

To:	Board
Date of Meeting:	13 December 2010
Item:	Paper (10) 97

Title:	Alternative business structures: appeal arrangements – recommendation to Lord Chancellor and consultation response
Workstream(s):	Workstream 2B: Widening access to the legal market
Introduced by:	Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087
Author:	Michael Stacey, Project Manager michael.stacey@legalservicesboard.org.uk / 020 7271 0089
Status:	Protect

Summary:

This paper updates the Board on the consultation about alternative business structure (**ABS**) appeal arrangements, which are required to ensure appropriate arrangements are in place for appeals against decisions made by Licensing Authorities (**LA**). The Lord Chancellor has an order-making power under s.80 of Legal Services Act 2007 (**'the Act'**) to make provision about the body that is to hear these appeals. Our proposal is that the First-tier Tribunal, General Regulatory Chamber should be the relevant appellate body in relation to Solicitors Regulation Authority (**SRA**) and Council for Licensed Conveyancers (**CLC**), should they be designated as LAs (and the relevant appellate body against any relevant decisions of the Board made in its capacity as an LA).

The Board is invited to agree in principle that a formal recommendation should be made to the Lord Chancellor to make the relevant Order, subject to:

- clarification of the Tribunals Service's position on altering its rules on costs
- formal consent to the recommendation being received from the relevant Approved Regulators (**AR**) and the Tribunals Service.

The Board is invited to give its consent to the proposed Order as a body from whose decisions an appeal can be made. This means that its decisions (if it becomes an LA) can be appealed to the First-tier Tribunal, General Regulatory Chamber.

The paper also seeks the Board's agreement to issue supplementary guidance to LAs on the content of licensing rules, and invites the Board to make rules under s.96 of the Act in relation to the relevant period for appeals against the imposition of a financial penalty by an LA.

Finally, it invites the Board to delegate authority to the Chairman and Chief Executive to publish the final version of the summary of responses and decision document.

Copies of the individual consultation responses will be available at the meeting (or are available by e-mail in advance on request).

Risks and mitigations	
Financial:	None.
FoIA:	Exempt – ss 22, 36 and 44 (review post-meeting).
Legal:	None.
Reputational:	None.
Resource:	Resource currently considered sufficient.

Consultation	Yes	No	Who / why?
Board Members:		✓	Update only.
Consumer Panel:		✓	
Others:	N/A.		

Recommendation(s):
<p>The Board is invited:</p> <ol style="list-style-type: none"> (1) to agree in principle to make the recommendation at Annex A to the Lord Chancellor in relation to the proposed s.80 order, subject to: <ul style="list-style-type: none"> • clarification of the Tribunals Service’s position on altering its rules on costs • formal consent to the recommendation being received from the relevant ARs and the Tribunals Service; (2) to consent to the recommendation in relation to the relevant appellate body, as a body from whose decisions (in its capacity as an LA) the appeals are to be made; (3) to agree to issue supplementary guidance to LAs on the content of licensing rules (see Annex B); (4) to make rules under s.96 of the Act in relation to the relevant period for appeals against the imposition of a financial penalty by an LA (see Annex C); and (5) to agree to delegate authority to the Chairman and Chief Executive to publish the final version of the summary of responses and decision document (current draft attached at Annex D).

LEGAL SERVICES BOARD

To:	Board		
Date of Meeting:	13 December 2010	Item:	Paper (10) 97

Alternative business structures: appeal arrangements – recommendation to Lord Chancellor and consultation response

