

To:	Legal Services Board	
Date of Meeting:	28 March 2012	Item: Paper (12) 16

Title:	Council for Licensed Conveyancers' designation application	
Workstream(s):	Section 2A Developing Regulatory Standards (see <u>Business Plan 2011/12</u>)	
Author / Introduced by:	Dawn Reid, Head of Statutory Decisions Dawn.reid@legalservicesboard.org.uk / 020 7271 Ext. 0063	
Status:	Unclassified	

Summary:
<p>The Council for Licensed Conveyancers (CLC) made an application to the Legal Services Board (LSB) in February 2011 for a recommendation from the LSB to the Lord Chancellor that the CLC be designated as an approved regulator and licensing authority for the reserved legal activities of conduct of litigation and exercise of rights of audience.</p> <p>Having completed a review and assessment of the application, the Executive is now in a position to report to the Board on its conclusions and make a recommendation as to whether the application should be granted.</p>

Recommendation(s):
<p>The Board is invited:</p> <ul style="list-style-type: none"> (1) to refuse the application from the CLC for a recommendation for designation as approved regulator and licensing authority for the reserved legal activities of conduct of litigation and the exercise of rights of audience. (2) delegate to the Chairman and Chief Executive authority to agree the final Decision Notice.

Risks and mitigations	
Financial:	None
Legal:	LSB's decision hinges on an interpretation of legislation that the CLC do not necessarily agree with or if they accept it, do so with reluctance. Our view has been informed by an external opinion. Given this known difference of opinion there is an increased risk of judicial review.
Reputational:	The decision not to grant the application could lead to some negative public commentary from the CLC. We have proposed to CLC that we talk about communicating the decision which should give us the opportunity to understand and maybe influence their messages.
Resource:	None

Consultation	Yes	No	Who / why?
Board Members:	√		Barbara Saunders and Andrew Whittaker, as the nominated non-executive directors, have the legal advice. They were also invited to comment on the draft report.
Consumer Panel:	√		Required to seek advice from Legal Services Consumer Panel under Schedule 4, 5(1) and (2).
Others:	We are required to seek advice from The Lord Chief Justice and the Office of Fair Trading under Schedule 4, 5(1) and (2).		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
N/A	N/A	N/A

LEGAL SERVICES BOARD

To:	Board		
Date of Meeting:	28 March 2012	Item:	Paper (12) 16

Council for Licensed Conveyancers' application under Part 2 of Schedule 4 to the Legal Services Act 2007, for a recommendation to the Lord Chancellor that the CLC be designated as an approved regulator and licensing authority for the reserves legal activities of the conduct of litigation and the exercise of rights of audience.

Recommendations

1. The Board is invited:
 - (1) to refuse the application from the CLC for a recommendation for designation as approved regulator and licensing authority for the reserved legal activities of conduct of litigation and the exercise of rights of audience.
 - (2) delegate to the Chairman and Chief Executive authority to agree the final Decision Notice.

Executive Summary

2. The CLC made an application to the Legal Services Board (LSB) on 2 February 2011 for a recommendation from the LSB to the Lord Chancellor that the CLC be designated as an approved regulator (AR) for the reserved legal activities of the conduct of litigation and rights of audience. The application also stated that should the CLC be designated as a licensing authority then that licensing authority (LA) should also be granted designation for these additional activities. The CLC were designated as a licensing authority on 12 September 2011 and was able to grant licences to licensable bodies from 6 October 2011.
3. Having considered the application and information gathered during the assessment (both information provided electronically and during a visit to the CLC offices) the Executive of the LSB recommend that the application is not granted.
4. In our view, the CLC do not have the legal authority to make rules which allow them, in their capacity as an approved regulator, to authorise and regulate these new activities. This is explained in more detail in paragraphs 13 to 31.
5. Schedule 10, Part 1, paragraph 15(3) of the Legal Services Act 2007 (LSA2007) states that the Lord Chancellor must not make an order for designation as a licensing authority for a reserved legal activity unless he has also made an order designating the body as an approved regulator in relation to that activity. Since the part of the application relating to the CLC as an AR fails, the Lord Chancellor cannot make an order for the CLC to be designated as a LA and so no recommendation in respect of the LA should be made.
6. CLC have asked whether we could make a decision that would allow them to authorise and regulate individuals for these activities. For the reasons set out in

paragraphs 32 to 38 we do not recommend that the application be granted on this narrower basis.

