

Approving rule changes and issuing Directions – Solicitors Disciplinary Tribunal

Law Society Response to the Legal Services Board's Consultation

1. This is the Law Society's response to the LSB's consultation on the way it proposes to exercise its powers under Section 178 and 179 of the Legal Services Act concerning approval of rules made by the Solicitors Disciplinary Tribunal, and issuing directions to the Tribunal.

Rule Changes

2. The Law Society recognises that formal rules made by the Solicitors Disciplinary Tribunal will require the approval of the Legal Services Board. However, other aspects of SDT's arrangements – potentially including practice directions governing the procedure of the Tribunal – do not require the approval of the Board.
3. This response concentrates on the appropriate procedure for those matters which do require formal approval of the Legal Services Board.
4. In the Law Society's view, the Solicitors Disciplinary Tribunal should have a considerable amount of latitude to determine the rules concerning SDT proceedings. We think it would be quite wrong for the Legal Services Board to second guess the SDT as to whether rules proposed by the SDT are (in the LSB's view) the best way of complying with the regulatory objectives. Indeed we consider that for the Legal Services Board to take such an approach would be inconsistent with its duty under section 49(4) of the Act.
5. Accordingly, the Society believes that the approach the Legal Services Board should take should be to consider:-
 - Whether the proposed rules fall properly within the Tribunal's rule making power.
 - Whether the Tribunal has consulted properly with relevant interested parties – in the circumstances of the SDT, this will primarily mean the SRA (as prosecuting authority) and the Law Society (as professional body for solicitors).
 - Whether the approach proposed in the draft rules comes within the reasonable range of decisions for the Tribunal to reach on the issues concerned.
6. If the proposed rules satisfy those tests, the Legal Services Board should approve them.

Directions

7. The Legal Services Board also consults on its interpretation of the question of whether the Tribunal has failed to "perform any of its function to an adequate standard." We agree with the Legal Services Board that this issue is best

dealt with primarily by reference to the Memorandum of Understanding which the Tribunal has agreed with the Law Society and LSB.

29 October 2010