

**Question 1** – How might an independent regulatory arm best be “ring-fenced” from a representative-controlled approved regulator in the way we describe (i.e. requiring a delegation of the power to regulate processes and procedures; and the power to determine strategic direction)?

The Law Society agrees that regulatory arms should be entitled to determine their own strategic direction. The Law Society also agrees that they should be entitled to regulate their own processes and procedures, although there are some areas (see paragraph 13 of the response) where the Society considers it legitimate for approved regulators to set the framework for such decisions. In the Law Society’s case, ring fencing is achieved through the provisions in the General Regulations which delegate authority to the Solicitors Regulation Authority.

**Question 2** – What do you think of our proposals relating to regulatory board appointees, set out under paragraph 3.15?

The Law Society’s views on the Legal Services Board proposals relating to Regulatory Board appointees are set out in paragraphs 14-22 of the response. Broadly speaking, the Law Society agrees with the proposed requirements concerning appointment on merit; individual members of a Regulatory Board not representing particular constituencies; and the selection of members of Boards not being dominated by representative interests. But the Society disagrees that there should always be a majority of non-lawyers on appointment panels, or on Boards. Furthermore, the Society believes the approved regulator, rather than the regulatory arm itself, should manage the arrangements for appointments.

**Question 3** – Is it necessary to go further than our proposals under paragraph 3.15, for example by making it an explicit requirement for the chairs of independent regulatory boards/equivalents to be non-lawyers?

The Law Society is strongly opposed to the suggestion that there should be a requirement that the Chairs of a Regulatory Board should be non lawyers. Such a requirement would be wrong in principle, and cannot be justified in terms of the need to ensure independence from representative interests. A purported requirement of that sort would thus be ultra vires the Legal Services Board’s powers under the Act.

**Question 4** – Do you agree with our proposals in respect of the management of resources, including those covering ‘shared services’ models that approved regulators might adopt? What issues might stand outside such arrangements as suggested in paragraph 3.22?

The Law Society supports the proposition that where support services are provided on a “shared services” model, there should be demonstrably fair arrangements – on the lines on those set out in paragraph 3.22 – for determining any issues which arise. The Law Society’s approach to this is set out paragraphs 29-38 of the response. The Law Society believes that issues of major and continuing expenditure – such as major premises issues, pension provision, capital expenditure above a defined figure, and un-budgeted expenditure above a defined limit – should be subject to ultimate decision making by the

ruling body of the approved regulator. The Law Society recognises that such decisions will themselves be subject to oversight by the Legal Services Board.

**Question 5** – Is our proposed balance between formal rules and less formal (non-enforceable) guidance right? In what ways would further or different guidance be helpful?

The Law Society believes that the Legal Services Board should avoid undue prescription in the formal rules. The core principles – separation of representative from regulatory decision making; a duty on the approved regulator to provide adequate resources; and the right of the regulatory arm to report to the Legal Services Board wherever its independence or effectiveness is at risk – are set out in the Act. Little more formal elaboration of them is needed at this stage, particularly in the light of the Legal Services Board’s powers to issue directions. If experience suggests that it would be beneficial for more detailed rules to be made at a later stage, that option will remain available to the Legal Services Board.

**Question 6** – What are your views on our suggested permitted oversight role for representative-controlled approved regulators over their regulatory arms? Are practical modifications required to make it work?

The Law Society broadly supports the Legal Services Board’s view on oversight roles for approved regulators. However, the Law Society does not agree that monitoring and scrutiny of the regulatory arm should be carried out by a body containing a substantial number of members drawn from the regulatory arm which is subject to scrutiny.

**Question 7** – In principle, what do you think about the concept of dual self-certification?

The Society supports the concept of self certification by the approved regulator, but does not consider it appropriate for the regulatory arm – which is not directly responsible for making the arrangements – to certify compliance, bearing in mind the provisions ensuring in the Act that the regulatory arm will always be free to raise concerns with the Legal Services Board.

**Question 8** – If a dual self-certification model were adopted, how should it work in practice? Or would alternative arrangements be more appropriate, either in the short or longer term?

The Law Society considers that – unless the Legal Services Board has concerns about the reality of the regulatory arm’s independence from the professional body – additional verification will rarely be needed.