Authority for the decision

7. Under the Schedule 4, Part 2 of the LSA2007 bodies may apply to the LSB to become an AR of one or more reserved legal activities. Any such application must specify which of the six reserved legal activities the applicant wishes to regulate. Once satisfied that the application meets the requirements of our Rules for Approved Regulator Designation applications (the LSB designation rules) and other rules (notably those on regulatory independence) and that the body has in place appropriate regulatory arrangements for the proposed activities, the LSB can approve (in whole or part) the application and recommend to the Lord Chancellor that the applicant be designated as an approved regulator for all or some of the reserved legal activities applied for.
8. An existing approved regulator may apply to extend the list of reserved legal activities for which it is a regulator. Such applications must also satisfy the LSB designations rules (and others if appropriate) and demonstrate that the approved regulator has in place (or will put in place) regulatory arrangements which will allow it to be an effective regulator for the extended activities.
9. Designation by the Lord Chancellor relates to the whole of the reserved legal activity. An applicant can restrict how the rights are granted through its own regulatory arrangements. Any subsequent change to the scope of the AR rules would be treated as a change to regulatory arrangements and decided by the LSB under Schedule 4, Part 3 of LSA2007.

Assessment of the application against the criteria in the Legal Services Act 2007

10. The Board may only approve an application for designation if it is satisfied that the criteria in Schedule 4, Part 2, paragraphs 13(2) and 13(3) of LSA 2007 would be met at the time that the order is made. In summary, our conclusions against these criteria is as follows:

CRITERIA	ASSESSMENT
<p>That the applicant would have in place appropriate internal governance arrangements; in particular the LSB needs to be satisfied that the regulatory functions will not be prejudiced by any of its representative functions and that decisions on the exercise of regulatory functions would, as far as is reasonably practicable, be taken independently from decisions relating to exercise of representative functions. (<i>Schedule 4, 13(2)(a) and 13(3)</i>)</p>	<p style="background-color: #92d050; text-align: center;">CRITERIA SATISFIED</p> <p>The CLC was established under the Administration of Justice Act 1985 (AJA1985) with purely regulatory functions – it has no representative role.</p> <p>Until September 2011, it was a statutory requirement that the majority of CLC Council members were licensed conveyancers. This was changed amended by SI 2011/1716 and the Regulations for the appointment and service of Council members were</p>

	<p>amended and now require that “the total number of new lay members appointed exceeds by one the total number of LC [licensed conveyancer] members”.</p>
<p>That the applicant would be competent and have sufficient resources to perform the role of an approved regulator in relation to the reserved legal activity. (<i>Schedule 4, 13(2)(b)</i>)</p>	<p>CRITERIA NOT SATISFIED</p> <p>The LSB is not satisfied that the CLC has the power to make rules that allow the CLC to authorise and regulate entities for the reserved legal activities applied for. See paragraphs 13 to 31.</p> <p>The CLC has not been able to satisfy us that the CLC has a good understanding of the risks in authorising and regulating these reserved legal activities. See paragraphs 39 to 48. In the absence of such an analysis it is not possible to form a view as to whether the resources are sufficient to perform the role of an approved regulator.</p>
<p>That the applicant’s proposed regulatory arrangements make appropriate provision. (<i>Schedule 4, 13(2)(c)</i>)</p>	<p>CRITERIA NOT SATISFIED</p> <p>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.</p> <p>While these arrangements appear to make provision for the matters covered in the LSA2007 and the LSB Rules, in the absence of a detailed risk analysis it is not possible to form a conclusion as to whether the arrangements are appropriate.</p> <p>Annex A contains a summary of the assessment of the regulatory arrangements.</p>
<p>That the applicant’s proposed regulatory arrangements comply with the requirements of s52 and s54 of the LSA2007, resolution of regulatory conflict. (<i>Schedule 4, 13(2)(d)</i>)</p>	<p>CRITERIA SATISFIED</p> <p>CLC have identified two possible situations in which conflicts could arise – where the CLC licensed individual is working in a firm regulated by another AR/LA or if the CLC licensed firm employs an individual who is authorised by another AR/LA.</p>

