

Council for Licensed Conveyancers: application for designation for conduct of litigation and exercise of rights of audience - Assessment of the proposed regulatory arrangements

Overall assessment

The regulatory arrangements that the CLC has proposed are primarily those that were approved by the LSB in May 2011. Provisions that would be added as a direct result of this application are of Overriding Principle 4, Comply with your duty to the Court, and the Litigation and Advocacy Supplementary Code.

While these arrangements appear to make provision for the matters covered in the Legal Services Act 2007 and the LSB Rules for applications for Approved Regulator designation, in the absence of a detailed risk analysis it is not possible to form a conclusion as to whether the arrangements are appropriate.

Criteria

1. Section 21 of the Legal Services Act 2007 (the Act) describes what constitutes the regulatory arrangements of a body and cover arrangements for
 - Authorisation
 - Practice rules
 - Conduct rules
 - Disciplinary arrangements
 - Qualification arrangements
 - Indemnification arrangements
 - Compensation arrangements
 - Other rules and regulations (however described) and arrangements which apply to regulated persons (other than those concerned with representing or promoting the interests of regulated persons)
 - Licensing rules
2. The applicant's organisational arrangements for delivering effective regulation do not fall within the definition of regulatory arrangements (though have to be considered under the competence and resources assessment criteria).

3. Part 2 of Annex 1 of the LSB Rules for Approved Regulator Designation sets out principles which the LSB has determined that the applicant's regulatory arrangements should be assessed against. The Principles are linked to the Regulatory Objectives in s1 of the Act and the regulatory arrangements (s21).

Overview of the CLC's proposed arrangements

4. Our assessment is that the CLC arrangements cover all of the matters described in s21 of the Act. The full set of regulatory arrangements will be available at the Board meeting.
5. The CLC's regulatory arrangements are primarily contained in the CLC Handbook and supporting Frameworks. The Handbook contains "Regulatory Arrangements – Universal" which apply to all CLC regulated firms and individuals (e.g. the Code of Conduct); "Regulatory Arrangements – Specific" which are targeted at particular issues (e.g. Recognised Body Code) and "Other" which is a combination of policies and frameworks which set out the CLC's approach to certain issues (e.g. Enforcement Policy).
6. The CLC also has a number of Frameworks that describe CLC's approach to matters which, while not about the conduct of the regulated community, can impact on them. For example, the Recognised Body Recognition Framework describes how the CLC will handle applications for Certificates of Recognition (as opposed to setting out what applicants must do to make an application).
7. The final element of the CLC arrangements are a set of rules and regulations for the following:
 - Fees
 - Adjudication Panel
 - Discipline and Appeals Committee
 - General Regulatory Chamber – ABS Appeals
 - Anti-money laundering
8. The Handbook was completely re-written as part of the CLC's preparations for this and the licensing authority applications. The new Handbook is based around Overriding Principles for each of which the CLC has defined Outcomes to be achieved. Below the Outcomes are Principles which describe the types of behaviour that will demonstrate that the Outcome is being achieved. The CLC has sought to avoid prescriptive rules but recognise that some circumstances require more detail; these are set out as Specific Requirements for the relevant Overriding Principle.

9. The Handbook is consistent with an outcomes focused approach to regulation. The current version (covering the reserved legal activities for which the CLC is already designated) was approved by the LSB on 9 May 2011 and was implemented by the CLC on 6 October 2011. The Handbook applies to all CLC regulated firms and individuals, whether authorised by the CLC as an approved regulator or a licensing authority.
10. Because of this structure of Principles and Outcomes, the Handbook appears to need limited amendment to accommodate these new activities. The following will be added to the Handbook if this application is granted
- Code of Conduct Overriding Principle 4 Comply with your duty to the Court. This has two Outcomes, “You act in the interests of justice” (Outcome 4.1) and “You act in good faith towards clients” (Outcome 4.2)
 - The Litigation and Advocacy Supplementary Code. This contains 13 Principles which describe the type of behaviour to expected to achieve the Outcomes in the Code of Conduct
11. In relation the Principles in the LSB rules. The table below indicates where the proposed arrangements address the LSB principles.

| Principles | Where covered in the proposed regulatory arrangements |
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| <p>Clients’ money must be protected</p> <p><i>Approved Regulators must ensure that Authorised Persons must keep clients’ money separate from own.</i></p> <p><i>Approved Regulators must be able to compensate clients as per section 21(2).</i></p> | <ul style="list-style-type: none"> • Code of conduct, Overriding Principle 1, Outcome 1.3 – Client money is kept separately and safely • Accounts Code and Guidance repeats Outcome 1.3 and contains a specific requirement of “You must keep client money entirely separate from your money or the money of the entity” • Accounts Code and Guidance includes reporting requirements for both the regulated individual/firm and the Reporting Accountant to cover misappropriation and fraud (13.16 and 18.2.3). For the reporting accountant this extends to notification if there are concerns as to fitness to hold client money • Professional Indemnity Insurance Code includes the requirement that “You only provide regulated services whilst you have a CLC-approved professional indemnity insurance in place (4)” • The Compensation Fund may make “grants or other payments the CLC determine should be paid out of the Fund (whether such grants or other |

