



**Application by the Council for Licensed
Conveyancers for designation as an approved
regulator in relation to the exercise of rights of
audience and the conduct of litigation**

February 2011

A. Introduction

1 Overview

The Council for Licensed Conveyancers (**the CLC**) is an approved regulator under the Legal Services Act 2007. We regulate individual licensed conveyancers and licensed conveyancing practices. Currently, the CLC is an approved regulator in relation to three reserved legal activities, namely reserved instrument activities (ie conveyancing), probate activities¹ and the administration of oaths.

By this document we apply for designation as an approved regulator in respect of two further reserved legal activities, namely the conduct of litigation and the exercise of rights of audience (**the new reserved legal activities**).

This application is made under section 53 of the Courts & Legal Services Act 1990 (**the 1990 Act**) and Part 2 of Schedule 4 of the Legal Services Act (**the 2007 Act**) and is intended to comply with the Legal Services Board's [Rules for Approved Regulator Designation Applications](#).

Abbreviations in this document appear in bold on the first occasion they are used. Hyperlinks to external web resources appear like [this](#). There is a Glossary of frequently-used terms at Annex B, page 39.

2 Layout of this document

The next section describes the CLC, the underlying statutory framework, the persons and bodies we regulate and their practising entitlements and authorisations ("**Who we are**", page 3). After that there are sections concerning our proposals ("**What we want to do**", page 9), their implementation ("**How we propose to do this**", page 13) and some concluding comments (page 35). There is also a more detailed table of contents at Annex A, page 37.

3 Other matters

(a) Related applications being made by the CLC

Concurrently with this application (**the Designation Application**) we are making two further applications. Their contents interact with this one. The second application, made under Part 3 of Schedule 4 of the 2007 Act (**the Rules Application**), seeks the approval of the Legal Services Board in respect of a new regulatory framework for licensed conveyancers. This new framework merges various elements of our existing regulatory arrangements and embeds a principles-based, outcomes-focused approach. The third application, made under Part 1 of Schedule 10 of the 2007 Act (**the Licensing Application**), involves us seeking designation as a licensing authority in respect of 'Alternative Business Structures' (or licensable bodies as they are referred to in the 2007 Act).

¹ The position in relation to probate activities is dealt with in more detail at Section B.2(c), page 6

(b) The interaction between the Rules Application and this Application

The Rules Application seeks approval for substantial alterations to our regulatory arrangements. Most, but not all, of those alterations will be sought even if the Designation Application does not succeed. Given that the Rules Application will proceed concurrently with this application, we suggest that the proposed regulatory arrangements the subject of this application² are those matters specifically identified at Section D, page 13, and which are solely required for the purposes of regulating the new reserved legal activities. We therefore anticipate this application will be considered and approved against the wider background of the proposed alterations to our regulatory arrangements contained within the Rules Application.

(c) Previous consultations

We previously consulted on the contents of this application in February and September 2010. The consultation papers, and a summary of the responses received, are available on our [website](#) and the observations of the consultees are reflected in this application.

B. Who we are

This section describes the CLC, licensed conveyancers and CLC recognised bodies, their practising entitlements, the statutory framework and our internal arrangements for governance and funding.

1 The statutory framework

The CLC, and the concept of licensed conveyancers, are both creations of statute. This is of some relevance to the nature and scope of this application.

(a) Administration of Justice Act 1985

The primary enabling statute is the Administration of Justice Act 1985, principally sections 11 to 39 and Schedules 3 to 6 (**the 1985 Act**). The 1985 Act makes provision, amongst other things, for the following:

- the training and licensing of individuals seeking to practise as licensed conveyancers
- the maintenance of a register of licensed conveyancers
- a code of conduct
- financial arrangements for professional indemnity insurance and client compensation
- the handling of client money
- disciplinary and other proceedings
- intervention into the practice of a licensed conveyancer

² Part 2 of Schedule 4 of the 2007 Act requires a body seeking a designation order in respect of new reserved legal activities to present for approval "what the body proposes as its regulatory arrangements if such an order is made ("the proposed regulatory arrangements")."

- the application of legal professional privilege to the work done by a licensed conveyancer
- the recognition of bodies as suitable to undertake conveyancing services or other relevant legal services

(b) Courts & Legal Services Act 1990

Section 53 and Schedule 8 of the 1990 Act combine to offer a pathway for us to apply to expand the scope of our regulatory remit by seeking authorisation to grant what the 1990 Act calls “advocacy licences”, “litigation licences” and “probate licences”.³ That terminology is adopted here.

The issue of an advocacy, litigation or probate licence constitutes the grant of an authorisation to carry on the applicable reserved legal activity, ie the exercise of a right of audience, the conduct of litigation or the carrying on of probate activities.⁴

We have already followed this statutory pathway and since November 2008 we have been issuing probate licences to licensed conveyancers. We therefore have a track record in successfully implementing an expansion to our regulatory powers.

As a matter of statutory construction, we consider that we are obliged to follow the s.53 pathway when seeking designation in respect of these new reserved legal activities. Section 53(6) does however provide that an application for designation must be made subject to the requirements of the 2007 Act. Accordingly, we have approached the preparation of this application on the basis that it must not only comply with Part 2 of Schedule 4 of the 2007 Act and the Legal Services Board’s associated rules, but also with the provisions of s.53 and Schedule 8 of the 1990 Act.

(c) Legal Services Act 2007

The relevant sections of the 1985 Act and the 1990 Act were further modified by the 2007 Act so as to produce conformity with the latter’s objectives and provisions.

The current position is that as an existing regulator of legal services we have been designated as an approved regulator under paragraph 1 of Schedule 4 of the 2007 Act and in respect of reserved instrument activities (ie conveyancing), probate activities⁵ and the administration of oaths.

As an approved regulator we must, so far as is reasonably practicable, act in a way which is compatible with the “regulatory objectives” of the 2007 Act,⁶ and in a way which we consider is the most appropriate for the purposes of meeting those objectives.⁷

We must also have regard to those principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which activity is needed, and to any other principle appearing to us to represent regulatory best practice.⁸

³ See Paragraph 1 of Schedule 8 of the 1990 Act.

⁴ See Schedule 2 of the 2007 Act for a full definition of each reserved legal activity.

⁵ Strictly speaking, probate licence holders are authorised to carry on probate activities, and CLC recognised bodies that employ such a licence-holder are exempted in respect of probate activities. See in this regard SI 2009/3233.

⁶ See s.1 of the 2007 Act.

⁷ See s.28(2) of the 2007 Act.

⁸ See s.28(3) of the 2007 Act.

(d) Rules and regulations made under the statutory framework

This statutory framework is supplemented by the rules and regulations that we make from time to time. Those rules and regulations constitute the main elements of our “regulatory arrangements”.⁹ The existing rules are not described in detail in this application but they are listed at Annex I, page 68. Almost all of them will be changed if the Rules Application succeeds.

2 The practising entitlements of licensed conveyancers and CLC recognised bodies

This section describes the individuals and entities that we regulate, their authorisations and permissions to provide legal services to the public.

(a) Licensed conveyancers

We regulate 1,100 individual licensed conveyancers. About two-thirds of this number are employees, and the remainder are managers.¹⁰ Most employed licensed conveyancer work in practices regulated by the SRA and by the CLC (see subsection (d) below) but some work in local authorities or for employers engaged in the property industry (eg developers).

A licensed conveyancer is defined in the 1985 Act as meaning a person who holds a licence to practise as a licensed conveyancer.¹¹ Section 11 of 1985 Act provides that “references...to practising as a licensed conveyancer are references to providing, as the holder of such a licence, conveyancing services in accordance with the licence”.¹² “Conveyancing services” are defined by s.11(3), 1985 Act, as “(a) the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land, and (b) any other activities which are reserved instrument activities for the purposes of the Legal Services Act 2007...”

(b) Licensing, generally

The concept of a “licence” is a key one in the regulatory framework for licensed conveyancers. A licence is equivalent in function to a solicitor’s practising certificate. The 1985 Act provides for their issue, suspension, termination and revocation, appeals against such decisions, and for the imposition of conditions.¹³ The Act also envisages that a licence can be a composite one, in the sense that further authorisations in addition to conveyancing may appear on the same licence.¹⁴ We intend to use composite licences to grant authorisations to carry on the new reserved legal activities.

In these circumstances, and for convenience, the expression “licence” is used in this document to denote any of the various types of licence that we can issue if designation is received, with the expression “conveyancing licence” reserved for a licence that entitles its holder to provide **only** conveyancing services.

⁹ See s.21 of the 2007 Act.

¹⁰ A “manager” is the subject of an extensive definition our Licensing Rules 2009, but that definition can be summarised as a licensed conveyancer who is either a sole practitioner or a member, partner or director of a CLC Recognised Body.

¹¹ See s.11(2) of the 1985 Act.

¹² “Conveyancing services” are defined by s.11(3) of the 1985 Act, as “(a) the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land, and (b) any other activities which are reserved instrument activities for the purposes of the Legal Services Act 2007...”

¹³ See ss.14-18 of the 1985 Act.

¹⁴ See s.53(4) of the 1990 Act.

(c) Probate licence-holders

Since November 2008 we have been able to issue probate licences under our Licensed Conveyancers' Probate Rules 2008.¹⁵ A probate licence grants its holder the authorisation to carry on probate activities (a reserved legal activity). As a matter of statutory construction, a probate licence-holder must also be a licensed conveyancer.¹⁶ Schedule 8 of the 1990 Act provides a framework for the issuing of probate licences that is very similar in nature to that applicable to that applicable to the issue of conveyancing licences. As at January 2011, a total of 57 licensed conveyancers also held probate licences.

(d) CLC recognised bodies

A CLC recognised body is, in effect, a licensed conveyancing practice. We exercise regulatory control over CLC recognised bodies by issuing certificates of recognition (amongst other things). These are closely analogous in function to licences. A CLC recognised body can take the form of a sole practitioner, a partnership, a limited liability partnership, a company or an unincorporated association. Currently, we regulate 210 CLC Recognised Bodies. At the end of 2009, 43% of the CLC Recognised Bodies had an annual turnover up to £100,000. A further 47% had a turnover between £100,000 and £500,000 and 10% had a turnover in excess of £500,000.

(i) Recognising conveyancing services bodies

The terminology used by the 1985 Act in this regard needs some explanation and is of relevance generally to this application.

Section 32(1)(b) of the 1985 Act permits us to make rules¹⁷ prescribing the circumstances in which “conveyancing services bodies” can be recognised as suitable to undertake the provision of conveyancing services and “other relevant legal services” to the public.¹⁸ A similar statutory approach is apparent at s.9 of the 1985 Act in the context of the Law Society recognising “legal services bodies” as suitable to provide “solicitor services”.

A conveyancing services body can be a body corporate or unincorporate and must satisfy a management and control condition, and a services condition.¹⁹ The gist of these conditions is that there must be at least one licensed conveyancer in a CLC recognised body, and that body must be carrying on conveyancing services only, or conveyancing services and other relevant legal services.

This means that we are already regulating practices that in certain respects resemble Alternative Business Structures in that a CLC recognised body can have directors or partners who are not authorised by any approved regulator. Our current rules nonetheless provide that any “manager” of a CLC recognised body must comply with the conduct rules.²⁰

¹⁵ Paragraph 1 of Schedule 8 of the 1990 Act uses the expression “probate licence” to mean a licence issued by the CLC under s.53 by which it authorises a licensed conveyancer to carry on activities which constitute probate activities.

¹⁶ This follows from s.53(2) of the 1990 Act, “If the Council becomes an approved regulator in relation to one or more of those activities, it may, in that capacity, authorise a person to carry on a relevant activity only if the person is a licensed conveyancer.”

¹⁷ See our current Regulation of Practices (Recognised Bodies) Rules 2009. These are to be changed as part of the Rules Application.

¹⁸ “Relevant legal services” are defined by s.32A(6) as “(a) conveyancing services, and (b) where authorised persons are managers or employees of, or have an interest in, the body, services such as are provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities within the meaning of the Legal Services Act 2007).”

¹⁹ See s.32A of the 1985 Act.

²⁰ See r.3.4 of the Conduct Rules 2009.

(ii) Provision of “other relevant legal services”

We can recognise CLC recognised bodies as suitable to provide conveyancing services and “other relevant legal services”.²¹

The concept of “relevant legal services” is of some importance to this application. This is because a bare authorisation to carry on a reserved legal activity may be of limited usefulness (depending, of course, on the reserved legal activity in question). For example, the definition of “conduct of litigation” is confined to activities closely associated in nature and time to the issue of proceedings,²² but a client may well wish to receive advice on the merits of litigation well in advance of issue. This means that a litigation licence ought to do more than just grant the bare authorisation to carry on the conduct of litigation. Its holder should also be permitted by us to practise in a wider sense. The precise limits of that wider practice are a matter for our regulatory arrangements to define and, in the context of this application, for the Legal Services Board to approve.

We can grant such wider permissions by recognising a body as suitable to provide “other relevant legal services” to the public. These words were introduced into s.32(1)(b) by the 2007 Act. Section 32A of the 1985 Act defines “Relevant legal services” as meaning “conveyancing services” and “where authorised persons are managers or employees of, or have an interest in, the body, services such as are provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities within the meaning of the Legal Services Act 2007).” We consider that the phrase “such as are provided” refers to those ancillary activities as are conventionally associated with carrying on the reserved legal activity in question, and that the scope of those activities may change from time to time insofar as we permit our areas of authorised practice to develop.

Accordingly, we intend to use a litigation licence or advocacy licence as the means (a) to grant authorisation to its holder to carry on the relevant reserved legal activity, and (b) as the means by which its holder is permitted, as matter of practice, to carry non-reserved “legal activity” as the 2007 Act defines the expression.²³ This is discussed in more detail in Section D, page 13.

(iii) CLC recognised bodies and the scope of possible authorisations under the 1985 Act

A final point to mention in this context is that s.32(1)(ba) permits us to authorise CLC recognised bodies to carry on certain reserved legal activities, namely reserved instrument activities and the administration of oaths. Currently, we treat the grant of recognition of a body as equivalent to authorisation for the purposes of this subsection. Although s.32(1)(ba) does not refer to probate activities, a CLC recognised body can carry on probate activities as long as one of its employees holds a probate licence.²⁴

However, s.32(1)(ba) omits to mention that we can authorise CLC recognised bodies in respect of the conduct of litigation and/or the exercise of rights of

²¹ See s.32(1)(b) of the 1985 Act.

²² See Paragraph 4 of Schedule 2 of the 2007 Act, “(1) The “conduct of litigation” means– (a) the issuing of proceedings before any court in England and Wales, (b) the commencement, prosecution and defence of such proceedings, and (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).”

²³ See s.12(3) of the 2007 Act.

²⁴ See Article 5, Legal Services Act 2007 (Approved Regulators) Order 2009/3233

audience. If we receive designation, it is possible that s.32(1)(ba) may need to be changed to reflect this, using the mechanism under s.69 of the 2007 Act.

(iv) Provision of non-legal services by CLC recognised bodies

There is no express prohibition in our regulatory arrangements against a licensed conveyancer providing other types of non-legal services to the public through a CLC Recognised Body, but this is subject to a significant caveat. If those other services are not within the domain of matters regulated by the CLC, then the licensed conveyancer must not communicate with the client in a way which states or implies he is undertaking that work as a licensed conveyancer, and he must inform the client that such work is neither regulated nor subject to indemnity insurance.²⁵

(v) CLC recognised bodies and the Licensing Application

For completeness we should mention that fifty CLC recognised bodies are either owned or managed by non-lawyers (as is currently permitted under our rules and s.32A of the 1985 Act). Eventually, these will have to become Alternative Business Structures. If we do not receive designation as a licensing authority able to license ABSs, then these practices will have to be regulated by another legal regulator. The subject is covered in more detail in the Licensing Application.

3 The CLC

This section concerns the CLC, its nature, personnel, funding, business plans and accounts.

(a) In summary

The CLC is a body corporate created by statute.²⁶ Most of our powers and functions are prescribed by statute.²⁷ There are seven Council members, supported by twenty employees. We operate from premises at 16-18 Glebe Road, Chelmsford, Essex CM1 1QG. We carry out our functions on an average annual income of about £1,150,000. About half of this sum derives from licence fees, with the remainder split between other charges associated with education, training and practice fees.

(b) Members

The CLC currently comprises four licensed conveyancer members and three lay members (one of whom, Anna Bradley, is Chair). The 1985 Act requires that there is a majority of licensed conveyancer Council members.²⁸ We have [Regulations for the Appointment and Service of Council Members 2009](#). These were made with the approval of the Legal Services Board under paragraph 4 of Schedule 3 of the 1985 Act.

²⁵ See rr.4.4.3 and 4.4.4 of the Conduct Rules 2009

²⁶ See paragraph 1 of Schedule 3 of the 1985 Act.

²⁷ For example, Schedule 3 of the 1985 Act provides for the CLC's constitution and permits us to make rules for the remuneration of our members, the appointment of officers and staff and so on.

²⁸ See paragraph 4(2) of Schedule 3 of the 1985 Act. The LSB consulted in autumn 2010 on an intended application under s.69 of the 2007 Act for an amendment to this provision so that there will be a mandated lay majority. It is hoped that the amendment will come into effect by autumn 2011.

(c) Governance

We completed a [Governance Review](#) in 2008. Since then we have significantly restructured our committees and internal processes. The detail of those arrangements, and an organisation chart, is set out at Annex K, page 82.

(d) Operations

On the operations side, our work is undertaken by twenty employees, overseen by a Chief Executive (Victor Olowe) and three Directors.²⁹ The operations side of the CLC is further set out in a organisational chart at Annex K, page 82.

(e) Accounts, business plans and strategy

We are required to keep proper accounts of all sums received and paid and must cause those accounts to be audited annually.³⁰ The latest available [Annual report and financial statements for the CLC](#) is for the year ending 31 December 2009. We have prepared Business Plans for the past four years. Our [Business Plan for the calendar year 2010](#) is the most up-to-date at the time of writing. We published our [Corporate Strategy 2009-2014](#) on 31 March 2009. An updated Corporate Strategy 2011-2014 is due to be published shortly. It is also submitted as part of our Licensing Application.

(f) Regulator, not representative body

We only have regulatory functions in respect of licensed conveyancers,³¹ and have no representative functions.³² This reflects the CLC's statutory origins.