	<p>Overriding Principle 5 CLC Code of Conduct is “You co-operate with other regulators and ombudsmen”. This is supported by a Specific Requirement that CLC licensees operating in an entity regulated by another regulator must comply with that regulator’s regulatory arrangements at all times in a way that is reasonably consistent with their Code.</p> <p>Although it is expected that there would rarely be a situation where the risk of conflict is with a regulator other than a legal services regulator, these same provisions would apply should that situation arise.</p>
<p>That the applicant’s proposed regulatory arrangements comply with the requirements of s112 and s145 of the LSA2007, handling of complaints. (Schedule 4, 13(2)(e))</p>	<p style="text-align: center;">CRITERIA SATISFIED</p> <p>Overriding Principle 5 is also relevant here. For complaints this is supported by the Complaints Code and Guidance which includes the following outcome “Your complaints procedure is clear, well publicised and free”. There are also outcomes that require the CLC regulated community to “co-operate with any Legal Ombudsman investigation” and “comply promptly and fully with any Legal Ombudsman Order”</p>

Criteria that have not been satisfied

Competent and sufficient resources (Schedule 4, 13(2)(b))

Power to make the necessary arrangements

11. At the meeting in January 2012, the Board were provided with an update on the discussions with the CLC on the potential legal barriers to granting the application. This report now summarises the steps that have been taken on this aspect of the application.
12. In its application the CLC raised the issue of whether the AJA1985, as amended by the Courts and Legal Services Act 1990 (CLSA1990) allows the CLC to authorise and supervise recognised bodies for conduct of litigation and/or the exercise of the rights of audience. The application specifically states (page 8) “If we receive designation, it is possible that s32(1)(ba) [of the AJA1985] will need to be changed to reflect this, using the mechanism under s69 of the 2007 Act”, i.e. that there is a restriction on the CLC powers in its founding legislation.
13. As a body created by statute, the CLC only has the powers given to it in statute (as amended). In making any recommendation to the Lord Chancellor, the LSB needs to be satisfied that the applicant is lawfully able to do that which has been applied for. Given the uncertainty created in the application, LSB undertook a detailed analysis of the legal position.

