

To:	Board
Date of Meeting:	28 April 2011
Item:	Paper (11) 29

Title:	Application by the Council for Licensed Conveyancers (CLC) to become a Licensing Authority and approval of the new Handbook and associated frameworks as a change to regulatory arrangements
Workstream(s):	3B Widening Access to the Legal Services Market
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Status:	Protect

Summary:
<p>In preparation for making an application to be designated as a Licensing Authority, the CLC has reviewed its entire regulatory framework to ensure an outcome focused and risk based approach to regulation. The CLC has therefore submitted two separate applications in relation to the proposals. The first for designation as a Licensing Authority (including approval of the proposed licensing rules) and the second for approval of the new Handbook and associated frameworks as a change to the CLC's regulatory arrangements.</p> <p>The process and approval criteria are distinct for each application; however there are interdependencies between the two. The Board is therefore being asked to consider and determine each application separately but within the same discussion.</p> <p>The Board has been provided with:</p> <p><u>Licensing Authority Designation</u> – paper on the Application by the CLC to become a Licensing Authority including a summary of advice from the Mandatory Consultees (Annex 1).</p> <p><u>Handbook approval</u> – the draft Decision Notice for approval of the new CLC Handbook and associated frameworks. This sets out the proposed changes and the issues we have considered as part of the assessment process (Annex 2).</p> <p>In addition, both the Licensing Authority application and the new Handbook will be available to Board Members at the meeting.</p> <p>A separate pack of background information relating to the assessment process is provided for Board Members to consider (Paper (11) 29(a)).</p>

Risks and mitigations	
Financial:	None
FoIA:	Initial assessment – none.
Legal:	Low

Reputational:	The Lord Chief Justice has registered his opposition to this application on the grounds of the experience of the CLC, the negative impact of multiple regulators and the link to the CLC application to extend reserved legal activities (to litigation and advocacy). More detail on his concerns and our analysis can be found at paragraphs 10.1-10.10 of the main paper.
Resource:	None

Consultation	Yes	No	Who / why?
Board Members:	✓		Steve Green and David Wolfe
Consumer Panel:	✓		As required by Schedule 10, paragraph 3
Others:	The Lord Chief Justice and the Office of Fair Trading, as required by Schedule 10, paragraph 5 of the Act		

Recommendation(s):
<p>The Board is invited:</p> <ol style="list-style-type: none"> (1) to make a recommendation to the Lord Chancellor (under paragraph 14(2) of schedule 10 of the Legal Services Act 2007 (the Act)) that the Council for Licensed Conveyancers (CLC) be designated as a Licensing Authority for its existing reserved legal activities (probate, reserved instrument activities and the administration of oaths) (2) to agree that in making a recommendation for the Lord Chancellor to make an order, that the proposed licensing rules are at the same time treated as having been approved by the Board (under paragraph 16(1) of Schedule 10, Part 1 of the Act). This includes the entire CLC handbook, with the exception of any proposed amendments made in relation to the extension of reserved legal activity application, and the Licensed Body (ABS) Licensing Framework (3) to agree to delegate authority to approve the Licensing Authority Decision Notice and the wording of the recommendation to the Lord Chancellor to the Chairman and the Chief Executive (4) to approve in part the new Handbook and related frameworks as a change to the CLC's regulatory arrangements under schedule 4, part 3 of the Act. Annex 1 to the draft Decision Notice sets out the arrangements that are approved in full and those approved in part (5) to note the draft Decision Notice in relation to the schedule 4, part 3 approval and agree to delegate authority for the agreeing the final Decision Notice to the Chairman and the Chief Executive.

Application by the Council for Licensed Conveyancers to become a Licensing Authority

1. Recommendation

- 1.1 This section of the paper invites the Board to make a decision on the CLC application to be designated as a Licensing Authority. More detailed recommendations in relation to this application are set out at paragraphs 1-3 of the recommendations section of the cover paper.

2. Summary

- 2.1 We have completed a detailed review of the application. This has included consideration of all advice from the mandatory consultees and CLC's response to that advice. A summary of the advice has been provided at **Annex 1(A)**. We have also met with CLC to discuss their progress in making the necessary organisational changes to become a Licensing Authority, including development of its staff, systems and processes. All of the information has been assessed against the Legal Services Board's (LSB) rules on applications for designation of licensing authorities and guidance on the contents of licensing rules.
- 2.2 We have been through the detail of the licensing rules to ensure that they meet the requirements of the Act. The requirements under paragraph 11(2) of schedule 10 of the Act, on which the Board must be satisfied in order to make a recommendation to the Lord Chancellor, are set out at paragraph 8.3 along with our conclusions. This includes the requirements for licensing rules under section 83. More information on the contents of licensing rules can be provided on request.
- 2.3 In his advice to us, the Lord Chief Justice has registered his opposition to the CLC being granted the status it seeks in this application. The Lord Chief Justice's concerns are centred on the question of multiple regulators for ABS, the competence of the CLC compared with the bigger regulators, and the implications of the CLC's application to extend its reserved legal activities (which he firmly opposes). More detail is contained in section 10 of this report. We agree with the Lord Chief Justice that these are important issues to be considered in our assessment of this application and in order to make a recommendation we need to be satisfied of the CLC's ability to regulate ABS.
- 2.4 We will carefully consider any concerns raised by the Lord Chief Justice in relation to the wider rights being sought as part of the assessment of the application to extend its reserved legal activities. The Lord Chief Justice is of course right to highlight the significance of the CLC gaining additional reserved legal activities as not only does that application involve a different statutory process, it also raises more fundamental questions that require significant analysis and challenge. At present, the Board can expect to take its decision on the application to extend reserved activities in July 2011. The Board must put that application to one side whilst it considers this application on its own merits.

- 2.5 For reasons explored in more detail throughout this paper, the executive has concluded that the CLC has developed the required licensing rules to regulate ABS and has done so in accordance with both LSB guidance and the requirements of the Act. Whilst we recognise that there is some development work to do in terms of how the proposed arrangements will operate in practice, we are satisfied that the CLC has the capacity and capability to be a competent Licensing Authority for its existing reserved activities.
- 2.6 The CLC already has experience of regulating ABS type structures with fewer protections than are proposed within this application and by the Act. The proposed regulatory framework would build upon this experience, with the addition of protections such as fitness to own checks and the requirement to have a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA).
- 2.7 We are therefore satisfied that should the Board make this recommendation to the Lord Chancellor, the CLC would be competent and have sufficient resources to perform the role of Licensing Authority in relation to its current reserved legal activities at the time the order takes effect.

3. Authority for the decision

- 3.1 Under Schedule 10, Part 1 of the Act, bodies may apply to the LSB to become a Licensing Authority. Any such application must specify the reserved legal activities to which the application relates. The CLC is already an approved regulator for probate, reserved instrument activities and the administration of oaths. The scope of this application is limited to these areas at the current time.
- 3.2 Once satisfied that the application meets the requirements of our rules for applications to be designated as a Licensing Authority (the LA designation rules), other rules (notably those on regulatory independence) and that the body has in place appropriate licensing rules to regulate the proposed activities, the LSB can approve the application and recommend to the Lord Chancellor that the applicant be designated as a Licensing Authority for all or some of the reserved legal activities applied for. We have also considered the application against our guidance on the contents of licensing rules which form much of our policy approach for ABS.

4. The Applicant

- 4.1 The CLC was established by the Administration of Justice Act 1985 to regulate licensed conveyancers in the provision of legal services (currently conveyancing and probate) and is an approved regulator under the Act.
- 4.2 The CLC currently regulates approximately 10-15% of the residential conveyancing market. Its regulated community is made of up 1103 licensed conveyancers, 301 managers and 215 practices¹. As a quarter of these practices are currently owned or managed by non-authorized persons, the CLC already has some experience of

¹ CLC Licensing Authority application, page 4. Figures correct as at February 2011 (when the application was submitted)

regulating ABS type structures and managing risks associated with external ownership.

- 4.3 In preparation for making this application the CLC has also reviewed the entirety of its regulatory framework. The CLC has made significant revisions to the Code of Conduct to ensure an outcome focused and risk based approach to regulation. It has only retained detailed rules where it thinks it is necessary. The new regulatory arrangements are subject to LSB approval as a change for the existing regulated community (under Schedule 4, Part 3 of the Act) as well as forming the licensing rules with which CLC regulated licensed bodies must comply.

5. The Application

- 5.1 This application is to seek

- a recommendation from the LSB to the Lord Chancellor that CLC be designated as a Licensing Authority for probate, reserved instrument activities and the administration of oaths
- agreement that in making the recommendation to the Lord Chancellor about the licensing application, to include a recommendation that the licensing rules be approved for use by the Licensing Authority when the Lord Chancellor exercises his authority under paragraph 16(1) of Schedule 10, Part 1

6. Structure of the application

- 6.1 The main part of the application consists of background information and an explanation of how the proposed regulatory arrangements comply with the Regulatory Objectives, Better Regulation Principles, Statutory Code of Practice for Regulators (Hampton principles), and the Code of Practice on Guidance on Regulation. The CLC has also completed competition analysis and an assessment of its compliance with the Framework Services Directive.
- 6.2 A summary of the Licensed Body Framework and relevant sections of the handbook is provided (which together form the licensing rules). This includes an assessment of how the proposed arrangements relate to the requirements of the Act and LSB guidance on the content of licensing rules.
- 6.3 The CLC has also provided explanatory material on its approach to regulation including risk, resourcing, staffing and adaptability. This is supported by the Corporate Strategy, Business Plan and Resources Statement.
- 6.4 Consideration of the impact of the proposals on equality and diversity and a proposed Client Charter (setting out the outcomes a consumer might expect) are also included.