Given the relatively small constituency of licensed conveyancers and CLC Recognised Bodies, and the frequency of their interaction with us, we consider that we already have in place effective lines of communication by which we are kept informed of the views of our regulated community.

C. What we want to do

This section sets out the statutory route by which this application is made, the nature of the new reserved legal activities in respect of which we seek a designation order, the manner in which we intend to approach the authorisation of persons to carry on those reserved legal activities, and the manner in which we intend further to limit the context in which those authorisations can be exercised.

1 The route by which this application is made

For the reasons given at Section B.1(b), page 4, this application for designation is made under s.53 of the 1990 Act **and** Part 2 of Schedule 4 of the 2007 Act.

²⁹ The post of Director of Operations is currently being advertised.

³⁰ See paragraph 11 of Schedule 3 of the 1985 Act.

³¹ Defined by s.27(1) of the 2007 Act, as "any functions the approved regulator has (a) under or in relation to its regulatory arrangements, or (b) in connection with the making or alteration of those arrangements."

³² Defined by s.27(2) of the 2007 Act, as "any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it."

2 The CLC's statement of the reserved legal activities to which this application relates

We wish to apply for designation as an approved regulator in respect of the following reserved legal activities:

- the exercise of a right of audience
- the conduct of litigation

as those expressions are defined in the 2007 Act.

3 The manner in which new authorisations will be granted

If we receive designation then we intend to grant authorisations to carry on the new reserved legal activities by putting in place new frameworks for the issuing of licences (to individuals) and certificates of recognition (to bodies). These frameworks will differ only slightly from our existing arrangements.

We should note that if we receive designation as a licensing authority, then we will also be able to recognise Alternative Business Structures in respect of the new reserved legal activities in a manner similar to that for CLC recognised bodies. Beyond noting that as a possibility, this section and the next one do not further address the position of Alternative Business Structures.³³

With respect to individuals, we will issue advocacy and litigation licences.³⁴ These will be issued only to licensed conveyancers. An advocacy licence will only be issued to a litigation licence-holder. Such a licence will be a composite licence.³⁵ Our current procedure for issuing conveyancing licences and probate licences will be merged into a uniform framework applicable to all such licences (see Section D.2, page 14). This draft framework will also make provision for the termination and revocation of licences and the grant of conditions in a manner similar to the existing one.

With respect to CLC recognised bodies, we will treat the issue of a certificate of recognition as the authorisation for that body to carry on a new reserved legal activity. Again, our existing procedures for recognition will be moved into a new framework, details of which are set out below.

4 The CLC's statement as to the context within which it proposes to regulate the new reserved legal activities

We propose closely to limit the exercise of the new reserved legal activities by granting new permissions in an incremental manner. This is a key concept underpinning this application.

(a) The concept of incremental permissions

We recognise that granting authorisations to conduct litigation and exercise rights of audience without any form of further limitation would, in most cases, be inappropriate. Our proposal for an incremental permissions framework addresses such concerns as may arise in this context.

³³ See also in this regard the Licensing Application.

³⁴ The concepts "advocacy licence" and "litigation licence" are defined at paragraph 1 of Schedule 8 of the 1990 Act and we consider it appropriate to adopt those definitions for the purposes of this application.

³⁵ See. s.53(4) of the 1990 Act.

The incremental permissions concept has three core elements: (a) authorisation to carry on a reserved legal activity, (b) the grant of permission to practise associated with that authorisation, and (c) limitations on the context in which such authorisations and permissions can be exercised.

The issue of an advocacy or litigation licence, and the equivalent issue of a certificate of recognition and (if our application is successful) the issue of a licence to an ABS, will constitute the authorisation of that individual or body to carry on a new reserved legal activity. For reasons discussed further below, we consider that the authorisation to carry on a new reserved legal activity cannot, and should not, be limited in extent. Accordingly, in addition to the act of authorisation we will grant a parallel permission to practise that more narrowly defines the scope of the non-reserved legal activities that can be undertaken by the holder of a licence, certificate or ABS licence in conjunction with the reserved legal activity. We may then further limit the exercise of that authorisation and permission by reference to certain additional criteria, such as the area of legal practice, the nature of the court and the type of proceedings. These limitations will take the form of conditions endorsed on the applicable licence or certificate of recognition. Compliance with the permissions and conditions will be a rule of conduct. Bodies and individuals will be able to apply to expand the scope of their permissions over time and upon proof of competence and experience. These authorisations, permissions and conditions will be recorded on a publicly-accessible register.³⁶

This scheme is explained in more detail in Section D, page 13.

(b) The challenges associated with limited authorisations

It will be apparent from the above description that we have chosen **not** to adopt the approach of regulating the new reserved legal activities by granting limited authorisations, for an example by granting an authorisation to carry on “a right of audience in the County Courts only”.

We consider that granting limited authorisations is likely to be both unworkable and risky. First of all, authorisation to carry on a reserved legal activity stands between a person and the commission of a criminal offence.³⁷ This is not a boundary that should be remotely vague or uncertain. However, a limited authorisation is likely to produce exactly such uncertainty³⁸ and in doing so this could put clients at obvious risk. Secondly, it appears to us that authorising a person to carry on a limited reserved legal activity is, arguably, impermissible because the 2007 Act does not appear to contemplate the possibility of subdivision of the defined term, “reserved legal activity”.

(c) The role of conduct rules in reinforcing practising entitlements

It will also be apparent from the above description that our approach to the regulation of the new reserved legal activities involves granting a wide authorisation followed by two restrictive elements focussing on the scope of practice and the circumstances under which the new reserved legal activities can be exercised. The authorisation element operates as a statutory trigger and will be a strict rule allowing no exceptions, whilst the restrictive elements will be effected by conduct rules that allow for a greater degree of flexibility.

³⁶ See <http://www.conveyancer.org.uk/directory.asp>. We are required to maintain such a register – see ss.19 and 32(3)(e) of the 1985 Act and paragraph 6 of Schedule 8 of the 1990 Act.

³⁷ See ss. 12-15 of the 2007 Act.

³⁸ For example, if the authorisation was defined as “carrying on the conduct of litigation of fast-track actions in the County Court only”, what would happen if a case was transferred to the High Court or changed track?

The holder of a litigation or advocacy licence will therefore be expected **as a matter of conduct** to confine the scope of his or her activities to the permission(s) granted as part of the licence. A similar approach will be adopted in relation to a recognised body's certificate of recognition. This conduct obligation will be reinforced by a new mandatory outcome under overriding principle 3 (part of the draft Code of Conduct), namely "You only accept instructions and act in relation to matters which are within your professional competence".

(d) Other relevant constraints on the grant of incremental permissions

There are certain further constraints on our proposals for the regulation of the new reserved legal activities. Some are required by the statutory framework whilst others we have adopted because we consider it appropriate to do so bearing in mind our regulatory responsibilities. These constraints are as follows:

- A litigation licence will only be granted to a licensed conveyancer.³⁹
- An advocacy licence will only be granted to a litigation licence holder.⁴⁰
- We do not intend to permit any individual or body to carry on a new reserved legal activity in the criminal courts. These new authorisations will be limited in their exercise to civil proceedings only.
- A body will only be recognised and authorised in respect of a new reserved legal activity if it has at least one individual who is either an employee or manager and is an authorised person in respect of that reserved legal activity.⁴¹
- Applicants for the new reserved legal activities can usually expect to receive practising entitlements limited to certain defined contexts. The limitations will be by reference principally to legal practice area, type of court, type of proceedings and, in the context of advocacy, type of hearing. The exact nature of those limitations will depend on an applicant's professional qualification and experience.

These limitations are further described in Section D, page 13.

(e) Typical pathways to the new reserved legal activities

It may help to put these proposals into context if we were to describe our expectations for three pathways to acquire practising entitlements associated with the new reserved legal activities.

For an **established licensed conveyancer**, a typical route might involve a period of study and practical training with a view to acquiring a litigation licence limited, say, to property law and County Court work. Over time, and subject to satisfying us of appropriate experience and competence, the individual might seek to expand the scope of the licence to encompass High Court proceedings as well, or other practice areas.

For a **student with no relevant legal qualifications or experience**, a typical route might involve a lengthier period of study and practical training, with a view to acquiring a composite licence that grants both conveyancing and litigation entitlements. The student would be able to choose from a selection of academic modules with a view to acquiring a broad or narrow litigation licence. A narrow licence might for example be confined to litigation in low value property cases whilst a wide licence might only be limited to civil

³⁹ A requirement imposed by s.53(2) of the 1990 Act.

⁴⁰ An understanding of litigation is of course a necessity for advocacy and the CLC does not wish to create a new category of "CLC barrister".

⁴¹ This is a requirement imposed by s.32(1)(b) and s.32A(6)(b) of the 1985 Act.

proceedings (although in the latter case the educational requirement will be expanded and likely to converge upon, if not be identical to, that expected of a solicitor).

As for an **established CLC recognised body**, it might expect to build on its expertise in conveyancing so as to offer litigation services and other non-reserved legal activities in the area of property law. In order to acquire recognition to conduct litigation and carry on such non-reserved legal activities, the body will need at least one manager who is authorised to conduct litigation and who has a significant experience of doing so. The limitations on that manager's practising entitlements would be mirrored at the level of the body's recognition.

(f) The advantages of an incremental permissions framework

Whilst we consider that the incremental permissions framework described above is the only means by which a broad authorisation to carry on the new reserved legal activities can be properly constrained, this same framework carries with it certain advantages, as follows:

- **It provides a greater degree of regulatory control over the acquisition of new practising entitlements.** This means, for example, that a novice practitioner will not be given a blanket permission to conduct litigation in all courts and then be expected to show self-restraint in its exercise.
- **The incremental grant of new permissions lends itself to an effective process of quality assurance and monitoring.** New permissions will be granted only where the applicant shows a satisfactory record of training, competence and experience. This means that on each occasion that a new licence is added, or the scope of an existing licence is expanded, we will be involved in a making a decision over the quality of service that the applicant can be expected to provide. See also Section D.5(e), page 26, for our quality assurance proposals.
- **This approach to granting authorisations and permissions is relatively easy for us to put into effect.** We have frameworks in place for the grant of conveyancing and probate licences and recognising bodies in respect of those activities. Those same frameworks, with slight modification, can be used for the new reserved legal activities.
- **The incremental grant of new permissions is consistent with our current experience of regulating conveyancing and probate services.** We have not regulated litigation or advocacy before, nor have we regulated the provision of legal services outside the domains of conveyancing and probate work. Our proposals for incremental development reflect and complement this prior experience and track record.

D. How we propose to do this

The overarching concept of incremental permissions has been described above. This section focuses on the detail of the proposed rules required to put it into effect. This section therefore comprises the “proposed regulatory arrangements” we submit for the purposes of Part 2 of Schedule 4 of the 2007 Act, subject to the comment at Section A.3(b), page 3.

1 Introduction to the proposed regulatory arrangements

There are four main elements to the proposed regulatory arrangements concerned with the new reserved legal activities. These are:

- changes to the framework for the issue of licences and the grant of certificates of recognition
- changes to the conduct rules
- changes to the qualification and training framework to accommodate the grant of advocacy and litigation licences
- changes to our continuing professional development, supervision and monitoring arrangements

They are dealt with in that order in the following subsections.

2 Licensing and recognition

This subsection describes how the proposed new authorisations and permissions will be granted to individuals and bodies.

(a) Changes to the existing arrangements

We have in place a framework for the issue of licences to individuals and the issue of certificates of recognition to bodies. This comprises the Licensing Rules 2009 (for the grant of conveyancing licences), the Probate Rules 2009 (for the grant of probate licences) and the Regulation of Practices (Recognised Bodies) Rules 2009 (for the issue of certificates of recognition). It is already in use for the purposes of issuing probate licences and, to some extent, is statutorily-mandated.⁴²

As part of the Rules Application, we intend to merge the existing Licensing Rules and Probate Rules into a single framework and to re-cast the Recognised Bodies Rules into a separate framework.⁴³ Both frameworks will also be changed to accommodate the grant of advocacy and litigation licences and recognitions. These new frameworks are named the Licensed Conveyancer Licensing Framework and the Recognised Body Certification Framework.

(b) The proposed arrangements for the issue of an advocacy or litigation licence

This subsection sets out the threshold criteria for the issue of one of the new types of licences as well as describing the associated authorisations and permissions. The text of the draft Licensing Framework is at Annex C, page 41.

(i) Threshold criteria

A litigation or advocacy licence will only be issued to an individual who has either completed the education and practical training stages or has been exempted from those requirements (see Section D.4, page 20).

⁴² See for example Schedule 6 of the 1985 Act and Schedule 8 of the 1990 Act.

⁴³ Although the system for granting recognition to bodies is closely analogous to that for issuing licences, there are reasons to keep the systems separate so as to avoid terminological confusion

If the applicant is seeking a composite licence and has never held a conveyancing licence before, he or she will also have to satisfy a fit and proper person test (as is currently the case).

As mentioned at Section C.4(d), page 12, a litigation licence will only be issued to a conveyancing licence-holder and an advocacy licence will only be issued to a litigation licence-holder.

(ii) Authorisations

A litigation licence will carry with it the authorisation to carry on the reserved legal activity the conduct of litigation. An advocacy licence will carry with it the authorisation to carry on the reserved legal activity the exercise of a right of audience.

(iii) Permissions

A licence will also grant a permission (or permissions) to its holder to provide an element of non-reserved legal activities to the public.⁴⁴ The scope of such permission will vary according to the nature of the licence held, the prior experience of its holder and the circumstances in which it is to be exercised. Compliance with any applicable permission endorsed on a licence will be a conduct obligation.⁴⁵

If the licence is a 'conveyancing licence', then the associated permission is likely to be limited to the provision of conveyancing services, as defined by s.11 of the 1985 Act. This does not change the existing entitlements of conveyancing licence-holders.

If the licence is a litigation one then its holder will be given an additional permission to carry on all non-reserved legal activities, but this permission will in most cases be restricted in its exercise to certain practice areas and/or courts and/or types of claim (as to which see the next subsection).

(iv) Conditions

Finally, the licence may be subject to conditions. Compliance with conditions will be a conduct rule.⁴⁶ Conditions will apply to both authorisations and permissions. They will limit the exercise of the authorisations and permissions to certain specified circumstances.

We will publish guidelines concerning the types of conditions that applicants for advocacy or litigation licences can expect to receive. The guidelines will cater for different levels of experience and prior qualification amongst applicants.

(v) Duration, termination, suspension and revocation

Currently, the CLC issues licences which are renewable from year to year. The draft Licensing Framework provides that licences will be issued to licensed conveyancers for an indefinite period, or for such period as may be specified. It is also intended that recognised body certificates and ABS licences are issued for an indefinite period, or for a shorter fixed period. All regulated persons will be required to pay fees to the CLC on a regular (probably annual basis) and to

⁴⁴ In this regard, we intend to adopt the definition of "legal activities" used by s.12(3) of the 2007 Act.

⁴⁵ OP5(c) draft Code of Conduct

⁴⁶ OP5(c) draft Code of Conduct

submit responses to data information requests made by the CLC (no less than once a year). The existing framework for termination, suspension and revocation of licences will apply equally to advocacy and litigation licences.

(vi) Modifying a licence

A licence can be modified by changing (a) the scope of its authorisations, (b) the scope of associated practising permissions granted or (c) the nature of any applicable conditions.

An increase to the scope of a licence's authorisations will involve the applicant satisfying the various applicable threshold criteria relevant to litigation, probate work or advocacy (as to which see above).

A change to permissions and, in particular, to conditions will involve a slightly different route. The applicant will have to prove to our satisfaction that an increase in practising entitlements is appropriate. This may only involve an assessment of experience but some forms of extension may also require an applicant to satisfy us of additional education requirements. We will draw up guidelines in order that prospective applicants can understand what outcomes and evidence will be expected of them.

For example, a litigation licence holder who has held her licence for, say, three years, and by condition is limited to practising in property law and the County Courts, could hope to expand her entitlements by satisfying us that she has sufficient experience of property law litigation that the limitation to County Court work only is no longer applicable and that it should be extended to include the High Court.

These expectations and outcomes concerning licence conditions will also underpin our proposals for monitoring the exercise of entitlements in respect the new reserved legal activities (see Section D.5(c), page 25).

(c) The proposed arrangements for the recognition of a body to carry on the new reserved legal activities

We intend to recognise bodies (and to issue licences to ABS) in respect of the new reserved legal activities in a similar way to that of individuals. There are however certain additional regulatory controls that apply to the recognition of bodies. The text of the draft Recognition Framework is at Annex D, page 44.

(i) Threshold criteria

The threshold criteria for the grant of recognition are somewhat more complex than those for the issue of licences. Some, but not all, are imposed on us by the statutory framework.

First of all, a body applying for recognition **for the first time** will have to satisfy us of the requirements at Annex D, page 44. We require a business plan, cash flow forecast, information about the premises, (where appropriate) certificate of incorporation, arrangements for accounts record keeping, evidence of identity of all managers and (if applicable) their professional qualifications, draft documentation (in particular terms of engagement; complaints and anti money laundering procedures).

Secondly, a body applying for recognition in respect of a given reserved legal activity must have at least one licensed conveyancer who is a partner, member or director etc.⁴⁷

Thirdly, and insofar as the body is seeking recognition in respect of any reserved legal activity in addition to conveyancing services, it must have at least one person who is either a manager or employee and is authorised in respect of that additional reserved legal activity.⁴⁸ That person could be authorised by another approved regulator.

In this respect, we intend to go slightly further than the 1985 Act in requiring that a body recognised in respect of advocacy or litigation will usually be expected to have as a manager (rather than as a manager **or** employee) someone who is an authorised person in relation to that reserved legal activity.

Fourthly, and as part of our discretion to grant recognition in respect of the new reserved legal activities, we will require an applicant body to satisfy us that it has proper arrangements for management and supervision when those new activities, and related non-reserved legal activities, are provided to the public. We will issue guidelines in this regard.

One element of those "proper arrangements" guidelines requires further explanation. We propose to require that a body applying for recognition in respect of one of the new reserved legal activities must employ, or have as a manager, someone who has at least three years of experience practising as an individual authorised in respect of that reserved legal activity.