14. S32(1)(ba) of AJA1985 states that the Council may make rules “prescribing the Council’s arrangements for authorising recognised bodies, for the purposes of the Legal Services Act 2007, to carry on reserved instrument activities or the administration of oaths, within the meaning of the Act”. It will be noted that this section makes no reference to the activities applied for.
15. This led us to conclude that the CLC is currently unable to make rules and regulations that would allow them to regulate (by which we mean authorise, supervise and take enforcement action) recognised bodies for the reserved legal activities of the conduct of litigation and exercise of rights of audience. This was initially communicated to the CLC at the beginning of September 2011.
16. CLC sought an external opinion. That opinion noted that s53 of CLSA1990 gives the CLC the powers to become an approved regulator for these activities and s53(2) provides that if so designated it “can authorise a person to carry on a relevant activity only if the person is a licensed conveyancer.” The CLC therefore argued that a reference to a licensed conveyancer in s53 covers not only individuals (for whom the CLC can make rules and regulations for these activities under the AJA1985) but also entities on the basis that “person” could include bodies corporate.
17. This was a novel interpretation, not being one that the CLC had previously advanced and not one that is reflected in its own arrangements which clearly distinguish between licensed conveyancers as natural persons and recognised and licensed bodies. That first Opinion and a subsequent letter from the CLC did not adequately address all of the points raised in our letter of September 2011. We subsequently met with the CLC and their legal advisers and further arguments were advanced to support the analysis. A second written submission, from a different external adviser, followed this meeting.
18. Recognising that this is a matter of interpretation, LSB sought its own external opinion from Gordon Nardell QC, seeking a view on whether all of the arguments presented by the CLC (in the Opinion, the information from the meeting and the subsequent written submission) could collectively be relied on to support the interpretation proposed by the CLC.
19. Mr Nardell’s Opinion is attached in **Annex B**.
20. The key issue is whether a “licensed conveyancer” can be interpreted in such a way as to cover both individuals and entities. Mr Nardell concludes that the AJA1985 draws a distinction between those who acquire the entitlement to provide services through a licence issued by the CLC – a licensed conveyancer – and those who may be authorised as recognised bodies.
21. S32 of the AJA1985 allows the CLC to make rules in relation to the authorisation of “conveyancing services bodies” which are defined in s32A. The management and control provisions require that to be recognised as a conveyancing services body, the body must have a licensed conveyancer as a partner, member or director (ss32A(2) to (5)). Mr Nardell states (at paragraph 27) that the language used gives a “strong indication that Parliament had in mind two distinct categories”. He points to other provisions in AJA 9185 that support this including rules for training and education, including examinations to be taken by such persons (s13) and that there are provisions relating to an adjudication for bankruptcy (s18(1)) but nothing relating to corporate insolvency
22. Therefore, we concluded that we could not agree with an interpretation that “licensed conveyancer” included both individuals and entities and consequently, we could not rely on s53 of the CLSA1990 to provide the CLC with the necessary powers.

23. Mr Nardell's opinion was shared with the CLC and in discussion they offered another written argument to support their interpretation, namely that they can authorise entities for probate (also not specifically mentioned in s32(1)(ba)) so clearly it was intended that CLC should be allowed to authorise entities for additional reserved legal activities.
24. S15 of the LSA2007 requires that entities that are providing reserved legal activities are authorised to do so. S32(1)(ba) AJA 1985 does not permit CLC to make arrangements to authorise entities for probate services. Since CLC recognised bodies were providing such services before the LSA2007 came into force, a transitional provision was made (SI 2009/3233) which exempts those bodies from the requirements of s15 of the LSA2007 and allowed those bodies to continue to offer the same services post LSA2007 coming into force.
25. This additional information has been considered by Mr Nardell but has not changed his opinion. Mr Nardell's supplemental advice also appears at Annex B(2). Indeed it highlights that there is a transitional provision as regards probate that also may need to be put on a permanent statutory footing through a section 69 order (though it should be noted that the CLC do not agree with this conclusion).
26. It is accepted that it was Parliament's intention that the CLC should be able to apply for designation to authorise and regulate entities for additional reserved legal activities. However, at this time the current statutory framework does not allow this. Before granting the current application and making the recommendation to the Lord Chancellor, the LSB needs to be satisfied about the legal basis on which the CLC would conduct these activities.
27. Parliament foresaw the need for an order-making power to modify a body's powers and s69 of the LSA2007 is the mechanism by which this can be achieved. To give effect to the expansion of the CLC's regulatory remit, therefore, it is necessary to amend s32A of the AJA 1985 through a s69 order.
28. We do believe that an amendment to the AJA to give the CLC the necessary powers could be achieved through a s69 order which would allow the LSB to make the recommendation. However the s69 process cannot be completed in the time available for the LSB to make a decision on this application and therefore we have concluded that the application should be refused.
29. The CLC has asked us to consider making a "conditional" recommendation to the Lord Chancellor for designation to take effect once the necessary s69 order comes into force. We do not consider that the LSA2007 provides a power for us to make a "conditional" designation.

Should we grant part of the application?

