Designing new approved regulators and approving rule changes

Response to Legal Services Board consultation paper from the Institute of Professional Willwriters.

The Institute of Professional Willwriters (IPW) – background

Formed in 1991, the IPW represents and regulates almost 500 people working in 200 firms in the unregulated Willwriting market.

For most of it's existence, the IPW has campaigned for a statutory regulatory regime in the Willwriting market and this will continue when the Legal Services Board takes up it's full powers.

The IPW is unique in that it is the only organisation in the unregulated Willwriting sector which has obtained Stage One approval of it's Code of Practice from the Office of Fair Trading under it's Consumer Codes Approval Scheme (CCAS). The IPW is currently working towards Stage Two approval under the scheme – the point at which the OFT will have checked and approved Code monitoring and compliance checking processes – which we expect by mid 2010.

Our responses to the consultation have been compiled having made the consultation paper available to our members and inviting them to respond either directly or to the IPW.

Responding to the Consultation questions:

Response to Question 1

The danger with any requirements is that they, by necessity, have to be broad ranging to cope with the wide diversity of Legal Services regulated by the LSB and the way that they are delivered and regulated. This diversity should be welcomed and encouraged. There is a danger however that assessment of applications could become too prescriptive which could stifle free thinking and also create loopholes. Only time will tell whether the right balance has been reached.

Response to Question 2

There is nothing in the requirements that would cause a problem to the IPW were it to make an application to become a regulator, so we have no suggestions for change in content.

Response to Question 3

We are not entirely clear on the issue of publication of material in relation to an application and in particular we have concerns about the publication of commercially sensitive or personal information. While the consultation paper states that applicants can request redaction of information, we believe that redaction should be automatic for certain types of information – such as the information required under section 14 of Part One of the schedule.

We also request clarification of the following statement in Rule 9; "The board requires successful Applicants to maintain a publicly accessible internet space containing all of the materials that are submitted by the Applicant in it's Application". When does an applicant become a 'successful Applicant'? At the start of the application process or at the end of it? This will influence exactly when it will become known that the Applicant has made an Application. This requirement is unfair on early Applicants because it requires them to

disclose the content of their Application to other, competing, organisations who can subsequently use the information to submit their own Applications.

For the same reason, we are cautious of the requirement to consult with members of, and representative bodies for, professions which may be affected by the Application. This requirement has the potential to 'tip off' other organisations.

While having no objection to the dissemination of information to decision makers, we urge the LSB to re consider any requirement to make Applicant information available outside of those who are immediately concerned with the Application process..

Response to Question 4

We believe that there should be a fee to prevent poorly presented applications.

In order to encourage applications, fees should be calculated on the basis that an Application is submitted with all the information required to enable the LSB to make it's investigations and make it's decision.

We support a basic fee calculated to recover the direct costs of LSB's staff and resources and overheads since this requires least internal accounting resources to determine and provides the lowest possible fee along with certainty to applicants providing their application is well ordered.

Where applications are not well presented, we suggest that the application should be rejected (and a new fee paid on re submission) or a negotiated additional fee to cover the additional work is made ion the applicant.

Response to Question 5

While we accept that there will be less work involved in administering applications from existing Approved Regulators, any reduction in application fee would put them at a competitive advantage, particularly as in the early stages the existing Approved Regulators have not been required to go through the approval process. This would be unfair.

One would assume that applications from existing Approved Regulators would be particularly well presented and would only ever pay a basic fee under our suggestion in response to Question 4.

Response to Question 6

We give a guarded positive response to this. There is a danger that the LSB will be tempted to use external advisors simply to offset costs of dealing with an application. We would hope that clear and open rules are developed which determine when external providers are engaged and that it should be clear that they are being engaged only because there is an agreed requirement for their knowledge or resource which is not already available within the LSB.

Response to Question 7

We are a little concerned that oral representation is being promoted as a process of last resort. We find it difficult to believe that an application process will be as straightforward as taking in an application, disseminating the information within the LSB and externally and then making a decision based purely on the information submitted – even if there is a

process to request further information. Will the process of considering applications really be as ‘clear cut’ as that?

The success or failure of consumer protection depends on making the right decisions at this stage – as does the commercial success of any potential Approved Regulators and the jobs that go with it both within the regulator and within the regulated sector. We urge the LSB to build in a ‘committee process’ where decision makers can meet and discuss with applicants any issues resulting from their application.

Having been through the written process of applying for approval from the Office of Fair Trading under it’s Consumer Codes Approval Scheme – and experienced how a 30 minute meeting can clear up months of ‘log jams’ in paperwork, we hope that oral hearings will be made available rather more than the consultation paper seems to indicate.

Response to Question 8

See response to Question 7

Response to Question 9

We do not believe that the LSB should start implementing criteria for that is not defined within the Act unless it is found that any provisions in the Act are found to be inadequate.

Responses to Questions 10 to 14

As we are currently outside of the regulator regime, we find it difficult to comment on the process to changes to rules to which we are not currently required to comply with.

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