



**LSB consultation:
Designating new approved regulators
and approving rule changes**
The CLC's response
October 2009

The CLC's response to the LSB consultation Designating new approved regulators and approving rule changes

Introduction

1. The Council for Licensed Conveyancers ("the CLC") was established under the provisions of the Administration of Justice Act 1985 as the Regulatory Body for the profession of Licensed Conveyancers. As set out at section 28 Legal Services Act 2007 the CLC must, so far as is reasonably practicable, act in a way—
 - (a) which is compatible with the regulatory objectives (set out at section 1 of the Legal Services Act 2007), and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
2. Further, the CLC must have regard to-
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

The purpose of the CLC

3. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
 - secure adequate consumer protection and redress;
 - promote effective competition in the legal services market; and
 - provide choice for consumers
4. The CLC welcomes the opportunity to respond to the LSB's consultation on designating new approved regulators and approving rule changes.

General Comment

5. As explained in the responses to the specific questions, the CLC considers that the Rules could provide a more targeted approach for approval of changes to Regulatory Arrangements so that they reflect more closely the risks associated with such changes.

Rules for New Body Designation Applications

Question 1 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board's approach to its requirements for the content of Applications?

6. The CLC agrees that it should be for the applicant to ensure that the application includes all the information necessary for a determination to be made without the LSB having to carry out its own investigation. This is, however, predicated on the understanding that any applicant will be able to have informal discussions with the LSB as to the form and content of any application in advance of any formal submission. The purpose of such discussions would be to ensure that any intending applicant understands

clearly the nature of the information and documentation required and also more broadly is advised at as early stage as possible whether any fundamental issues are present which make the prospect of approval unlikely.

Question 2 – If you do not agree with the Board’s approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

7. Not applicable.

Question 3 – What additions to or alterations to the Application process would you suggest?

8. None, other than as set out in the response to Question 1.

Question 4 – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

9. The CLC agrees that an application fee should be charged.
10. The CLC considers that the fee should be determined on the amount of work actually carried out by the LSB at marginal cost. Clearly, it would be helpful to the applicant to have a non-binding estimate of the likely costs at as early stage as possible.
11. The LSB will also have to determine from what point the LSB’s charges should start to accrue. If applicants are encouraged to discuss intended applications informally before they are submitted, it may be that significant time (and therefore cost) is spent before an application is formally submitted.
12. Charging on the basis of a set fee will provide certainty, but may, as the paper suggests, encourage the submissions of applications which have not been properly prepared.

Question 5 – Do you think we should reduce the Prescribed Fee for Applications from existing Approved Regulators to take on additional Reserved Legal Activities?

13. This consideration will not be applicable if the LSB is to charge on the basis of marginal cost.
14. If the LSB decides to charge on the basis of a set fee, then the CLC agrees that the set fee for applications from existing Approved Regulators to take on additional Reserved Legal Activities should be less than the prescribed fee charged for applications to become an Approved Regulator. This is on the basis that the LSB will not need to spend as much time assessing an application from an existing Approved Regulator. It is to be hoped that the LSB will not need to be specifically satisfied, for example, about the Approved Regulator’s internal governance arrangements or any arrangements for splitting representative and regulatory functions.

Question 6 – Do you agree that the Board should use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

15. Yes, on the assumption that external advisers will only be used in exceptional circumstances, and not because the LSB is insufficiently resourced.

Question 7 – Do you agree with the approach taken to oral representations?

16. Yes.

Question 8 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

17. Other than as set out above, the CLC has no suggestions to make.

Questions 9 – Do you consider that these are the appropriate criteria?

18. Yes.

Rules for Rule Change Applications

Question 10 – Do you agree with the Board’s view that the process suggested is the most effective way to address the Regulatory Objectives and the Better Regulation Principles in relation to approaching potentially low impact rule changes? If not, then please can you suggest how the Objectives and Principles could be better addressed?

19. The CLC considers that the arrangement proposed will have the effect of increasing the regulatory burden of the Approved Regulator without delivering proportionate benefits for the LSB.
20. The definition of “Regulatory Arrangements” at s.21 LSA is wide ranging and includes any change made by an Approved Regulator which is not “made for the purposes of any function the body has to represent or promote the interests of persons regulated by it” [s.21(1)(i)].
21. The CLC suggests that the Rules should provide for the following types of changes to the Regulatory Arrangements:
- a. Those changes which are routine in nature. Examples include changes to application forms, updates of rules and guidance notes to ensure they refer to statutes and rules currently in force, informal guidance or advice provided by the Approved Regulator to its regulated community and to consumers. In these instances no formal notification need be given to the LSB at the time the changes are made, although the fact that the changes had been made could be included in the Annual Report made by the Approved Regulator to the LSB. The fact of these changes could be posted on the LSB website with links to the relevant part of the Approved Regulator’s website.
 - b. Those changes which have no material impact on the Regulatory Objectives and Better Regulatory Principles can be dealt with broadly as proposed. However, where the Approved Regulator is satisfied that the changes should come into effect immediately or within a short period after publication the certificate should also include an endorsement that the change needed to come into effect urgently.

22. The CLC recognises that there needs to be a period to allow for testing the way in which changes to Regulatory Arrangements are implemented. It should be possible for any uncertainty as to whether a change comes into category A or B above to be agreed informally between the LSB and the Approved Regulator.

Question 11 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the requirements specified above? If not, why not? What alternative or additional requirements would you recommend?

23. Broadly, yes, subject to two provisos:
- a. the way in which the Rules are interpreted in practice may make them unduly onerous.
 - b. the way in which paragraph 14 of the draft Rules at Annex 2 is phrased suggests that different types of amendment in one set of rules may have to be made by separate applications eg changes to the rules on diversity will need to be dealt with separately from changes to requirements on systems and controls . This may result in one set of rules being amended a number of times within a short period. The CLC believes this is likely to cause unnecessary uncertainty or confusion, and so be detrimental to the regulatory process.

Question 12 – Do you agree with the approach taken to oral representations?

24. Yes.

Question 13 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

25. Other than as set out above, the CLC has no suggestions to make.

Questions 14 – Do you consider that these are the appropriate criteria?

26. Yes.

Summary

27. The CLC agrees the approach taken for approving applications to become an Approved Regulator and for existing Approved Regulators to add Reserved Legal Activities. The CLC further agrees that the fee payable to the LSB should be determined on the basis of marginal cost.
28. The CLC has suggested how its concern that the procedure for changes to Regulatory Arrangements is not sufficiently targeted can be addressed (see response to Question 10).