



The Law Society

Section 69 Orders: modification of the functions of the Solicitors' Regulation Authority and the Council for Licensed Conveyancers.

A consultation paper under section 70 of the Legal Services Act 2007 on proposals to modify the functions of two approved regulators.

1. The Law Society welcomes the opportunity to respond to the LSB consultation concerning a possible Order under section 69 of the Legal Services Act 2007 to modify the functions of two approved regulators.

Defining reserved activities

2. The Law Society understands that the SRA will be proposing that the definition of reserved activities under the Act should be extended to cover all "solicitors activities". Under the Act providers of legal services can only be regulated as an ABS if they undertake one or more of the reserved activities. Accordingly those entities that only provide unreserved legal activities cannot be regulated, even if they wished to be.
3. Many important legal services, such as will writing, much business related legal advice, mediation and employment tribunal work are outside the current scope of "reserved activities". We agree with SRA that where such activities are not conducted through regulated firms people are exposed to much greater risks, including financial default, negligent advice and being misled as to costs.
4. The best way to secure consistent consumer protection and avoid consumer confusion over which legal services in this new market are regulated or not is for the LSB to work with the SRA to extend the definition of reserved activities to cover all "solicitor activities". If the LSB consider that this is too radical an approach for a Order under section 69, they may wish to consult on making a recommendation to the Lord Chancellor under section 24 of the Act, to achieve the same result.

Compensation fund

5. The Law Society believes that compensation arrangements for ABS must be as extensive as those in the Solicitors Act, which governs other solicitors firms. It is important that clients of ABS receive the same level of protection as those who instruct other firms. We support the proposal that a section 69 order should allow the option for the SRA to operate a single compensation fund, though it is not yet clear whether this will be the best course to take, as the SRA's approach to Multi-Disciplinary-Practices is as yet unknown. It is important therefore that SRA should also be able to establish two Compensation funds, one for ABS firms and one for other firms.
6. The Law Society understands that since the publication of the consultation paper the SRA has identified the following aspects of the proposals that require amendment.
 - The draft section 69 order would not allow the SRA to make provision in the Compensation Fund rules to cover loss caused by an act or omission of an owner or former owner of a licensed body.
 - Under the current draft section 69 Order any default or regulatory action which triggers the claim on the Fund must "occur" in the transitional period. There is a concern about whether the draft Order would allow the SRA to recover unpaid contributions after the transition period in respect of the transitional period.

7. We urge LSB to work with the SRA to resolve these inconsistencies in the drafting before the Order is submitted.

Law Society responses to questions contained in the LSB consultation under section 70 of the Legal Services Act 2007 on proposals to modify the functions of two approved regulators.

Question 1

**What are your views on the proposal to enable the SRA and CLC to obtain information from third parties about ABS by application to the High Court?
Do you have any comments about the drafting of the SI on this issue?**

We agree with the proposal. It is important that the SRA has the power to obtain information from third parties concerning ABS, as it has in respect of other law firms.

Question 2

**What are your views on the proposal to enable the SRA and CLC to recover the cost of investigations that lead to disciplinary action against ABS from those parties that are the subject of the investigation?
Do you have any comments about the drafting of the SI on this issue.**

We agree with the proposal. Regulators must have the ability to recover the cost of investigations from ABS, as the SRA already does from traditional firms.

Question 3

**What are your views on the proposal to extend the protection of client money to ABS for the SRA and CLC?
Do you have any comments about the drafting of the SI on this issue.**

We agree with the proposal. It is important that client money is protected in the event of action by a bank against a solicitor or recognised body; and for this protection to be contained in the Act.

Question 4

**What are your views on the proposal to enable the SRA to operate a single compensation fund for ABS and non-ABS?
Do you have any comments about drafting of the SI on this issue.**

We agree that the regulator should have this option though the Society has yet to decide whether having a single consultation fund is appropriate. Some sections of the draft order will need to be redrafted in order to resolve inconsistencies around owners who are not managers or employees, and around sunset and transitional periods.

Question 5

**What are your views on the proposal to enable the SRA to collect periodic fees without an annual renewal process?
Do you have any comments about the drafting of the SI on this issue?**

We agree with the proposal. The ability to collect periodic fees from recognised bodies without an annual renewal process will make a modest contribution to avoiding unnecessary bureaucratic regulatory requirements.