



RICS

REGULATION

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Via email: consultations@legalservicesboard.org.uk

19 February 2010

Dear Mahtab

Alternative business structures: approaches to licensing

I am responding on behalf of the Royal Institution of Chartered Surveyors (RICS) to the Legal Services Board's consultation on draft guidance to licensing authorities on the content of licensing rules.

The Royal Institution of Chartered Surveyors

RICS is the world's leading professional body on all aspects of land, property, construction and the associated environmental issues. An independent, not-for-profit organisation governed by Royal Charter, it regulates, represents and promotes over 160,000 Members in 120 countries worldwide.

The regulatory arm of RICS operates an arms-length, principles and risk-based regulatory regime which adheres to the five principles of better regulation. RICS currently regulates approximately 10,000 firms.

1. What is your view on basing the regulation of ABS on outcomes?

Consumers should be able to use legal services safe in the knowledge that they are adequately and appropriately regulated. RICS believe that outcomes-based regulation is a suitable vehicle for providing consumer protection.

In 2007 RICS removed its existing system of regulation and replaced it with principles-based rules supported by help sheets. The new system has proved to work well and the short, outcomes-focused rules have been easily understood by both practitioners and consumers increasing transparency of regulation.

It is easy for regulatory creep to return formerly principles-based regulation to detailed rules and requirements and this is something that should be kept under regular review. In some cases, what is referred to as principles-based regulation is actually shortened rules, with lengthy mandatory guidance meaning that there is little change for the consumer or firm. Where supporting guidance is used, this should offer guidance on best practise rather than creating additional requirements.





We agree that consumers should have consistent standards irrespective of which authority the ABS is licensed by and therefore all LAs should have the same core outcomes. Although it is appropriate to have separate outcomes or rules for individuals and entities, regulation of both should take place as part of a holistic process.

2. Do you think our approach to tests for external ownership is appropriate?

LAs should take a risk-based approach to external ownership of ABS. Other professionals who are appropriately regulated by their own bodies pose a much lower risk than non-regulated individuals and should therefore be subject to a lower level of checking, or excluded from checks provided their own regulatory body can confirm they are a member and have a clean conduct record.

3. Do you have views on how indemnity and compensation may work for ABS?

Firms should have the flexibility to obtain adequate and appropriate from the market, depending on the risk-level posed by their work and clients, providing that it meets consistent baseline standards. We do not believe that Master policy arrangements are appropriate for ABS.

We have serious concerns about which compensation fund would pay out in the event of a client having suffered a loss and the firm being supervised by several different regulatory bodies for different areas of work.

4. Do you agree with our position on reserved and non-reserved legal activities?

We agree that there is a need to collect better evidence on consumer perception of reserved and non-reserved legal activities and any detriment arising out of confusion surrounding their regulatory structures. To make a decision without this information would be premature.

5. Are the enforcement powers for LAs suitable?

We believe that there should be a suite of enforcement tools available to regulatory authorities to encourage firms and individuals back into compliance in the first instance ranging to powers to fine and expel in more serious or repeated cases. Whatever the enforcement method, it should be transparent and fair, which we do not believe is the case with unlimited fines considered on a case-by-case basis. A more appropriate approach would be to allow LAs to levy fines in accordance with a published sanctions policy.

In the case of non-legal work, MOUs should be in place to allow the relevant professional body to take disciplinary action, or for legal action to be taken in extreme cases.

6. What do you think of our approach to access to justice?

Generally, we think that ABS could allow greater consumer choice and access to justice, however a watching brief must be kept as the market develops.



As to the specifics of the proposals, the requirement for ABS applicants to explain how they will improve access to justice is burdensome, particularly as there is no such requirement for traditional firms.

7. What is your view of our preference for a single appeals body?

We agree with the LSB view on this matter.

8. Do you agree with approach to special bodies?

We agree with the LSB approach.

9. Do you think our approach to HoLP and HoFA is suitable?

In general we agree to the approach to HoLP and HoFA although would reiterate the comments made to question two, that individuals from other regulated professions should be treated as lower-risk than non-regulated individuals. The LSB should also consider allowing – but not requiring - firms to nominate a deputy HoLP and HoFA who can act in the primary individual's absence, or step in should they leave the firm. This would go some way towards preventing the situation whereby the LA has to appoint an emergency HoLP or HoFA.

10. Do you think that our approach to complaints handling is suitable?

We agree with the approach to complaints handling where there is purely offering a legal service, however the provisions for MDPs should be consumer-focused and dealt with by the most appropriate organisation – which may not be the OLC.

All firms should handle complaints initially through their internal complaints procedure; this should be performed in a timely manner and by an appropriate individual within the firm. If the complaint cannot be resolved internally, it should then be referred to the redress mechanism which is appropriate to that area of work. Firm's should be required to provide redress for consumers for each area of work which they are performing, which should be free to consumers at the point of access.

11. What are your views on our proposed course of action to conduct research and, depending on the results, either compel transparency or encourage it?

We agree with the need for better information in this area, but the collection of data must be performed in a sensitive manner. Employees should not be in the position of being required to provide sensitive personal information to their employer and the LA unless anonymity and confidentiality can be guaranteed.

12. Do you agree with our approach to international issues?

We agree with the approach in principle, but would caution that there are a number of practical issues to be considered before firms can trade internationally without compromising the reputation of the LA. The LA would need to ensure that the firm is appropriately insured for work undertaken, irrespective of geographical location, which can prove problematic in areas where equivalent cover is not available. There should also be appropriate redress available to consumers in the country and language in which they commissioned the work; again this may not be available in all jurisdictions. Failure to ensure adequate consumer protection overseas would bring the LA into disrepute.



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13. Should LDPs, Recognised bodies and other similar firms have transitional arrangements into the wider ABS framework in the way we propose?

We agree with the proposals of the LSB.

14. Should ABS licences be issued for indefinite periods?

We agree that licenses should be issued for indefinite periods, but that there should be means of suspending or revoking a license for disciplinary breaches or insolvency.

15. Do you agree with our approach to managing regulatory overlaps?

The consumer should receive adequate protection from ABS regardless of the service and generally won't care which regulatory body is ensuring protection, as long as it is effective. On that basis a lead regulator should be nominated for the firm with other secondary regulators undertaking additional regulation of areas not covered by the primary. We do not believe that a single MOU can be effective in the numerous situations and business structures which exist current and may arise in the future.

I hope that the above comments are useful to you, but if you would like to discuss them further, please do not hesitate to contact me.

Yours sincerely

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