Background

1. Appropriate appeal arrangements for ABS need to be in place in advance of us finalising a recommendation that an AR should be designated as an LA. LSB cannot approve ABS licensing rules unless it is satisfied that there is a body able to hear appeals against decisions of the LA.¹
2. Following consultation last autumn as part of the *Alternative Business Structures: Approaches to Licensing* consultation, our policy position is that there should be a single mechanism for all ABS-related appeals (including regulatory decisions affecting regulated entities and individuals working in such entities). A single mechanism will ensure consistency in decision-making about ABS licensing matters, and will enable a body of expertise to develop.
3. We consider that the most suitable body to hear the appeals is the First-tier Tribunal, General Regulatory Chamber (**GRC**), which is part of the unified tribunals structure administered by Ministry of Justice. This will enable the existing expertise of the GRC in relation to regulatory matters to be utilised, and is also cost efficient as there is already well developed infrastructure and administrative support. This approach is preferable to alternatives (such as Solicitors Disciplinary Tribunal (**SDT**) or other existing legal services appeal mechanisms) for the following reasons:
 - Existing appellate bodies do not have expertise in relation to issues of ownership and complex financial matters
 - In circumstances where LSB is required to act directly as an LA, it would not be appropriate for appeals against its decisions to be heard by a body over which it has a regulatory role (e.g. the Board approves SDT's rules and budget)
 - Other options are likely to be significantly more expensive than the GRC route.
4. We have therefore been working with the Tribunals Service and the ARs to develop implementation plans. The Lord Chancellor (on the Board's recommendation) will need to make an Order under s80 of the Act to give effect to the proposed appeal arrangements. We are required to consult on a draft Order before the Board makes a recommendation.
5. In July 2010 the Board agreed to delegate authority to publish a consultation document about the ABS appeal mechanism (including the draft s80 Order, associated rules and guidance) to the Chairman and the Chief Executive. The

¹ Schedule 10, para 11(2)(b) of the Act.

consultation document was published on 23 August 2010 and the consultation period ended on 12 November 2010.

6. The next steps required to progress the establishment of the ABS appeal mechanism are:
 - Making a recommendation to the Lord Chancellor to make an Order under s.80 of the Act, with a draft Order annexed (see **Annex A**)
 - Issuing supplementary guidance to LAs about the content of their licensing rules in relation to appeals (see **Annex B**)
 - Making rules under s.96 of the Act in relation to the relevant period for appeals against the imposition of a financial penalty by an LA (see **Annex C**)
 - Publishing our response to the consultation (see **Annex D**).
7. In 2011, we plan to do further work to explore best practice in relation to the disciplinary rules, enforcement and appeals processes used by ARs. This will include exploring the scope for greater alignment of processes, not least in the formal architecture of disciplinary decision-making and appellate bodies.

Consultation responses

8. We received six responses to the consultation, from:
 - The Law Society (**TLS**)
 - Solicitors Regulation Authority (**SRA**)
 - Solicitors Disciplinary Tribunal (**SDT**)
 - Bar Standards Board (**BSB**)
 - Ilex Professional Standards (**IPS**)
 - Council for Licensed Conveyancers (**CLC**).
9. CLC and BSB both expressed broad support for the proposals outlined in the consultation paper with some comments on points of detail. CLC described the proposals as “proportionate and fair”. BSB considered that “the case has been made that the arrangement provides the opportunity to utilise a body which has expertise in regulatory matters as well as having an established infrastructure which should ultimately lead to lower costs and a consistent approach on appeals from licensable bodies across the sector”.
10. SRA did not object to the proposal that that the Lord Chancellor should designate the GRC in relation to ABS appeals. However, it expressed concern about the potential for inconsistency in the treatment of ‘traditional’ law firms (with disciplinary decisions dealt with via SDT) and ABS (with disciplinary decisions dealt with via the GRC). It therefore suggests that the arrangements proposed should be an interim measure pending the appointment of a single body to hear all legal services appeals.
11. IPS made a number of detailed comments on the proposals but raised no fundamental objections.
12. TLS is opposed to the proposals on the basis that they are inconsistent with the principle of equal treatment between ABS and other law firms. It argues that SDT

could readily be adapted to deal with the challenges of the new legal regulatory regime. TLS accepts in principle that issues specific to ABS firms (such as licensing appeals, fitness to own and fitness to hold particular posts) could be dealt with by a separate body.