7. Completeness assessment of the application

- 7.1 The LA Designation rules set out the information and evidence needed for LSB to consider an application. This includes both administrative information and the licensing rules requirements (set out in the Act and in our guidance on the contents

of licensing rules). The full application was published on the LSB website on 9 February 2011.

- 7.2 The application contained all of the information needed under these rules with the exception of a statement on the reserved legal activities which the application applies to. This was provided to us by the CLC on 11 April 2011.
- 7.3 It should be noted that the CLC has developed its licensing rules on the assumption that the following orders proceed as planned: section 69 (modifying the functions of the CLC), section 80 (appeals), section 95 (maximum financial penalty) and an order making an amendment to the rehabilitation of offenders exemption (to enable Licensing authorities to conduct enhanced CRB checks).

8. Assessment against LSB Rules and Guidance

- 8.1 The application has been reviewed and assessed against the applicable rules and guidance. The issues identified are discussed in section 10 of the report.
- 8.2 In assessing the application against the LSB's Rules and Guidance the following have been considered:
- The application and supporting documents
 - The advice from the mandatory consultees and CLC's response
 - Further information provided by CLC in response to our issues logs on the main application and the supporting regulatory arrangements (which form the licensing rules)
 - Information on the CLC's organisational development, regulatory approach (including its management information system) provided during a visit to the CLC on Monday 4 April 2011. These issues are discussed further at section 10 of this report
- 8.3 Schedule 10, 11(2) sets out the matters on which the Board must be satisfied when granting an application for designation of a Licensing Authority. The following table summarises our conclusion against each of those matters:

Matter to be satisfied	Conclusion
Compliance with section 83 requirements	
Contain appropriate qualification regulations for Licensable Bodies	<p>The CLC Licensed Body Framework requires all applicant bodies to provide information on the entity's employment procedures and arrangements. This includes information on staff structure (in part to determine the ratio of Authorised Persons to those who are not) and the experience, qualifications and professional history of both the HoLP and HoFA.</p> <p>The Specific Requirements in the Licensed Body Code specify that a HoLP and HoFA must have appropriate (in terms of the body's profile) experience and qualifications. The HoLP must be an Authorised Person in relation to one or more of the reserved legal activities (this is a requirement under paragraph 11(2)(b) of schedule 11 of the</p>

	<p>Act). There are no specific qualification requirements for the HoFA but the suitability criteria require the HoFA to demonstrate that they have accountancy experience, competence and/or whether or not they have a recognised accountancy qualification.</p> <p>The CLC's determination will be informed by the structure and profile of the entity and will be used to inform the risk profile of the licensed body. This is consistent with the statutory requirements and LSB guidance which provides that "<i>qualifications and experience of those who work in an ABS are matters for the ABS to decide, based on the requirements of its business and the expectations of its staff</i>".²</p>
<p>Provision for how the Licensing Authority, when considering the regulatory objectives in connection with an application for a licence, will take account of the objective of improving access to justice</p>	<p>The CLC's Licensed Body Framework states that licence assessment and determinations are based upon the applicant's compatibility with the regulatory objectives. A judgement will be made on an assessment of the applicant's capability and capacity to deliver the outcomes required by the regulatory arrangements.</p> <p>Applicants are required to provide details of the arrangements they have in place for complying with the Code of Conduct and the Licensed Body Code, as well as outlining any incompatibility with the Codes. Where issues have been identified, applicants must detail how these have been or will be resolved.</p> <p>Applicants must also provide an Access to Justice statement which sets out how they aim to improve access to justice. The CLC expects that applications will be declined on the basis of access to justice only in exceptional circumstances. This is consistent with paragraph 43 of LSB guidance on licensing rules. The CLC will continue to monitor overall impact on access to justice and will publish a summary of the declared access to justice improvements after six months and then every 12 months thereafter.</p> <p>Additionally, the CLC considers that improved access to justice for the public is dependent on access to the profession that would serve them. Licensing application requirements include the provision of the entity's diversity profile, which must be broken down by management level. In accordance with the LSB wider policy on diversity, the CLC will also extend this requirement to non ABS.</p>
<p>Contain appropriate arrangements (including conduct rules, discipline rules and practice</p>	<p>In preparation for making this application the CLC has reviewed the whole of its regulatory</p>

² LSB 'Alternative Business Structures: Approaches to Licensing. Guidance to licensing authorities on the content of licensing rules', paragraphs 37-39

<p>rules) under which the Licensing Authority will be able to regulate the conduct of bodies licensed by it and their managers and employees</p>	<p>framework. Significant revisions have been made to the Code of Conduct to ensure an outcome focused and risk based approach to regulation. It has only retained detailed rules where it thinks it is necessary.</p> <p>All bodies and individuals regulated by the CLC are required to comply with a number of universal codes (as provided in the CLC handbook).</p> <p>The Code of Conduct is the umbrella document which all other codes support but includes the following codes: accounts, anti-money laundering & combating terrorist financing, complaints, conduct and Professional Indemnity Insurance. There is also a Licensed Body Code which contains specific provisions required of ABS (for example the requirement to have a HoLP and HoFA and any duties on any external owners).</p> <p>The CLC also has a series of frameworks which set out the way in which it will regulate. This includes the Licensed Body Framework which contains the majority of provisions required of licensing rules.</p>
<p>Contain appropriate indemnification arrangements</p>	<p>Professional Indemnity Insurance cover is a mandatory requirement of all those regulated by the CLC (as set out in both the Code of Conduct and Professional Indemnity Code). The CLC currently operates a Master Policy. This arrangement is currently mandatory but in future all those regulated by the CLC will be permitted to opt out of the Master Policy where they are able to obtain equivalent cover from an alternative source. The CLC will obtain advice from insurance brokers to inform verification of the cover's sufficiency. Where the CLC is not satisfied with an applicant's indemnity insurance cover and conditions, they will not license the applicant until proof has been provided that the policy has been amended to reflect the risks identified.</p> <p>In addition, the ABS Multi-Disciplinary Practice Memorandum of Understanding has been established to enable licensing authorities to exchange information about suspected or fraudulent activity or dishonesty.</p>
<p>Contain appropriate compensation arrangements</p>	<p>The CLC operates a compensation fund to which all members of the regulated community must contribute. Contributions are based upon turnover and are dependent on the financial requirements of the fund each year. ABS firms will be brought within this.</p> <p>In order to allow compensation grants to be paid to consumers of ABS, the remit of the fund needs to be widened. The CLC has confirmed to us that subject to some minor amendments (which will be</p>

	made before a recommendation to the Lord Chancellor is put forward), the regulatory arrangements provided enable the operation of a single compensation fund for both ABS and non ABS.
Provision required by sections 52 and 54 regarding the resolution of regulatory conflict	<p>The CLC is a signatory to the ABS Multi-Disciplinary practices Memorandum of Understanding (MoU). The MoU seeks to clarify so far as it is practicable the roles of the regulators and professional bodies in the oversight of Licensed Bodies. It provides a framework for cooperation, coordination and exchange of information. LSB staff have been involved in the development of this document.</p> <p>The MoU has been agreed in principle by the Approved Regulators. The SRA has taken the lead in resolving the remaining issues with the FSA with regards to its statutory remit. We are expecting there to be more signatories over the next couple of months and are confident that the framework will provide an adequate basis for regulatory conflicts to be resolved by the time the CLC are designated.</p>
Provision required by sections 112 and 145 in relation to complaints handling (including compliance with our signposting requirement)	The Code of Conduct provides clear outcomes in relation to complaints handling (see Overriding Principle 6). The Complaints Code and Guidance provide more detailed provisions on complaints.
Any other provisions required to be contained in the licensing rules	There are no further provisions.
That if an order were to be made designating the CLC as a Licensing Authority, there would be a body with the power to hear and determine appeals	The CLC has elected for the First Tier Tribunal (FTT) of the General Regulatory Chamber (GRC) of the Tribunals Service to hear appeals from determinations made by the CLC as a Licensing Authority. This is consistent with the LSB's longer term policy of having a single appellate body for all Licensing Authority decisions. It is also consistent with paragraphs 129-130 of our guidance on licensing rules which states that licensing rules must specify one body to which appeals can be made for those issues for which the rules (and/or the Act) provide a right of appeal. The ability of the FTT to hear appeals, and therefore the designation of the CLC, is dependent on the section 80 order.
That if an order were to be made designating the CLC as a Licensing Authority, the CLC would be competent and have sufficient resources to perform the role of Licensing Authority in relation to the activity at the time the order takes effect	<p>The CLC application includes a report on resources prepared by an external audit service (Scrutton Bland). The report concludes that the CLC:</p> <ul style="list-style-type: none"> • Has sufficient financial resources to conduct its existing and future operations • Has adequate and effective control processes in respect of human resources, including

