



## **Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The Council for Licensed Conveyancers application for approval of changes to Regulatory Arrangements relating to the fee structure and the Compensation Fund**

The Legal Services Board (“LSB”) has approved the Council for Licensed Conveyancers’ Fees Rules 2010 and the contribution level for the Compensation Fund for the licence year commencing 1 November 2010. This Notice sets out basis for the LSB approval and the decision taken, including a brief description of the changes.

#### **Introduction**

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve or reject alterations to the Regulatory Arrangements of the Approved Regulators. The Council for Licensed Conveyancers (“CLC”) is an Approved Regulator.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below<sup>1</sup>). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB’s rules.

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<sup>1</sup> The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of the CLC's application for approval of changes to regulatory arrangements relating to the fee structure and Compensation Fund on 31 August 2010. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

## **Decision**

6. The CLC's application is for approval for changes to the following Regulatory Arrangements.
  - The Council for Licensed Conveyancers' Fees Rules 2010 (which will replace the Council for Licensed Conveyancers' Fees Rules 2003)
  - The level of contribution to the Compensation Fund for the licence year commencing 1 November 2010.

### *The Council for Licensed Conveyancers' Fees Rules 2010 ("2010 Fees Rules")*

7. Under the current arrangements each licensed conveyancer is required to pay an annual licence fee, the level of which is determined by whether they are a "manager" member or "employed" member. This distinction could create the erroneous perception that employed members, who pay a lower fee, are less qualified than manager members when in fact they have attained the same level of education and training qualification and have equal status. The proposed new rules apply a single fee to all licensed conveyancers.
8. The CLC's Licensing Rules 2009 allow the CLC to levy a fee where a member who is required to deliver a report by an accountant does not deliver such a report in with required period and a consequential addition is made to the 2010 Fees Rules (Rule 2.(3)). The CLC view is that cost of the additional administration resulting from late submissions should be met by those who cause it rather than the membership as a whole.
9. In the interests of transparency, the CLC has concluded that the costs of intervention, inspection and monitoring of practices should be separated from the contributions to the Compensation Fund and replaced with a distinct practice fee, calculated by reference to turnover, with tiered contributions (subject to a minimum contribution for each band).
10. The actual levels of all of these fees is subject to a separate application to the LSB under s51 of the Act.

### *Compensation Fund Determination*

11. The changes to the 2010 Fees Rules will mean that in future contributions to the Compensation Fund will be applied solely to the purpose of maintaining, managing and administering the Fund.
12. While the CLC Consultation Paper Review of Licence and Practice Fee arrangements (February 2010) proposed a new basis for calculating the contribution to the Fund, no specific changes are proposed for this year.
13. Since 2007 the CLC has had a policy of maintaining cash reserves of not less than £2m in the Compensation Fund. At 31 December 2009 the reserves totalled £3.25m and it is expected that the reserves will be equal to or in excess of this at 31 December 2010. The CLC has assumed that the total direct costs for the Fund for 2011 will be £0.5m (2009: £0.35m). Given that even after the deduction of the direct costs, the reserves are expected to be well above the lower limit for the CLC cash reserves, the CLC have determined, and put forward for approval, that the contribution level for the licence year commencing on 1 November 2010 should be set at £NIL
14. Overall, we are content with the CLC's assessment that the proposed arrangements will facilitate and promote the Regulatory Objectives of the Act and the Better Regulation Principles. In particular we note the consultation process that has been adopted and the CLC's move towards a more risk-based fee structure for entities.
15. Therefore, we are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application. The approved rules are set out in Annex 1.