13. SDT is also firmly opposed to the proposal that ABS appeals should be heard by the GRC, suggesting the proposal is “seriously flawed” and “potentially damaging to the efficient and effective regulation of the solicitors’ profession”.
14. A draft summary of responses and a decision document is attached at **Annex D**.

Our response

15. The focus of the consultation paper was not the question of whether there should be a single appeal mechanism, or whether the GRC is suitable to hear the appeals. These questions were addressed in *Approaches to licensing* consultation in November 2009. Question 7 of that paper asked for consultees’ views on our preference for a single appeals body, and question 7(c) asked consultees whether the GRC is an appropriate body to hear appeals. In the summary of responses to this consultation published in March 2010, we made clear that the majority of responses were positive to a greater or lesser extent – in particular the Master of the Rolls supported a single appeal mechanism for ABS appeals. We committed to do further work with the Tribunals Service to develop the proposal. The latest consultation was the culmination of this work and presented our detailed proposals on implementation.
16. Nevertheless, we have given due consideration to the objections to our underlying policy position raised by TLS and SDT in response to the consultation. No element of those responses has led us to alter this policy position of a single appeal mechanism for all ABS appeals.
17. There were four key issues emerging from the consultation, which are explored further below:
 - Whether the proposals support the principle that there should be consistent regulatory treatment of ABS and ‘traditional’ law firms; and consistent requirements on individual authorised persons regardless of whether they work in an ABS or a ‘traditional’ firm
 - Whether the GRC should have a general power to award costs against a party to the proceedings
 - The appropriate onward appeal route against decisions of the GRC
 - The composition of the panels within the GRC that will hear the appeals.

A consistent approach to ABS appeals

18. We have been consistent in justifying a single mechanism for ABS appeals, and why we think the GRC is the most appropriate body, in both consultation papers and in face-to-face meetings with both TLS and SDT.
19. Broadly speaking, there are three possible approaches to dealing with ABS appeals:

- **Option A:** a single, consistent mechanism as proposed in our consultation (which we consider should be delivered by the GRC)
 - **Option B:** different mechanisms that are consistent with the existing arrangements each LA uses in its capacity as an AR
 - **Option C:** a 'hybrid' approach where appeals about "ABS specific issues" (e.g. licensing appeals, fitness to own and fitness to hold particular posts) would go through a single mechanism, but all appeals about the conduct of individual Authorised Persons would be dealt with via the existing disciplinary tribunals/committees used by the relevant AR.
20. TLS and SDT favour option B, although TLS also states in its consultation response that option C is acceptable in principle. We do not accept the arguments put forward by TLS and SDT suggesting that ABS appeals relating to SRA-regulated firms should go to SDT. The argument is based on the principle of equal treatment between ABS and other law firms regulated by SRA.
21. We agree that it is desirable for there to be consistency in regulatory outcomes for ABS and other firms, regardless of their business model or regulator.
22. However, TLS' argument is based on an assumption that such consistency in outcomes cannot be achieved through a model where SDT deals with disciplinary matters in relation to solicitors who happen to work in a 'traditional' law firm, and the GRC deals with appeals about disciplinary matters where a solicitor works in an ABS.
23. We do not consider that our proposed approach is incompatible with the principle of consistent regulatory outcomes. Further, we consider that the arguments in favour of a single, consistent mechanism for ABS appeals outweigh TLS' argument that the principle of consistency between the firms regulated by a particular regulator should override the principle of consistency among ABS regulated by different LAs. The reasons for this are explored below.
24. In our view, there are a number of compelling reasons why it is desirable for ABS appeals to be dealt with through a single, consistent mechanism – these are explored at paras 26 – 43 below. If the need for a single mechanism is accepted, SDT is not a viable option for hearing ABS appeals. The mechanism needs to be capable of dealing with appeals against decisions of LSB acting in its capacity as an LA (should this be necessary in the future). LSB has statutory oversight functions in relation to SDT (for example, approving its rules and budget), and we do not consider it appropriate for SDT to hear appeals against LSB decisions.
25. We have sought to quantify the costs of the appeal mechanism in the impact assessment (a draft was attached to the consultation paper and a revised version will be available at the Board meeting). Even if the upfront costs of the GRC option were to be higher than the costs of SDT providing the single appeal mechanism, we do not consider the difference in costs will be so significant as to drive us back to considering the SDT option.