	<p>recruitment, training and retention</p> <ul style="list-style-type: none"> • Has adequate and effective control processes in respect of qualifications of licensed conveyancers and the requirements for their Continuing Professional Development; • Has adequate and effective processes in respect of the control of litigation matters which are reported to the Council • Has in place the structure, resources, systems, policies and flexibility to meet the demands of market changes from October 2011 onwards • Is well placed to achieve its strategic objectives <p>Further information on the competency of the CLC in relation to the regulation of ABS is provided at section 10 of this report.</p>
<p>The exercise of regulatory functions is not prejudiced by representative functions</p> <p>Decisions relating to the exercise of the regulatory functions are taken (as far as possible) independently from decisions relating to the exercise</p>	<p>The CLC was created to have an exclusively regulatory function. The CLC's Certificate of Regulatory Independence was signed off by the LSB in May 2010 and we will not be requiring the CLC to submit a new certificate for 2011. Given the status of the CLC, we have done no further review of this issue as part of this application.</p>

9. The Mandatory Consultees

- 9.1 When considering an application to become a Licensing Authority, the LSB is required to seek the advice of the Lord Chief Justice, The Office of Fair Trading and the Legal Services Consumer Panel (collectively referred to as the "Mandatory Consultees"). In addition, the LSB can seek advice from a selected consultee though no such advice has been sought in relation to this application.
- 9.2 Advice was received from each of the mandatory consultees and the CLC submitted a response within the required timescale.
- 9.3 A summary of the key points made by the mandatory consultees and CLC's response is contained in **Annex 1(A)**. It should be noted that the Legal Services Consumer Panel congratulated the CLC on the emphasis it has given throughout the process to delivering good consumer outcomes. The advice also commented on the "positive way in which the CLC has responded" to any feedback provided.
- 9.4 Specific issues raised by the mandatory consultees are covered in the relevant section of this report.

10. Issues arising from the assessment of the application

Advice from the Lord Chief Justice

- 10.1 In his advice to us, the Lord Chief Justice has registered his firm opposition to the CLC being granted the status it seeks in this application and sets out several concerns. The first is around CLC's experience of regulating ABS type entities. The Lord Chief Justice recognises that the CLC has some experience of regulating entities which are owned or managed by non-authorized persons but notes that the numbers are small and the types of activities being undertaken by those entities are far narrower in scope than what is ultimately being considered by the CLC. The Lord Chief Justice considers this application to be a stepping stone towards the CLC extending the types of reserved activities that it may regulate and is therefore unable to support it due to his strong opposition to the CLC being able to regulate civil litigation and advocacy.
- 10.2 The Lord Chief Justice's advice is that there should be a limit to the number of regulators who are permitted to operate in this area and that the more established regulators ought to regulate ABS in the first instance as they have the widest knowledge and experience of legal services regulation.
- 10.3 Finally, the Lord Chief Justice is concerned that the protections offered by the CLC in respect of the protection of the public interest and the constitutional point of law lack substance. He gives the example of the Framework Memorandum of Understanding (Framework MoU), developed by the approved regulators and other key parties to ensure consistency of approach between regulators, which he considers to emphasise the risk of inconsistency. The Lord Chief Justice has significant concerns about the risks around differing regulatory standards which are likely to occur with different regulators operating in the same field.
- 10.4 The CLC has responded to all of the advice provided to us, including the advice from the Lord Chief Justice. Whilst the CLC does not agree with the view expressed by the Lord Chief Justice in relation to its application to regulate litigation and advocacy services, it believes that the CLC's Licensing Authority application should be determined in accordance with the requirements of the relevant sections of the Legal Services Act and separately from any other application. The CLC is confident in its ability to meet the challenges posed by the regulation of ABS and the implementation of a principle based and outcomes focused approach to regulation. On the matter of the Framework MoU, the CLC considers that it would not be consistent with the regulatory objectives if a Licensing Authority did not have in place agreements with other regulators in order to ensure that any breach of regulatory requirements can be dealt with appropriately. The Board should note that the LSB has been involved in the development of the Framework MoU.

LSB analysis of the Lord Chief Justice's advice and CLC's representations

- 10.5 We agree with the Lord Chief Justice that these are important issues to be considered in our assessment of the application.
- 10.6 The CLC has submitted a separate application to the LSB seeking a recommendation to the Lord Chancellor that it be designated for the reserved legal activities of the conduct of litigation and rights of audience. That application is being assessed under a separate process and part of that is to seek the advice of the Lord Chief Justice. Any decision to recommend designation as a Licensing Authority at

this time is specifically limited to the current reserved legal activities for which the CLC is an approved regulator. It may inform consideration of the application to for additional reserved legal activities but does not in any way pre-suppose the outcome of the other application.

- 10.7 We have sought information from the CLC on their experience of regulating ABS type bodies. At the current time 44 of the 215 practices which the CLC currently regulate will be licensable bodies (as defined by section 72 of the Act) when Part 5 of the Act is commenced. Together these 44 practices account for 65% of the turnover of the profession. The CLC considers that over 30 of these will need to be licensed as ABS before the end of the transitional period (6 October 2012). We note that those in this category, although fewer in number, account for 54% turnover of the profession.
- 10.8 The CLC is therefore already regulating bodies that fall within the definition of ABS and our view is that they should be allowed to continue to do this. Bringing these within a Licensing Authority regime will mean that these entities will be subject to more detailed due diligence checking on application as the requirements for licensing rules contain more detail about what tests are to be satisfied before a licence can be granted. Consumer protection will also be enhanced by the ongoing requirements for ABS such as the requirement to have a HoLP and HoFA. CLC's risk based approach to supervision will enable them to identify those entities which present risks and decide on appropriate regulatory response. This will promote and protect the interests of both consumers and the wider public and promote adherence to the professional principles.
- 10.9 Although the CLC application is the first from a potential Licensing Authority, we do not think that they should be the only Licensing Authority for ABS. The Act already allows more than one regulator to regulate any of the reserved legal activities provided the proper standards are maintained. The CLC does not currently have the ability to regulate the range of reserved activities and any future extensions are limited via primary legislation to conveyancing, probate, rights of audience and litigation (section 53 of the Courts and Legal Services Act 1990). If the CLC is successful in extending its reserved legal activities, it will only be able to authorise persons that are firstly licensed conveyancers. The application to extend reserved legal activities, submitted at the same time as this application to be designated as a Licensing Authority will be decided later this year after careful consideration of all the evidence, analysis and advice (including the advice from the Lord Chief Justice). That said we do not consider this application is about regulatory competition. It is about the competence of the CLC as a Licensing Authority for the areas they currently regulate and ensuring the right protections are in place to address the risks associated with the removal of restrictions on ownership. The Act imposes a responsibility to consider applications against the criteria on which we need to be satisfied when making a recommendation. The criteria are focused around the competence, capability and resources of the applicant rather than the number of licensing authorities that should be permitted.
- 10.10 In terms of regulatory standards, the LSB has thus far taken a case by case approach which has helped to inform its strategic view. At this time we are satisfied that the CLC's arrangements are appropriate for regulation as both an Approved

Regulator and a Licensing Authority. Consistency of standards is not an issue that is exclusive to Licensing authorities; it applies across all the activities of all the Approved Regulators for which LSB has oversight responsibility. Through our current work on regulatory standards we will (subject to the outcome of the consultation process) agree with each of the Approved Regulators an individual action plan through which they will improve standards in their approach to regulation. The fact that there are already multiple regulators covering all of the reserved activities (other than notarial activities) inevitably means that there will be a degree of inconsistency of *approach* to some aspects of regulation. However, the Executive's view is that the MoU and the work on regulatory standards should help to ensure greater consistency of outcomes.

Organisational capability

- 10.11 In our decision document on the Rules for Designating Approved Regulators as Licensing Authorities, we set out clear expectations that an applicant must be able to demonstrate how it has prepared properly and thoroughly for its role as a Licensing Authority and has appropriate arrangements in place to license competently. The Act requires that, in making a recommendation to the Lord Chancellor, we are satisfied that a prospective Licensing Authority will be competent and have sufficient resources to perform the role of Licensing Authority at the time that the order takes effect (Schedule 10, paragraph 11(2)(d)).
- 10.12 The process for designation of licensing authorities means that the CLC has had to submit its application before it has fully developed all of the functions it will need to regulate ABS. Arguably any Approved Regulator looking to become a Licensing Authority (or a body applying to become an Approved Regulator for the first time) would be in the same position. However the challenge is greater as the CLC is one of the first in a new regulatory regime. There is still a lot of work to do before the CLC is able to take applications from applicants so it is therefore essential that we consider not only where they have got to but what is left to do and more importantly, whether we are confident that they have the competence and ability to get there.
- 10.13 The CLC has provided a resources statement provided by Scrutton Bland, an external auditor, confirming that it has in place the structure, resources, systems, policies and flexibility to meet the demands of market changes from October 2011 onwards. As part of our assessment process we have sought more information on the way the CLC currently regulates and how it is changing its people, systems and processes to support a more outcomes focused approach. In particular we have looked at how the authorisation and licensing process will work in practice and how this fits in with the development of the CLC's risk methodology.
- 10.14 The CLC has clearly made significant progress in this area. We were given a walkthrough of the new Management Information System (MIS) which has been operational since 31 January 2011 and is under development to take ABS applications. This work is on track to be completed by 30 June 2011. The CLC has sourced additional IT support coupled with management support to ensure that this is completed on schedule. Verification of information provided by individual and firm checks at the application stage will be done by an external provider.