30. The CLC application is to allow them to authorise individuals and entities for these new activities. The CLC have specifically asked whether we will part grant the application and allow them to authorise individuals only for these activities. In part this is to allow the CLC to proceed with the development of its education and training framework.
31. The LSB's initial view was that this would be a different application. The CLC were asked to consider what changes they would need to make to the proposed regulatory arrangements to make them suitable for regulation at individual level. Two changes were proposed

32. The Note to the Overriding Principle 4 Comply with your duty to the Court would be amended to read “this Principle is only applicable to individuals licensed by the CLC to provide advocacy and litigation services” (currently reads “this Principle will only be applicable if the CLC’s application to regulate advocacy and litigation services is successful”)
33. References to “you” in the Litigation and Advocacy supplementary to be amended to remove bodies
34. We have carefully considered this and concluded that we should not make a recommendation that the application is granted in part.
35. The CLC’s regulatory approach is based around entities and the regulatory arrangements mean that individuals granted licences have to work within an entity. Paragraph 10 of the Licensed Conveyancer Licensing Framework requires that a licensed conveyancer can only carry on their authorisations and permissions as a manager or employee of a CLC body or a body recognised by another approved regulator or licensing authority.
36. It follows therefore that licensed conveyancers operating in CLC regulated bodies could not exercise these rights even if granted because the CLC regulated body could not itself be authorised for these activities.
37. What remains is the question of whether the CLC should be able to authorise licensed conveyancers operating in entities authorised by another legal services approved regulator and licensing authority (which at this point in time means working in a body recognised by the Solicitors Regulation Authority (SRA)). We have carefully considered this and concluded that this would not be an appropriate decision. We are sceptical about “individual only” applications. The CLC do not appear to have given specific consideration to the regulation of individuals (the regulation of entities has always been the primary focus) and the lack of detailed analysis of any conflict issues arising between their regulation of individuals and SRA control of entities leads us to question whether this has been adequately considered.
38. We recognise that the CLC wish to proceed with the development of their education and training framework and would encourage them to do so. The application envisages that the first licence for these activities based solely on the CLC education and training framework (as opposed to those whose education and experience qualifies them for exemptions) will be granted two years after designation. Developing the framework now would mean that when a new application is made the proposals would be more advanced and would strengthen the application. Licensed conveyancers currently working in SRA regulated bodies (and who can already undertake the activities under appropriate supervision by and SRA authorised person) are likely to benefit from the expanded education programme and would still be able to become licensed for the new activities in a shorter timescale post designation.

Capability and capacity

39. As part of the assessment of competence and resources, the LSB needs to be satisfied that the applicant will have the capability and capacity to be an effective regulator at the time that the designation is granted.
40. As an existing approved regulator and licensing authority, the LSB has some knowledge of the CLC’s operations and arrangements. The application makes clear

that these are the basis on which the new activities will be regulated. As part of the assessment of the application, five LSB colleagues spent a day at the CLC offices meeting with key people and discussing with CLC staff how they work in practice. During the day meetings were held with the four executive directors and the authorisation, supervision (including practice inspections) and complaints handling arrangements were reviewed. In addition we had a meeting with a lay Council Member who is also Chair of the Audit Committee.