Different regulatory frameworks

26. Firstly, it must be recognised that the statutory provisions in Part 5 of the Act impose a different regulatory framework for ABS from the existing multiple

regulatory frameworks that apply to ARs. The statutory framework under part 5 will be a common framework applicable to all LAs, in contrast to the existing distinct statutory frameworks (for example, Solicitors Act 1974 and Administration of Justice Act 1985 underpins SRA's role as an AR; and a different part of the 1985 Act underpins CLC's role).

27. SRA has stated a desire to achieve harmonisation of the regulatory requirements where possible.² It will prescribe a common code of conduct, and a common investigation and decision-making process when considering a breach and the appropriate sanction. Provision is also being consulted on to make an order under s.69 of the Act to ensure consistency in those areas where it is not possible to achieve consistent outcomes through licensing rules – for example, to enable licensing rules to provide for LAs to recover the costs of investigations. However, the powers used to impose the sanction will vary according to the relevant statutory framework (for example, in relation to the imposition of a financial penalty).
28. Our proposal is that the GRC will hear appeals against any decisions of LAs that are subject to a right of appeal under the Act, or under licensing rules. All matters relating to ABS entities will be dealt with under the statutory framework in Part 5. In relation to individuals who are Authorised Persons, there is the possibility that LAs will have other statutory powers outside Part 5, which could be used despite the individual working in an ABS. Our expectation is that LAs will wish to use the powers under Part 5 of the Act to deal with all matters relating to the conduct of individuals working in ABS, regardless of whether they are an Authorised Person. There are two reasons for this:
- s.52(4) of the Act establishes the principle that in situations of regulatory conflict, an “entity requirement” prevails over an “individual requirement; and
 - the powers available to LAs in relation to the discipline of individuals working in an ABS (regardless of whether they are an Authorised Person) are stronger than other statutory powers available to ARs (see paragraph 29 below).

The only circumstances where we envisage LAs will need to refer a matter to an AR (whether to the same LA in its capacity as an AR, or to another AR) is where an Authorised Person has committed a breach of the licensing rules so serious that the relevant AR should consider whether their Authorised Person status should be removed (i.e. whether they should be “struck off”).

29. The disciplinary powers available to LAs under Part 5 differ in a number of important respects from the powers available to ARs within their existing frameworks. For example, compared with SRA's existing powers under Solicitors Act 1974, Part 5 of Legal Services Act 2007 gives much stronger powers to LAs to make disciplinary decisions on their own account. They can impose financial penalties³ on an ABS and/or its managers and employees, and disqualify a person from working in an ABS⁴. Under the existing regulatory regime, SRA

² See for example the speech made by SRA's Chairman on 8 November 2010:

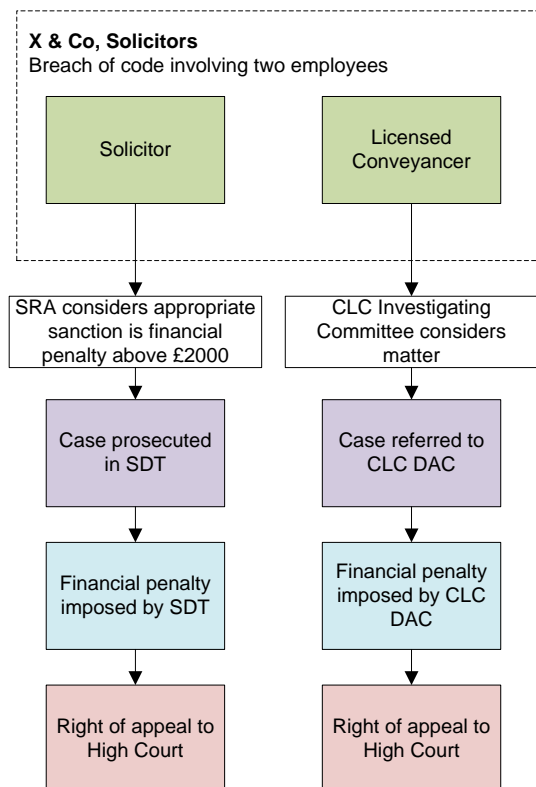
<http://www.sra.org.uk/sra/news/plan-abs-proposals-speech.page>

³ S.95 of the Act.

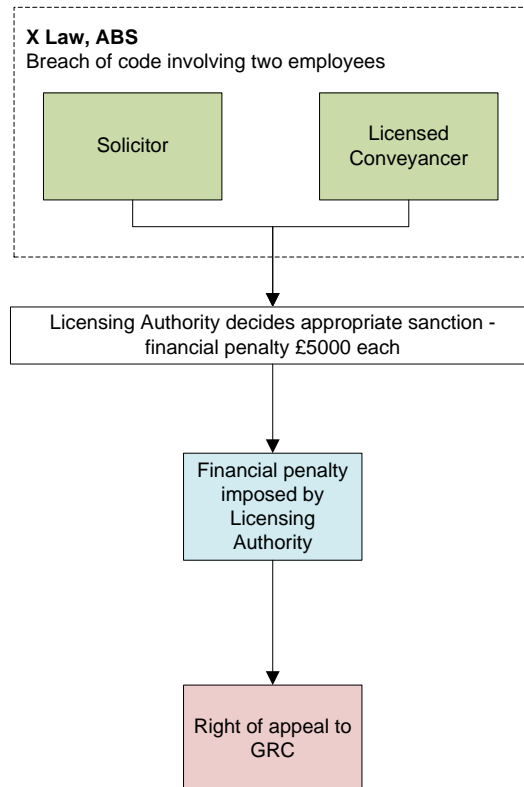
⁴ S.99 of the Act.

would need to prosecute a case before SDT, which would then make the decision about whether to impose a fine above £2000 or strike the relevant solicitor off the roll. Flowcharts are shown below illustrating the current framework for the use of disciplinary powers and the framework under Part 5 that will be available to LAs.

Current framework



Part 5 framework



30. Were the statutory powers available to LAs in relation to ABS identical to their existing powers in relation to Authorised Persons and regulated entities, there would be a strong argument that the same body should hear all appeals emanating from decisions of a regulator (option B). However, there is a different regulatory framework for ABS, and this is common to all LAs. It is more important to achieve consistency in relation to appeals made by ABS regulated by different licensing authorities, to ensure that the common regulatory powers provided by the statutory framework under Part 5 of the Act are applied in a consistent way. This consistency between ABS appeals is achievable within the legislative framework.

31. There is a further risk that without a single mechanism, variation between the arrangements put in place by different LAs will lead to ABS choosing the LA that has what they perceive to be the least robust requirements in relation to appeals.

Simplicity and certainty

32. Secondly, a single consistent mechanism for ABS appeals will provide clarity for ABS and potential ABS about the process for appeals. It is essential to the effective regulation of ABS that an LA has the powers to deal with all regulatory issues relating to ABS – whether they concern the entity or individuals who own,

manage, or are employed by the entity. We do not consider that it would be feasible for an LA to refer all matters relating to the individual conduct of Authorised Persons (or indeed another non-legal professional) to the relevant 'individual' regulator (option C). There would be a high likelihood of dispute, with the risk that some cases could fall into a gap.