**Question 9** – Do you agree that the mandatory permitted purposes currently listed in statute should be widened to include explicit provision for regulatory objective (g), i.e. “increasing public understanding of the citizen’s legal right and duties”?

The Law Society agrees there should be explicit provision to permit practising fees to be used for work designed to increase public understanding of the citizen’s legal rights and duties.

**Question 10** – Should any other (general or specific) purpose be permitted under our section 51 rules?

The Law Society believes the promotion of access to justice should also be specified as a permitted purpose.

**Question 11** – What do you think about our proposal to seek evidence that links to the regulatory objectives in the Act?

The Law Society does not support the proposal to seek evidence that links to the regulatory objectives in the Act. We consider that to be unduly cumbersome so far as the sums required for regulation are concerned, and not relevant so far as the sums required for non regulatory purposes are concerned.

**Question 12** – What criteria should the Board use to assess applications submitted to it?

The Law Society does not consider the Legal Services Board will generally need to give detailed consideration to applications for practising fees. Unless the Board has concerns about the independence of the regulatory arm, it should generally endorse any sum in respect of regulatory needs which is supported by both the regulatory arm and the professional body. The Board must endorse the sums required for non regulatory purposes unless it considers them to be so large that they might have a significant regulatory impact.

**Question 13** – If they are adopted, what should Memoranda of Understanding between the Board and approved regulators contain? For approved regulators in particular, are there any particular implications for your organisations?

The Law Society supports the suggestion that there should be Memorandum of Understanding between the Legal Services Board and approved regulators. In the Law Society's case, we think this should cover the process by which the Council's decision on practising fees is taken, and the timetable on which the Board requires information, and the Law Society needs formal approval.

**Question 14** – Should there be a requirement on approved regulators to consult prior to the submission of their application each year – and if so, who should be consulted, and on what? Should there be a distinction drawn between approved regulators with elected representative councils or boards; and those which have no such elected body?

The Law Society considers that regulatory arms need to consult their regulated community before determining their requirements for resources. In the Law Society's case, the SRA discharge that requirement through consultation with the Law Society itself. There would be little benefit in adding a requirement for further consultation. The fees required for non regulatory purpose are determined directly by the Council, which is the elected representative body for the profession. Council members are themselves accountable to the profession. Again, there is no advantage in a requirement for further consultation.

**Question 15** – What degree of detail would be most appropriate to require when seeking to maximise transparency but be proportionate in terms of bureaucracy? Have we got the balance right?

The Law Society has a general concern that the proposed procedures are over-elaborate. The arrangements in section 51 of the Act were subject to virtually no debate throughout the Parliamentary process. In the Law Society's view, that is because Parliament did not intend to make a substantial change from the existing provisions. The new provisions were intended simply to transfer the formal power for approving practising fees from the previous multiplicity of approving authorities to the Legal Services Board.

**Question 16** – Are there any issues in respect of practising certificate fees that you think we could consider as part of this consultation exercise?

No.

**Question 17** – Please comment on our draft proposed rules, both in terms of the broad framework, and the detailed substance.

The Law Society would expect to see the draft rules amended in the light of the amendments to the Legal Services Board's substantive proposals which we have suggested in the body of our response. We would also make two additional points:-

- The rules as a whole appear to us unnecessarily detailed. In the Law Society's view, it would be preferable for the rules to concentrate on high level principles, leaving scope for the individual approved regulators to give effect to them in a way that is best suited to their particular organisations. The Legal Services Board will have power to issue directions if it should feel that an approved regulator's actions do not comply with the rules.
- The suggestion that the scope of the regulatory arm's delegated authority should be determined by the regulatory arm itself is wrong in principle. Disagreements over what is the scope of the delegated authority ought to be resolved by the delegating body or ultimately by the courts. The Legal Services Board will of course have the power to give a direction to the approved regulator if it considers that the scope of the regulatory arm's delegated authority is insufficient.

**Question 18** – Are there any comments that you wish to make in relation to our draft impact assessment, published at **Annex C** alongside this consultation paper?

Not at this stage.

**Question 19** – Are there any other issues that you would like to raise in respect of our consultation that has not been covered by previous question?

Not at this stage.