

## **ALTERNATIVE BUSINESS STRUCTURES; APPROACHES TO LICENSING**

### **RESPONSE BY THE SOLICITORS DISCIPLINARY TRIBUNAL TO THE CONSULTATION PAPER ISSUED BY THE LEGAL SERVICES BOARD**

1. This response is limited to that part of the Consultation Paper which deals with appellate bodies because this topic directly affects the tribunal. As a statutory tribunal, the SDT does not intend to comment on the other licensing issues raised in the Paper.
2. As the constitution and role of the Tribunal are not fully described in the Paper it may be helpful if this is briefly set out in this response.
3. The Tribunal's place in the existing regulatory framework is established by the Solicitors Act 1974 as amended. It is an independent body with its own premises and administrative staff. It has no links with the Law Society or the Solicitors Regulation Authority.
4. Members of the Tribunal are appointed by the Master of The Rolls for a three year term which can be renewed. There are currently 40 solicitor members and 20 lay members. The President is a solicitor. There are solicitor and lay Vice-Presidents who are elected by the members.
5. The main business of the Tribunal is to hear and determine applications by the SRA and occasionally other parties alleging misconduct by solicitors and others, to include registered foreign lawyers and recognised bodies, and their unadmitted employees. The task of the Tribunal is to determine whether the allegation is proved and if so to decide on penalty which may be to remove a solicitor's right to practice either permanently or temporarily or to impose a financial penalty or a reprimand. Solicitors may be prevented from employing in the future those employees whose misconduct has been found to be proved. This work cannot be categorised as appellate.
6. Parliament has increased the powers of the Tribunal in the Legal Services Act 2007 by providing that it may impose an unlimited financial penalty on solicitors or former solicitors. Further it is now empowered to hear appeals against disciplinary action taken by the SRA. This latter is clearly appellate work.
7. Appeals from decisions of the Tribunal are to the High Court and from there to the Court of Appeal. It is the decisions of these courts on matters of principle which provide the body of jurisprudence informing the work of the Tribunal.
8. Given appropriate resources, the SDT considers that it has the ability, infrastructure, experience and expertise to conduct the appellate work referred to in this consultation paper. The expansion of the work currently carried out by the SDT would result in a substantial saving of public expense over any other option.
9. The SDT considers that there would be a danger in creating a second limb of appellate jurisdiction which might give rise to uncertainty, overlap and risks of double jeopardy.

10. The SDT is not at present, as is suggested in paragraph 223, primarily an appellate body. It considers applications against solicitors and their unadmitted employees and others at first instance, although it also has an appellate jurisdiction.
11. The SDT has had a number of difficulties in responding to this consultation paper which fails to consider exactly what work is likely to fall to be dealt with by a “new” tribunal, how much work that will entail and what should be the appropriate level of tribunal. Whilst there are references to “all these appeals” being “heard by a single body”, there is no estimate provided as to the type, number or nature of such appeals. The paper also fails to define “all ABS related appeals” although it refers to the preferred outcome of having a single appellate body to hear all such appeals.
12. The paper also fails to define “all non-ABS matters” or “all legal service appeals”. Is it proposed that the tribunal hearing such matters should take on all the work currently dealt with by the SDT? If so, what future role is proposed for the SDT, given, in particular, the intention to give authorised regulators the power to impose unlimited fines?
13. Concern is felt at the matrix on page 63 which has little value in the absence of definitions of what it is describing. It is not understood why it is considered that there is a “Low” ability to attract and train high quality members if each licensing authority has its own separate appeals body. This does not apply to the SDT which not only has high quality members but also attracts them in abundance, over 1,200 applicants having recently applied for a small number of vacant positions.
14. A number of other criticisms of this matrix arise although, because this response is intended to be positive and helpful, those criticisms will not be paraded here but can be supplied.
15. Responding as best possible to the question which relates primarily to the work of the SDT, the SDT responds as follows:

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

- (a) Should, in the future, a single body hear all legal services appeals?

As previously stated, there is some doubt as to what is included in the term “all legal services appeals”. Subject to this comment, the SDT considers that with some limited expansion of its membership, it could take on ABS related appeals thereby achieving a significant saving in public expense. Were it to do so, this would be by far the most economical and efficient outcome, given the many years experience and expertise of its members and of the tribunal. The SDT’s results are of the highest standard and the tribunal has recently received the seal of approval of both Sir David Clementi and Lord Hunt. The Tribunal has been sitting, in its present format, for 36 years and prior to that sat for many years as a disciplinary committee. That knowledge and experience should not be lightly thrown away.

Question 7 (b), (c) and (d) – Not applicable.

16. Members of the SDT would be very willing to meet with members of the Board should the Board consider that a further discussion of the topic discussed above would be of assistance.