numbers involved compared with solicitors, or whether it is due to differences in financial management.