41. At the conclusion of the visit, the LSB considered that the CLC had demonstrated that they have a good understanding of the risks and issues in the market that they currently regulate and have in place or are developing appropriate systems and for effective regulation of that market.
42. An applicant should demonstrate that it has considered the full range of risks (including but not limited to the risks from different client groups, different business models and different financial risks) and how its proposals mitigate against those risks occurring. Given that the same systems will be used for regulating the new activities, we need to be satisfied that they are adaptable to the different risks presented in authorising and supervising these new activities so we sought assurance that the CLC have a good understanding of the risks and issues. The discussions with management and the papers provided have not given us that assurance.
43. The CLC executive has described these activities as “low risk” as, unlike conveyancing they will not be holding significant amounts of client money. In relation to litigation the view was expressed that generally cases take a long time and therefore there is more opportunity to spot when things are going wrong and correct them. The executive has recognised that there is a knowledge risk. In discussion, the view was expressed that there were no implementation risks.
44. In January 2012 (11 months after the application was submitted and shortly before the visit) CLC were given a presentation on the risks associated with these activities. This identifies a number of specific risk areas for litigation and advocacy most of which were not commented on by CLC management in the discussions.
45. One of the documents provided as evidence of a risk based approach was the draft monitoring programme. We recognise that this is a document in development but do not consider that it contains a risk analysis.
46. We accept that at the point that the application is made, an applicant is unlikely to have in place everything needed to regulate the activities. However, given that the assessment criteria specifically refer to the applicant having in place all of the necessary resources and arrangements at the point of designation, we need to be satisfied that the programme of work post the decision on the application is capable of achieving this. The CLC had not, at the time of the visit, prepared an implementation plan. We requested that such a plan be produced and this has now been provided and contains a note of the implementation risks.
47. Collectively, this information leads us to question whether the CLC has an adequate understanding of the risks involved. As a consequence, it is difficult for us to form a view as to whether the existing arrangements are sufficient or capable of being developed to support effective regulation of the new activities.
48. In the event that the CLC decide to make another application to the LSB, it will be important that the application contains a detailed risk analysis and how their planned regulatory arrangements mitigate the risks identified.

Advice from the Mandatory Consultees

49. In considering an application for designation the LSB is required (under Schedule 4, 5(1) and (2)) to seek advice from 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 any other person it considers reasonable to consult regarding the application; no further advice was sought for this application.
50. The advice from the Mandatory Consultees was split. The Office of Fair Trading and the Legal Services Consumer Panel (LSCP) were broadly supportive while the Lord Chief Justice was firmly opposed to the granting of the application.
51. In summary – the points raised by the mandatory committee and CLC’s response is as follows:

CONSULTEE COMMENTS	CLC RESPONSE
Office of Fair Trading	
No evidence to suggest that granting the application would (or would be likely to) prevent, restrict or distort competition within the market. Allowing CLC members authorisation to conduct litigation and to have rights of audience may strengthen competition for these services.	CLC is grateful for the positive and supportive response.
Legal Services Consumer Panel	
LSCP support the proposed incremental approach which will allow CLC to build experience and develop a track record. Targeted authorisation (e.g. restricted to certain types of Court) supports this.	CLC is grateful for the positive and supportive response.
<p>LSCP were concerned about the arrangements for ongoing monitoring. They question whether supervisors and mentors would raise issues within the CLC and note that while there will be a requirement to complete continuing professional development, there is no information for any independent checks on technical competence.</p> <p>LSCP also suggest that customer feedback should form part of assessing competence.</p> <p>LSCP hope that the CLC’s arrangements will become fully integrated in the Quality Assurance for Advocates [now known as QASA] should that expand to new areas.</p>	<p>CLC respond that the application makes clear that it will rely on external advisers supplemented by recruitment to oversee the practical training, monitoring and assessing quality of supervision.</p> <p>CLC agree and will develop processes for consumer feedback.</p> <p>CLC agree in principle that their arrangements should be fully integrated into QASA but would need to be satisfied that the scheme endorsed by LSB offers proportionate and cost effective delivery of</p>

