

**A RESPONSE BY THE FELLOWSHIP OF PROFESSIONAL WILLWRITERS AND
PROBATE PRACTITIONERS**

THE LEGAL SERVICES BOARD CONSULTATION ON DESIGNATING NEW
APPROVED REGULATORS AND APPROVING RULE CHANGES

DATED: 12th October 2009

INTRODUCTION

The Fellowship of Professional Willwriters and Probate Practitioners has been formed to act as a representative and regulatory body for its members. The Fellowship will be applying for approved regulatory status under the Legal Services Act 2007 for probate activities.

1. This response has been prepared by the President of the Fellowship, after consultation with the Chair of the Regulatory Board and members of the Executive Committee.
2. The Fellowship is pleased to be given the opportunity to consider the Legal Services Board (LSB) approach to formulating rules for new regulators and rule changes for existing regulators, and provides its considered opinion below.

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?

Opinion:

Yes

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?

Opinion:

N/A

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

Opinion:

It is important that there is consistency as to consideration of applications. There should therefore be clear and concise instructions as to what is required from each applicant so that a proper and considered approach to dealing with applications can be adopted by the Board. Advice and guidance should be available to all applicants at each stage of the application process.

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

Opinion:

The fee should be fair and proportionate and should be calculated by taking into account what is considered to be a reasonable amount of time involved in properly considering an application. The suggestion that the fee should be calculated to recover the LSB's direct cost of the staff resources and the associated overheads deployed on considering a typical application is therefore considered appropriate.

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

Opinion:

On the grounds of consistency it is difficult to envisage why any particular applicant should be granted a concession. Indeed it could be argued that the costs incurred by new regulators are already higher to get to the point of application than existing Approved Regulators and thus it could be argued that a concession is appropriate for those applicants. Reducing the Prescribed Fee for a particular segment of applicants could be seen as creating an increase in fees for the remainder and this would be inconsistent with the Regulatory Objectives. A standard fixed fee arrangement is therefore favoured.

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?

Opinion:

The important thing is to ensure that the application process is successful in appointing the best possible available regulators. A great deal depends upon the resources which the Board has to hand internally and the expertise of the individuals concerned who are employed by the Board. If it is clear that there are knowledge/expertise gaps then clearly these need to be filled and it is likely to be cost effective and expedient to use suitably qualified external advisers. If the cost of “employing” external advisers is to be added to the Prescribed Fee then the amount involved should be made clear at the outset. New Regulators’ likely costs should be communicated to Applicants during any initial consultation with the Board.

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

Opinion –

The LSB is required by the Act to make rules governing the making of oral and written statements by applicants. The Draft Rules state that oral statements will only be accepted in exceptional circumstances. It is difficult to envisage what those circumstances may be. The fellowship favours a transparent and consistent approach to considering applications but also recognises that there may be exceptions which may require oral statements to ensure that the best possible regulators are appointed. This may well be the case for new Regulators’ who are otherwise unknown to the LSB and may therefore need to make oral representations to enable the Board to gain a greater understanding of that Applicant. The LSB’s approach is therefore considered appropriate if exceptional circumstances can be clarified.

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.

Opinion –

The key objectives in dealing with applications should be fairness, consistency and transparency. The LSB is able under the Draft Rules to exercise discretion e.g. it can refuse to consider, or to continue its consideration of, an

Application if it believes that it has not received all the information it requires. It may well be appropriate to allow an Applicant to appeal (possibly to the Lord Chancellor) if this discretion is exercised.

Question 9 – Do you consider that these (*consistency with the requirements of Section 28 of the Act*) are the appropriate criteria?

Opinion –

Definitely.

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?

Opinion –

Yes

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?

Opinion –

Yes

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

Opinion –

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

Opinion –

The key objectives in dealing with applications should be fairness, consistency and transparency. The LSB is able under the Draft Rules to exercise discretion e.g. It can refuse to consider, or to continue its consideration of, an Application if it believes that it has not received all the information it requires. It may well be appropriate to allow an Applicant to appeal if this discretion is exercised.

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

Opinion –

Yes