



**A RESPONSE BY ILEX PROFESSIONAL
STANDARDS LIMITED**

**CONSULTATION BY THE LEGAL SERVICES
BOARD ON SECTION 70 OF THE LEGAL
SERVICES ACT 2007 – PROPOSALS TO MODIFY
THE FUNCTIONS OF TWO APPROVED
REGULATORS**

DATE: 17 DECEMBER 2010

ILEX PROFESSIONAL STANDARDS

This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Legal Executives. Legal Executives are members of the Institute of Legal Executives (ILEX). ILEX is the professional body representing 22,000 qualified and trainee Legal Executives and is an Approved Regulator under the Legal Services Act 2007 (LSA 07). The consultation paper is wide ranging and IPS does not propose to respond in detail to all of the questions posed, but hopes the general observations below may be of value.

ILEX and IPS are committed to regulating Legal Executive businesses and businesses in which Legal Executives are partners and directors by 2012. IPS will be responsible for establishing regulatory arrangements that not only comply with the requirements of the Act and with any regulations made by the Legal Services Board (LSB) under the Act but that also provide public protection.

Comments on the proposals in the consultation have been presented below and divided into the following three sections, the first is modifications applying to the SRA only, the second is modifications applying to the CLC only and the third is modifications applying to both the SRA and CLC. The comments have been further divided into ABS related modifications and non-ABS related modifications within each section.

SRA Only

ABS related

A single compensation fund for ABS and non-ABS:

The consultation highlights that the Solicitor's Act 1974 (SA) does not allow the SRA to extend the use of its existing compensation fund to consumers of ABS. In the paper the SRA propose to extend their existing compensation fund to ABS consumers. This may not be a permanent arrangement, but the SRA, after its current review of PII and compensation arrangements will decide whether to set up a separate fund for ABS. The current proposals have been included in the draft order with a sunset clause permitting the proposed arrangements until 31 December 2012. This is to allow ABSs access to the current fund pending the results of the SRA's current review and permanent arrangements in October 2012 will implement the outcomes of the review.

The SRA will consult in October 2010 on the rules that will operate pending the outcome of the review. It would be beneficial to have a more detailed outline of the changes that would need to be made to the current compensation fund in order to extend it to ABSs. For example it is unclear whether compensation fund contributions of non-ABS firms' will increase. Furthermore, thought needs to be given to whether contributions will be based on the size and structure of the entity or the regulated activity it undertakes. It is difficult to comment on whether the proposal is an appropriate extension of the compensation fund without substantive detail. If the SRA had already consulted on the outcome of its review before this consultation was published, it would be easier to comment on the proposal.

Non-ABS related:

Collecting periodic fees from non-ABS regulated by the SRA:

In the consultation it is explained that the SA and the Administration of Justice Act 1985 (AJA) do not contain any power for the SRA to collect periodic fees which means that the SRA would need to maintain an annual renewal process in order to collect its fees. It is understood that because licenses will last indefinitely, the SRA need a mechanism to collect annual fees and sustain an annual income. The consultation fails to quantify what the cost benefits are of collecting fees periodically. More details are needed from the SRA regarding this area.

CLC Only

ABS related

Enable grants to be made out of the compensation fund for other regulated entities:

The CLC propose to extend their existing compensation fund to any legal services regulated by the CLC, in order to allow compensation to be paid to consumers of ABS.

The CLC has touched upon the issue in their consultation titled 'Outcomes Focused Regulation: Proposed Application by the CLC to the Legal Services Board as an Approved Regulator to regulate licensed conveyancers and CLC regulated practices in the Exercise of Rights of Audience and the Conduct of Litigation'. However, the CLC has not indicated whether this will be a temporary measure. Furthermore, the CLC has not given details of any changes or whether there will be changes to the current compensation fund in order to extend it to ABSs.