This will be part of our guidelines for recognition, rather than a prescriptive rule, because the discretion to recognise will have to be exercised flexibly and in accordance with the circumstances of a given applicant. In particular, we can envisage that different arrangements may apply to sole practitioners.⁴⁹

This means that CLC recognised bodies who seek to expand their activities into litigation will in most instances be obliged to have at least one experienced litigator.

That individual may well also serve two further roles: (a) as a qualified person in relation to the supervision of students seeking to satisfy the practical element of their training, and (b) as a mentor for new litigation licence holders (as to which see further at Section D.4, page 20).

(ii) Authorisations

As with licences, a certificate of recognition will state on its face the nature of authorisations it grants to the body.

(iii) Permissions

As with conveyancing licences, the authorisation to carry on reserved instrument activities will carry it with the permission to provide conveyancing services to the public.

⁴⁷ See the definition of the "management and control condition" at s.32A of the 1985 Act.

⁴⁸ See in this regard the CLC's power to recognise a body as suitable to provide "other relevant legal services" (at s.32(1)(b)), and the definition of that phrase at s.32A(6)(b).

⁴⁹ It would be inappropriate for us to fetter a sole practitioner's ability to acquire a litigation licence by imposing a mandatory requirement that he or she employ an experienced litigator as well.

If a recognised body has a litigation authorisation as well, then it will be permitted to provide all non-reserved legal activities, but subject to the conditions described in the next subsection. The same approach will apply to advocacy and probate authorisation.

(iv) Conditions

The conditions on the exercise of advocacy, probate and litigation authorisations and permissions will mirror those of the manager(s) within the CLC recognised body that hold the advocacy, probate or litigation licences required as part of the threshold criteria for the grant of recognition.

For example, if a body is recognised in respect of litigation because it has a manager with a litigation licence, the scope of that individual's licence will define the scope of the body's recognition. This mirroring will of course be cumulative. If there are two managers with litigation licences of different scopes, the body will be recognised in respect of the widest one.

(v) Duration

Certificates of recognition, once granted, will last for an indefinite period. As with licences, they can be revoked, varied, terminated and suspended. The recognised body will be required to inform us if any of the threshold criteria for recognition are no longer satisfied. Save for insolvency, the cessation of a threshold criterion will not automatically lead to suspension or revocation of recognition as this could otherwise mean a body's authorisation to carry on a reserved legal activity might cease unexpectedly and inadvertently (with potentially disastrous consequences for the clients).

(vi) Modifying a certificate of recognition

As with licences, any increase in the scope of authorisations of a CLC recognised body will require compliance with the above threshold criteria. If, on the other hand, a CLC recognised body only wants to change the scope of existing conditions on its recognition, then we expect that in most cases this will follow automatically upon any changes to the scope of the practising entitlements of its managers. The body will however have to apply to us in all cases to change such conditions.

(d) A sample licence

To put these proposals into context, a litigation licence issued to a first-time holder might look like this:

<p style="text-align: center;">COUNCIL FOR LICENSED CONVEYANCERS</p> <p>This LICENCE is issued to JANE DOE of Incorporated Conveyancing Services Limited, [of address].</p> <p>It takes effect from 12.01AM on 1 May 2013 and continues for an indefinite period unless brought to an end by revocation or</p>

termination.

Authorisations

This licence authorises JANE DOE to undertake the following reserved legal activities (as defined by section 12 of the Legal Services Act 2007):

1. Reserved instrument activities (that is to say conveyancing)
2. The conduct of litigation

Permissions

This licence further permits JANE DOE to provide to the public:

1. conveyancing services (as defined by section 11 of the Administration of Justice Act 1985);
2. any other legal activity (as defined by section 12(3) of the Legal Services Act 2007) that is not a reserved legal activity.

Conditions

This licence, and the exercise of the authorisations and permissions it grants, are subject at all times to the following additional conditions:

1. Limited to the practice area of Property Law;
2. Limited to the conduct of litigation in the County Courts of England & Wales only.

3 New Code of Conduct and Supplementary Codes

As part of the Rules Application we are seeking significantly to alter our core conduct principles in order to adopt an outcomes-focused approach. Those elements of the proposed rules changes that are solely concerned with the new reserved legal activities, or are of particular significance to the new reserved legal activities, are as follows

(a) Overriding Principle 4: “Comply with your duty to the court”

The text of this new Overriding Principle is set out in full at Annex E, page 50. Its contents reflect similar principles in the rules of other approved regulator able to authorise the new reserved legal activities.

(b) Litigation & Advocacy Supplementary Code

This supplements Overriding Principle 4 and its text is set out in full at Annex F, page 53.

(c) Overriding Principle 3: “Act in the best interests of your Clients”

Whilst this new principle is not solely referable to the provision of advocacy and litigation services, it is nonetheless an important requirement, particular insofar as it provides for a mandatory outcome, “You only accept instructions and act in relation to matters which are within your professional competence” (see Annex E, page 50). This outcome underpins and reinforces the duty imposed on licence-holders and recognised bodies only to carry on new reserved legal activities within the limited circumstances defined on their licences and certificates of recognition.

4 Training and qualification

This section describes how a student might go about qualifying for a litigation or advocacy licence. It should be borne in mind that we will only grant litigation, probate and advocacy licences to persons holding conveyancing licences. This means that most students (with no prior professional qualifications or experience) will choose at the start of their studies whether to qualify for a conveyancing licence only, or for a composite licence comprising conveyancing and one or more of the other reserved legal activities.

(a) The draft Student Training Code & Framework

As part of our Rules Application, we will seek approval for a proposed Student Training Code & Framework, the text of which appears at Annex G, page 54.⁵⁰ That Framework is however principally concerned with the procedural aspects of registration as a student, passing exams, exemptions and waivers. The detail of the proposed academic programme for advocacy and litigation does not emerge from the Framework but is described in the next subsection.

(b) An outline of the training and qualification programme

Our proposed arrangements for the training and qualification of applicants for advocacy and litigation licence are summarised in this section.

As an initial point, we should emphasise that those arrangements will vary according to the prior educational and professional attainments of a given applicant (if any). What follows describes the position from the perspective of an applicant with no relevant prior experience or qualifications.

(i) The education requirement

- Satisfactory completion of a core academic stage covering legal knowledge.
- Satisfactory completion of a core vocational stage covering professional knowledge, litigation and advocacy.
- These stages will be offered as modules, initially to be selected from the offerings of existing providers of legal professional courses, with the development of a CLC-specific programme to follow some years later.
- In the early stages of the educational requirement, students will be able to complete modules by distance-learning (as do two-thirds of the CLC’s current students) but the vocational stage will involve a significantly

⁵⁰ This replaces our current Licensed Conveyancers’ Training Rules 2004 and forms part of the Rules Application.

greater element of face-to-face interaction between students and teachers.

- It is expected that the academic and vocational stages will take a student **with no prior legal qualifications** at least two years to complete. This estimate assumes an element of distance learning and concurrent completion of the practical training stage (as to which see below).
- A student studying for a composite licence of particularly wide scope (eg litigation limited to civil proceedings and all practice areas), or a combined conveyancing, advocacy and litigation licence, could expect the education and practical requirement to take longer although much will depend in that regard on the choices made regarding full-time study versus distance learning.

(ii) The practical training requirement

- An applicant will also have to complete a practical training requirement that can be pursued alongside the education stage or afterwards.
- The practical training requirement will involve a student proving to our satisfaction that he or she has been engaged in the delivery of legal services associated both with the relevant reserved legal activity **and** with the underlying practice area in respect of which the licence will be sought.
- The practical training stage will have to be supervised by a qualified person (the attributes of a qualified person are discussed further below).

(iii) Application for a licence

- Once the education and practical requirements are completed to our satisfaction, an applicant may apply for a first litigation or advocacy licence.
- If the applicant has never held a licence before, then he or she will need to satisfy a fit and proper test and we may also decide to interview the applicant.

(iv) Waivers & exemptions

- These requirements can be waived, or exemptions granted, for applicants who can demonstrate prior relevant legal education and/or professional qualifications and/or experience of practice in the relevant reserved legal activities and practice area(s).

Each of these elements is dealt with in more detail in the next subsections.

(c) The education requirement

Details of the proposed education requirement were set out in our second consultation paper concerning this application. That section of the second consultation paper is reproduced at Annex 0, page 54. Those details remain essentially unchanged for the purposes of this application, subject to certain points identified at the end of Annex 0.

(i) The CLC's external advisers in respect of the design of the education programme

We have been assisted in the development of the proposed educational programme by Nottingham Law School and by UK National Recognition and Information Centre⁵¹ (UK NARIC).

Nottingham Law School advised on the design of the education programme. Meanwhile UK NARIC has been involved in efforts to identify and measure learning equivalence. It does so using the concept of a higher education credit framework. The guidelines for credit transfer were developed in accordance with principles of best practice identified by organisations such as the Higher Education Credit Framework and the South England Consortium for Credit Accumulation and Transfer. It has recently completed a substantial report (as yet, unpublished) for us on our existing education requirements for conveyancing and probate. An extended summary of that report is at Annex L, page 85.

Building on that work, and assuming we receive designation, UK NARIC may be asked to extend that project to the proposed educational requirements for the new reserved legal activities. In particular, UK NARIC may be asked to assist in identifying equivalences between our proposed educational programme for advocacy and litigation and the courses offered by other providers.

(d) The practical training requirement

The practical training requirement is a key part of our proposals for advocacy and litigation training.

(i) The existing arrangements for practical training

Currently, applicants for conveyancing licences must complete a practical training stage involving "engagement" with the provision of conveyancing services "...for, or for the equivalent of, two years on the basis of a working week of 25 hours".⁵² This must be supervised by a qualified person who can be a licensed conveyancer or person authorised by another approved regulator. A similar approach is adopted for probate licence applicants.

(ii) Proposed new arrangements for practical training

As part of the Rules Application, we will seek to alter these arrangements as they apply to applicants for **all** types of licences by introducing a new outcomes-focused requirement in addition to the current, 'time-served' element.

We anticipate replacing the time-served element entirely with a set of outcomes. The main impetus for this change comes from our perception that we should be measuring both quantity and quality.

With the assistance of our external education advisers, we will publish guidelines setting out what we would expect to see by way of minimum required outcomes for practical training, sub-divided by the different types of licence.

We expect these guidelines will follow closely the outcomes identified by Nottingham Law School in connection with their draft education programme (see

⁵¹ UK NARIC is a National Agency providing expert advice and information on vocational, academic and professional qualifications. See www.naric.org.uk.

⁵² See Rule 5.2 of the Licensed Conveyancers' Training Rules 2004.

the numbered outcomes under the heading ‘Skills, Qualities and Attributes’ at Annex 0).

These will be guidelines, rather than mandatory rules, because applicants for licences may have significantly different experiences of professional practice and educational attainments and we consider it would be inappropriate to be prescriptive in this regard.

Students will be able to satisfy the practical training requirement concurrently with the academic stage. This means they will be able to earn and learn at the same time. This is a significant benefit of our current and proposed training arrangements, especially given the current economic climate and anticipated future obstacles in the path of funding higher education.

(iii) The role of the qualified person in the proposals for practical training

We view the role of the qualified person as an important element of our current qualification arrangements. We would like to improve on those arrangements for the purposes of granting future licences, including advocacy, probate and litigation licences.

In particular, we consider that it is important to ensure that a qualified person has sufficient experience of practice to provide supervision of an appropriate quality. We propose achieving this by requiring that qualified persons must apply for that status before they are entitled to supervise. We will keep a register of qualified persons and, if possible, we hope to publicise that status on the (official) register of licensed conveyancers.

Given the potentially wide variety of experiences of practice, we will issue guidelines concerning the attributes of a qualified person, rather than prescriptive rules. Underpinning those guidelines will however be an issue of principle, namely that a qualified person must have (a) experience of practice as an authorised person, usually to be measured as a minimum number of years over a given period of years, and (b) experience in a relevant area of legal practice.

(e) Exemptions and waivers to the training framework

We will develop guidelines for those applying for exemptions and waivers of the licensing and qualification rules in relation to new reserved legal activities. We expect that there will be four main types of applicants that may wish to apply for waivers or exemptions, as follows:

(i) Applicants with a degree of prior practical experience

- These persons may be able to skip parts, if not all, of the practical training stage provided they can demonstrate sufficient, relevant and recent practical experience supervised by a qualified person.

(ii) Applicants with a level of prior (academic) legal qualification

- These persons will be able to skip parts, if not all, of the education requirement.

- We will develop an independently verified system whereby external legal qualifications will be treated as equivalent to parts of our educational programme for the new licences.

(iii) Applicants who have sufficient legal and professional qualifications such that they have at some stage, or could have, been authorised by another approved regulator to carry on a relevant reserved legal activity

- These applicants may be able to skip some or all of the education and practical training requirements.
- Our proposals for equivalence-mapping again will be of assistance in identifying the education stages in respect of which exemption may be sought.

(iv) Applicants who are able to demonstrate a sufficient period of practice as a person authorised by another approved regulator to carry on a relevant reserved legal activity

- Depending on the nature and degree of the prior experience, these applicants are likely to proceed to the grant of a first licence at once.

(f) The cumulative effect of the education and practical training requirements

It is helpful to spell out the cumulative effect of the above requirements on the speed of acquisition of litigation and advocacy licences and the anticipated development of litigation and advocacy practices within CLC recognised bodies.

It will take at least two years for a student with no prior legal qualifications to complete the education and practical requirements for the grant of a typical composite licence (eg conveyancing and litigation).

The timeframe will be shorter for an existing licensed conveyancer seeking to expand his or her practising entitlements by obtaining a litigation or advocacy licence, but there will remain a minimum education and practical requirement that must be satisfied.

The practical training requirement will involve engagement with the delivery of the relevant legal activity, supervised by a qualified person, and where that engagement must satisfy defined outcomes (as to which see above).

We will usually require that a CLC recognised body with new litigation or advocacy licence holders must also have a suitable person available to mentor them (in most cases this will be a qualified person). This topic is covered in more detail in the next section.

5 Post-licensing arrangements

Our oversight of litigation and advocacy licence holders will not end when a licence is granted. We propose a substantially altered set of arrangements for mentoring, continuing professional development, monitoring, registration and quality assurance following the grant of a first licence. These are as follows.

(a) Mentoring after the grant of a first advocacy or litigation licence

A new CLC litigator or advocate is likely to benefit from mentoring during the early years after first licensing. This is especially the case during the four or five years after we receive designation (if we do), when the provision of litigation and advocacy services will be less familiar to CLC recognised bodies.⁵³

We consider that the most effective and proportionate means of introducing a mentoring element to the early years of practice of a litigation or advocacy licence holder is by making this a criterion going to the recognition of a body as suitable to provide litigation services to the public.

Whilst this will not be a mandatory requirement, we propose that any body seeking recognition in respect of one of the new reserved legal activities can expect to satisfy us that it has at least one individual, either a manager or employee, with sufficient and relevant experience of litigation (or advocacy) that he or she can function as a mentor to any newly licensed litigators or advocates in the firm.

We expect that in most cases a qualified person (for the purposes of supervising a student's practical training requirement) will also fill this role.

(b) Continuing professional development and the new reserved legal activities

As part of the Rules Application, our existing arrangements for continuing professional development⁵⁴ are to be replaced by a Continuing Professional Development Code.

The proposed Code will ensure licence holders acquire training relevant for their particular area of practice so that their skills remain current and develop.

Licence holders will be expected to self-certify their continuing professional development compliance by submitting an annual form to that effect. They will be required to verify the accuracy of the information supplied. We will also undertake monitoring of self-certified continuing professional development forms with a view to ensuring compliance. Non-compliance by licence holders with their continuing professional development obligations will be dealt with by an escalating system of sanctions. Non-compliance will also be recorded and form part of our risk assessment of regulated persons and their practices.

(c) Monitoring

We consider that we should monitor the utilisation of the new practising entitlements of litigation and advocacy holders on an annual basis for the first five years after acquiring a first licence. Thereafter, it may be a triennial requirement.

In our view, such monitoring is a necessary element of quality assurance and it also serves to remind new litigation and advocacy licence holders that constant practice of their new skills is the best way of ensuring satisfactory client outcomes.

This monitoring will take the form of a series of questions in an annual return sent to all applicable licensed conveyancers and CLC recognised bodies.

For example, we will ask a litigation licence holder to quantify the new litigation matters that have been opened in the previous twelve months where the individual has been

⁵³ The CLC considered, but rejected, making this a supervision requirement to be imposed on a new litigation or advocacy licence holder for the first years of practice. In part, this was because CLC recognised bodies are already required to supervise the work of their employees, but also the concept of supervision did not capture the desirable elements of mentoring, ie the presence of a senior and more experienced individual within the practice whose guidance and advice can be sought by a newly qualified litigator or advocate.

⁵⁴ Licensed Conveyancers' Continuing Professional Development Rules 2004

either the supervising manager or lead fee-earner. An advocate will be asked similar, quantitative questions about court appearances.

This information will form part of our risk assessment for CLC recognised bodies and licensed conveyancers. We will publish guidance as to the manner of operation of that risk assessment. Amongst other things, we may ask a litigation or advocacy licence-holder to increase the frequency of his or her exercise of those entitlements or face additional conditions up to, and including, revocation of the licence involved.

(d) Registration

We intend to expand the capabilities of our directory of licensed conveyancers and CLC recognised bodies so that it becomes a register. It will provide the same name and practice details and will also indicate the authorisations, permissions and conditions applicable to each licence and certificate of recognition. This register will be publicly-accessible via our website.⁵⁵ The register will not only serve as a visible reminder of practising entitlements but also it will reinforce consumer confidence in the ability of a licensed conveyancer and CLC recognised body to deliver new types of legal services.

(e) Quality assurance

A number of aspects of these proposed regulatory arrangements combine to form a robust and transparent system for quality assurance, particularly in relation to the new reserved legal activities. They are:

- the qualified person role in supervising students satisfying the practical training requirement
- the mentoring element, following the grant of a first advocacy or litigation licence
- the register as a visible indicator of practising entitlements
- the annual requirement to undertake continuing professional development specific to new authorisations
- the annual requirement that litigation and advocacy licence holders quantify their utilisation of their new practising entitlements for the first five years
- the system for incremental grant of new licences to existing conveyancing licence holders
- the proposal to grant limited practising entitlements to new litigation and advocacy licence holders, confined in their exercise to specified practice areas and courts and consistent with their prior experience and educational attainments
- our involvement in approving any expansion to practising entitlements, eg by lifting or modifying a condition

This system for quality assurance has the further advantage that it is based on information-gathering and regulatory control, rather than just possession of aspirations towards client service and quality. Each of the eight elements above involves us either receiving information that can be acted upon or making a decision.