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| | <p>payments relate to the practices regulated by the CLC as a recognised body or a licensed body)” (6.e)</p> |
| <p>Authorised Persons must act in clients interests subject to duty to court</p> <p><i>Approved Regulators must demonstrate how regulated persons and entities are indemnified against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons or entities</i></p> <p><i>Approved Regulators must have a code of conduct that enshrines the primacy of acting in the client interest and subjugates other pressures, be they commercial or otherwise to that principle</i></p> | <ul style="list-style-type: none"> • Code of Conduct Overriding Principle 3 – Act in the best interests of your Clients. This Overriding Principle is supported by six outcomes. Specific requirement “You ensure that you have adequate indemnity arrangements in respect of claims made against you for work carried out by you after you have ceased to practice” • Professional Indemnity Insurance Code includes the requirement that “You only provide regulated services whilst you have a CLC-approved professional indemnity insurance in place” |
| <p>Reserved Legal Services should only be delivered by regulated persons of appropriate skill and competence</p> <p><i>Approved Regulators must ensure that definitions of appropriate skill and competence are proportionate in order to ensure both value and professionalism</i></p> <p><i>Easily accessible redress should be in place</i></p> | <ul style="list-style-type: none"> • Code of Conduct Overriding Principle 2 – Maintain high standards of work. Specific requirements that support this include <ul style="list-style-type: none"> ○ You keep your skills and knowledge up to date ○ You ensure all individuals within the entity are competent to do their work ○ You supervise and regularly check the quality of work in client matters ○ You systematically identify and mitigate risks to clients <p>Student Training Framework – designed to ensure that only those able and committed to delivering the CLC’s Code of Conduct’s Outcomes for Clients are awarded a Practising Licence</p> <ul style="list-style-type: none"> • Application sets out details of the qualification and training framework for litigation and advocacy licences and the continuing professional development arrangements (sections D4 and D5) • The Complaints Code and Guidance |
| <p>Compliance with professional principles should be enshrined in regulation</p> <p><i>Approved Regulators must have a code of</i></p> | <ul style="list-style-type: none"> • Code of Conduct Overriding Principles <ul style="list-style-type: none"> ○ Act with independence and integrity ○ Maintain high standards of work |

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| <p><i>conduct that defines the professional principles that are compulsory for regulated community</i></p> <p><i>Approved Regulator must have a disciplinary remit and processes that allow for setting standards and managing compliance of Authorised</i></p> | <ul style="list-style-type: none"> ○ Act in the best interests of your clients ○ Comply with your duty to the Court ○ Deal with regulators and ombudsmen in an open and co-operative way ○ Promote equality of access and service ● Code of Conduct states “Disciplinary proceedings may be taken against you if the CLC believes that there is a breach of this Code”. This is supported by the Regulatory and Enforcement Policies |
| <p>Responsibilities for front line complaints handling and interactions with the OLC should be clear</p> <p><i>Approved Regulator must have rules specifying how rights to complain and redress can be accessed, including the right of access to the OLC at an appropriate stage</i></p> | <ul style="list-style-type: none"> ● The Complaints Code and Guidance ● CLC Client Charter includes information on how to make a complaint |
| <p>Regulatory Arrangements should advance the objective of supporting competition</p> <p><i>Approved Regulator should be able to demonstrate that their rules are the minimum necessary to address the full set of objectives and do not have unintended consequences in terms of restricted entry</i></p> | <ul style="list-style-type: none"> ● The CLC contend that allowing them to authorise these additional reserved legal activities will bring benefits to consumers since they will have a wider choice of service provider. The proposed regulatory arrangements should ensure that appropriate safeguards are maintained and consumer interests safeguarded. ● The OFT note that allowing the CLC members authorisation to conduct litigation and exercise rights of audience may strengthen competition for these services. |
| <p>Representative and regulatory functions should be discharged and decisions made, so far as reasonably practicable, independently of each other</p> <p><i>Approved Regulators should have arrangements which implement the Act and such rules as the LSB make on the issue in relation to regulatory strategy, decisions and resourcing of the regulatory arm</i></p> | <ul style="list-style-type: none"> ● The Council for Licensed Conveyancers has no representative function |

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| <p>Regulation should clearly support the rules of law</p> <p><i>Approved Regulators rules and processes should unequivocally give priority to this duty</i></p> | <ul style="list-style-type: none"> • Code of Conduct Overriding Principle 4 – Comply with you duty to the Court. • Litigation and Advocacy Supplementary Code |
| <p>The legal professions make up should reflect the population it serves</p> <p><i>Approved Regulators should be able to demonstrate processes which address diversity concerns</i></p> | <ul style="list-style-type: none"> • Code of Conduct Overriding Principle 6 – Promote equality of access and services. This is a applies to both the regulated community and its clients • CLC have submitted an action plan which meets the expectations set out in the LSB’s guidance on transparency and collection of data on diversity |
| <p>Consumers should be actively involved in decision making throughout their dealings with the profession</p> <p><i>Approved Regulators can demonstrate how their processes address public legal education</i></p> | <ul style="list-style-type: none"> • CLC Client Charter is headed “When you obtain services from an individual or a business regulated by the CLC, you are entitled to the following outcomes...” and covers service, advice, money and fees, professional conduct, principled behaviour and complaints |