

The logo for Which? is a red square with the word "Which?" in white, bold, sans-serif font. The question mark is slightly larger and more prominent than the word.

Which?, 2 Marylebone Road, London, NW1 4DF

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Consultation Response

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Legal Services Board Consultation on the Chairs of Regulatory Bodies

Which? welcomes the opportunity to contribute to the LSB's consultation to require the Chair of (applicable) Approved Regulators to be a lay person. Our response is brief as we take a simple and principle based position to the key question - should the chair of any regulatory body responsible for discipline and standards be a lay person? In all circumstances, our answer is yes.

About Which?

Which? exists to make individuals as powerful as the organisations they deal with in their daily lives. We began life in a garage 56 years ago as a volunteer organisation committed to providing expert and impartial advice. We are now the largest consumer body in the UK with almost 800,000 members. We have kept our independence and now operate as a group social enterprise whose growing work on behalf of all consumers is funded solely by our commercial ventures, unlike nearly all well-known charities. We receive no government money, donations from the public, or any other fundraising income.

In the period from 2005-2009, we worked closely on the reforms to the legal services market prompted by the Clementi Review that led directly to the Legal Services Act 2007 (LSA07). Since then, we have taken a less active role but have nevertheless contributed to a number of consultations flowing out of the LSA07; examples include those relating to the establishment of the Legal Ombudsman and the Ministry of Justice's Triennial Review of the legal services regulatory structure.

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Consultation response

Our answers to the questions posed in the LSB consultation document are:

1. Do you agree with the proposed change to the IGRs in order to deliver lay chairs?

Yes we do.

In a briefing note on the Legal Services Bill as long ago as 2007 we argued: *At the very least, the (Legal Services) Bill should require the regulatory arms of approved regulators to have lay chairs and lay majorities on their boards to ensure the independence of decisions, though we acknowledge that both the Solicitors Regulation Authority and Bar Standards Board have made strides to include lay representation. Lay representation is a key principle of regulation, which should be enshrined in the Bill, rather than left to the LSB¹.*

With the then National Consumer Council, we supported an amendment to the Legal Services Bill during the Bill's parliamentary passage in 2007 that would have achieved this. The amendment was rejected on the basis that, given the Bill proposed self-regulation within a statutory framework, this should be a matter for the LSB once it was established. This was despite the fact that the Government did agree that the chair of the LSB should always be a lay person and this provision was included in the LSA07.

When making regulatory decisions, in the event of a conflict between professional and consumer interests, consumers must have confidence that Approved Regulators will act in their interests. Given that the LSB is required to have a lay majority and chair for this reason, it has been inconsistent to not require the same arrangements for Approved Regulators since the Legal Services Act 2007 has been fully in force since 2010.

We therefore welcome that the LSB is now consulting to make this change. It will help ensure that the regulatory / representative split as required by Part 4 of the Legal Services Act 2007 is strengthened and the vision outlined by Sir David Clementi is further developed.

2. Do you think the proposed change should take immediate effect or only be applicable to future appointments?

We agree that a commitment by all applicable Approved Regulators to appoint a lay chair at the end of any current non-lay chair's term would be acceptable.

3. Do you agree that the requirement for lay chairs to apply only to the AARs?

For the reasons set out in the Consultation paper, we agree.

4. Do you agree with the proposed exclusion of the Master of Faculties from the proposed change?

For the reasons set out in the Consultation paper, we agree.

¹ Which?, Legal Services Bill, 2nd Reading Briefing (May 2007)