

By email only (under s203 of the Legal Services Act 2007)



**LEGAL SERVICES
BOARD**

The Chief Executive's Office
Legal Services Board
One Kemble Street
London
WC2B 4AN
T 020 7271 0050
F 020 7271 0051

www.legalservicesboard.org.uk

Paul Philip,
Solicitors Regulation Authority,
The Cube,
199 Wharfside Street,
Birmingham,
B1 1RN

28 October 2015

Dear Paul,

Warning notice issued pursuant to paragraph 21(1)(b) of Part 3 of Schedule 4 to the Legal Services Act 2007

This warning notice given to The Law Society informs the Solicitors Regulation Authority (SRA) that the Legal Services Board (LSB) is considering whether to refuse part of the SRA's application submitted on 16 September 2015 seeking approval for certain alterations to its Authorisation Rules. The words used in this notice have the meanings given to them in the Legal Services Act 2007 (the Act).

The LSB has decided to consider further the SRA's proposals to remove regulatory arrangements from its Authorisation Rules 2011: 4.2 and 22.1(a)(iii). The removal of rule 4.2 will mean that a licensable body seeking authorisation will no longer need to state the reserved legal activities for which it is seeking authorisation. The removal of 22.1(a)(iii) will mean that a body can no longer have its authorisation suspended or revoked if it fails to satisfy the SRA of its intention to carry on the legal activities for which it is authorised. The net effect of the removal of these rules is that a licensable or authorised body will be able to apply for SRA authorisation without any intention of carrying on reserved legal activities. The SRA noted in its application that the alteration "may encourage some existing providers of legal services who carry out non-reserved legal activities only and do not have to be regulated to enter regulation for the first time."

Having considered the application and the subsequent information received from the SRA, these proposed changes continue to raise questions for the LSB and as a result we are considering refusing the proposals under the refusal criteria in Schedule 4, Part 3 of the Act. Of particular bearing with respect to the changes proposed is whether:

- Granting the application would be prejudicial to the regulatory objectives, including, protecting and promoting the public interest, protecting and promoting the interest of consumers

- Granting the application would be contrary to the public interest
- Granting the application would be contrary to any provision made by or by virtue of the Act or other enactment

Our concerns include, but are not limited to, whether enabling providers of non-reserved legal services (for which there is no statutory requirement to be authorised) to choose to become authorised can amount to a proper exercise of regulatory functions, whether the effect of the proposals is to introduce accreditation rather than authorisation, and if it has a potentially detrimental impact on consumers and the public interest.

Widening of regulatory coverage and legality

The making available of authorisation by the SRA to firms undertaking non-reserved legal activities only and with no intention of undertaking reserved legal activities, whatever the SRA's intentions, could be seen as a significant shift in the regulation of legal services. The LSB must consider if it has the legal authority to facilitate the regulation of legal services that do not currently need to be regulated under the Act. The LSB also needs to ask itself if, through approving the alterations, it is implementing a substantive policy that ought instead to be the subject of public debate and primary legislation.

Accreditation and legality

In its response of 13 October 2015 to questions the LSB asked as part of its clarification of the application, the SRA acknowledged that a driver in "a firm's decision to seek authorisation may well be because the firm sees commercial or other reputational benefit in being able to show that it meets the SRA standards required to carry on reserved legal activities", even if it ends up not carrying on reserved legal activities. The LSB needs to consider further whether this will create a form of voluntary accreditation scheme. Accreditation schemes are typically operated by representative bodies, and do not form part of a regulatory body's regulatory arrangements.

Impact on consumers and public interest

The SRA in authorising firms not undertaking reserved legal activities will afford consumer protection to clients using those firms. However, if the cost of regulation is ultimately passed to the consumer, the LSB must consider whether it is in consumers' interest for firms that do not need to be authorised to be subject to a regulatory framework for which there is a cost. The proposed changes could risk, therefore, being prejudicial to the regulatory objectives of protecting and promoting the public interest and protecting and promoting the interests of consumers.

Rule 4.3 of the Authorisation Rules

The SRA also proposed amendments to simplify Rule 4.3 of the Authorisation Rules so that it would state that the SRA may grant an application (for authorisation) in relation to one or more reserved activities. While this particular alteration does not raise the questions prompted by the deletion of 4.2 and 22.1(a)(iii), the alteration is also not approved at this time because it is dependent on a decision on the alteration to 4.2.

Warning notice process

In raising the issues with respect to rules 4.2 and 22.1(a)(iii), the LSB has not come to a conclusion on whether to refuse the proposed alterations. We need to give the matters further consideration, using the warning notice process, and may seek advice from bodies that have an interest or relevant expertise.

The effect of the warning notice is to extend the decision period in which the LSB can consider the application. Paragraph 26(3) of Schedule 4 to the Act provides that the Board has a period of 12 months from the date of your receiving this warning notice to continue considering the proposed rule change. The decision period will therefore expire on 27 October 2016. While the decision period has been extended by 12 months, the LSB would aim to conclude its deliberation before then, subject to proper and full consideration of all the issues.

A copy of this letter has been sent to the Law Society.

Yours sincerely



Caroline Wallace

Director of Strategy

Acting under delegated authority granted by the Board of the Legal Services Board

cc Catherine Dixon, Chief Executive, The Law Society
Enid Rowlands, Chair, Solicitors Regulation Authority