⁵⁵ <http://www.clc-uk.org/consumers.php>

6 Other potentially relevant aspects of the proposed regulatory arrangements

(a) Client financial protection

The current and proposed arrangements for client financial protection are as follows.

Current regulatory arrangements for client financial protection	Equivalent in the CLC's proposed regulatory arrangements (forming part of the Rules Application)
Accounts Rules 2008	Accounts Code and Guidance
Indemnity Rules 2009	Professional Indemnity Insurance Code
Compensation Fund Rules 2009	Compensation Fund Code and Operating Framework

We do not anticipate a need to change the Accounts Rules 2008 to reflect the new reserved legal activities.

As for the Compensation Fund Rules, they will be amended so as to introduce a definition of licence that includes litigation and advocacy licences. Otherwise, the scope of client protection will remain.

As regards professional indemnity arrangements, we operate a master policy scheme for CLC recognised bodies. This is likely to remain the case for the foreseeable future,⁵⁶ subject to the proposed opt out. Any practice wishing to opt out of the Master Policy will be required to satisfy the CLC that its professional indemnity terms are in all respects equivalent to that provided under the Master Policy. The terms of the Master Policy are commercially sensitive and therefore not referred to directly in this application. The scope of cover will be extended (where applicable) to include litigation and advocacy services, and associated non-reserved legal activities, as well as for civil liability arising from the provision of conveyancing services.

(b) Regulatory conflicts

We envisage that regulatory conflicts⁵⁷ might arise (a) where a licensed conveyancer is employed by, or is a manager of, an entity regulated by another approved regulator; or (b) where a person authorised by another approved regulator is employed by, or is a manager of, a CLC recognised body.

We consider that our proposed regulatory arrangements make proper provision for the possibility of such regulatory conflict, as we explain in the following subsections.

(i) A licensed conveyancer working in an entity regulated by another regulator

Overriding principle 5 of the draft Code of Conduct requires all licensed conveyancers to act in accordance with their regulatory responsibilities.

This principle includes a required outcome that "you cooperate with other regulators and ombudsmen" and there is a specific requirement (k), "As a CLC licensee operating in an entity regulated by another regulator you must comply with that regulator's regulations at all times in a way which is reasonably consistent with this Code."

⁵⁶ A comparison of the benefits and risks of a master policy scheme, as opposed to an open market arrangement, was undertaken at our request by Marsh in January 2009. [A copy of the summary of that report is available on the CLC's website.](#)

⁵⁷ See s.52 of the 2007 Act.

We also require a licensed conveyancer to seek prior permission before offering Regulated Services⁵⁸ as a Manager in an entity regulated by another approved regulator.⁵⁹

The precise scope of an individual licensed conveyancer's authorisation(s) and permissions will also be obvious to his or her employer as they will be stated on the licence and the register.

(ii) A person authorised by another approved regulator working in a CLC recognised body

Individuals working within a CLC recognised body will continue to be required to comply with the CLC's regulatory arrangements, and will be the subject of disciplinary proceedings taken by the CLC if they do not.

(iii) External regulatory conflicts

We consider that the prospects of conflict between our regulatory arrangements and those of another regulator who is not a approved regulator, ie a external regulatory conflict,⁶⁰ are limited given the nature of activities undertaken by licensed conveyancer (and to be undertaken if designation is received).

Express provision is however made for situations where licensed conveyancers might also be acting as insurance intermediaries – see the draft Acting as Insurance Intermediaries Code & Guidance.

In the event that such conflicts were to arise, licensed conveyancers will be obliged to cooperate with other regulators and ombudsman under the draft Code of Conduct.⁶¹ The CLC has participated with a number of other regulators (and in which the LSB has been involved) in drafting a Memorandum of Understanding so that arrangements are in place to manage conflicts (as required by s.52 of the 2007 Act). As the time this application has been submitted, whilst the CLC has agreed the wording of the Memorandum of Understanding, we understand that it has not yet been finalised, but anticipate it will be very shortly.

(c) Complaints

As part of the Rules Application, we are seeking permission for a draft Complaints Code & Guidance which is substantially the same as the version approved by the LSB in August 2010.

7 Delivery of the proposed regulatory arrangements

In this section we have set out our plans for implementing these proposed regulatory arrangements, assuming designation is received.

⁵⁸ "Regulated services" are defined in the draft Glossary of Terms as "Reserved Instrument Activities such as conveyancing, Probate Activities, the Conduct of Litigation and the Exercise of a Right of Audience which you are authorised by the CLC to provide."

⁵⁹ See Overriding Principle 5(k) of the draft Code of Conduct.

⁶⁰ See s.54 of the 2007 Act.

⁶¹ See Overriding Principle 5(g), draft Code of Conduct

(a) Extra resources required

Our procedures for processing applications for litigation and advocacy licences will, as a matter of internal implementation, be very similar to those already in force.⁶²

Moreover, given the small numbers of registered students, licensed conveyancers and CLC recognised bodies, we do not anticipate that there will be a significant increase to the number of overall applications if designation is granted.

However, the assessment of evidence of practical training specific to litigation and advocacy licence applicants, and of those applicants' abilities and experiences, and the extent to which such applicants should receive exemptions or waivers, will require the exercise of careful judgment based on experience of practice of litigation and advocacy and its regulation. We expect to rely on external advisers in this regard, supplemented by the recruitment of at least one new full-time employee to oversee the provision of that experience and judgment and, ideally, a further similarly qualified part-time employee to provide further cover during busy periods and absences.

Monitoring litigation and advocacy licence-holders, assessing the quality of continuing professional development compliance in that regard, and assessing the quality of supervision for the first two years after issue of such licences, will require similar experience and judgment. If the volume of work involved builds slowly, we expect that this can be undertaken primarily by the same employee(s) as above with relevant external advisers involved as appropriate.

The design, implementation and ongoing maintenance of the academic programme require different skills and, at least initially, will involve much more work. Whilst we will continue to rely on our external advisers in this regard (as to which see Section D.4(c)(i), page 22), we expect that for at least two to three years after designation a full-time employee will be required to oversee this process, after which it may be possible to absorb the ongoing maintenance element into our existing complement of staff.

(b) Funding these proposed arrangements

Many of the rule changes sought in the Rules Application would be pursued regardless of this application. Accordingly, the direct financial impact of our proposals to authorise the new reserved legal activities is relatively limited (and see the preceding subsection in that regard). We therefore expect that the ongoing costs of these proposals will be funded through three principal means:

- Licensing fees associated with each additional reserved legal activity⁶³
- Additional training fees associated with those parts of the education programme specific to litigation and advocacy
- Practice fees, chargeable when a CLC recognised body seeks recognition in respect of the new reserved legal activities

As for the initial costs of developing the regulatory framework for the new reserved legal activities, these are to be met from the CLC's reserves.

⁶² For example, the issue of litigation licence, the mechanics of processing such an application, the need for adjustments to entries on the register, are near-identical to those required for probate licences.

⁶³ Currently, the standard conveyancing licence is £400 and there is a further fee of £75 to add to it a probate licence.

(c) Draft timetable

Assuming designation is received in around October 2011, then we consider that the following timetable is a reasonable one to anticipate.⁶⁴ We have also included anticipated milestones, assuming the Licensing Application succeeds.

Period	Activity
Late 2011 to 2012	<ul style="list-style-type: none">• Accept applicants for the new licences on the basis of transfers or exemptions, with or without an Accounts module 'top-up'• First licensed body issued with extended scope authorisations• Post licensing arrangements (CPD and monitoring requirements) start for individual licence holders• Review operation of new regulatory regime
2012-2013	<ul style="list-style-type: none">• Start accepting students registering to study for litigation licences• Roll out one or more CLC course with flexibility to recognise courses delivered by other providers
2013-2014	<ul style="list-style-type: none">• First CLC litigation students complete academic and vocational stage• First advocacy students registered• CLC advocacy courses begin to be delivered
2014-2015	<ul style="list-style-type: none">• First wave of litigation licences issued for licensed conveyancers• First CLC advocacy students complete academic and vocational stage
2015-2016	<ul style="list-style-type: none">• First wave of advocacy licences issued for licensed conveyancers

8 Frequently-asked questions

In this section we have sought to anticipate and answer queries concerning this application.

(a) Would the CLC accept partial designation either in respect of the conduct of litigation or rights of audience ?

In our view, designation in respect of advocacy rights without conduct of litigation would be unworkable.⁶⁵

Designation in respect of conduct of litigation without advocacy rights might be capable of practical implementation but we consider it would present an inappropriate restriction on the ability of CLC recognised bodies to compete with other providers of legal services.

⁶⁴ References to "new licences" in the table are to litigation licences or to litigation and advocacy licences.

⁶⁵ This would create a curious hybrid, incorporating elements of an existing licensed conveyancer and a self-employed barrister. This would be unsatisfactory to explain to clients and most likely commercially unviable for CLC recognised bodies.

(b) Following designation, how quickly do we expect to see advocacy and litigation licences issued?

If we were to be designated as an approved regulator in respect of the new reserved legal activities at the start of a notional Year One, then we would expect to see small numbers of advocacy and litigation licences granted within the first six months.

This first wave of new licence-holders will probably involve ‘external applicants’, that is to say individuals who have previously practised as a solicitor or barrister and have been authorised to carry on the reserved legal activity in question. As a result, they may be able to obtain exemptions from the education and practical requirements.

Later waves of litigation licence-holders are likely to involve ‘internal applicants’, that is to say licensed conveyancers who have only ever held that qualification. These may take rather longer to appear. For example, it will not be until the start of Year Three that applicants with no prior relevant experience or qualifications will (at the earliest) have completed the practical training and education requirements for a typical composite licence.

(c) Why would a licensed conveyancer or CLC recognised body want to apply for one of these new authorisations?

For licensed conveyancers employed in CLC recognised bodies or solicitors’ firms, the ability to apply for a litigation or advocacy licence will offer a new route for career development and, for the employer, the opportunity for its employee to acquire new skills and move into a new role within the firm.

For CLC recognised bodies, the opportunity to expand the scope of services offered to their clients offers obvious commercial advantages. Fostering commercial success is of course one means by which a regulated community can be strengthened, with concomitant advantages for the public and the consumer.

(d) What impact would these new arrangements have on access to legal services?

In our view, more and different providers in the market can only have a positive impact on access to justice.

(e) If the CLC receives designation, will this increase regulatory competition, and is that a good idea?

The expression “regulatory competition” appears to be developing distinctly negative connotations. If it means driving standards down, or permitting forms of ‘regulatory arbitrage’, then we would not wish to be associated with the concept.

However, we do consider that for any given regulatory problem there may exist more than one proper solution.⁶⁶ For other regulatory problems, there may exist a best solution but sometimes this cannot be identified without first seeing a number of possibilities trialled. And, finally, a current ‘best’ solution is always apt to be replaced by an improved one over time.

In each of these cases, we suggest that the overall regulation of legal services is improved by allowing differentiated regulatory solutions amongst approved regulators.

⁶⁶ For example, the solicitors have an open market in professional indemnity insurance but licensed conveyancers do not (subject to the proposed introduction of the opt out). The self-employed Bar has yet a further approach to this regulatory objective of client financial protection.

Our proposed regulatory arrangements can be seen as one such solution to the issue of regulating advocacy and litigation and, provided they meet the appropriate statutory criteria and rules, we suggest that fostering diversity in this way is beneficial in itself.

(f) How would these new arrangements affect routes to qualification as a legal services professional?

On average, about two-thirds of licensed conveyancers acquire their qualifications over time and via distance-learning. The opportunity to acquire the licensed conveyancer qualification whilst holding down full or part-time work is of particular advantage to those who might otherwise face barriers to entry attributable to their personal circumstances or means.⁶⁷

We hope to preserve this element of qualification in the education and practical training requirements for litigation and advocacy licences, albeit the amount of distance-learning will be less, reflecting the nature of the vocational element of the education stage.

We consider that a diversity of points of entry into the legal profession is desirable.

(g) How would the proposed regulatory arrangements address the issue of quality assurance?

Quality in the provision of legal services “[goes] to the very purpose of why legal services are regulated in the public interest.”⁶⁸

Our proposal for the grant of incremental permissions lends itself particularly well to a quality assurance framework. Licensed conveyancers will be allowed to expand their authorisations and permissions away from the core service of conveyancing in a gradual, regulated manner. Each expansion will require additional training and/or demonstrable experience and competence. The new permissions, once granted, will be monitored. Each further expansion will require additional evidence of competence and experience. This system will ensure ongoing competence in a manner that goes well beyond the possibilities offered by continuing professional development. From the consumer’s perspective, knowledge of the existence of such an incremental system will bring confidence whilst the visibility of permissions on the register will bring a verifiable form of assurance as to the competence of a given individual or body.

(h) Is it relevant that Parliament has provided a pathway by which the CLC can apply for designation?

Section 53 of the 1990 Act gave us the power to apply for designation in respect of the issue of litigation, probate and advocacy licences. Whilst the grant of a power to apply is not the same as an application succeeding, we do suggest that s.53 means Parliament had in mind more than twenty years ago that licensed conveyancers could aspire to move beyond their origins in conveyancing.

(i) What’s in a name?

There may be a perception that litigation and advocacy lie outside what should be viewed as the proper domain of activities of licensed conveyancers.

⁶⁷ As at November 2009, 170 male and 521 female employed Licensed conveyancers.

⁶⁸ “Quality in Legal Services”, November 2010, Legal Services Consumer Panel.

At one level, this argument appears to do no little more than take as its assumption the unchangeable nature of licensed conveyancing and then use that to argue against change.

Such an objection can be easily countered by observing that Parliament has by now twice indicated that the boundaries of licensed conveyancing are not fixed.⁶⁹ Of course, those boundaries have already changed now that probate licences can be issued.

At another level, the argument appears perhaps to place excessive significance on the name “licensed conveyancer”. Naturally, those words engender a set of expectations on the part of the public. There is no question that the holders of advocacy or litigation licences will need to make clear to their clients the scope of their authorisations and permissions. We have already suggested in a previous consultation that the label “CLC Litigator” or “CLC Advocate” might well be an appropriate solution to this issue.

(j) Does the CLC have the necessary experience and competence to regulate advocacy and litigation?

It is of course correct that we lack a track record in regulating the new reserved legal activities. However, we suggest that this cannot be a valid objection on its own, given that Parliament intended as long ago as 1990 that the CLC could apply to regulate litigation and advocacy without prior experience.

The solutions to a lack of experience can be found in various aspects of this application. The grant of incremental permissions, and the anticipated slow-start to granting new licences, means that we will have the time and opportunity to acquire the necessary experience. We will also bring in such experience by recruitment.

Finally, it should be mentioned that we do have a track record of successfully expanding our regulatory remit without any prior experience in the area in question (ie probate licences).

(k) How do these proposed arrangements compare with those of other approved regulators?

Some have suggested that our proposed education programme for litigation and advocacy licences is of insufficient breadth in comparison with others.

Whilst we do not consider that such criticism is valid, it is important to have in mind the differences between our proposals for training and those applicable to other approved regulators such as the Law Society and the Bar Council.

The principal authorisations granted to a solicitor and a (self-employed) barrister are unfettered in scope and exercise.⁷⁰ A very junior solicitor can conduct litigation in all courts. Likewise, a very junior barrister can appear in all courts. In such circumstances, it might well be considered appropriate to ensure that barristers and solicitors have a thorough grounding in a wide range of legal subjects, both academic and vocational, before qualifying.

In comparison, we are proposing something rather different. Our concept of incremental permissions means that a student can choose whether to study for a litigation licence of narrow or wide extent. One student might want to take so many modules that his or her final educational attainment is equivalent to that of a solicitor (for example). Another student might choose a different pathway, passing modules that lead to a conveyancing

⁶⁹ See s.53 of the 1990 Act and Part 2 of Schedule 4 of the 2007 Act.

⁷⁰ Save by conduct duties that can be approximately summarised as a duty not to get out of one's depth.

licence and a litigation licence limited in its exercise to property law and small-value claims. The difference here is that the CLC offers students the option to aim for a limited set of practising entitlements, whereas other approved regulators set the bar at only one height.

(l) Isn't the regulation of legal services complex enough without another approved regulator exercising yet more powers?

The “regulatory maze” mentioned by Sir David Clementi has been replaced by the Legal Services Act 2007. The 2007 Act provides twenty-nine different ways in which reserved legal activities can be authorised, involving eight approved regulators, six reserved legal activities and one Legal Services Board. It expressly envisages that an existing regulator can apply for additional designation and thereby increase those ways even further. We suggest that there is no quota here and that the addition of two further designations is not of itself a reason to reject this application.

(m) How will these proposals affect competition?

At the time of writing, the SRA is consulting on changes to its professional indemnity arrangements so that conveyancing work may no longer be fully covered by the Minimum Terms. Meanwhile, ILEX Professional Standards (IPS), the regulatory body for legal executives, is applying for designation to conduct litigation and advocacy and is proposing to apply for reserved instrument activities as well. Later this year, Alternative Business Structures are to be introduced. These are clearly both challenging and opportunity-filled times for licensed conveyancers.

Against such a background, and in the context of competition,

- We suggest that licensed conveyancers and CLC recognised bodies should be given the freedom to compete by offering new forms of legal services, on the basis that a commercially-thriving sector is one better able to serve the public interest.
- Our proposals for the new reserved legal activities will increase opportunities for entry into the legal profession.
- Our proposals to regulate the new reserved legal activities are very closely aligned to the extent to which CLC recognised bodies in fact wish to exercise new practising entitlements. See in this regard our proposals for ongoing monitoring, continuing professional development and mentoring (at Section D.5, page 24). As a result, the regulatory burden is applied where it is required, rather than across the board.

(n) How will these proposed regulatory arrangements protect and promote the interests of the consumer?

These proposals build on a longstanding and robust regulatory framework for the provision of legal services to consumers, one that has comprehensive client protection measures and operates in a practice area where client money-handling, and client service delivery, are critical issues.⁷¹

We seek to introduce change through small steps, building on this existing framework. The incremental permissions concept delivers this objective. Consumer confidence is

⁷¹ For most consumers, conveyancing and probate may be the only legal services they ever need.

maintained through the education and practical training stages and our arrangements for post-licensing mentoring and monitoring.