LSCP welcome the approach to regulation of non-reserved Legal Services.	relevant outcomes
The Lord Chief Justice	
The LCJ reiterated the concerns expressed in his response to the CLC consultation on this application. His view is that the CLC was established to regulate conveyancing services and litigation and advocacy fall outside of a licensed conveyance.	<p>CLC do not accept the objections raised by the LCJ.</p> <p>The CLSA1990 makes specific provision for the CLC to regulate advocacy and litigation services. These provisions were introduced to and so that the CLC could, like other bodies, seek authorisation in due course.</p>
CLC lacks the necessary expertise to regulate litigation and advocacy and to set and maintain standards for those who seek legal qualification	<p>CLC are confident that they will have the necessary competencies and capabilities to effectively and efficiently regulate these activities.</p> <p>CLC have extended powers incrementally over a number of years and this application is the next logical step in its development.</p>
The LCJ recognises that there is some consumer interest in extending CLC's regulation scope but note reserved activities have also to regulate in the public interest and the LCJ has not identified any strong public interest to granting the application.	<p>CLC draw attention to the LSB's paper on the Regulatory Objectives (July 2010) and note that three elements are identified to "protecting and promoting the public interest".</p> <p>Public interest best served through a properly regulated legal services market – the CLC's Code of Conduct and regulatory arrangements deliver a principles based and outcomes focused approach to regulation.</p> <p>Commitment to transparency – CLC fully committed to transparency as evidenced through the consultation with profession and other stakeholders on the application.</p> <p>Principle of separation of the regulation and representation functions of regulators. CLC was established by statute with and exclusively regulatory function.</p> <p>CLC also submit that the application is entirely consistent with the definition put forward by the Legal Services Institute. "The public interest concerns objectives and actions for the collective benefit and good of the current and future citizens in achieving and maintaining those fundamentals of society that are regarded by them as essential to their common security and well being, and to their legitimate participation in society".</p>

<p>LCJ notes that the legal profession is adequately provided for through the ILEX scheme and there is little justification for a parallel CLC Scheme.</p> <p>LCJ concluded by stating that if the application is successful, CLC must create and implement a regulating regime which is at least as robust that of existing regulations.</p>	<p>CLC note that while ILEX can only grant rights of audience and litigation to Associate Prosecutors of the Crown Prosecution Service. The other application in relation to litigation was withdrawn.</p>
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52. The final part of the CLC response notes that the proposed incremental approach provides on appropriate balance of protecting interest of the public, maintaining high professional standard and encouraging supplier diversity in the legal market.
53. The CLC has noted the concerns of stakeholders and while satisfied that the regulatory arrangements mitigate these concerns, CLC suggests that it would consider a “conditional approval” from the LSB in which they would only be permitted to authorise and regulate entities for litigation and advocacy where these entities had managers who were authorised persons (such as Solicitors and Barrister) for these activities. Licensed Conveyancers would only be permitted to be managers for conveyancing and probate services. This would, they contend, ensure public confidence by combining CLC’s track record of regulating entities with the experience of the SRA and BSB in regulating Authorised Persons in the provision of such services until such time as the CLC has developed the education and training programmes to authorise Licensed Conveyancers for these activities.

LSB assessment of advice and responses

54. We agree with the OFT that allowing the CLC to authorise and regulate the activities applied for may increase competition among providers of these services and this will have a positive impact on the access to justice objective through potentially increasing the sources of supply of these services.
55. In relation to the points raised by the LSCP, the quality and effectiveness of the CLC’s ongoing monitoring programme (for the activities for which they are already an approved regulator) is part of the LSB’s ongoing work on regulatory standards. In relation to these new activities, were the application to be granted we could require the CLC to specifically report (under s55 of LSA2007) on the authorisation and supervision of firms in relation to these activities after the first year of designation. On the point of customer feedback we will ensure that the commitment to develop a customer feedback mechanism is taken through to the implementation plan. In relation to QASA, we agree that it would be prudent to wait until the scheme is finalised before committing absolutely to integration.
56. We have noted the views of the LCJ. The CLSA 1990 first made provision for the CLC to regulate these activities and they are entitled to make the application under the LSA2007. The LSA2007 anticipates that bodies can apply to be designated as an AR or LA – either existing legal services ARs and LAs or entirely new entrants – and any such body is unlikely to have experience of regulating specific activities applied for; this would be true also if one of the more established regulators were to seek to extend the scope of activities (e.g. the Bar Standards Board introducing rules to allow more barristers to conduct litigation). In assessing an application the LSB

must take into account the relevant past experience of the applicant (in this case the arrangements for the authorisation, supervision and enforcement of conveyancing and probate activities) and consider the extent to which they can be developed to accommodate the new activities. Our conclusions on this are set out in paragraphs 39 to 48. We agree that the arrangements must be robust though judge them on their own merits rather than by direct comparison with other legal regulators.

57. We do not consider that the designation process allows for a conditional designation.