- 10.15 The system developments currently underway and information provided by MIS is a significant step in terms of capability. For example, the CLC is building data on individual practices to compare with data supplied by independent parties, including the Legal Ombudsman and professional indemnity insurers, in order to better understand both the market risks and entity risks within their regulated community. It enables staff to complete desk top audits and for annual submissions to be provided online. The CLC is also looking to take a more dynamic approach to risk assessment, using technology to gather wider intelligence and enabling staff to get to people and issues quicker.
- 10.16 The CLC recognises that in addition to improving its data collection and management process, its approach to supervision also needs to develop to more closely align with the principles and outcomes in the new Handbook. Alongside the system developments the CLC is also focused on ensuring they have the right people with the right skills in place. Three new Legal Practice Inspectors have been appointed in addition to the three that are currently in post. Together with the automation and increased information provided by MIS, CLC now has greater capacity to focus its supervision resources on the areas that present the most risk.
- 10.17 While we recognise that there is some development work to do, we are satisfied from our conversations with the CLC combined with the external assurance report that we have enough information to recommend that the CLC be designated as a Licensing Authority. By the time of designation, the CLC will have further developed its authorisation process and risk framework so that issues picked up at the licence application stage will inform the approach to supervision. The CLC will also have completed the next stage of its IT development and additional staff resources will be in place.

Regulation of non-reserved legal activities

- 10.18 The CLC is proposing that all licences stipulate the non-reserved legal activities that a licensed body is allowed to undertake through a series of permissions on the licence. The CLC believes that the regulation of non-reserved legal activities to the same standard as reserved activities is in the interests of consumer protection. Depending on the particular circumstances and risks involved with an application, the CLC may also place limits on non-reserved legal activities as a condition of issuing a licence.
- 10.19 The Mandatory Consultees have expressed different views on the approach to regulation of non-reserved legal activities which is to be expected given their statutory remit. Both the Consumer Panel and the Lord Chief Justice have expressed support for the proposal to regulate non-reserved legal activities to the same standard as those which are reserved. The Consumer Panel considers that this is aligned with the consumer expectation that all legal services are regulated. The Lord Chief Justice agrees that the CLC ought to regulate non-reserved legal activity and reserved legal activity to the same standard. Such an approach will offer clarity in the regulatory environment and therefore protection of the interests of the administration of justice.

10.20 The OFT has expressed concern that the imposition of regulation that may not be necessary to protect consumers may create barriers to entry that limit competition. In addition, the OFT is concerned that this approach may afford the CLC undue discretion over what unreserved legal activities the licensed body can undertake.

10.21 In our guidance on licensing rules, we proposed that the decision on whether to regulate non-reserved legal activities should reflect the current levels of consumer protection. The CLC currently authorises individual licensed conveyancers to provide conveyancing services or probate services through the issuing of a licence. Paragraph 2(a) of schedule 17 of the Act provides an amendment to the Administration of Justice Act 1985 which broadens the scope of regulated activity for individuals to include “other services by persons who hold licences” which means that anything an individual licensed conveyancer does may be regulated.

10.22 The CLC can also authorise CLC recognised bodies to provide conveyancing services and “other relevant legal services” (as defined by section 32(1)(b) of the 1985 Administration of Justice Act). This is a narrower definition than that provided for individual conveyancers by the amendment mentioned above. The CLC considers that this gives them the ability to regulate non-reserved legal activities provided by Recognised Bodies.

10.23 As a Licensing Authority, the CLC will arguably have the ability through its licensing rules to regulate a wider set of activities than it is currently able to. The CLC has confirmed to us that any decisions made in relation to the regulation of non-reserved legal activities will be risk based and will be made in accordance with the outcomes set out in the CLC Code of Conduct. It is not seeking to reserve particular activities to authorised persons and therefore effectively reserve currently non-reserved activities. Instead, the resources allocated to and arrangements for non-reserved legal activities will inform the risk assessment of the applicant. In determining each application, the CLC will assess the competence of the applicant, the sophistication and vulnerability of their clients and how closely aligned the non-reserved legal activities are to the reserved activities to be provided. The CLC will also consider the impact upon consumer choice and access to justice if the non-reserved activities are not permitted.

Approach to separate businesses

10.24 The CLC states in the application that it is likely to expect ABS offering non-reserved legal activities closely related to the reserved legal activities they undertake (such as will writing where probate services are provided) to provide those activities through the regulated entity as opposed to some being provided by a separate unregulated business. Where legal services are delivered alongside other types of services, the CLC is likely to require the legal services to be ‘ring fenced’ from the remainder of the business. This is the approach the CLC currently takes with Countrywide conveyancing services.

10.25 As with the regulation of non-reserved activities, the OFT commented that the imposition of regulation that is not necessary to protect consumers may create a barrier that limits competition.

10.26 The Consumer Panel supports the expectation that licensed bodies should offer reserved and non-reserved work through the same entity, as this will prevent entities from avoiding regulation through establishment of a separate business. The Consumer Panel expressed some concern that the CLC's intention to consider alternative approaches could lead to inconsistency and cause confusion for consumers and raised a series of practical questions which the CLC has since addressed in its response to the advice, for example how is a 'legal activity' defined? The Lord Chief Justice shares the view of the Consumer Panel and does not support the potential for permission of separate businesses to provide reserved and non-reserved legal services. His view is such arrangements would not create clarity in the regulatory environment.

10.27 The CLC is not proposing a specific prohibition of separate businesses or on legal and non-legal activities being provided by a single legal entity. The CLC also considers it to be in the consumer interest that an ABS is permitted to provide a range of activities to consumers. Decisions will be made in relation to each application and it will be for the applicant to set out the reasons why the proposed arrangements are appropriate and how they impact upon the regulatory objectives. The CLC has committed to assess the consistency of all its licensing determinations after six months operating as a Licensing Authority, and then every 12 months therefore. The CLC has confirmed to us that this review process will include decisions on the approach to separate businesses as well as any conditions placed on individual licenses.

10.28 The CLC has determined its likely approach based upon experience of regulating legal services and places the onus on applicants to set out the reasons why an alternative approach is needed. The CLC is seeking to use the licensing process to understand the types of business it will regulate and the individual risks posed. The CLC will then target its approach accordingly.

Standard of proof

10.29 The CLC's Regulatory and Enforcement Policies provide that the civil standard of proof, based on the 'balance of probabilities' is to be applied in regulatory determinations other than if a criminal act (including fraud or dishonesty) is alleged in which case the test applied is "beyond reasonable doubt". The CLC proposed taking the same approach in its function as a Licensing Authority.

10.30 The Legal Services Consumer Panel raised the matter of the standard of proof in its advice to us and expressed disappointment that the CLC had not decided to universally adopt the civil standard. The Panel considers that the civil standard of proof should apply in all disciplinary hearings as the need to prove beyond reasonable doubt could frustrate proceedings and potentially impact negatively on public protection. The Panel also highlighted the decision of other regulators, such as ILEX and the SRA, to apply the civil standard of proof and expressed concern that the lack of consistency with other regulators may lead licensable bodies being attracted to the regime which makes it harder for the Licensing Authority to take disciplinary action. The Lord Chief Justice, having reviewed the application alongside

the advice provided by the other consultees, agreed that it would seem appropriate for the CLC to move to a position commensurate with that of other regulators.

- 10.31 The Act provides that licensing rules must contain appropriate arrangements, including conduct rules, discipline rules and practice rules, under which the Licensing Authority will be able to regulate the conduct of bodies licensed by it and their managers and employees (section 83(5)(c)). In our guidance on the contents of licensing rules we set an expectation that an LA must have a credible and effective compliance and enforcement policy and must take account of the Better Regulation Principles when carrying out enforcement action. We have therefore considered the CLC's ability to enforce its licensing rules and whether there are any consistency issues with regards to the CLC's position on the standard of proof.
- 10.32 The First Tier Tribunal of the General Regulatory Chamber uses the civil standard of proof. As the First Tier Tribunal will be the appeals body for Licensing Authority decisions made by the CLC, we considered that it would be problematic for the LA to apply a different standard of proof in its internal decision making. This is particularly the case because the Tribunal will be able to conduct a substantive rehearing of a disciplinary matter and substitute its own decision for that of the Licensing Authority. It would therefore be problematic if, in making a new decision, the Tribunal did so on a different basis to that upon which the original decision was made.
- 10.33 Following discussion the CLC has confirmed to us that, subject to a short consultation which considers the change to the Licensing Authority application and the impact of amendments to the Disciplinary Procedure Rules on the current regulated community, they will adopt the civil standard of proof and amend the rules accordingly. The consultation closes on 27 April 2011.