The incremental permissions framework also allows for a highly effective form of quality assurance, as further permissions will only be granted upon proof of satisfactory experience and competence.

All this will be obvious to the consumer: our register will show the competencies of a licensed conveyancer and recognised body and we will publicise the benefits of our approach to granting these new licences.

For the consumer, the transition from licensed conveyancing to a full-service property law firm is a natural and obvious one. It means that a consumer can not only expect his conveyancing to be done by a CLC recognised body but also for that firm to be able to advise on subsequent matters – eg the drawing up of wills, or a boundary dispute or drafting a letting agreement. This gives continuity of representation and the opportunity for associated reductions in costs.

E. Conclusion

The CLC was set up in 1985 to regulate licensed conveyancers and conveyancing. Since then, we have expanded our remit to include probate activities and we now wish to do so again with respect to litigation and advocacy.

Although we (and our regulated constituency) are small in comparison with other approved regulators, we have been given by statute a comprehensive range of powers that are demonstrably capable of regulating an area of legal practice that places particular demands on its practitioners, especially in connection with satisfying consumer needs and the handling of client funds.

In venturing into the new areas of litigation and advocacy, we intend to proceed slowly and carefully. We will use our existing (and statutorily-prescribed) arrangements for licensing and recognition to put in place an incremental permissions framework (we shall approach the regulation of ABS in a similar way). These will limit the exercise of the new reserved legal activities to individuals who have satisfied comprehensive education and practical training requirements.

Our incremental permissions framework will be reinforced by regular monitoring of the new permissions. Litigation and advocacy licence-holders will be required to demonstrate they are exercising their new permissions in addition to a practice-specific continuing professional development requirement. If a litigator or advocate wishes to expand the permitted scope of his or her activities, we will have to be satisfied of his or her competence and experience. This system of monitoring and gradual expansion of permissions also lends itself particularly well to the maintenance of quality standards.

For all of the reasons given above, we hope and believe this application should succeed.

Declaration of truth and accuracy

The date of this application is Thursday 3rd February 2011. We certify that the information provided in this is true, accurate, or reasonable to the best of our belief.

Signatories:

Anna Bradley, CLC Chair

Ann Brady

Victor Olowe, CLC Chief Executive

Victor

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B. Glossary and defined terms

1985 Act	Administration of Justice Act 1985
1990 Act	Courts & Legal Services Act 1990
2007 Act	Legal Services Act 2007
Advocacy licence	"...means a licence issued under section 53 [of the 1990 Act] by which the Council authorises the licensed conveyancer concerned to exercise a right of audience". See paragraph 1 of Schedule 8 of the 1990 Act
Alternative Business Structure (ABS)	See Licensable body.
Approved regulator	See s.20 of the 2007 Act. Currently , the following are designated as approved regulators: the Law Society, the General Council of the Bar, the Master of the Faculties, the Institute of Legal Executives, the Council for licensed conveyancers, the Chartered Institute of Pater Attorneys, the Institute of Trade Mark Attorneys and the Association of Law Costs Draftsmen.
BSB	Bar Standards Boards
CLC Recognised Body	A term used in this document to identify a body corporate or unincorporated recognised by the Council under s.32 of the 1985 Act to provide regulated services to the public, Administration of Justice Act 1985
Council	Council for Licensed Conveyancers, a body corporate created by s.12 of the 1985 Act
Designation Application	This application
Employee	(depending on the context) an individual employed by a CLC body, by an entity regulated by another legal regulator or by a local authority or other employer
Licensable body	See s.72 and Part 5 of the 2007 Act. In summary, a licensable body that is capable of being licensed is an alternative business structure.
Licensed conveyancer	a person who holds a Licence issued by the CLC to provide conveyancing and other legal services regulated by the CLC
Licensing Application	The Council's application for designation as a licensing authorities in respect of licensable bodies. See Schedule 10 of the 2007 Act.
Licensing authority	as defined at s.73 of the 2007 Act, an approved regulator which is designated as a licensing authority under Part 1 of Schedule 10 and whose licensing rules are approved to license and regulate Alternative Business Structures
Litigation	referred at Schedule 2 of the 2007 Act, as the "conduct of litigation" and includes: <ul style="list-style-type: none"> (a) the issuing of proceedings before any court in England and Wales, (b) the commencement, prosecution and defence of such proceedings, and (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).
Litigation licence	a licence issued by the CLC to provide litigation services

LSB	Legal Services Board
Manager	The term is given a more extensive definition in the Council's draft Glossary, but in summary a Manager is a person in a CLC recognised body who is either a partner, member, director or owner.
New reserved legal activities	The reserved legal activities in respect of which the Council seeks designation as an approved regulator, ie the exercise of a right of audience and the conduct of litigation.
Probate (Services)	as defined at s.119 of the 1990 Act, services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person
Probate licence	a licence issued by the CLC to provide probate services
Probate Practitioner	A term used in this document to identify an individual who has been licensed by the CLC to carry on probate activities under its licensed conveyancers' Probate Rules 2008
Proposed regulatory arrangements	Those parts of the CLC's regulatory arrangements for authorising persons to carry on reserved legal activities that are directly applicable to the new reserved legal activities
Regulated Services	All of the legal activities – both Reserved Legal Activities and non-reserved - which the CLC authorises/permits the Licensed Conveyancer or body within the terms of the licence to provide and which are therefore be regulated by the CLC
Regulatory arrangements	See s.21 of the 2007 Act. In summary, the arrangements of a approved regulator for authorising persons to carry on reserved legal activities as well as its practice rules, conduct rules, disciplinary arrangements and so on.
Reserved legal activity	As defined by s.12 and Schedule 2 of the 2007 Act. Currently, there are six reserved legal activities: the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.
Rules Application	The application made by the Council under Part 3 of Schedule 4 of the 2007 Act for approval of proposed changes to its regulatory arrangements.
SRA	Solicitors Regulation Authority

C. Proposed Licensing Framework

THE LICENSING FRAMEWORK

Expected outcomes

1. Only those individuals able and willing to deliver the Code of Conduct Outcomes in a principled manner are licensed as CLC Licensed Conveyancers

Definitions

2. For the purposes of this framework:
 - a. “You” means a person who holds a Licence, save that for the purposes of [xref] it means a person applying for a Licence.
 - b. A “licensed conveyancer” is a person who holds a conveyancing licence in force under Part 2 of the 1985 Act and this includes a person who holds a composite licence.
 - c. A “conveyancing licence” means a licence to practise as a licensed conveyancer providing conveyancing services.
 - d. The expression “conveyancing services” has the meaning given to it by s.11(3) of the 1985 Act.
 - e. A “Licence” is a conveyancing licence or a composite licence.
 - f. A composite licence is a conveyancing licence and one or more of the following:
 - i. a probate licence;
 - ii. a litigation licence;
 - iii. an advocacy licence.
 - g. The expressions “probate licence”, an “advocacy licence” and a “litigation licence” have the meanings given to them by Part 1 of Schedule 8 of the 1990 Act.
 - h. The expression “reserved legal activities” [has the meaning given to it by the 2007 Act, ditto for each specific reserved legal activity.]
 - i. The expression “legal activity” [has the meaning given to it by the 2007 Act, ie “means- (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and (b) any other activity which consists of one or both of the following – (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.”]]
 - j. The “register” is the register of licensed conveyancers maintained by the CLC under Section 19 of the 1985 Act

Applying for a Licence

3. If you wish to apply for a Licence then
 - a. you must deliver to the CLC’s offices:

- i. a correctly completed application in the form prescribed by the CLC; and
- ii. the fee payable; and
- b. your application must identify the authorisations and permissions sought (see requirement [7]); and
- c. if you have not held a conveyancing licence before, then you must satisfy the CLC that you are a fit and proper person to practise as a licensed conveyancer; and
- d. you must:
 - i. either have passed the CLC's Qualifying Examination, and completed the CLC's Practical Training requirements; or
 - ii. demonstrate to the satisfaction of the CLC, and in accordance with such terms and conditions as may be prescribed, that you have the relevant educational and professional qualifications and experience in the provision of the reserved legal activity or activities the subject of the intended Licence.

Issuing a Licence

- 4. If the CLC is satisfied as to the matters identified at requirement [3] and if it is satisfied of your capability and willingness to comply with the CLC Code of Conduct and other CLC Codes, then the CLC shall:
 - a. issue you with a Licence as provided at requirement [7]; or
 - b. issue you with a Licence as provided at requirement [7] subject to such conditions as it considers appropriate.
- 5. Conditions may result in you incurring expenditure and include:
 - a. Limiting the types of Legal Activities a body may provide;
 - b. Requiring the body to take specific steps the body deems conducive to safeguarding the interests of consumers or other regulatory objectives.
- 6. If it is not satisfied of the matters set out at requirement [4], the CLC shall refuse your application.
- 7. Any Licence issued by the CLC will be endorsed with:
 - a. all authorisations that it grants you to carry on reserved legal activities ("the authorisations");
 - b. all permissions that it grants you to provide non-reserved legal activities ("the permissions");
 - c. any conditions applicable to the exercise of your authorisations and your permissions ("the conditions"); and
 - d. any condition imposed will take effect at the time the CLC directs.
 - e. the CLC will record on its register:
 - i. your authorisations, your permissions and your conditions;
 - ii. your full name and your practising address; and
 - iii. the date and time from which your Licence takes effect and its duration.

Practising as the holder of a Licence

8. You can only practise as a licensed conveyancer if you hold a Licence.
9. You can only carry on your authorisations and permissions in your capacity as holder of your Licence.
10. You must not carry on any reserved legal activity that is not within your authorisations.
11. You can only carry on your authorisations and permissions
 - a. as a manager of a CLC Recognised Body; or
 - b. as a manager of a body recognised by a Approved Regulator or a Licensing Authority other than the CLC; or
 - c. as an employee of a CLC Recognised Body; or
 - d. as an employee of a body recognised by an Approved Regulator or a Licensing Authority other than the CLC.
12. When carrying on your authorisations and permissions, you must comply at all times with your conditions.
13. You must return your Licence promptly to the CLC should you cease to be eligible to remain a licensed conveyancer, or should the CLC demand return of the Licence.
14. Whilst you hold a Licence, you must notify the CLC of any changes to the information you provided under requirement [3] within seven days of becoming aware of such changes.

Conditions on your Licence

15. At the time of issuing your Licence, or at any time subsequently, the CLC may, in its discretion, endorse your Licence with such conditions as it thinks fit, or remove any condition that has been imposed.
16. Where an endorsement is made to your Licence, or an endorsement that has been made is later amended or removed, then the CLC shall record this in the register.
17. If you wish to apply for the removal or amendment of any condition endorsed on your Licence, then you must provide the CLC with a completed application and the fee payable.
18. Where a Licence condition application has been made the CLC will notify you of its decision within 42 days of its receipt of the application. If the applicant is not notified of a decision within this period, the application will be deemed to have been refused.
19. When the CLC agrees to the removal or amendment of all or any of the conditions imposed, those conditions will remain effective until the Licence is delivered to the CLC's offices together with the fee payable.
20. The CLC may refuse your application for the removal or amendment of a Licence condition if:
 - a. you have not complied with requirement [3]; or
 - b. it is not satisfied that you are a fit and proper person to practise with the removal or variation of such a condition on the Licence.
21. In any case where it decides to issue a Licence subject to conditions, to refuse an application for a Licence or to refuse an application for the removal or amendment of a condition on your Licence the CLC will notify you of the refusal of the application and of the grounds on which it has been refused.

22. An applicant dissatisfied with a determination made under requirement 4, 6 or 7, or under requirement 20, may:
 - a. within 14 days of its publication ask the Adjudication Panel to review the CLC's determination; and
 - b. within 28 days of publication of the CLC's determination, alternatively publication of the review of the Adjudication Panel, appeal to the CLC Discipline and Appeals Committee under section 29 of the 1985 Act.

USEFUL INFORMATION FOR LICENSED CONVEYANCER APPLICANTS

Application

23. The CLC will treat a Licence application as having been made on the day on which you have complied fully and finally with requirement [3].
24. In considering your application for a Licence the CLC may, at its discretion, require you to attend for interview.
25. A condition may take effect immediately or at a future time, or it may not have effect until after any appeal in relation to it
26. You may, when applying for a Licence, apply in addition for a duplicate Licence which, if issued, shall be free of charge. If you apply to the CLC at any other time for a duplicate Licence a fee is payable.

Duration of Licence

27. Your Licence will be in the form prescribed by the CLC and will remain valid from the date specified for an indefinite period or for such period as is specified. You will be entitled to undertake the Legal Activities set out in your Licence, subject to the condition that all regulatory fees have been paid as and when due, and that no order is made or condition imposed which affects your continuing entitlement to provide all (or any) of the Legal Activities set out in your Licence. A licensed conveyancer wishing to renew their licence must apply to do so one month before its expiry.
28. The fees payable are those prescribed by the CLC's Fees Payable Structure.

D. Recognition framework (draft)

Structural Requirements

1. Only those entities able and willing to deliver the Code of Conduct Outcomes in a principled manner are issued with a Certificate.
2. A Recognised Body may be established as a Sole Principal, partnership, a Limited Company or a Limited Liability Partnership provided all the Managers and owners are Authorised Persons.
3. A Recognised Body which is a Company must:
 - a) be registered in England and Wales under the Companies Acts; and
 - b) have its registered office in England and Wales and at the place, or one of the places, of business of the Company.
4. A Recognised Body which is Limited Liability Partnership (LLP) must:
 - a) be registered in England and Wales under the Limited Liability Partnerships Act 2000;
 - b) have its registered office in England and Wales and at its place, or one of its places, of business;
 - c) have at least two LLP Members.

Application for and Grant of a Certificate

5. Any applicant for a Certificate must:
 - (a) deliver to the CLC offices
 - (i) a correctly completed application in the form prescribed by the CLC, signed by a Manager;
 - (ii) the fee payable;
 - (iii) evidence of or a quotation for professional indemnity insurance;
 - (iv) any contribution required towards the CLC's Compensation Fund;
 - (v) where the applicant is a Company the application must also be signed by the company secretary or a director and accompanied by a copy of its Memorandum and Articles and a declaration that they comply with this Framework; and
 - (vi) where the applicant is a Company or LLP, its application must include its certificate of incorporation.
 - (b) identify the endorsements for which application is made (see requirement [7]);
6. The applicant must inform the CLC (with such additional information and documentation as the CLC may require) of any issues which may cause the Recognised Body failing to meet requirements 1-4, or:
 - (a) if the Recognised Body has at any time had made against it:
 - (i) one or more of the orders referred to in paragraphs 4(2), 4(2D) and 5(4) of Schedule 6 to the 1985 Act;
 - (ii) an order of the High Court made under paragraph 6(1) or 6(1A) of Schedule 6 to the 1985 Act;
 - (b) if the issue of a Certificate will have, or is likely to have, an adverse effect on the delivery of positive Outcomes for Clients.

so that these issues can be taken into account when the application is determined.

Determinations of applications for Recognised Body Certificates

7. If the CLC is satisfied as to the matters identified at requirements 5 and 6 and of the capability and willingness of the entity to comply with the CLC Code of Conduct and other CLC Codes, then the CLC will:
 - (a) issue a Certificate endorsed as provided at requirement 11; or
 - (b) issue a Certificate endorsed as provided at requirement 11, subject to such conditions as it considers appropriate.
8. If it is not satisfied of the matters set out at requirements 5 and 6 the CLC shall refuse the application.
9. If an application is granted with conditions attached, the conditions must be complied with.
10. Conditions may result in you incurring expenditure and include:
 - (a) limiting the types of Regulated Services a Recognised Body may provide; or
 - (b) requiring the Recognised Body to take specific steps the CLC deems conducive to safeguarding the interests of consumers or other regulatory objectives.
11. Any Certificate issued by the CLC will be endorsed with:
 - (a) all authorisations that it grants the Recognised Body to carry on reserved legal activities ('the authorisations');
 - (b) all permissions that it grants the Recognised Body to provide non-reserved legal activities ('the permissions'); and
 - (c) any terms applicable to the exercise of the authorisations and the permissions ('the terms').
12. Any endorsement or condition imposed will take effect at the time the CLC directs (a condition may take effect immediately or at a future time, or it may not have effect until after any review or appeal in relation to it).
13. The CLC will record on its register in respect of each Recognised Body:
 - (a) its name and practising address,
 - (b) the endorsements and conditions, and
 - (c) the date from which the Certificate takes effect and its duration
14. An entity can only undertake Legal Activities as a Recognised Body if it has a Certificate in force.
15. A Recognised Body can only carry on its authorisations and permissions whilst acting as a Recognised Body.
17. A Recognised Body must not carry on any reserved legal activity which is not within its authorisations.
18. When carrying on its authorisations and permissions, a Recognised Body must comply at all times with its terms.
19. The Certificate must be returned promptly to the CLC if it ceases to be eligible to remain a Recognised Body, or if the CLC demands return of its Certificate.

20. Whilst the Certificate remains in force, the Recognised Body must notify the CLC of any changes to the information provided under requirements [5 and 6] within seven days of becoming aware of such changes.
21. A new Certificate takes effect the day following the expiration of the existing Certificate unless otherwise directed.
22. Provided a completed application has been received by the CLC and no new Certificate has been issued, an existing Certificate shall not expire at that time but shall remain in force until a new Certificate has been issued. If the renewal application is refused, the existing Certificate remains current until expiry of the period within which an appeal may be brought, or, if an appeal is brought, until the appeal is determined or abandoned.
23. At the time of issuing the Certificate, or at any time subsequently, the CLC may, in its discretion, issue the Certificate with such endorsements or conditions as it thinks fit, or remove any endorsement or condition that it has imposed.
24. Where an endorsement or condition is made to a Certificate or an endorsement or condition that has been made is later amended or removed the CLC shall record this in the register.
25. If making an application for removal or variation of any endorsement or condition on a Certificate other than when the Certificate is due to be renewed the applicant must use the appropriate CLC form, correctly completed and signed by a Manager and accompanied by the fee payable.
26. Where an application has been made for amendment or removal of any endorsement or condition the CLC will notify the applicant of its decision within 42 days after it has received the application. If the applicant is not notified of a decision within this period, the application will be deemed to have been refused.
27. When the CLC agrees to the removal or amendment of any endorsement or condition, such endorsement or condition will remain effective until the Certificate is delivered to the CLC's offices together with the fee payable.
28. The CLC may refuse an application for the removal or amendment of an endorsement or condition if:
 - a. requirement 25 has not been complied with; or
 - b. it is not satisfied that the Recognised Body is a fit and proper person to practise with the removal or variation of such a condition on the Certificate.
29. In any case where it decides to issue a licence subject to any endorsement or condition, or to refuse an application for a Certificate or for the removal or amendment of an endorsement or a condition on a Certificate the CLC will notify the applicant of the refusal of the application and of the grounds on which it has been refused.

