



The Law Society

## **Response to LSB Consultation:**

### **Statement of policy: section 15 (4) of the Act**

November 2015



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**Introduction**

1. This response has been prepared by the Law Society of England and Wales ("the Law Society").
2. The Society notes that LSB is able to make regulatory policy statements under s49 of the Act providing it consults on the content of such draft statements. It is useful for the Society to see LSB's thinking in relation to the high level principles which it sets out and which LSB is likely to use in determining its position in relation to certain regulatory arrangements.
3. The Society appreciates that this work stems from LSB's discussion paper earlier this year and that it is focussing on s15 of the Act: restrictions around practice related to employees of non-authorised bodies undertaking reserved legal activities.
4. The Society notes the timing of this exercise, ahead of the SRA's and BSB's own consultations on in-house regulation and that the content of the statement is timely in that context.
5. The Society understands that in its statement, LSB is reporting that its previous analysis suggests that regulation under s15(4) is inconsistent between regulators. LSB's statement reiterates principles designed to make clear what it will consider when looking at applications to amend s15 of the Act (ahead of the upcoming SRA and BSB reviews aimed at doing that). Those principles make clear that such applications to amend should:
  - Be evidence based, having assessed the need for action. The latter should particularly address the need for regulatory restrictions on in-house lawyers.

- Address ‘consequential effects’ on wider regulatory arrangements.
- Assess any impact on consumers, for example balancing access to justice with mitigating risks around consumer detriment.
- Be consistent, to aid consumer understanding, across all regulators and as it affects both in-house and independent lawyers.

**The Society’s reponse to the detail contained within the statement.**

6. The Law Society is broadly content with the thrust of LSB’s draft statement of policy relating to the regulation of in-house lawyers and is happy to submit its considered response to it. The Society values proper targeted and consistent regulation which reduces unnecessary burdens for its members and provides clarity for consumers. Any changes to specific regulatory arrangements should be evidence based, properly impact assessed and clear. The Law Society has already been engaged in analysis and dialogue aimed at obtaining clarity around the regulation of in-house lawyers, not least in relation to how it may currently restrict them from undertaking pro bono work. LSB’s statement usefully sets the tone for the regulators’ own imminent review of these arrangements.

**Specific comments in relation to LSB principles for assessing regulatory arrangements that pertain to section 15 (4) of the Act.**

*The approach taken to rules pertaining to section 15(4) is evidence based*

7. There is no reason for in-house practitioners to be treated any differently from practitioners in firms. We can therefore see the value of regulators needing to be able to justify placing restrictions on in-house lawyers providing unreserved legal services.

*Rules that pertain to section 15(4) have been considered in light of wider regulatory arrangements*

8. The Society supports the consideration of all rules within the wider regulatory context in order to achieve a consistency of rule making which in turn leads to a better understanding of professional obligations within the profession.

***The impact on consumers of any rules that pertain to section 15(4) of the Act has been assessed***

9. The Society has always maintained that it is important that consumers have choice in an open and level market and that they should be adequately protected. It is also in the public interest for there to be a robust and open competitive legal services market where standards are clear consistent and enforced and are not eroded by exceptions.

***Consistency in approach to regulating in-house lawyers has been considered***

10. The Society supports the view that there should be consistency in regulating in-house lawyers between all the regulators. As we stated in our response in April, it is well recognised that in practice the distinction between professional qualifications is barely recognised in in-house practice. Assuming that a lawyer has achieved the relevant level of qualification to do the work, the circumstances in which he or she is permitted to undertake it should not differ whilst not setting new or separate standard from the rest of any regulated community in relation to the activity in question.
11. In this regard, the Society also notes that in-house lawyers are not in any way precluded from practising in ways those in independent practice can; they simply have to create the right business structure to practise from, for example an ABS. This would support our view that by following that existing regulatory framework it is possible to achieve consistency across the board in the way that solicitors in private practice and those in-house are regulated.