Summary of advice from Mandatory Consultees and CLC representations

1. Overall		
Lord Chief Justice (LCJ) <ul style="list-style-type: none"> Considering the regulatory objectives of public interest and supporting the constitutional principles of the rule of law, the LCJ is opposed to the application 	Legal Services Consumer Panel (LSCP) <ul style="list-style-type: none"> Supports the application Congratulates the CLC on its emphasis on consumer outcomes and in particular its decision to include a client charter 	Office of Fair Trading (OFT) <ul style="list-style-type: none"> Unlikely to raise any substantive concerns with LA applications as they are likely to increase overall competition and choice for consumers Restrictions can only be justified where they are justified by the regulatory objectives
<p>In responding to the points made by the mandatory consultees the CLC asks that the following points are borne in mind:</p> <ul style="list-style-type: none"> The CLC was established by the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers in the provision of conveyancing services. The CLC issued its first licences in 1988 The Courts and Legal Services Act 1990 enabled the CLC to apply to license licensed conveyancers in the provision of advocacy, litigation and probate activities³ Applying the more permissive provisions of the AJA, the CLC made the Recognised Bodies Rules 2000 which allowed certificates of recognition to be issued to limited companies wholly owned by non-licensed conveyancers and managed by non-licensed conveyancers, provided the Chairman and a majority of the directors were licensed conveyancers (in effect these bodies were ABS) Sir David Clementi published his final report 'Review of the Regulatory Framework for Legal Services in England and Wales' in December 2004 making wide ranging recommendations for reform. He commented that the CLC "does permit outside investors to own practices [ie ABS] within its regulatory area"⁴ The Legal Services Act 2007 was enacted in October 2007 The CLC was authorised to regulate probate services from August 2008⁵ and issued its first probate licences in December 2008 The Licensing Rules 2009 and Regulation of Practices (Recognised Bodies) Rules 2009 came into force in March 2009. These rules <ul style="list-style-type: none"> permitted licensed conveyancers to become managers in SRA regulated entities extended the CLC's power to regulate non-licensed conveyancer managers; and changed the requirements so that only one licensed conveyancer is required to be a Manager in a CLC regulated entity, entities to select the most appropriate candidates (who may or may not be licensed conveyancers) as Managers. <p>As is apparent, the CLC has extended its regulatory powers incrementally over a number of years. The application to become a Licensing Authority and to extend the scope of services it regulates is a development of that approach.</p>		
2. Lord Chief's Justice's opposition		
<ul style="list-style-type: none"> CLC has experience of regulating ABS type entities but they are small in number and narrow in scope Should be a limit on the number of regulators permitted to operate in this area; the more established regulators ought to regulate ABS in the first instance The application is merely a 'stepping stone' to the wider rights application to which LCJ is opposed because the new areas lie outside the skills of a licensed conveyancer; LCJ unable to support an application which facilitates this 		

³ s.53 Courts and Legal Services Act 1990 (which came into force in December 2004 (SI 2004/2950) immediately before publication of the Clementi Review)

⁴ Para 56 page 123 of the Clementi Report

⁵ SI 2008/1865

Summary of advice from Mandatory Consultees and CLC representations

- Standards should be consistent across regulators and signing up to the *Memorandum of Understanding* only emphasises the risk of inconsistency; risk that different standards will lead to confusion and inefficiency both for the administration of justice and the consumer

CLC Response

As is set out above, the CLC has regulated licensed conveyancers since 1988. The AJA provides a robust statutory framework which has enabled it to be an entity regulator, and it has regulated ABS within its regulatory area since 2000. Our regulatory approach and the arrangements we propose in our Licensing Authority application are focused on the regulatory objectives and the principles of good regulation (as required by s.28 Legal Services Act 2007).

The LCJ responded to the CLC's consultation papers in December 2010 saying that he opposed both of the CLC's proposed applications: the application to regulate litigation and advocacy services, and; the application to be designated a Licensing Authority. He viewed it as inappropriate that the CLC be licensed to regulate ABS carrying out these additional reserved legal activities (litigation and advocacy services). We queried this response. The LCJ's office replied stating that the LCJ's objections did not apply to the CLC's application to become a licensing body in respect of bodies providing conveyancing services. His concerns were raised in respect of litigation and advocacy services. We were advised that the LCJ reiterated the view that all regulatory regimes must operate in the public interest in the administration of justice, and not merely in the interests of the consumer.

Whilst we do not agree with the view expressed by the LCJ in relation to our application to regulate litigation and advocacy services (to which we will respond separately in the context of that application), we believe that the CLC's Licensing Authority application should be determined in accordance with the requirements of Part 5 of the Legal Services Act 2007 and separately from any other application it has made. We remain confident that the CLC has the competence and the capability as an innovative regulator to meet the challenges posed by the regulation of ABS and the implementation of a principles based and outcomes focused approach to regulation.

The LCJ expressed concern that our proposed arrangements lack substance, giving as an example the proposed Alternative Business Structure (ABS) Multi-Disciplinary Practices MoU which he says whilst intended 'to ensure consistency of approach between regulators only emphasises the risk of inconsistency'. We do not accept this. We have had MoUs in place with other regulators (including the SRA) for a number of years. In our experience they work well because they ensure there is a timely exchange of information on regulatory issues. S.54 Legal Services Act 2007 brings an element of consistency to these arrangements by requiring :

'the regulatory arrangements of an approved regulator [to] make such provision as is reasonably practicable and, in all the circumstances, appropriate—

- (a) to prevent external regulatory conflicts,
- (b) to provide for the resolution of any external regulatory conflicts which arise, and
- (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body.

ABS will be authorised to provide a range of services (including legal services) and though a Licensing Authority will regulate the legal services provided by ABS, it would not, in the CLC's view, be consistent with the regulatory objectives if a Licensing Authority did not have in place agreements with other regulators in order to ensure that any breach of regulatory requirements is addressed by the most appropriate regulator.

The MoU also seeks to ensure there is a timely exchange of information about breach of regulatory arrangements, including fraudulent activity and dishonesty. This is consistent with the interests of the consumer and public, as well as the administration of justice.

3. Standard of proof in disciplinary hearings

Summary of advice from Mandatory Consultees and CLC representations

<p>LCJ</p> <ul style="list-style-type: none"> • Seems appropriate for the CLC to move to a position commensurate with other regulators in respect of the burden of proof in disciplinary procedures 	<p>LSCP</p> <ul style="list-style-type: none"> • LSCP view is that the civil standard should apply in all disciplinary hearings • Consistency with other regulators is important to avoid the risk of licensable bodies being attracted to the LA where it is harder for them to take disciplinary action • Considers that public protection may be undermined if a Licensing Authority is unable to take action 	<p>OFT</p> <ul style="list-style-type: none"> • No comment
<p>CLC Response</p> <p>The CLC's initial view was that the applicable standard of proof was by no means as clear cut as had been suggested by the mandatory consultees. However, the CLC considers it critical that the standard of proof it applies is the same as that applied by the First Tier Tribunal of the General Regulatory Chamber which will determine appeals against enforcement and other determinations made by the CLC as a Licensing Authority. Failure to do so would lead to confusion within the CLC regulated community and is likely to diminish the reputation of both the profession and the CLC because there may be a perception that appropriate enforcement action is not being taken against the regulated community if too low a standard of proof is applied.</p> <p>The CLC has published a short consultation paper in which it proposes that the civil standard of proof (the balance of probabilities) should be applied in all of its regulatory proceedings and determinations.</p>		
<p>4. Reserved/non-reserved</p>		
<p>LCJ</p> <ul style="list-style-type: none"> • CLC should regulate non reserved and reserved activity to the same standard to ensure clarity and protection of interests of administration of justice • Does not support permission of separate business for the same reason as above 	<p>LSCP</p> <ul style="list-style-type: none"> • Supports position of regulating non reserved legal activities to the same standard reserved legal activities as this policy aligns towards consumer expectations that all legal services are regulated • Supports the expectation that ABS should offer reserved and non-reserved services through the same entity but concerned that flexibility which allows CLC to consider alternatives could lead to inconsistency and confusion for consumers • CLC need to do more work on how decisions will be made around separate businesses. For example, how is a legal activity defined? How do you define closely related activities? How does the CLC monitor compliance? What 	<p>OFT</p> <ul style="list-style-type: none"> • Concerned that the potential restriction on non reserved activities being provided outside of the regulated entity may create a barrier to entry which restricts competition • May allow CLC undue discretion over the non-reserved activities that a licensed body can undertake • Suggest that a balance needs to be struck between necessary consumer protections and ensuring that any protective measures do not restrict competition • LSB has to be confident that the benefits of the CLC's provision outweigh any potential costs to consumer choice and completion • Suggests the use of a sunset clause for these