Management Structure

31. In an LLP of two Members, if one of them:
 - (a) is committed to prison in civil or criminal proceedings;
 - (b) is unable, because of incapacity caused by illness, accident or age, to attend to the practice for a period of more than 14 days (or such other period as the CLC may determine);
 - (c) lacks capacity (within the meaning of the Mental Capacity Act 2005) and

powers under sections 15-20, or section 48, of that Act have been exercised in relation to him;

- (d) abandons the LLP;
- (e) has a licence issued by the CLC subject to a condition which would be breached by continuing as a LLP Member;
- (f) is not a Licensed Conveyancer; or
- (g) dies,

the Certificate will continue in full force and effect provided the remaining LLP Member is an Authorised Person, and within 28 days of the occurrence (or the end of any time period determined under paragraph (b)) an additional person who is an Authorised Person has become an LLP Member. The remaining LLP must notify the CLC of these changes.

32. With the exception of a LLP (to which rule requirement applies) where a Recognised Body's Manager:

- (a) is committed to prison in civil or criminal proceedings;
- (b) is unable, because of incapacity caused by illness, accident or age, to attend to the practice of the Recognised Body for a period of more than 14 days (or such other period as the CLC may determine);
- (c) lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him;
- (d) abandons the practice of the Recognised Body;
- (e) has a licence issued by the CLC subject to a condition which would be breached by continuing as a Manager; or
- (f) dies;

the Certificate will continue in full force and effect provided that within 28 days of the occurrence (or the end of any time period determined under paragraph (b)) a Manager who is an Authorised Person is in place for the Certificate to remain valid, and that in the meantime the CLC has been advised of the arrangements in place to ensure that the interests of consumers are protected.

33. No person lacking capacity (within the meaning of the Mental Capacity Act 2005) may continue as a Manager. No voting powers may be exercised in respect of any shares registered in that person's name.

Cessation of Recognition

34. If the CLC determines that the issue or continuation of a Certificate is likely to have or will have a serious adverse effect on the delivery of positive Outcomes for Clients, the CLC will determine that the Certificate ceases to have effect, notify the Recognised Body and require immediate delivery to it of the Certificate

Review and Appeal

35. An applicant dissatisfied with a determination made under requirement 7(b), 8 or 28 may:

- (a) within 14 days of its publication ask the Adjudication Panel to review the CLC's determination; and
- (b) within 28 days of publication of the CLC's determination, alternatively publication of the review of the Adjudication Panel, appeal to the CLC's Discipline and Appeals Committee.

Inspection and Discipline

36. To enable the CLC to investigate whether there has been a breach of its regulatory arrangements and to prepare a report as part of that investigation, the Recognised Body must provide to the CLC all its records, papers, files and financial accounts, all of which must be stored on a Durable Medium and be immediately accessible to the CLC.
 37. If it appears to it that there has been a breach of any of its regulatory arrangements, the CLC may take enforcement action in accordance with its Enforcement Policy.
-

USEFUL INFORMATION FOR RECOGNISED BODY APPLICANTS

1. The CLC will treat an application for a Certificate as having been made on the day on which the applicant has complied fully and finally with requirement 5.
2. In considering an application for a Certificate the CLC may, at its discretion, require representatives of the applicant to attend for interview.
3. Any Certificate issued remains the property of the CLC.
4. Any document served on a Recognised Body under this Framework will be posted to the applicant's or the Recognised Body's principal office.
5. Any endorsements or conditions imposed will take effect at the time the CLC directs e.g. an endorsement or condition may take effect immediately, or may not have effect until after any appeal in relation to it.
6. A Certificate automatically ceases to have effect if the CLC refuses to recognise an applicant or to continue to recognise a Recognised Body.
7. An applicant is entitled to a duplicate Certificate free of charge if issued at the same time as the original. At any other time a fee is payable for the issue of a duplicate Certificate.
8. The fees payable are those prescribed by the CLC's Fees Schedule.

E. Proposed Code and Rule changes

Code of Conduct – Overriding Principle 4

OVERRIDING PRINCIPLE 4 - “COMPLY WITH YOUR DUTY TO THE COURT”

Outcomes

You must deliver the following Outcomes:

1. You act in the interests of justice;
2. You act in good faith towards Clients.

Principles

Delivery of these Outcomes requires you to act in a principled manner:

3. You promote and protect the client’s best interests.
4. You do not compromise your professional standards or independence.
5. You assist the court in the administration of justice.
6. You do not knowingly or recklessly mislead or deceive the court, or allow the court to be misled.
7. You ensure that the Court is informed of all relevant decisions and legislative provisions (whether this has a favourable or unfavourable effect on the case you are advancing).
8. You comply with any Court Order (unless an application for a stay is pending or the Order has been revoked by the Court) ;
9. You advise your Client to comply with Court Orders and of the consequences of failing to do so.
10. You properly protect sensitive evidence.
11. You safeguard the well being of children and other vulnerable persons.

Specific Requirements

You must also comply with the following specific requirements:

12. You ensure that the court is made aware of any relevant legal or factual matters which are likely to have a material effect on the outcome of the proceedings.

Code of Conduct – Overriding Principle 3

OVERRIDING PRINCIPLE 3 – “ACT IN THE BEST INTERESTS OF YOUR CLIENTS”

Outcomes

You must deliver the following Outcomes:

1. Each Client’s best interests are served;
2. Clients receive advice appropriate to their circumstances;
3. Clients have the information they need to make informed decisions;
4. Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC;
5. Clients are aware of any limitation or conditions resulting from your relationship with another party;
6. Clients’ affairs are treated confidentially (except as required or permitted by law or with the Client’s consent).

Principles

1. Delivery of these Outcomes requires you to act in a principled manner:
2. You only accept instructions and act in relation to matters which are within your professional competence.
3. You keep the interests of the Client paramount (except as required by the law or the CLC’s regulatory arrangements).
4. You do not act for a Client where you judge it is not in the Client’s best interests for you to do so.
5. You do not accept instructions from a person nor continue to act for a Client whose interests conflict directly with your own, the entity’s, or another Client.
6. You disclose client information only as you have been instructed (or as required by the CLC’s regulatory arrangements or by law), keeping effective records of any disclosure you make.
7. You only recommend a particular person, business or product when it is in the best interests of the Client.
8. You cease acting in a matter if the Client so instructs or, in the absence of such instructions where it is reasonable to do so.
9. You provide the Client with information which is accurate, useful and appropriate to the particular Client.
10. You only provide Regulated Services whilst you have CLC-approved professional indemnity insurance in force.
11. You seek to exclude or limit liability only with the informed consent of the Client.
12. You provide the Client with all relevant information relating to any fee arrangements or fee changes.

13. You advise Clients of the name and status of the person dealing with their matter and the name of the person responsible for overall supervision.
14. You consult Clients on key decisions in a timely way.
15. You promptly advise Clients of any significant changes to projected costs, timelines and strategies.

Specific Requirements

16. You must also comply with the following specific requirements:
17. Where the entity represents parties with different interests in any transaction. each party is at all times represented by different Authorised Persons conducting themselves in the matter as though they were members of different entities.
18. You ensure there are adequate indemnity arrangements in respect of claims made against you for work carried out by you after you have ceased to practice.
19. When providing services which are not regulated by the CLC, you advise your Client of this and inform them the activity is not covered by CLC-approved professional indemnity insurance, or by the Compensation Fund administered by the CLC, or the Legal Ombudsman does not have the jurisdiction to determine complaints made about the service you are providing.
20. Before or when accepting instructions, you inform Clients of the terms on which the instructions are accepted, a complete, accurate estimate of fees and disbursements to be charged and if and when they are likely to change.
21. You inform the Client promptly of the existence and amount of a sum payable (whether directly or indirectly) as a result of receipt of that Client's instructions.
22. With the exception of disbursements, you do not delay completion because fees are outstanding to you.
23. You discuss with the Client how costs will be paid, whether directly by the Client, by public funding, through an insurance policy or otherwise.

F. Litigation and Advocacy Supplementary Code

LITIGATION AND ADVOCACY SUPPLEMENTARY CODE

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies providing **litigation** and **advocacy** services regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

All **CLC Litigation** Lawyers and Advocates are required to comply at all times with the **Principles** and **Specific Requirements** set out under the **Code of Conduct's Overriding Principle 4 of Comply with your duty to the Court** when providing **litigation** and **advocacy** services. This Code provides you with responsibilities supplementary to those identified in the **Code of Conduct**, which are aimed at helping you deliver the **Outcomes** identified below.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- You act in the interests of justice; (Outcome 4.1)
- You act in good faith towards **Clients**. (Outcome 4.2)

Providing **clients** with a high standard of **litigation** and **advocacy** helps you deliver these **Outcomes** and requires you to act in a principled manner:

1. You avoid unnecessary expense or waste of the court's time.
2. You do not offer or make payments to a witness.¹
3. You do not say something which is merely scandalous or which seeks only to insult, vilify or annoy a witness or other person.
4. Wherever possible you do not name in open court any person if by doing so their character is, or is likely to be, impugned.
5. You do not devise facts to assist in advancing the **client's** case.
6. You advise the **Client** that your duties to the court override your responsibilities to them.
7. You do not pressurise a witness; in particular you do not do anything which gives rise to a significant risk that a witness will give evidence which is not truthful.
8. You deal sensitively with the evidence of child witnesses and other vulnerable persons, and hold it securely.
9. You may refuse to act as an advocate under a conditional fee agreement or where you are offered a fee which you can reasonably be expected to consider inappropriate.
10. If 9 is applicable, you inform the **client** in advance why you are ceasing to act and ask the **client** to agree to you passing their instructions onto another advocate.
11. When appearing as an advocate you do not assert any person is guilty of a crime, fraud or misconduct, unless you consider the assertion is reasonably supported and is material to your **client's** case.
12. If you become aware that you have inadvertently misled the court, you, with your **client's** agreement, immediately inform the court; if the **client** does not agree to this, you stop acting for them.
13. You do not call into question the character of a witness unless you have given them the opportunity to answer the allegation under cross-examination.

¹ Except reasonable expenses and reasonable compensation for loss of time attending court

G. Draft Training Framework

STUDENT TRAINING CODE & FRAMEWORK

Outcomes-Focused

This Code seeks 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.

APPLICATIONS

1. The student application must be in the form prescribed by the CLC and accompanied by the required fee.
2. The application must state whether you intend to train to acquire:
 - a. a conveyancing licence; and/or
 - b. a probate licence; and/or
 - c. a litigation licence; and/or
 - d. an advocacy licence; andthis is referred to below as the "Intended Licence(s)".
3. The application and any notice given to the CLC must be addressed to the CLC's offices at 16 Glebe Road, Chelmsford, Essex, CM1 1QG or to such other address as may be designated by the CLC.
4. The application must be fully completed and must demonstrate to the satisfaction of the CLC that you are a fit and proper person to be registered as a student.
5. If the CLC considers it appropriate, the applicant must support their application with a statutory declaration and produce such other evidence as it may request to support your application.

REGISTRATION DETERMINATIONS

6. The CLC will notify the applicant of its determination of their application within 28 days of its receipt.
7. The CLC will give reasons for refusing any application.
8. If a refusal is appealed the CLC shall convene a meeting of the Adjudication Panel to determine the application.
9. The CLC shall notify the applicant of the determination of the Adjudication Panel not more than 90 days after the appeal has been lodged.

Application acceptance and rejection

10. If the application is accepted the individual will be entitled to call themselves a CLC Registered Student.
11. If the application is not accepted and the applicant wishes to appeal this decision they must apply in writing to the CLC within 28 days of receiving notification of the application refusal.

CLC REGISTERED STUDENTS

Practical Training

12. Practical Training should be completed no later than 10 years after the CLC's acceptance of an application to become a CLC Registered Student.
13. The student must produce evidence of completion of their Practical Training to the CLC upon its request and in such form as it may require.
14. "Practical Training" means:
 - a. you are engaged in the provision of Legal Activities⁷² associated with your Intended Licence(s);
 - b. such engagement must be for the equivalent of 1,200 chargeable hours which must be documented;
 - c. such engagement must at all times be subject to the supervision of a Qualified Person; and
 - d. such engagement must, in the opinion of the CLC, be current, relevant and of an adequate standard.
15. A "Qualified Person" is an individual who has for a cumulative period of five years in the seven years prior to the start of the period of supervision in question been authorised by an approved regulator to carry on the reserved legal activity the subject of your Intended Licence and has carried on that reserved legal activity as his or her principal form of practice during that five year period.
16. The CLC will judge the standard to be adequate if the registered student has gained practical experience as certified in the 'Checklist for Practical Training' issued by the CLC.

Examinations and Qualification

17. The CLC determines the syllabus.
18. The CLC may provide:-
 - a. for examination and assessment of various types and levels and at different times;
 - b. for limiting the number of times candidates who may attempt any qualifying examination and the effect of failure to achieve the required standard; and
 - c. the maximum period during which candidates must successfully complete all qualifying examinations and the effect of failure to do so within that time limit.
19. Qualifying examinations will be held on dates determined by the CLC.

Examination Concessions

20. Students should attend CLC qualifying examinations.
21. If, having presented them self for a CLC qualifying examination, the student considers their performance to have been adversely affected as a result of illness or exceptional circumstances, they may apply to the CLC within 21 days of the examination for a concession to be granted.

⁷² Adopting the definition at s.12 of the 2007 Act.

22. In considering the concession application, the CLC may require the applicant to:
 - a. support their application by a statutory declaration and production of other evidence requested; and/or
 - b. attend an interview; and/or
 - c. comply with any other steps the CLC considers necessary.
23. The granting of a concession is at the discretion of CLC which may:-
 - a. grant a concession with or without conditions; or
 - b. refuse the application.
24. In determining an application for concession the CLC will take account of the results obtained by the candidate in the examination to which the application relates.
25. The candidate will be notified of the grant or refusal within 14 days after a determination has been made.
26. Within 28 days after the CLC has sent notification of a refusal, the applicant may apply to the Adjudication Panel which will review the decision.

Examination Exemptions

27. The CLC may grant a registered student exemption from a qualifying examination subject to such terms and conditions it imposes.

ANNUAL REGISTRATION

28. A registered student must pay to the CLC on the first day of September (or such other date as the CLC may determine) each year the annual registration fee as prescribed by the CLC.

H. The proposed education programme

The first part of this annex reproduces the text of the draft programme specification we published in our second consultation paper concerning these matters. The second part identifies certain minor respects in which we propose to change that specification in light of the issues identified in this application.

Draft Programme Specification: CLC, litigation and advocacy programme

1 Overview, general educational aims and timescale for the programme.

Nottingham Law School has designed a programme to enable the CLC to license individuals (in particular those working for CLC regulated entities) to provide litigation and advocacy services not confined to the property or probate fields (“a CLC Civil Litigator”). The aim is that the individuals licensed will achieve standards that are at least equivalent to those of the other legal professions currently operating in the field whilst simultaneously allowing for a primary focus on provision of good quality services to a principally consumer client group.

Students may already be Licensed Conveyancers or they may, in principle, (subject to the appropriate amendments being made to the CLC’s statutory framework under s.69 LSA) follow the litigation and advocacy route to qualification as a CLC Civil Litigator without having previously qualified as a Licensed Conveyancer. The programme has been designed taking account of the responses received to the CLC consultation paper on advocacy and litigation.⁷³

The CLC litigation and advocacy programme will be divided into four stages:

- Core academic stage – identifying the key areas of legal knowledge required (at year 2 of the timescale below) as a basis for practice in consumer-focussed general civil litigation and advocacy. This stage includes
 - Introduction to Law and Legal Method (for those not exempt from it by virtue of ILEX, CLC or degree/GDL qualification);
 - Contract (for those not exempt from it by virtue of ILEX, CLC or degree/GDL qualification);
 - Tort (for those not exempt from it by virtue of ILEX or degree/GDL qualification)
 - At present it is envisaged that those who wish to practise in conveyancing and/or probate should continue to pursue the CLC’s existing assessment regime which includes land law and landlord and tenant law.
- Core vocational stage – a higher element of consumer-focus is brought in at this stage as the student concentrates on skills, client care and solutions to clients’ problems in civil litigation and County Court advocacy. This stage includes:
 - CLC accounts (for those who have not already completed it);⁷⁴
 - Professional Knowledge and Skills (partial exemption for those with LPC, BVC/BPTC or ILEX qualifications);
 - Civil Litigation and County Court Advocacy (for those not exempt from it by virtue of LPC, BVC/BPTC or ILEX qualifications).
- As with the existing conveyancing route, a period of practical training in civil litigation and advocacy will be required before a licence permitting a licensee to practise as a CLC Civil Litigator is granted. The CLC will develop a scheme setting outcomes and providing

⁷³ CLC Consultation Paper, February 2010, *Proposed Application by the CLC to the LSB as an Approved Regulator to regulate licensed conveyancer practices in the Exercise of Rights of Audience and the Conduct of Litigation*.

⁷⁴ It may, however, be necessary to extend the Accounts course for those working in litigation and advocacy to take in additional factors arising in those areas of practice.

for the appropriate recording of evidence of achieving those outcomes so that there is a robust work based assessment of skills.

- Optional specialist stage post-licensing – a combination of distance learning and face-to-face skills teaching allows CLC Civil Litigators to apply the knowledge and skills attained in the core vocational stage to a more specialist field. In some cases the specialist stage will involve a more directed “top-up” to the core vocational stage only (for example, personal injury/clinical negligence); whilst in others it will be necessary for students to cover additional key areas of core academic knowledge (such as land law). Those who successfully complete a specialist option will then be able to obtain a modified additional licence to practise in the nominated specialist field. Rights of audience in the Higher Courts is also an option at the specialist stage. Post-licensing study will attract CPD.