33. Regulatory issues in an ABS could involve a range of different individuals (some lawyers authorised by other legal regulators, some other non-legal professionals, and some with no legal or other professional qualification). It is likely that in many cases a regulatory issue will not be a self-contained breach of the code concerning one individual that is capable of being referred on to another regulator as a 'stand alone' issue.
34. For example, an investigation into the alleged mishandling of client money might lead the LA to conclude that the entity itself is partially responsible (because of a deficiency in internal systems), together with three employees (one who is an Authorised Person regulated by the LA in its capacity as an AR, another who is an Authorised Person regulated by another AR, and another who has no legal or other professional qualification). In such a scenario it is difficult to see how the conduct issues relating to an Authorised Person regulated by another regulator could be separated from the consideration of the whole matter by the LA.
35. Any attempt to draw a line between those matters that should be dealt with via the single ABS appeal mechanism and those that should be dealt with via the existing disciplinary tribunal/committee would run the risk of matters arising in practice that were not contemplated in advance, which would fall outside the agreed definitions. There is also the possibility that LAs and ARs will be distracted by disagreements about where appeals should properly be heard, when their priority should be to deal with the alleged breach and impose a sanction as soon as possible.
36. Having proposed option C in its response to our earlier consultation, SRA has considered this further. Its response to our latest consultation it acknowledges that "hiving off" some but not all appeal rights could be "too complex and confusing", with parallel rights of appeal potentially arising from the same facts. SRA considers that such an approach is "potentially confusing, duplicative and more costly".
37. For these reasons, we do not accept TLS' assertion that our concern about this issue is not "well founded". Nor do we accept its suggestion that the route for appeal could simply be defined in relation to the nature of the decision. As discussed above, a decision on a single alleged breach could involve a consideration of the systems put in place by the ABS, and the conduct of a number of individuals who may be a mixture of Authorised Persons and other employees. The issue needs to be considered in the round to ensure appropriate judgements can be made about the appropriate way to apportion blame between those involved and an appropriate sanction. A single appeal mechanism for ABS appeals will provide ABS (and individuals who own, manage or are employed in ABS) with certainty about how appeals will be dealt with.
38. There will also be costs associated with this additional complexity which have not been quantified in the Impact Assessment – for example, the costs of several different disciplinary and appeal bodies considering issues arising from the same set of facts and the costs of LAs in preparing for multiple hearings. While this

duplication will be unavoidable in relation to the 'striking off' of Authorised Persons, in all other matters the LA and single appeal body can deal with issues once.

Possible future developments

39. Thirdly, a single mechanism for ABS appeals will enable a body of expertise to develop in relation to licensing and other regulatory matters under the framework of Part 5 of the Act.
40. We have previously expressed our view that it would be desirable to explore whether there should be a single body to hear all legal services appeals (about ABS and 'traditional' firms, and all Authorised Persons). Establishing a single mechanism is not feasible in the timescales for establishing a mechanism to hear appeals under Part 5, and so we have proposed that there should be a single mechanism for ABS appeals pending further consideration of a single mechanism for all legal services appeals.
41. A single mechanism for ABS appeals will provide a strong foundation for the future development of a single mechanism for all legal services appeals. ARs currently have a range of separate discipline and appeals arrangements in place, and we intend to consider whether it is appropriate to rationalise these in the future. It would be perverse to add to the existing maze of discipline and appeal arrangements – building more complexity now when we already have the policy intention to consider rationalising these existing structures in the future. The arguments against such an approach are particularly strong in relation to ABS appeals since all LAs will operate under the same statutory framework. Implementing different structures for each LA on the foundation of a common statutory framework would be inconsistent with best regulatory practice, which is to simplify and rationalise regulatory structures. We are required to have regard to best regulatory practice in discharging our functions.⁵
42. Both TLS and SRA support the principle of a single mechanism for all legal services appeals in the future. The concerns they have raised about consistency between ABS appeals and appeals under the existing arrangements suggest we should explore the feasibility of rationalising existing mechanisms sooner rather than later. We have included this as a potential workstream in the 2011/12 business plan.
43. In addition, there is the potential to achieve economies of scale in terms of administrative and appellate functions compared with establishing separate mechanisms for each LA. The reasons why we consider the GRC to be the most appropriate body are set out at paragraph 3 above – namely, that it has significant relevant expertise, that if necessary it would be in a position to hear appeals against decisions of the Board made in its capacity as an LA, and that it is cost effective.