Summary of advice from Mandatory Consultees and CLC representations

	criteria will CLC use to consider alternative approaches?	provisions
<p>CLC Response</p> <p>Our application stated that we are likely to expect Licensed Bodies offering non-reserved legal activities closely related to the reserved legal activities they undertake (such as will writing where they provide probate activities) to provide those activities through the regulated entity⁶. We believe this to be in the interests of consumer protection since consumers ‘assume that someone is making sure standards are being maintained’⁷.</p> <p>The CLC believes that the observations from the mandatory consultees should be considered in the context of the broader legal landscape. The Legal Services Institute has published two papers: one reviewing the history and rationale of reserved legal activities, and: the other suggesting the case for reserving specific legal activities⁸. In parallel the Legal Services Board has asked the Legal Services Consumer Panel to provide advice ‘about the consumer interest in relation to the provision of will writing services’⁹. What is clear (and is not altogether unsurprising) is that no overarching policy considerations of the nature of the regulatory objectives (set out at s.1 Legal Services Act 2007) were formulated at the time legal activities began to be reserved in the nineteenth century.</p> <p>Clearly, the CLC needs to have these factors in mind in determining how it should approach the regulation of reserved and non-reserved legal activities. In this context the CLC considers it is consistent with the regulatory objectives for it to take the factors identified at paragraph 5.31.2 (page 105 of its application) into account in determining whether to approve the arrangements proposed for the provision of reserved and non-reserved legal activities. Since the regulation of non-reserved legal activities is to a large extent a new departure for it, the CLC has decided to manage the delivery of non-reserved legal activities by the use of permissions endorsed on a licence. It believes this is a transparent and proportionate way to manage any associated risks.</p> <p>As we state in our application ‘we will operate a programme of systematic review to ensure that our regulatory arrangements remain up-to-date and relevant’¹⁰. Given that commitment, we do not consider that a ‘sunset clause’ is necessary.</p>		
5. Access to Justice		
<p>LCJ</p> <p>Note that the CLC will require bodies to provide an access to justice statement and that only in exceptional circumstances will an application be refused on the basis of access to justice. Such processes fail to offer the necessary assurances for the protection of the public interest and the administration of justice</p>	<p>LSCP</p> <ul style="list-style-type: none"> • Welcomes the requirement that licensable bodies will need to set out in their application how they will improve access to justice and make an annual declaration on how this has been achieved • CLC should monitor the impact of its ABS regime on overall access to justice (after 6 months then every 12 months thereafter), not 	<p>OFT</p> <ul style="list-style-type: none"> • No comment

⁶ Para 3.10 p.19 CLC LA Application

⁷ Para 1.2 Legal Services Consumer Panel paper “Quality in Legal Services” published November 2010

⁸ accessible at http://www.legalservicesinstitute.org.uk/LSI/LSI_Papers/Institute_Papers/Institute_papers/

⁹ Letter LSB to LSCP 9 September 2010 at http://www.legalservicesconsumerpanel.org.uk/ourwork/will_writing/documents/20100909_LSBcommissioningletter.pdf

¹⁰ Para 2.55 p.15 CLC LA Application

Summary of advice from Mandatory Consultees and CLC representations

	just at an entity level	
<p>CLC response</p> <p>In accordance with the Legal Service Board’s guidance our application committed us to requiring applicants to provide us with a statement outlining how licensing them would improve access to justice. We will also require our regulated community to provide us with an access to statement as part of the information which it is required to provide us on an annual basis and publish access to justice examples of good practice. The LSCP has welcomed both of these initiatives. As suggested by the LSCP, we shall consider further how we will analyse the overall impact of access to justice and communicate our findings externally.</p> <p>The LCJ considered that our proposal to refuse an application on the basis of access to justice only in exceptional circumstances failed to provide the necessary assurances for the protection of the public interest and the administration of justice.</p> <p>The introduction of a regulatory objective targeted specifically at access to justice is new to the legal regulators, as it is to their communities. We anticipate that it will take a number of years before the impact of these reforms on access to justice can be effectively measured. The approach taken by the CLC in its application is consistent with the LSB’s Guidance. We refer, in particular, to the LSB statement ‘Since it is likely to be difficult for applicants [for an ABS licence] to predict the impact that they will have on access to justice in isolation, other than in exceptional circumstances, we would not expect a licence application to be refused on the basis of the response to this question’. Over time, the LSB expects evidence to build up (by ARs, LAs and the LSB) that shows how access to justice changes.</p>		
6. Other		
<p>LCJ</p> <ul style="list-style-type: none"> No comment 	<p>LSCP</p> <ul style="list-style-type: none"> <i>Consumer Engagement</i> - Business Plan is not specific on planned consumer engagement activities and there is no allocated budget 	<p>OFT</p> <ul style="list-style-type: none"> <i>Professional Indemnity Insurance</i> - opt out from master policy is a positive step towards greater flexibility. Consider that CLC should specify that the opt out refers to the open market
<p>CLC Response</p> <p><i>Professional Indemnity Insurance</i> – CLC’s view is that it is clear that the cover can be obtained in the open market: “Should you choose to opt out of the CLC Master Policy you are required to obtain this cover from and authorised insurer” (<i>provided in the CLC Professional Indemnity Insurance Operating Framework and Licensing Body Framework</i>)</p> <p><i>Consumer Engagement</i> - Our Corporate Strategy commits us to developing a comprehensive programme of research to increase our understanding about the attitudes of both consumers and the regulated community so that we can underpin and enhance our evidence-based policy approach. We shall share our detailed plans with the LSCP as they emerge.</p>		

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This paper relates solely to the approval of the Handbook (and related Frameworks) as a rules change for the existing regulated community.



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

The Council for Licensed Conveyancers (**CLC**) has made an application under the Legal Services Act 2007 (**the Act**) to change its regulatory arrangements. The CLC has undertaken an exercise to completely re-write its regulatory arrangements for individuals and bodies regulated by the CLC.

The Legal Services Board (**LSB**) has approved in part the application for CLC’s new Handbook. A part approval has been granted since the Handbook as presented included provisions which will only come into force if the CLC’s applications to be designated as a Licensing Authority and to extend its reserved legal activities to conduct of litigation and rights of audience are successful. Provisions which are specific to those designations will be considered in the assessment of the relevant applications.

This Notice sets out the basis for the LSB approval and the decision taken.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Act to review and approve or reject alterations to the regulatory arrangements of the Approved Regulators. The 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 below¹¹). 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

¹¹ 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.

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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.
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. The chronology for handling of this application can be found towards the end of this Decision Notice.

Background

6. In developing the approach, framework and rules for licensing authorities, the LSB has made clear that it expects applicants to adopt an outcomes-focused approach to regulation.
7. As part of its preparations for becoming a Licensing Authority and extending the reserved legal activities for which it is an approved regulator (both of which are subject to separate applications to the LSB) the CLC has taken the opportunity to review and revise all of its rules and guidance. It has also developed a series of framework documents which describe the parameters within which the CLC operate.

The CLC Handbook

8. The CLC recognises the merits of an outcomes-focused approach to regulation. It proposes to replace its existing prescriptive Rules and Guidance with a new Handbook of Codes and Frameworks. The Codes are the foundation stones of the proposed regulatory arrangements. They set out the regulatory responsibilities of the regulated community and, wherever possible, are based on principles rather than prescriptive.

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9. The Code of Conduct is the “parent” document. It sets out 6 Overriding Principles (OP)
 - OP1 Act with independence and integrity
 - OP1 Maintain high standards of work
 - OP3 Act in the best interests of your clients
 - OP4 Comply with your duty to the Court¹²
 - OP5 Deal with regulators and ombudsmen in an open and co-operative way
 - OP6 Promote equality and access to service

10. Each Overriding Principle is underpinned by
 - Outcomes – the result for the customer; the end result of the application of a principle or specific requirement
 - Principles – an essential quality; a characteristic, behaviour or ethic which must be demonstrated so that positive outcomes for customers are achieved
 - Specific requirements – a strict direction for conduct

11. The supporting Codes & Guidance cover a range of subjects, e.g. accounts, conflicts of interest, equality, professional indemnity insurance. Each is introduced with Outcomes that the regulated community must deliver for their clients in that particular area of activity. They are explicitly linked to the Outcomes in the Code of Conduct and contain individual provisions relevant to the issue covered by the Code.

12. In addition to the Codes & Guidance, the CLC has developed 7 framework documents which describe the processes that the CLC follow, e.g. the Compensation Fund Operating Framework sets out how the CLC manage the Compensation Fund. These frameworks have been submitted for approval.

13. CLC’s view is that the revisions will make the regulatory arrangements more transparent, accountable and appropriate. CLC intends to conduct a survey of its regulated community one year after the roll-out of the revised arrangements to determine whether transparency, accountability and proportionality have been achieved.

Major changes proposed by CLC

14. In developing the Handbook, CLC has introduced some significant changes to its regulatory arrangements.

¹² This Outcome will only be applicable if CLC’s application to be designated for the reserved legal activities of rights of audience and right to conduct litigation is successful. This application is being considered by the LSB.

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Regulation of non-reserved legal activities

15. As part of its Licensing Authority application, the CLC is proposing that all licences stipulate the non-reserved legal activities that a licensed body is allowed to undertake through a series of permissions on the licence. It may also place limits on the non-reserved legal activities through the imposition of conditions. The CLC believes that the regulation of non-reserved legal activities to the same standard as reserved activities is in the interests of consumer protection.
16. The Licensed Conveyancers Licensing Framework and the Recognised Body Recognition Framework have similar provisions thereby ensuring a consistent approach across all of the CLC regulated community.
17. Differing opinions have been expressed on whether non-reserved legal activities should be regulated (see paragraphs [] to [] of the Decision Notice on the Licensing Authority application).
18. Paragraph 2(a) of schedule 17 of the Act provides an amendment to the Administration of Justice Act 1985 which broadens the scope of regulated activity for individuals to include “other services by persons who hold licences” which means that anything an individual licensed conveyancer does may be regulated. The CLC can also authorise CLC recognised bodies to provide conveyancing services and “other relevant legal services” (as defined by section 32(1)(b) of the 1985 Administration of Justice Act).
19. The CLC has confirmed that any decisions to regulate non-reserved legal activities through permissions will be risk based and will be made in accordance with the outcomes set out in the CLC Code of Conduct. It is not seeking to reserve particular activities to authorised persons. Instead, the resources allocated to and arrangements for non-reserved legal activities will inform the risk assessment of the applicant. In determining each application, the CLC will assess the competence of the applicant, the sophistication and vulnerability of their clients and how closely aligned the non-reserved legal activities are to the reserved activities to be provided. The CLC will also consider the impact upon consumer choice and access to justice if the non-reserved activities are not permitted.