Given the likely student demographic perhaps the most obvious specialist stage will be property litigation and advocacy but a template is provided which could accommodate different specialist routes once these are defined.

The CLC anticipates that provision will be made for periodic retesting and relicensing.

It is likely that the CLC may decide:

- To absorb some or all of the specialist stages into the core academic and core vocational stages (year 4); and/or
- To incorporate the conveyancing and/or probate routes with the litigation and advocacy route into a single programme of study or at least for the common aspects of the core academic stages of each to be combined into a single course of study (year 5).

Providers

The programme is designed so that the core academic stage can – given the co-operation of those providers - be studied at a wide range of existing providers, including all or part of a GDL, degree, ILEX qualification or as relevant existing CLC provision (as, for example, for CLC accounts (albeit possibly augmented to take litigation aspects into account), contract or land law). This presupposes, however that in the case of partial completion of a more extensive qualification such as a degree or GDL, the individual has reached or exceeded the pass mark in the relevant components. It also assumes that providers will be prepared to allow students to attend and sit only such parts of a more extensive qualification as will satisfy the CLC core academic stage. In due course, as suggested for years 4 and 5, it may be possible to consolidate the core academic stage into a single programme offered by one or more providers accredited by the CLC.

The core vocational stage, however, does constitute a single coherent programme, although it would be possible for it to be offered by a number of providers or for an individual to study one module with one provider and the other with another. At this stage it is not proposed to make any changes to the study and assessment of the existing (or augmented) CLC Accounts requirement (at least until year 5). The CLC may choose strategically to limit the number of CLC accredited providers of the core vocational stage for consistency of standards and educational and financial viability.

It is anticipated that the number of CLC accredited providers of optional specialist programmes will be limited for consistency of standards and educational and financial viability.

Timescale

Implementing the entirety of such a project in one go is challenging and, in addition, it is not known at the stage which specialist routes will be of interest. It is proposed that the overall scheme might evolve over a five year timescale:

Year one

- Design, approval and authorisations including those of the core academic and core vocational stages as well as the optional specialist stage template.

Year two

- Implement (by discussion with providers as necessary) civil litigation and County Court advocacy core academic stage;
- Implement initial version of core vocational stage (for those with exemptions from core academic stage).

Year three

- Continue core academic and core vocational stages;
- Implement practical training stage in civil litigation and County Court advocacy;
- Implement first tranche of optional specialist routes following market research.

Year four

- Continue core academic and core vocational stages;
- Continue practical training stage;
- Continue first tranche of optional specialist routes;
- Implement higher rights (will require some existing practical experience in post-licensing advocacy before CLC Civil Litigators can undertake the higher rights programmes);
- Review range of specialist routes:
 - whether any or all can be brought forward to be subsumed in the core academic and core vocational stages
 - whether any additional specialist routes are to be added.

Year five

- Continue core academic and core vocational stages (as augmented from year four review);
- Continue practical training stage;
- Continue optional specialist routes (insofar as not now part of augmented core academic and core vocational stages) and higher rights;
- Review and consolidate. Consider amalgamation of core academic stage for conveyancing, probate and civil litigation into a single programme for all routes unless it is determined that qualification as a Licensed Conveyancer and as a CLC Civil Litigator should remain separate.

2 Programme Learning Outcomes (“PLOs”) for the core academic and core vocational stages

These outcomes are intended as “macro-outcomes” defining the core stages of study. More specific “micro-outcomes” will be set for individual units of study in the core academic, core vocational and optional specialist stages.⁷⁵ In defining these outcomes as appropriate for the CLC award, attention has been given to providing parity with the QAA benchmark statement for Law⁷⁶ in relation to the core academic stage in particular; the Legal Practice Course outcomes as well as generic level descriptors for level 6 study identified by QCF and by QAA.⁷⁷ The programme outcomes describe what a student should be able to know and do by the end of the programme (assuming an appropriate level of commitment to study). It should be emphasised that these outcomes, are, as with the equivalent LPC outcomes, identified at the point prior to the undertaking of the period of practical training and not at the point of licensing.

⁷⁵ It should be noted that micro-outcomes and assessment criteria for the higher rights specialist route will need to be at least equivalent to those now prescribed by the SRA for solicitors: SRA, *Statement of Standards for Solicitor Higher Court Advocates* (2010).

⁷⁶ <http://www.qaa.ac.uk/academicinfrastructure/benchmark/honours/law.asp>.

⁷⁷ Other level descriptors exist, such as those for the National Occupational Standards for Legal Advice: http://www.skillsforjustice.com/las/section_a/index.html and the Australasian Professional Legal Education Council competency standards for entry level lawyers (http://www.aplec.asn.au/aplec/dsp_resources.cfm)

For simplicity they are here divided into outcomes relating to “knowledge and understanding” and to “skills, qualities and attributes”. What is also critical in a workable learning outcome used for the purposes of assessment is that it should not only articulate the scope of the area of knowledge or skill involved but also set out the expected level of performance in a way that can be meaningfully assessed. The latter, at vocational and professional levels of attainment, is not easy to do and demands careful consideration of the alignment between micro-level outcomes which nest under these programme level macro outcomes and the assessments set and their marking criteria.

Knowledge and Understanding⁷⁸

By the end of the programme (and any prescribed period of practical training) you should be able to:

1. demonstrate a systematic knowledge and understanding of defined areas of law and procedure, legal concepts, methods and institutions;
2. demonstrate a systematic knowledge and understanding of defined rules of professional conduct, ethics and court etiquette;

Skills, Qualities and Attributes

By the end of the programme (and any prescribed period of practical training) you should be able to:

3. apply your knowledge and understanding of those defined areas to hypothetical and actual problems of limited definition (but involving interacting factors) in order to devise and sustain arguments or recommend solutions to problems;
4. critically analyse arguments, concepts, facts, risk factors and evidence to make judgments and evaluate potential solutions within hypothetical and actual problems of limited definition (but involving interacting factors);
5. demonstrate a basic ability to carry out effective legal research, including determination of the scope and objectives of the research task, using primary and secondary sources and both online and paper resources so as to inform your analysis and evaluation;
6. understand and use the English (or Welsh) language proficiently to communicate effectively both in writing and orally to a range of recipients including consumer-clients and, in the context of advocacy, the County Court, as well as effectively drafting defined legal documents;
7. in interview and other contexts; identify and address consumer-clients’ objectives in obtaining information and in formulating possible solutions to problems of limited definition including cost/benefit analysis whilst maintaining good client relations and an appropriate ethical stance and demonstrating appropriate sensitivity to matters of equality and diversity;
8. take responsibility and initiative in initiating, planning and pursuing consumer-clients’ objectives and best interests within an appropriate ethical context and in the context of problems of limited definition;
9. demonstrate self-awareness in the context of your own learning and employ effective strategies for your own personal and professional development, including the review, consolidation and extension of your knowledge, understanding and skills and an awareness of current developments in your field.

⁷⁸ These outcomes seek to state a level of performance at level 6. However it is at present possible to study and achieve exemption at a lower level. A university, for instance, which offers Criminal Law in its first year, will do so at QCF level 4; whereas the same subject offered in a third year at a different institution may be at level 6. It should however be assumed that all GDL/CPE provision is at level 6. The ILEX Professional Diploma is treated as level 3 (although currently providing an exemption from the CLC level 5 foundation in relation to introduction to law and legal method). The existing CLC Foundation is at level 5 with Finals at level 6.

3 Teaching and Learning Methods

The existing CLC Foundation and Finals conveyancing programme can be studied by attendance or by distance learning. The breadth of the civil litigation and advocacy programme, including as it does a considerable element of skills, lends itself to some form of face to face interaction at the core vocational stage in particular. The mandatory accounts programme and assessment can, of course, continue in the form currently administered by the CLC save that it is recommended that this provision be augmented to cover matters relevant to litigation and advocacy.

The **core academic stage** for the litigation and advocacy route is envisaged at present as building on existing provision in the relevant areas of law in the FE and HE sectors, allowing students to select (assuming that the relevant providers will permit this) from modules delivered as part of existing CLC provision, from the FILEX diet of programmes or from modules of a degree or Graduate Diploma in Law. In the course of time (Year 5), a discrete core academic stage, whether formulated as a degree or otherwise, may be desirable to replace or supplement this “piggybacking” on existing provision. An “introduction to study” module is however recommended for those new to FE or HE to induct students into new methods of study and of assessment and is discussed further in section 7. Such a module will require separate design and delivery.

The **core vocational stage** for the litigation and advocacy route, again whether formulated as a degree or otherwise, is envisaged as a face to face programme combining lecture, workshop, demonstration, feedback and practice of key skills including research, writing and drafting, interviewing and client care and advocacy. It is envisaged that a programme of 20-30 days’ class contact (including assessment days) spread over a series of long weekends or evening or day release would be feasible in the year two iteration.

The precursor to granting of a licence permitting the licensee to practise as a CLC Civil Litigator, is of course, the period of practical training.

4 Assessment Methods

Core academic stage for the litigation and advocacy route – this will be assessed according to the methods applied by the provider. In the case of areas of legal knowledge this will usually be by examination but some providers, particularly at degree level, might also employ coursework or elements of oral presentation (including mooting) as part of the assessment. Students will have to achieve the pass mark nominated by the provider. It is assumed that the core vocational stage will teach and assess at least PLOs 1, 3, 4 and 5 but may, particularly if governed by the QAA benchmark, teach and assess others. It should be noted that at LLB/BA level achievement may not be at level 6 but, as this is regarded as acceptable for the JASB qualifying law degree, it is treated as acceptable here provided achievement is at least equivalent to that of the first year of a law degree.

It is proposed that the core vocational stage for the litigation and advocacy route is assessed by a combination of methods appropriate to its consumer-client focus:

- Professional knowledge and skills:
 - a written paper and
 - a skills assessment involving a sequence of interview, research activity and report to a consumer-client (orally and/or in writing);

The module will teach and assess PLOS 2, 4, 5, 6, 7, 8, 9.

- Litigation and County Court advocacy skills:
 - a further written paper based on a hypothetical situation requiring application of knowledge of civil procedure and evidence; analysis of risk and other factors and litigation drafting (such as drafting or correction of a statement of case) and

- a skills assessment involving advocacy (which may also require research and analysis as a precursor to oral submissions).

The module will teach and assess PLOs 1, 2, 3, 4, 5, 6, 8, 9.

Optional specialist stage template: in specialist streams other than higher rights of audience, the assessment can be envisaged as a shorter version of the kind of assessment used in the core vocational stage, focussing on specifics of procedure, analysis and advocacy peculiar to the specialist area of practice. The emphasis in the higher rights course and assessment will be on advocacy and court etiquette and its assessment may involve a written paper as well as an extended advocacy assessment including conduct of a complete simulated High Court or Crown Court trial.

5 Programme Structure and Curriculum

Core academic stage

Institutions, particularly those offering degrees, may vary as to the level at which a particular key knowledge area is delivered and assessed as well as the way in which it is assessed.

The minimum components, then for completion of the academic stage for the litigation and advocacy route will be

- introduction to study at FE/HE level, assuming that the student has not previously studied at FE/HE level
- Introduction to law and legal method
- Contract
- Tort

Those who wish to proceed along one of the specialist streams are likely to have to cover additional areas of law. Those pursuing the existing CLC conveyancing route will also continue to study land law and landlord and tenant law.

The cost to the individual student of pursuing the core academic stage is dependent on the fees charged by the individual provider which may be less than that of a full LLB (which might be envisaged, at present, as involving 3 years each with a tuition fee of c £3000). It will be critical, however, to obtain the co-operation of providers to achieve the core academic stage as envisaged. Aside from the costs involved in accreditation and regulation there are no additional design costs until year five.

Core vocational stage

This stage of the litigation and advocacy route in its first iteration is envisaged as a non-specialist course in civil litigation and advocacy at level 6, with the addition of mandatory completion of the CLC existing Accounts assessments as modified to include coverage of specific CLC accounts rules relating to litigation and advocacy practice. The core academic stage is designed as a necessary precursor and basis for the core vocational stage. Given the desired consumer focus and the likelihood nature of the CLC's typical client base, it will focus on civil litigation involving individuals or small businesses in, for example, debt; defective product or service claims, principally in the County Court, rather than heavyweight commercial litigation (which could form a stream at the specialist stage).

The core vocational stage for the litigation and advocacy route is divided into two modules (in addition to the mandatory CLC accounts course/assessments) to be taken after satisfactory completion of the core academic stage:

1. *Professional Knowledge and skills* (10-15 days class contact including assessment)

This module covers:

- Legal research in a practical context (PLOs 4, 5, 8)

- Interviewing and client care (PLOs 2, 4, 6, 7, 8)
- Letter writing, meeting and telephone skills (PLO 6)
- Self awareness and professional development (PLO 9)
- Professional conduct and ethics (PLOs 2, 8)

And

2. *Civil Litigation and County Court advocacy skills* (10-15 days class contact including assessment)

This module covers:

- Civil procedure and evidence from pre-action protocol to enforcement and appeal, focussing on fast track and small claims track cases but introducing High Court and multi-track procedure (where it differs) (PLO 1)
- Case and risk analysis (including cost/benefit and CPR Part 36) (PLOs 3, 4, 8)
- Writing and drafting in the litigation context (statements of case, applications, orders, witness statements) (PLOs 6, 8)
- Alternative Dispute Resolution including the advantages and disadvantages of negotiation, arbitration and mediation (PLOs 1, 3)
- Civil advocacy before the district judge (PLOs 2, 3, 4, 5, 6)
- Civil advocacy in a County Court trial (PLOs 2, 3, 4, 5, 6)

The two modules must be studied sequentially with Professional Knowledge and Skills being undertaken first. The student fees for the programme will be dependent on the number of students recruited and whether or not any costs of development (the core vocational stage described here contains elements such as risk analysis which are not constituent parts of an LPC) are to be paid by the CLC as an investment or need to be recouped by the provider from student fees. Student fees (excluding accommodation) might be in the region of £5,000-£6,000. This is to be compared to typical fees for the LPC in the region of £10,000.

Draft curricula for the core vocational stage appear at Appendix I [not included in this application document]

Optional specialist stage - template

The specialist stages currently identified for CLC Civil Litigators are: personal injury/clinical negligence; property litigation and advocacy; immigration litigation and advocacy; employment litigation and advocacy; High Court civil litigation and advocacy. The same PLOs, with recognition that they are to be exercised in the relevant specialist field can be employed for the majority of the specialist stages. More specific micro-outcomes must be set at a high level for the two higher rights routes.

Whether the specialist stage is a comparatively short “top up” to the core vocational stage or whether it involves a more substantial period of study or an additional academic stage will depend on the specialism.

Because it is not yet clear which specialist routes will be of interest to the relevant demographic, five possible examples are shown in the table which follows by way of explanation of the overall template.

The student fees for the programme will be dependent on the number of students recruited and whether or not any costs of development) are to be paid by the CLC as an investment or need to be recouped by the provider from student fees. Student fees (excluding accommodation) might be in the region of £2,000-£3,000. The content of each specialist route may mean that the class contact time for each differs.

	Property Litigation and Advocacy	Person injury and clinical negligence litigation and advocacy	Commercial Litigation and Advocacy	Employment Litigation and Advocacy	Higher Rights in the Civil Courts
Required preliminary study or qualifications	CLC Civil Litigator	CLC Civil Litigator	CLC Civil Litigator	CLC Civil Litigator	CLC Civil Litigator Demonstrated period of practice and competence in County Court advocacy
Additional academic stage	Land Law Landlord and Tenant Law	N/A	EU law [Commercial law]	N/A (academic law is contained in vocational stage)	N/A
Specialist vocational stage	<ul style="list-style-type: none"> Property procedure and evidence including repossessions landlord and tenant; Lands Tribunal (PLO 1) Case and risk analysis in property cases (PLOs 3, 4, 8) Writing and drafting in the property litigation context (witness statements; statements of case; Part 8 claims) (PLOs 6, 8) Advocacy in property cases (PLOs 2, 3, 4, 5, 6) 	<ul style="list-style-type: none"> Procedure and evidence including pre action protocol in fast track and multi-track cases; calculation of special damages; interim payments and structured settlements; working with expert witnesses (PLO 1) Case and risk analysis in PI/clinical negligence cases (PLOs 3, 4, 8) Writing and drafting in the PI/clinical negligence litigation context (witness statements; statements of case; schedules of loss; Scott schedules) (PLOs 6, 8) County Court advocacy in PI/clinical negligence cases (PLOs 2, 3, 4, 5, 6) 	<ul style="list-style-type: none"> Procedure and evidence including pre action protocol in the Commercial and Mercantile Courts; working with expert witnesses; cross border issues; injunctions (PLO 1) Case and risk analysis in commercial cases (PLOs 3, 4, 8) Writing and drafting in the commercial context (witness statements; chronologies; case memoranda) (PLOs 6, 8) County Court advocacy in commercial cases (PLOs 2, 3, 4, 5, 6) 	<ul style="list-style-type: none"> Employment Law (PLO1); Procedure and evidence in employment cases including wrongful, unfair dismissal, redundancy and discrimination claims (PLO 1); Case and risk analysis in employment cases (PLOs 3, 4, 8) Writing and drafting in the employment context (Employment Tribunals documents; settlement agreements) (PLOs 6, 8) County Court and Employment Tribunal advocacy (PLOs 2, 3, 4, 5, 6) 	<ul style="list-style-type: none"> Review of civil procedure and evidence in particular interim applications, injunctions and preparation for trial; Court etiquette and the CLC Code for Advocacy;⁷⁹ Legal and evidential submissions Opening and closing speeches Examination, cross-examination and re-examination Dealing with specific types of witnesses (vulnerable witnesses; experts) Trial preparation
Additional practical training period	Recommended	Recommended	Recommended		Periodic relicensing is suggested
Specialist licence	Licence to practise property litigation and conduct property advocacy in the County Court and tribunal	Licence to practise personal injury/clinical negligence litigation and conduct advocacy in the County Court	Licence to practise commercial litigation and conduct advocacy in the County Court		Licence to carry out civil advocacy in the High Court and above.