It is worth noting that the money currently held in the compensation fund was not for compensating consumers of ABSs but for consumers of licensed conveyancers. More information is required in relation to the interim period when the CLC license ABSs but the money held in the fund is for consumers of and has been accrued by licensed conveyancers. The Law Society has addressed a similar issue in schedule 1, article 4 (2A) (a) and (b) of the draft order whereas the CLC has not.

Non-ABS related

Constitution of the Council

Require a lay majority on the Council

The consultation proposes a change be made to the constitution of the CLC's Council. The Council will be modified to have a lay majority by one member. IPS has no comment to make upon the proposed modification. It is noted it will allow the CLC Council to be compliant with the LSBs Internal Governance Rules.

Extending the definition of 'licensed conveyancer' member of the Council

Change the definition of 'lay member' of the Council

The consultation proposes an extension to the definition of 'licensed conveyancer' to include an approved person in an entity regulated by the CLC including approved persons other than licensed conveyancers. IPS has no comment to make.

IPS agrees with the further proposal to modify the definition of 'lay member' to be in line with Schedule 1 of the Act which is defined as any person who is not and has never been an authorised person. It should be noted that such a definition would not prohibit people employed in the legal profession or non-lawyer partners/manager falling within the definition of 'lay member'.

Change the requirements for consumer representatives

Currently the AJA requires the Council to have two people who represent the consumer interest. The CLC propose that this is an outdated requirement given the current arrangements in the LSA for appointments to the LSB's Board to include members who have experience and knowledge of consumer affairs. Despite members with consumer affairs knowledge and experience being appointed to the LSB Board, consumer interest is an issue that each Approved Regulator should have regard to. It might be suitable if at least one Council member has experience and knowledge of consumer issues but it should not be a mandatory requirement. All members should have regard to consumer issues and the aggregate experience and knowledge of members in this area should also be acknowledged.

Enable the Council to issue licenses for indefinite periods

The CLC considers that the basis for regulating authorised persons and ABS should be the same. The CLC wishes to be able to issue licenses to licensed conveyancers which are not time limited.

Not only should the CLC be able to issue licenses for indefinite periods, the ability to revoke a license of an authorised person by way of sanction should also apply. The CLC will need to monitor authorised persons annually or periodically in the same way ABSs will be monitored. In order to ensure compliance by authorised persons a reporting requirement or some form of annual return may be an option.

SRA and CLC

ABS related

Seeking information from third parties:

In the consultation the SRA and CLC propose that they be allowed to be able to seek information from third parties to inform a disciplinary investigation. Third parties may include banks, insurers, clients, other regulators and any non-authorised person with an indirect or material interest. The power can only be granted by the High Court upon an application by the SRA and CLC.

IPS agrees with this proposal. It is clear that the safeguard in this proposal is the requirement that the SRA and CLC can only be granted this power by the High Court. The High Court will need to be careful about data protection when considering applications.

Recovery of investigation costs:

The SRA and CLC seek to recover the cost of investigations that lead to disciplinary action against ABS from those parties that are subject to investigation.

IPS agrees with the proposal as it would avoid investigation costs falling on compliant entities and individuals. However, the consultation does not give details of whether there would be a limit on the cost that can be recovered or if the full cost of investigation can be recovered.

Protection of client money:

The SRA and CLC propose to be able to protect client money held by banks from third party claims. The proposal is favourable as it is in the consumer interest. It might be appropriate that this is a power that should be provided by statute as opposed to by licensing rules.

The consultation highlights that this proposed power is one that other licensing authorities will require. As section 69 orders modify provisions made under any enactment it remains unclear how Approved Regulators not constituted by statute gain the same power if they are designated as a Licensing Authority.

CONCLUSION

IPS agrees with the majority of modifications proposed in the consultation. It was difficult to make substantive comments on some of the proposals due to lack of detail provided. The LSB considers it essential in most cases that the Approved Regulator or Licensing Authority consults publicly. IPS also considers it essential for the Approved Regulator or Licensing Authority to consult in detail about the proposals. Detailed consultations published before the LSB consult as part of section 70 of the Act will increase the quality of responses from stakeholders.

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