Other changes

20. CLC will introduce flexibility in the Professional Indemnity Insurance (PII) Code by allowing firms to opt out of the CLC Master Policy. Firms that elect to do so will need to provide evidence to the CLC that they have in place PII cover that is at least equivalent to that of the Master Policy.

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21. CLC propose to remove the requirement for annual renewal of licences, though firms will still have to submit an annual return of key data and information. This will allow the CLC to direct its resources to more risk identification and management activities rather than administrative functions.
22. There is a new code dedicated to equality issues. The Equality Code & Guidance is designed to assist the regulated community to achieve compliance with OP6, Promote equality and access to service.
23. The Compensation Fund Framework enables the CLC to recover money from a manager without having to prove that he specifically contributed to the loss giving rise to the claim. This recognises that managers have a responsibility to ensure that firms have in place appropriate systems and procedures to prevent the loss arising in the first place.

Changes to the proposals during the assessment

24. During the assessment of the application, we raised a number of issues with the CLC which have led to the following changes to the proposed arrangements:
 - A requirement in the CLC Accounts Rules 2008 on licensed conveyancer to pay interest, at his own expense, to clients on money that should have been held in a separate designated account or client account but it had not been carried forward to the new rules. As a result, the Accounts Code 15.1 has been amended to “ when holding *Client Money* in a *Client Account* or which should have been paid into a *Client Account*, subject to 15.3 you must account to the client for any interest earned or which should have been earned on such money”
 - The Compensation Fund Operating Framework required that when making a claim for a grant from the Compensation Fund, “*Claimants* must sign, complete and deliver to *CLC* a notice of *claim* in the form required by the *CLC*”. Concern was expressed that some clients (such as those that are vulnerable or have disability) may not be able to meet these requirements. A further provision has been added “where the Claimant requires assistance in completing a notice of claim form this will be provided”
 - An additional provision has been included in the Compensation Fund Operating Framework allowing a claimant a right to request that the CLC Adjudication Panel reviews a decision on a claim.

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Rules that are approved with effect from the date of this decision notice

25. This Decision Notice only approves changes to the regulatory arrangements that apply to the current regulated community for the current reserved legal activities for which the CLC is an approved regulator.

Rules that are not approved at this time

26. The application contains provisions that will only become effective if the CLC is successful in its applications to be designated as a Licensing Authority and to extend the reserved legal activities for which it is an approved regulator. Proposals which are specific to those applications will be considered for approval as part of the assessment of those applications.
27. Annex 1 lists the Codes that have been approved in full and in part. It also lists those that have not been approved as part of this decision. For those parts that have not been approved, an indication is given as to which application will consider them.
28. Annex 2 contains a copy of the revised Code of Conduct. A copy of the full Handbook can be found on the LSB website. **(ADD LINK)**

Decision

29. 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 relation to the regulatory arrangements in so far as it affects the current regulated community. Therefore the application is therefore approved for those items listed on paragraph 1 and 2 of Annex 1.
30. The sections of the Handbook listed in paragraph 3 of Annex 1 are partially approved. Those listed in paragraph 4 are not approved. For the sections not approved, the application is refused under Schedule 4, paragraphs 23(d) and (e).

Chronology

- The LSB confirmed receipt of an application from the CLC on 21 February 2011.
- The 28 day initial decision period for considering the application ended on 18 March 2011
- The Decision Period was extended to 19 May 2011 on 18 March 2011 to allow for the proposals to be considered alongside the application from the CLC to be designated as a Licensing Authority.
- This Decision Notice is being published on our website on **INSERT DATE**.

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Actions

- The CLC to conduct a survey of its regulated community one year after the roll-out of the revised arrangements to determine whether transparency, accountability and proportionality has been achieved.

The Legal Services Board

INSERT DATE

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ANNEX 1 (of Decision Notice)**1. CLC Handbook – Codes & Guidance approved in full by this Decision Notice****Universal Arrangements**

- Accounts Code & Guidance
- Anti-Money Laundering and Combating Terrorist Financing Code & Guidance
- Complaints Code & Guidance
- Conflicts of Interest Code & Guidance
- Continuing Professional Development Code
- Dealing with non-Authorised Persons (third parties) Code & Guidance
- Disclosure of Profits and Advantages Code
- Equality Code & Guidance
- Estimates and Terms of Engagement Code & Guidance
- Management and Supervision Arrangements Code & Guidance
- Professional Indemnity Insurance Code & Guidance
- Undertakings Code & Guidance

Specific Arrangements

- [Acting as an Insurance Intermediary Code & Guidance]
- Acting for Lenders and Mortgage Fraud Code & Guidance
- Recognised Body Code
- Transactions Files Code & Guidance

Frameworks

- Compensation Fund Operating Framework
- Professional Indemnity Insurance Framework

2. Other Framework documents approved in full under this Decision Notice

- Licensed Conveyancers Licensing Framework
- Recognised Body Recognition Framework

3. Elements of the CLC Handbook that are approved in part under this Decision Notice

	Section of Handbook	Excluding	To be considered as part of
1	Code of Conduct	Overriding Principle (OP) 4 and the Outcome, Principles and Specific Requirements relating to the OP	Additional RLA application
2	Notification Code	Paragraphs 13 to 16 inclusive - provisions relating to Licensed Bodies (ABS)	Licensing Authority application
3	Continuing Professional Development Framework	Para 2 in so far as it imposes requirements for holders of litigation and/or advocacy licences	Additional RLA application

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4. Elements of the CLC Handbook that are not approved under this Decision Notice

- Licensed Body Code – will be considered as under the Licensing Authority application
- Litigation and Advocacy Supplementary Code – will be considered as part of the extension to reserved legal activity application

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Universal Arrangements **Decision Notice)**

Annex 2 (of



Introduction

This **Code of Conduct** was made in accordance with s.20 of the **Administration of Justice Act 1985** and s.83 of the **Legal Services Act 2007**.

All individuals and bodies regulated by the **CLC** must comply with this Code and its associated **regulatory arrangements**. In this Code “you” refers to individuals and bodies (and the employees and managers within them) regulated by the **CLC**. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code. Your main driver should be the delivery of positive **client outcomes**. The Code comprises **principles** and **specific requirements**, which taken together deliver positive **Outcomes** for your **Clients** and, particularly in relation to **Overriding Principle 6**, for others you deal with.

To effectively secure the protection of, and the provision of choice for, the consumer of legal services, you must at all times comply with the following **Overriding Principles**:

1. Act with independence and integrity;
2. Maintain high standards of work;
3. Act in the best interests of your **Clients**;
4. Comply with your duty to the court;
5. Deal with regulators and ombudsmen in an open and co-operative way;
6. Promote equality of access and service.

These are underpinned by **principles** of behaviour which must be demonstrated and **specific requirements** which must be complied with in order that the **Overriding Principles** are supported.

Disciplinary proceedings may be taken against you if the **CLC** believes there has been a breach of this Code, meaning that **clients** do not receive the standard of legal services they should reasonably expect to receive. The **CLC's** response will be informed by the **CLC's** Regulatory and **Enforcement** Policies.

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In exceptional circumstances the **CLC** may waive a provision, or provisions, of the **regulatory arrangements** for an individual, body or circumstance for a particular purpose, or purposes, and with the **conditions** specified in the waiver.

Overriding Principle 1. Act with independence and integrity

Outcomes - you must deliver the following **Outcomes**:

- 1.1 **Clients** receive good quality independent information, representation and advice;
- 1.2 **Clients** receive an honest and lawful service;
- 1.3 **Client money** is kept separately and safely.

Principles - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You do not allow your independence to be compromised.
- b) You act honestly, professionally and decently.
- c) You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute.
- d) You **carry on Reserved Legal Activity** only through a person entitled to **carry on** that activity.
- e) You do not give false or misleading information relating to the provision of **Regulated Services**.
- f) You do not allow fee arrangements to prejudice your independence or professional judgement.
- g) You do not conduct business under a misleading name.
- h) You keep **Client money** safe.
- i) You do not publicise your business through unsolicited communications in person or by telephone.
- j) Your advertising is clear, accurate and fair.
- k) You keep **Client money** entirely separate from your money or the money of the entity.
- l) You do not take unfair advantage of any person, whether or not a **Client** of the business.

Specific Requirements - you must also comply with the following **specific requirements**:

- m) You comply with **anti-money laundering and prevention of financing terrorism legislation**.
- n) When acting as a **CLC** licensee, you accept instructions only to act in a matter which is regulated by the **CLC**.

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- o) All business **communications**, websites and office premises display information confirming the entity is regulated by the **CLC** and the names of the **Managers** (identifying those who are **Authorised Persons**).

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Overriding Principle 2. Maintain high standards of work

Outcomes- you must deliver the following **Outcomes**:

- 2.1 **Clients** are provided with a high standard of legal services;
- 2.2 **Client** matters are dealt with using care, skill and diligence;
- 2.3 Appropriate **arrangements**, resources, procedures, skills and commitment are in place to ensure **Clients** always receive a high standard of service.