⁵ S.3(3)(b) of the Act.

Power to award costs

44. The existing GRC rules include a power for the Tribunal to award costs in proceedings only where a party has acted unreasonably in bringing, defending or conducting the proceedings; or where there are wasted costs. CLC, SRA and TLS all considered that this power is too limited and increases the risk of unmeritorious appeals. SDT currently has a general power to award costs.
45. As a general principle, the unified tribunals operate on the basis that each party should bear their own costs – this is one of the features that distinguishes tribunals from courts and is designed to ensure access to justice in relation to administrative decisions by reducing the potential legal costs. However, there are exceptions in some tribunal jurisdictions.
46. Consultees have made strong arguments in favour of a broader power to award costs. Firstly, they argue that the absence of such a power means there is no disincentive in relation to costs, which is likely to encourage unmeritorious appeals. This is a particular risk in relation to ABS appeals since it is likely that the appeal will be a substantive re-hearing rather than a procedural review of the original decision, and in relation to the imposition of a fine the Tribunal will have no power to increase the amount of the fine on appeal (only reduce it or quash it). This will mean appellants have nothing to lose in pursuing an appeal, so may not make much effort to assess the strength of their case before lodging an appeal.
47. Secondly, there is the principle that the costs of the LA in defending an appeal ought to be borne by an unsuccessful appellant. Consultees argued that it would be unfair for the LA to be responsible for meeting its own costs in relation to unsuccessful appeals, since the effect is that the costs are met by the licensed community as a whole rather than the appellant. This is consistent with the proposal by SRA and CLC to include a provision in licensing rules that the costs of an investigation are recoverable.
48. In view of these arguments, we are minded to concede this point and request that the Tribunals Service makes a rule change to include a broad power for the Tribunal to award costs in relation to ABS appeals. Decisions about changes to the Tribunal Rules are made by the Tribunals Procedure Committee. We are working with colleagues in the Tribunals Service to obtain a view from the committee about this proposal. Policy officials in the Tribunals Service have informally suggested that our proposal will not be problematic. However, until we have greater clarity that the proposed rule change will be taken forward, we will not be able to make a recommendation to the Lord Chancellor to make the Order under s.80 of the Act.

Onward appeal route

49. Only CLC supported our proposal to use the Order under s.80 of the Act to amend the onward appeal route against decisions of the appellate body from the High Court to the Upper Tribunal. The purpose would be to achieve consistency with the approach generally taken to onward appeals from decisions of the First-tier Tribunal, which includes a further right of appeal (with permission) to the Court of Appeal.

