



The Law Society

## **The Law Society's Response to the LSB consultation 'Designating new approved regulators and approving rule 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?**

We broadly agree with the approach laid out in the consultation. It is right that the LSB, as oversight regulator, sets out its processes for assessing applicants who wish to be Legal Approved Regulators. We agree with the statement that Approved Regulators must be "solid, stable, well structured, adequately financed and a professionally operated body – a regulator should seek to adhere to standards at least as good as those that it seeks to enforce on others." New applicants must be able to prove that they can uphold the appropriately robust standards that are expected under the Act.

It is important to avoid regulatory arbitrage. In the absence of evidence that the approach taken by existing approved regulators is too restrictive, the LSB should ensure that any new applicants will be equally rigorous in ensuring that consumer and public safeguards are met.

We comment on the improvements we believe that can be made in our answer to question 3.

#### **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?**

We broadly agree with the LSB's approach, subject to the points made in our answer to question 3.

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

The consultation states that the LSB's:

"approval of a new body as an Approved Regulator, or of an existing Approved Regulator as an Approved Regulator in relation to an additional Reserved Legal Activity represents an assessment that:

the Applicant appears well prepared and appears to understand the roles and responsibilities granted to Approved Regulators under the Act."

We believe that the word 'appears' is not robust enough in this context. Applicants *must* be well prepared and the LSB should be satisfied that they *do* understand the responsibilities as placed onto them under the Act. Becoming an Approved Regulator or adding new Reserved Legal Activities to a current regulator's remit entails a significant responsibility. The LSB must be certain that those who apply can fulfil all the necessary duties from day one, otherwise there would be a significant risk of consumer detriment.

It would be beneficial if any new applicant could justify their proposal against each of the seven regulatory objectives. This should be a specific question on the application form. It is important that the answers should be open to public scrutiny before any application is judged. It would not be appropriate for the LSB to approve a new regulator unless its application is clearly justifiable by reference to the regulatory objectives.

We agree that all documents supplied should be subject to publication and public scrutiny. While it is understandable that the LSB would consider limited requests for redaction of information from documents that are there should be a strong presumption in favour of transparency. If the LSB does allow an applicant to omit certain data it should publish a list of what data has been omitted and its reasoning for allowing the omission.

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

In principle the fee should cover the full cost of application. It would not be fair to expect existing Approved Regulators to subsidise the fees charged to new applicants. If a new applicant cannot afford to pay the Prescribed Fee, the LSB should ask serious questions about their ability to finance their operations to the level required.

It is for the LSB to decide how best to meet that principle. The suggestion that the LSB sets an estimated fee with a proviso that a refund can be given back to the applicant if costs turn out to be less or, conversely, the fee increased in the event that more significant work is required seems sensible. This will encourage new applicants

to produce a good quality application as they will not want to risk the prescribed fee being increased due to the LSB needing to do additional work because of deficiencies in the application.

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

We believe that the fee should be related to the costs. The same charging method should be used as the one we propose for new applicants. We imagine that the process of assessing whether an existing Approved Regulator can take on additional reserved legal activities will generally consume less resources than an application to become a new regulator. One reason for this may be that the LSB are more likely to be satisfied that an existing Approved Regulator can in general meet the regulatory objectives.

**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?**

The LSB has to be satisfied that it makes correct decisions. If this means that they need to take advice from an external expert that is understandable, though we would hope that this option is not used excessively. It is the responsibility of the applicant to prepare an adequate application. Before the LSB commissions external advice it may wish to explore whether it would be best if the applicant could do the work itself. The LSB should not feel that it is their responsibility to make up any deficiencies in the application.

Applicants should be charged the full amount if the LSB feels that it needs to buy in external technical advice.

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

Although the transparent nature of the process will ensure that proper scrutiny can be given to the application, we think the approach suggested underplays the value of oral discussion with new applicants. The consultation states: "On the ground of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations."

We believe that all new applicants to be an Approved Regulator should be required to participate at least once in face-to-face questioning session with the LSB. Other

regulators, such as Monitor, the regulator of NHS Foundation Trusts, greatly value the lessons they learn during their 'board-to-board' meetings.

Ensuring that that is part of the process would minimise the risk of the LSB having the wool pulled over their eyes by a slickly presented written application which was not well founded in substance.

**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.**

The proposed process seems to be comprehensive and relevant.

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

We agree that the criteria for determining applications are appropriate.

### **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?**

The new system should be no more complicated than the current system for an Approved Regulator to make rule changes. We support the LSB's desire to create a process whereby it can quickly deal with any new application. We also support the emphasis being placed on the regulator to get the process right themselves. There is now less need for scrutiny on rule changes than before the passage of the Act, because regulatory boards now operate independently of professional bodies representative activities.

**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?**

We agree with the requirements for the contents of applications. All the information requested should be easily available as long as a regulator has consulted openly and effectively.

Where new rules differ from those of another regulator, the LSB may wish to ensure that those differences do not prevent lawyers from different backgrounds from working in the same organisation, as well as ensuring that the difference will not cause any consumer detriment.

The LSB may wish to consider implementing a minimum time period between a regulatory arm's rule change submission and deciding whether to ratify the request. This will allow other stakeholders to lobby the LSB if they strongly believe that the rule is undesirable or unworkable. This period does not have to be long. We would suggest five to fifteen working days, save in exceptional case.

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

The proposed approach for an existing Approved Regulator to change its rules, as laid out in the consultation, seems appropriate. In principle, oral representations should not be necessary for those who have gone through the process properly. The LSB will already have a working relationship with existing approved regulators and so the risk we identified in respect of prospective new approved regulator of the LSB being deceived by an application will not arise.

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

The proposed process is adequate. It would be beneficial if those who are called to appear before an oral process are given information about what areas the LSB would like to cover, what concerns they may have and what the background is to these concerns.

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

Yes. We consider the criteria adopted to be appropriate, especially the emphasis on the importance of the regulatory objectives.

## **Other Issues**

Under the Act, the LSB's approval is in principle required for any changes to regulatory arrangements, rather than just rule changes. While it is necessary for LSB to have jurisdiction over regulatory arrangements as a whole, a requirement for prior consent to changes which do not amount to a rule change is disproportionate, and risks creating significant delays. We believe the LSB should use its powers to exempt those from the requirement to obtain prior authority, instead relying on its power to call in particular changes for detailed examination where necessary.