### **Additional comments**

16. In addition to approving the application, there are two other areas upon which we wish to comment in this Decision Notice.
17. We have noted that while the CLC have clearly stated that the costs of intervention, inspection and monitoring of practices should not be paid from the Compensation Fund, they are not at this time proposing to amend the Council for Licensed Conveyancers' Compensation Fund Rules 2009 to remove this from the list of items to which money from the Fund may be applied (Rule 12(g) of the CLC Compensation Fund Rules 2009). We understand that this will be considered as part of a wider consultation that the CLC will be undertaking as part of its preparation to apply to become a licensing authority. We recognise the merit in completing a single consultation. However, in not amending the rules at this time, the Fund Rules will not properly reflect the purposes for which money can be applied. We have therefore sought and received assurance that notwithstanding Rule 12(g) of the Compensation Fund Rules 2009, CLC will not apply monies from the Fund for the

purposes of monitoring and inspection of practices ns that if circumstances change to make it necessary to do so they will give prior notice to the LSB.

18. While the LSB agrees that proposed fee structure for recognised bodies is appropriate, we note that the net effect on most will be an increase in fee, although for this year this is offset to some extent by the £nil Compensation Fund contribution. There is a risk that this could have a greater impact on smaller firms (and potentially BME firms which tend to be smaller firms). We expect the CLC to monitor the impact of the new arrangements.

### **Chronology**

- The LSB confirmed receipt of an application from the CLC for approval of changes to Regulatory Arrangements relating to the Council for Licensed Conveyancers' Fees Rules 2010 and the level of contribution to the Compensation Fund for the licence year commencing 1 November 2010 on 31 August 2010. Further information was received on 21 September 2010
- The 28 day initial decision period for considering the application is due to end on 28 September 2010
- This Decision Notice is being published on our website on Monday 27 September 2010.

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**Monday 27 September 2010**



## The Council for Licensed Conveyancers' Fees Rules 2010

Made [ ] 2010 by the Council for Licensed Conveyancers with the approval of the Legal Services Board in accordance with s.14, 32 and 38 Administration of Justice Act 1985 and s.51 Legal Services Act 2007.

### CITATION, COMMENCEMENT AND REVOCATION

1. These Rules may be cited as the Council for Licensed Conveyancers' Fees Rules 2010 and shall come into force on [date] 2010 on which date the Council for Licensed Conveyancers' Fees Rules 2003 shall cease to have effect.

### LICENSING RULES

2. The fees payable by virtue of the Licensed Conveyancers' Licensing Rules 2009 shall be as follows: -
  - (1) for a licence under rule 2.4(b): £[amount];
  - (2) the additional fee payable for failure to submit an Accountant's Report within the time limited under rule 2.5(c): £[amount];
  - (3) the additional fee under rule 2.5(d), when applying for a licence under rule 2.3(a), either for the first time, or where such a licence is not in force at the time of the application (and has not been in force for at least 12 months prior to that date): £[amount];
  - (4) for a duplicate licence, where chargeable under Rule 2.10: £[amount].
  - (5) for an amendment of a licence under rule 3.4, rule 5.2 or rule 5.3: £[amount];

### PROBATE RULES

3. The fee payable by virtue of rule 5.3(b) of the Licensed Conveyancers' Probate Rules 2008 shall be £[amount].

**REGULATION OF PRACTICES (RECOGNISED BODIES) RULES**

4. The fees payable by virtue of rule 7.4(a) of the Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009 shall be determined by reference to the turnover declared by the Recognised Body for the purpose of determining the applicable annual premium payable in accordance with rule 4.1 of the Council for Licensed Conveyancers' Indemnity Rules 2009 as follows:

Turnover Banding			Practice Fee payable				
			<b>Minimum Fee in Band</b>				
Between	0 and	£100,000	£[amount]	or	[ ]%	Of Turnover	Whichever is the greater
			<b>Minimum Fee in Band</b>			<b>On Turnover in excess of</b>	
Between	£100,001 and	£500,000	£[amount]	plus	[ ]%	£100,000	
Between	£500,001 and	£3,000,000	£[amount]	plus	[ ]%	£500,000	
Over	£3,000,000		£[amount]	plus	[ ]%	£3,000,000	

5. The fee payable by virtue of rule 8.7 of the Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009 shall be £[amount].

**WAIVER**

6. The Council may in writing waive or vary any of the provisions of these Rules and may revoke any waiver in any particular case.