Principles - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You provide the level of service appropriate for, and agreed with, the **Client**.
- b) You keep your skills and legal knowledge up-to-date.
- c) You ensure all individuals within the entity are competent to do their work.
- d) You supervise and regularly check the quality of work in **Client** matters.
- e) You comply fully with any undertaking given by you.
- f) You **systematically** identify and mitigate risks to the business and to **Clients**.
- g) You promote ethical practice and compliance with regulatory requirements.
- h) You enable staff to raise concerns which are acted on appropriately.
- i) You maintain proper governance, management, supervision, financial, and risk management **arrangements** and **controls**.
- j) You administer oaths, affirmations and declarations properly.
- k) You deliver services in accordance with timetables reasonably agreed with the **Client**.

Specific Requirements - you must also comply with the following **specific requirements**:

- l) **Control** of an entity is from a permanent fixed address in England or Wales.
- m) A **Manager** who is an **Authorised Person** is responsible for ensuring that all of the entity's **employees** are properly supervised.
- n) You make provision for alternative supervision **arrangements** in case of illness, accident or other unforeseen event.
- o) You maintain proper records to evidence your **arrangements** and **controls** and how they are applied.

Overriding Principle 3. Act in the best interests of your Clients**Outcomes** - you must deliver the following **Outcomes**:

- 3.1 Each **Client's** best interests are served;
- 3.2 **Clients** receive advice appropriate to their circumstances;
- 3.3 **Clients** have the information they need to make informed decisions;
- 3.4 **Clients** are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the **CLC**;
- 3.5 **Clients** are aware of any limitation or any condition resulting from your relationship with another party;
- 3.6 **Clients'** affairs are treated confidentially (except as required or permitted by law or with the **Client's** consent).

Principles - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You only accept instructions and act in relation to matters which are within your professional competence.
- b) You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**).
- c) You do not act for a **Client** where you judge it is not in their best interests for you to do so.
- d) You do not accept instructions from a person nor continue to act for a **Client** whose interests conflict directly with your own, the entity's, or another **Client**.
- e) You disclose **client** information only as the **Client** has instructed (or as required by the **CLC's regulatory arrangements** or by law), keeping effective records of any disclosures you make.
- f) You only recommend a particular person, business or product when it is in the best interests of the **Client**.
- g) You cease acting in a matter if the **Client** so instructs or, in the absence of such instructions where it is reasonable to do so.
- h) You provide the **Client** with information which is accurate, useful and appropriate to the particular **Client**.
- i) You only provide **reserved legal activities** whilst you have **CLC**-approved **professional indemnity insurance** in force.
- j) You provide the **Client** with all relevant information relating to any fee arrangements or fee changes.
- k) You advise **Clients** of the name and status of the person dealing with their matter and the name of the person responsible for overall supervision.
- l) You consult **Clients** on key decisions in a timely way.
- m) You **promptly** advise **Clients** of any significant changes to projected **costs**, timelines and strategies.

Specific Requirements - you must also comply with the following **specific requirements**:

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- n) Where the entity represents parties with different interests in any transaction each party is at all times represented by different **Authorised Persons** conducting themselves in the matter as though they were members of different entities.
- o) You ensure there are adequate indemnity arrangements in respect of **claims** made against you for work carried out by you after you have ceased to practise.
- p) If you seek to exclude or limit liability, you do so only to the extent that such exclusion or limitation is above the minimum level of cover provided by **CLC**-approved **professional indemnity insurance**; you must obtain the written informed consent of the **Client** for such exclusion or limitation to be effective.
- q) When providing services which are not regulated by the **CLC**, you advise your **Client** of this and inform them in writing that the activity is not covered by **CLC**-approved **professional indemnity insurance** or the **CLC**-administered **Compensation Fund**.
- r) Before or when accepting instructions, you inform **Clients** in writing of the terms on which the instructions are accepted, a complete, accurate estimate of fees and **disbursements** to be charged and if and when they are likely to change.
- s) You **promptly** inform the **Client** in writing of the existence and amount of any sum payable (whether directly or indirectly) as a result of receipt of that **Client's** instructions.
- t) With the exception of **disbursements**, you do not delay completion because fees are outstanding to you.
- u) You discuss and agree with the **Client** how **costs** will be paid, whether directly by the **Client**, by public funding, through an insurance policy or otherwise.

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Overriding Principle 4. Comply with your duty to the court

Note: this Principle will only be applicable if the *CLC's* application to regulate *advocacy and litigation services* is successful

Outcomes - you must deliver the following **Outcomes**:

- 4.1 You act in the interests of justice;
- 4.2 You act in good faith towards **Clients**.

Principles - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You promote and protect the **client's** best interests.
- b) You do not compromise your professional standards or independence.
- c) You assist the court in the administration of justice.
- d) You do not knowingly or recklessly mislead or deceive the court, or allow the court to be misled.
- e) You ensure that the Court is informed of all relevant decisions and legislative provisions (whether this has a favourable or unfavourable effect on the case you are advancing).
- f) You comply with any Court Order (unless an application for a stay is pending or the Order has been revoked by the Court) ;
- g) You advise your **Client** to comply with Court Orders and of the consequences of failing to do so.
- h) You properly protect sensitive evidence.
- i) You safeguard the well being of children and other vulnerable persons.

Specific Requirement - you must also comply with the following specific requirement:

- j) You ensure that the court is made aware of any relevant legal or factual matters which are likely to have a material effect on the outcome of the proceedings.

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Overriding Principle 5. Deal with regulators and ombudsmen in an open and co-operative way.

Outcome - you must deliver the following **Outcome**:

5.1 You act in accordance with your regulatory responsibilities.

Principles - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You are open and honest in your dealings with us.
- b) You comply with the **CLC Code of Conduct** and the **CLC's other regulatory arrangements**.
- c) You comply **promptly** and fully with a **CLC** direction or request.
- d) You comply with any **authorisation, permission** or **condition** endorsed on your **licence, Recognised Body Certificate** or **Licensed Body Licence**.
- e) You co-operate with any **CLC** investigation.
- f) You co-operate with any **Legal Ombudsman** investigation.
- g) You comply **promptly** and fully with any **Legal Ombudsman** Order.
- h) You co-operate with other regulators and ombudsmen.

Specific Requirements - you must also comply with the following **specific requirements**:

- i) You make the **Compensation Fund** contribution determined by the **CLC**.
- j) You **systematically** identify, monitor and manage risks to the delivery of this Code's **outcomes**.
- k) You **promptly** notify insurers in writing of any facts or matters which may give rise to a **claim** under **CLC**-approved **professional indemnity insurance**.
- l) You **promptly** notify the **CLC** in writing of any facts or matters which may give rise to a **claim** under its **Compensation Fund**.
- m) As a **CLC** licensee operating in an entity regulated by another regulator you must comply with that regulator's regulations at all times in a way which is reasonably consistent with this Code.
- n) You obtain permission from the **CLC** before offering **Reserved legal activities**:
 - as a new business;
 - in an entity regulated by another **Approved Regulator**, or
 - through an entity with a **Manager** who is not a **Licensed Conveyancer**.
- o) You notify the **CLC** of any material breach of this Code, whether by you, the entity or any other person.
- p) You notify the **CLC** of a change as set out in the **CLC's** Notification Code.

Overriding Principle 6. Promote equality of access and service.**Outcomes** - you must deliver the following **Outcomes**: -

- 6.1 The service is accessible and responsive to the needs of individual **Clients**, including those who are vulnerable;¹
- 6.2 No-one - **Client, employee**, colleague, job applicant, trainee or other party - you deal with feels discriminated² against (whether directly or indirectly), victimised or harassed;
- 6.3 You accept responsibility where the service you provide is not of the expected standard and provide appropriate redress for the **Client** where necessary;
- 6.4 Handling of **complaints** takes proper account of **Clients'** individual needs, including those who are vulnerable;
- 6.5 **Complaints** are dealt with impartially and comprehensively.

Principles - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You comply with **Equalities legislation**.
- b) You make reasonable adjustments to prevent persons with disabilities from being placed at a substantial disadvantage.
- c) You provide equal opportunities for all partners, **employees** or applicants in employment and training.
- d) You make all reasonable efforts to ensure your service is accessible and responsive to **Clients**, including those with vulnerabilities.
- e) Your **complaints** procedure is clear, well-publicised and free.
- f) You treat **complaints** seriously and provide appropriate redress options.
- g) You deal with **complaints** fairly and within 28 days.
- h) You identify and address systemic **Client Complaints** issues.

Specific Requirements - you must also comply with the following **specific requirements**:

- i) Any allegation of (direct or indirect) discrimination, victimisation and harassment is investigated thoroughly, resulting, where appropriate, in disciplinary action.
- j) You advise **Clients** from the outset of their right to make a **complaint**, how to make it, to whom, and the timeframes involved.
- k) You advise **Clients** of their right to have their **complaint** escalated to the **Legal Ombudsman** and provide them with contact details and timeframes of that body.
- l) You keep a record of **complaints** received and any action taken as a result.

¹ a **Client** may be vulnerable because of a range of characteristics such as low-literacy levels; disability; distress; limited knowledge of, or limited skills in, use of

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English; or lack of knowledge of their legal entitlements. Vulnerability can only be assessed on a case-by-case basis.

² On the grounds of age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation.

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