50. If the amendments were not made as proposed, there would be two parallel onward appeal rights – a right of appeal to the High Court under Legal Services Act 2007, and the right to onward appeal to the Upper Tribunal against any decision of the First-tier Tribunal by virtue of Part 1 of Tribunals, Courts and Enforcement Act 2007. It is unclear how the High Court or Upper Tribunal would deal with a situation where these rights were in conflict (i.e. an appellant brought two parallel appeals to the High Court and Upper Tribunal respectively).
51. An additional complication would arise from the fact that in relation to the onward appeal routes for ABS appeals, some matters are subject to a statutory right of onward appeal to the High Court under the Act, and others will be appealable under licensing rules and therefore not appealable to the High Court. Decisions appealable under licensing rules would, however, be subject to the right of onward appeal to the Upper Tribunal provided under Tribunals, Courts and Enforcement Act 2007.
52. The Upper Tribunal is a superior court of record, which means that its decisions are binding on the tribunals and public authorities below. The Upper Tribunal also has powers both to enforce its own procedures and the procedures of the First-tier Tribunal. The Upper Tribunal will therefore have the ability to develop a body of case law in relation to ABS appeals. There is a right of onward appeal (with permission) from decisions of the Upper Tribunal to the Court of Appeal.
53. We consider that it is undesirable for there to be inconsistent onward appeal routes for ABS appeals (based on whether there is an explicit right of onward appeal in the Act or whether the matter is appealable under licensing rules). The existence of two parallel appeal routes also has the potential to result in confusion and uncertainty for appellants. We therefore propose to proceed with the proposals as set out in the consultation paper.

Composition of panels

54. CLC, IPS and SDT all suggested that the panels hearing appeals should consist of three members rather than two members. TLS and SDT both queried whether the GRC has sufficient relevant expertise to hear ABS appeals. We think this is partly a result of a misunderstanding about the difference between the Immigration Services jurisdiction, which is a regulatory tribunal dealing with appeals concerning the licensing of immigration advisers, and the Asylum and Immigration jurisdiction which deals with appeals against decisions made by the Home Office about immigration, asylum and nationality matters.
55. The composition of panels is entirely a matter for the GRC President. During the consultation period, the Chairman had a very constructive meeting with the Acting President (judicial head) of the GRC, Professor John Angel. The judge suggested that the panels should be composed of three members and confirmed his intention to select the most appropriate members to hear appeals from across the First-tier tribunal, based on the expertise that we recommend is required. This provides additional re-assurance that the panels hearing ABS appeals will have relevant expertise, and also means that existing members of SDT who are also members of any jurisdiction of the First-tier tribunal could be 'cross-ticketed' to hear ABS appeals, helping to ensure consistency. Having three member panels

rather than two member ones will impact on the costs, and we are discussing this with SRA and CLC (the two ARs named in the draft s.80 Order).

56. None of the issues identified above requires any amendments to be made to the draft Order to be made under s.80 of the Act.

Recommendation

57. Before making the recommendation, we are required to obtain consent from the person(s) from whose decisions the appeals are to be made, and from the body to which appeals are to be made⁶. We have sought the necessary consents in writing and will provide an update at the Board meeting on responses.

58. The Board is also required to consent to the making of the recommendation because, should it act as an LA, it will make appealable decisions in that capacity. We have considered whether that consent needs to be provided by the Board acting in its capacity as an LA, or by the Board as a whole. We have concluded that it is the LSB as a whole, and not the LSB acting in its capacity as a LA, that must give its consent to the making of the recommendation. The decisions that are the subject of an appeal will be the decisions of the LSB, albeit potentially made by the committee to whom the Board has delegated the LA-type functions. Therefore, the Order will need to recite the Board's consent, just as it will do with the consent of the named ARs.

59. The Board is invited:

(1) to agree in principle to make the recommendation at **Annex A** to the Lord Chancellor in relation to the proposed s.80 Order, subject to:

- clarification of the Tribunals Service's position on altering its rules on costs
- formal consent to the recommendation being received from the relevant ARs and the Tribunals Service;

(2) to consent to the recommendation in relation to the relevant appellate body, as a body from whose decisions (in its capacity as an LA) the appeals are to be made;

(3) to agree to issue supplementary guidance to LAs on the content of licensing rules (see **Annex B**);

(4) to make rules under s.96 of the Act in relation to the relevant period for appeals against the imposition of a financial penalty by an LA (see **Annex C**); and

(5) to agree to delegate authority to the Chairman and the Chief Executive to publish the final version of the summary of responses and decision document (current draft attached at **Annex D**).

22.11.10

⁶ S.81(1) of the Act.