6 Admission to the programme and exemptions

It is proposed that, as currently, it would be possible for a student, with appropriate support, to enter the programme without prior qualifications at 'A' level or above (as can be the case for an

⁷⁹ Assuming a discrete Code is developed.

individual pursuing the FILEX qualification or applying for the Open University law degree). Care should be taken first in the selection and briefing of such candidates and secondly in their induction into the programme and support whilst studying.

Those who do hold prior qualifications in the relevant field may, however, apply for exemption from parts of it, provided that their prior qualifications are assessed by the CLC are being sufficiently current. The CLC is likely to require minimum pass marks (which may be higher than the pass mark set by the provider) before exemption is given.

Core Academic stage

	<i>CPE/GDL/LLB/BA/LPC (LLB/BA may be at levels 4-6)</i>	<i>ILEX</i>
• [introduction to study at FE/HE level]	N/A	N/A
• introduction to law and legal method	<i>CPE/GDL/LLB/BA exempt</i>	exempt
• Contract	<i>CPE/GDL/LLB/BA exempt</i>	Level 6 equivalent qualification
• Tort	<i>CPE/GDL/LLB/BA exempt</i>	Level 6 equivalent qualification
• [Land law]	<i>CPE/GDL/LLB/BA exempt</i>	Level 6 equivalent qualification
• [Landlord and tenant]	<i>CPE/GDL/LLB/BA/LPC exempt on proof of completion of an equivalent qualification (i.e. a suitable landlord and tenant option)</i>	Level 6 equivalent qualification

Core Vocational Stage

	<i>LPC (level 6)</i>	<i>ILEX</i>
<i>CLC accounts</i>	N (partial exemption for LPC accounts)	N
<i>Professional Knowledge and skills</i>		
• Legal research in a practical context	Y	Level 6 equivalent qualification (provided it includes research in a litigation context)
• Interviewing and client care	Y	Level 6 equivalent qualification gives partial exemption (provided it has been studied in a litigation context)
• Letter writing, meeting and telephone skills	Y (as to writing skills only)	N
• Self awareness and professional development	No exemption	No exemption
• Professional conduct and ethics	No exemption – must study CLC code	No exemption – must study CLC code
<i>Civil Litigation and County Court advocacy skills</i>		
• Civil procedure and evidence from pre-action protocol to enforcement and appeal, focussing on small claims and fast track cases with an introduction to the High Court	Y	Level 6 equivalent qualification
• Case and risk analysis (including cost/benefit and CPR Part 36)	N	N
• Writing and drafting in the litigation context (statements of case, applications, orders, witness statements)	Y	Level 6 equivalent qualification provided writing and drafting assessed at appropriate level
• Alternative Dispute Resolution including the	N	N

advantages and disadvantages of negotiation, arbitration and mediation		
• Civil advocacy before the district judge	Y	N
• Civil advocacy in a County Court civil trial	N	N

Optional Specialist stage

Any provider seeking authorisation to provide academic, vocational or specialist stages must demonstrate how candidates with exemptions, including partial exemptions (at level 6) in their assessment strategy will be accommodated.

7 Support for Learning

Specific care will be taken with those entering at a pre-A level stage: not only will they be required to pass a discrete module but they will also be allocated mentors, who may be members of teaching staff or more experienced students, to act as part of their support network during study.

All students will be encouraged to form study circles and networks. Whilst these may be hosted within the electronic and other resources of individual providers, the CLC will also host a website and chat room for all students in the programme.

Course providers will be required to provide welfare and pastoral care and careers support for all students. This will include provision for extensions of time and intercalation or deferral of study to accommodate life events of working students (such as pregnancy, loss of job etc). In addition, providers will be required to make provision for academic support including tutor contact, revision days and mock assessments.

8 Programme Standards and Quality

Standards and Quality for the core academic stage will be defined by the relevant provider and the CLC will satisfy itself of appropriate quality before confirming exemption or satisfaction of the academic stage.

The CLC will satisfy itself of the quality framework of any provider seeking to offer the core vocational or specialist stages. Matters falling for consideration will include:

- Mechanisms for setting, maintaining and enhancing standards and quality in provision of teaching and assessment;
- Robust assessment mechanisms including provision for security and identity of candidates; confidentiality and where appropriate anonymity in assessment; calibration and moderation of assessments; external examination etc;
- Mechanisms for dealing with issues of equality and diversity.

In authorising a provider of the core vocational stage the CLC will also consider provisions for internal (by the provider) reporting and review as well as the CLC's requirements for periodic review and annual reporting to it on quality matters. The CLC will reserve the right to withdraw accreditation of a provider or of a programme or any part of it if standards and quality are not maintained.

10 Assessment Regulations

The CLC will publish Assessment regulations for the core vocational and optional specialist stages (and for the discrete core academic stage in year 5). The CLC will also publish specimen Assessment Regulations to be applied by institutions it approves. These will deal with, inter alia:

- Exemptions;

- Number of attempts at any one assessment, provision for referral papers, retaking of complete modules etc;
- Weightings of different assessments or papers against each other as a contribution to the overall final assessment result;
- Confirmation of the level of performance required to pass including pass marks and “merit” or “distinction” awards;
- Condonation/compensation (where a fail in a paper is regarded as having been made up for by something else, such as strong performance in another part of the assessments);
- Treatment of performance in assessments impeded by matters beyond the candidate’s control such as illness, bereavement etc;
- Use of external examiners to approve papers and contribute to final decisions about assessment awards;
- Appeals against results.

Changes to the above education programme

We have slightly modified the above draft education programme, in the following respects

- The programme envisages a template for the final vocational stage that prepares students for practice in particular areas of law. Such templates will be designed by reference to the form of the ultimate licence to be sought by the student. Without wishing to limit a student’s ability to change direction mid-course, we expect that students will be encouraged to choose in advance the nature of licence they will apply for.
- We expect that most students will choose to train for a composite licence, comprising conveyancing services and litigation services likely to be limited to or likely to lead to specialisation in property law.
- We expect that advocacy entitlements are more likely to be seen as something to add to a composite licence after a period of practice as a litigator. However, students will be able to seek composite conveyancing, litigation and advocacy licences in one go. The education and practical stage requirements will however be more demanding for those wish to follow that route.

I. **A listing of the CLC's current Rules & Regulations**

The current Rules and Regulations of the Council for Licensed Conveyancers can be downloaded from the [CLC's website](#) and therefore are not reproduced here. In summary however, they comprise the following:

- Licensed Conveyancers' Training Rules 2004
- Licensed Conveyancers' Continuing Professional Development Rules 2004
- Guidelines for Approval of Applications to be registered as CLC Students July 2007
- Licensing Rules 2009
- Guidelines for Approval of Applications for Licences July 2007
- Licensed Conveyancers' Probate Rules 2008
- The Council for Licensed Conveyancers' Fees Rules 2010
- Conduct Rules 2009
- The Licensed Conveyancers' Designated Professional Body Rules 2004
- Code of Practice Issue 4 (18 January 2006 – concerning acting as an insurance intermediary)
- The Council for Licensed Conveyancers' Accounts Rules 2008 (in force 1 January 2009)
- Accounts Guidance Note 1 – Recognised Accountancy Bodies (in force 1 January 2009)
- Accounts Guidance Note 2 - Reporting Accountant's Terms of Engagement (in force 1 January 2009)
- Accounts Guidance Note 3 – Form of Accountant's Report and Checklist (in force 1 January 2009)
- Licensed Conveyancers' Indemnity Rules 2009
- The Council for Licensed Conveyancers' Compensation Fund Rules 2009
- Regulation of Practices (Recognised Bodies) Rules 2009
- Council for Licensed Conveyancers' Investigating Committee Rules 2004
- Discipline and Appeals Committee Rules 2009
- The CLC's Guidance for the appointment, service and duties of Legal Advisers to the Discipline and Appeals Committee 2009
- The Licensed Conveyancers' Discipline & Appeals Committee (Procedure) Approval Order 2001
- Regulations for Appointment & Service of Council Members 2009
- Guidance Notes
- Practising Address and Communications (March 2009)
- Undertakings (March 2009)
- Supervision (March 2009)
- Management Arrangements (March 2009)
- Conflicts of Interest (March 2009)
- Disclosure of Profits and Advantages (March 2009)
- Conveyancing Files (March 2009)
- Estimates and Terms of Engagement (March 2009)
- Complaints Procedures (August 2010)
- Anti Money Laundering (March 2009)
- Dealing with Unqualified Third Parties (March 2009)
- Home Information Packs (April 2009)
- Acting for Lenders (March 2009)

- Mortgage Fraud (March 2009)
- Suggested Procedures
- Complaints (March 2006)
- AML Toolkit (March 2008)
- Practice Notes
- Guidance Insurance Intermediaries (January 2005)
- Information Note Aged Balances 2003
- Arrangements for Incapacity and Death (July 2005)
- Interim Guidance for the prevention of money laundering and combating terrorist financing - December 2007

J. **Compliance with the Legal Services Board’s criteria for determining designation applications**

In this Annex we have provided a lookup table that cross-references the main body of this application and the Legal Services Board’s published criteria for determining applications.⁸⁰

Criteria for determining applications

<p>“49. In accordance with paragraphs 13(2) and 13(3) of schedule 4 to the Act, the Board will only grant an Application if it is satisfied...”</p>	
<p>a.</p>	<p>“that, if the Lord Chancellor were to make an order designating the Applicant in relation to the particular Reserved Legal Activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect and, in particular that the exercise of the Applicant’s regulatory functions would not be prejudiced by its representative functions and, so far as is reasonably practicable, regulatory decisions would be taken independently of representative ones”</p>
<p>“appropriate internal governance arrangements” The internal governance arrangements for the Council are described at Section B.3, page 8. Its Regulations for the Appointment and Service of Council Members 2009 have recently been approved by the Legal Services Board. “the exercise of the Applicant’s regulatory functions would not be prejudiced by its representative functions” The Council has no representative function – see Section B.3(f), page 9. “regulatory decisions would be taken independently of representative ones” See above.</p>	
<p>b.</p>	<p>“that, if such an order, were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time”</p>
<p>“competent” The Council relies on all the matters set out this application, whilst also noting that it has already successfully expanded the remit of its regulated reserved legal activities in relation to probate activities (see Section B.1(b), page 4). “sufficient resources” See Section D.7, page 28.</p>	
<p>c.</p>	<p>“that the Applicant’s proposed Regulatory Arrangements make</p>
<p>“ proposed Regulatory Arrangements make appropriate provision for the regulation of those it wishes to authorise”</p>	

⁸⁰ cite

	appropriate provision for the regulation of those it wishes to authorise. Details of the kind of evidence that the Board may consider in determining whether an Applicant's proposed Regulatory Arrangements make such provision can be found in Part 2 of the Schedule to these Rules"	See the applicant generally and, in particular, Section C, page 9.
d.	"that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 52 of the Act in that they must make such provision as is reasonably necessary to prevent regulatory conflicts"	"such provision as is reasonably necessary to prevent regulatory conflicts" See Section D.6(b), page 27.
e.	"that the Applicant's proposed Regulatory Arrangements comply with requirements of section 54 of the Act in that they must make such provision as is reasonably practicable and, in all the circumstances appropriate: (a) to prevent external regulatory conflicts; (b) to provide for the resolution of any external regulatory conflicts that arise; and (c) to prevent unnecessary duplication or regulatory provisions made by an external regulatory body"	"prevent external regulatory conflicts" See Section D.6(b)(iii), page 28.
f.	"that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 112 of the Act in that they must make provision requiring each relevant Authorised Person: (a) to establish and maintain procedures for the resolution of relevant complaints; or (b) to participate in, or to make arrangements to be subject to, such procedures established and maintained by another person, and	" establish and maintain procedures for the resolution of relevant complaints" See Section D.6(c), page 28.

	provision for the enforcement of that requirement”	
g.	“that the Applicant’s proposed Regulatory Arrangements comply with the requirements of section 145 of the Act in that they must make: (a) provision requiring each relevant Authorised Person to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination or complaints under the Ombudsman Scheme, as that person is reasonably able to give; and (b) provision for the enforcement of that requirement”	See Section D.6(c), page 28
	“50. In addition, when considering an Application the Board will consider how consistent an Applicant’s proposed Regulatory Arrangements are with the requirements of section 28 of the Act (duty to promote the Regulatory Objectives, pursue best regulatory practice etc).”	

Administrative Information Needed to Enable Processing of an Application

	What is required	Possible Evidence	Response
1.	Background information	Contact details in relation to the person(s) the Board should contact in relation to the Application, including job title, email address and phone number, a physical address for communication and the Applicant’s registered office	Simon Blandy Director of Policy and Standards 01245 349599 simonb@clc-uk.org Council for Licensed Conveyancers 16 Glebe Road

		address (if different from communication address) and company registration number if applicable	Chelmsford Essex CM1 1QG DX 121925 CHELMSFORD 6 Tel: 01245 349599 Fax: 01245 341300
2.	A statement of the Reserved Legal Activity or Activities to which the Application relates	Specification of: <ul style="list-style-type: none"> • Which of the Reserved Legal Activities set out in section 12 and schedule 2 to the Act the Applicant proposes to regulate • The context within which the Applicant proposes to regulate such Activities (i.e. will the Applicant only be providing authorisation to provide the Reserved Legal Activities in limited circumstances?) 	See Section C, page 9.
3.	Details of the Applicant's proposed Regulatory Arrangements	Relevant documentation on how the Applicant proposes to establish and discharge its Regulatory Arrangements, as defined in section 21 of the Act i.e.: <ul style="list-style-type: none"> • Authorisation processes • Practice rules • Code of conduct • Disciplinary arrangements • Qualification regulations • Indemnification arrangements 	" Authorisation processes " – see Section C.4, page 10, Section D.2, page 14, the draft Licensing Framework and the draft Recognised Bodies Certification Framework. " Practice Rules " – see Section D.2, page 14. " Code of conduct " – see Section D.3, page 19 for proposed changes to the Code of Conduct introduced specifically for this application (or which are particularly relevant). " Disciplinary arrangements " – see the draft Enforcement Policy and Discipline and Appeals Committee Rules 2009 – the Investigating Committee Rules 2004 are due to be replaced by the Adjudication Rules 2011 – a separate application is being made for these rules to be approved " Qualification arrangements " – see Section D.4, page 20

		<ul style="list-style-type: none"> • Compensation arrangements • Licensing rules • Other related rules • A clear explanation of how the Applicant's Regulatory Arrangements actively contribute to the achievement of the Regulatory Objectives and remove risks to their delivery 	<p>and the draft Student Training Code & Framework.</p> <p>"Indemnification arrangements" – see the draft Professional Indemnity Insurance Code.</p> <p>"Compensation arrangements" – see the draft Compensation Fund Code and Operating Framework.</p> <p>"Licensing rules" – see Section C.4, page 10, Section D.2, page 14, the draft Licensing Framework and the draft Recognised Bodies Certification Framework.</p> <p>"Other related rules" – see Section D.6, page 27, and the Rules Application generally.</p> <p>"A clear explanation" – see this application and the Rules Application.</p>
4.	Such explanatory material (including material about the Applicant's constitution and activities) as the Applicant considers is likely to be needed for the purposes of Part 2 of schedule 4	<p>Memorandum and articles of association or equivalent constitutional documentation</p> <ul style="list-style-type: none"> • Current details of legal entity structure, ownership, list of directors • Statement of the non-regulatory activities the Applicant intends to carry out and how these will be managed in accordance with the requirements of the Act and such rules as the Board shall make from time to time • A business plan for the activity to be regulated, demonstrating the proposed governance and funding arrangements and sensitivity analysis showing how it relates to different 	<p>For constitutional documents, a list of employees and Council members, see Section B.3, page 8.</p> <p>The Council does not carry on any non-regulatory activities.</p> <p>The Council's plans for delivery of the proposed regulatory arrangements are described at Section D.7, page 28.</p>

		forecasts	
5.	Details of the authority which the Applicant proposes to give persons to carry on activities which are Reserved Legal Activities	See Item 3	See Section C, page 9.
6.	Details of the nature of the persons to whom each aspect of the authority is to be given	See Item 3	See Section C, page 9 and Section D.2, page 14.
7.	Regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised	<p>Details might include:</p> <ul style="list-style-type: none"> • Split between general principles (i.e. duty to the Supreme Court) and specific activity (i.e. staff training, client money handling etc) • Split between mandatory elements and guidance • Explanation of any variation with the practices adopted by others currently regulating the activity 	<p>For education and training, see Section D.4, page 20 and the draft Student Training Code & Framework.</p> <p>For Code of Conduct changes specific to this application, see Section D.3, page 19.</p> <p>The comparison between the Council's proposed regulatory arrangements and those of other approved regulator regulating the new reserved legal activities is discussed at Section 0, page 33.</p>
8.	Rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority	Details of the activities within each relevant Reserved Legal Activity (e.g. conducting CPD eligible training, handling client money, supervising trainees, supervising lawyers or other disciplines)	See generally Section D, page 13.
9.	In deciding what advice to give, the OFT must, in particular, have regard to whether an order ... would (or would be likely to) prevent, restrict or distort competition within the market for	The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice	Noted.

	reserved legal services to any significant extent		
10.	In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order	<p>Explanation of how the Regulatory Arrangements will:</p> <ul style="list-style-type: none"> • Protect and promote the interests of consumers generally • Meet the specific requirements in terms of indemnification and complaint handling 	<p>For consumer protection and the promotion of consumer interest, see Section D.8(n), page 34.</p> <p>For the Council's client financial protection and complaints arrangements see (briefly) Section D.6(a), page 27, and Section D.6(c), page 28, and the Rules Application for more detail.</p>
11.	A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the Application	Information on any matters specified by a selected consultee	
12.	The Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order	Information on any matters specified by the LCJ	
13.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if an order were to be made designating the body in relation to that activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect	See Item 4	
14.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if such	Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how	See Section B.3(e), page 9, for a description of the Council's current financial position and audited accounts. See Section D.7, page 28 for the Council's proposals for delivery of the

	<p>an order were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time</p>	<p>this has been assessed</p> <p>Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit</p> <p>Business Plan for coming year and 3 year forward look</p> <p>Risk management strategy</p> <p>Staff development and retention strategies</p>	<p>proposed regulatory arrangements.</p>
15.	<p>The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, the Applicant's proposed Regulatory Arrangements make appropriate provision</p>	<p>Assessment of how the proposed Regulatory Arrangements are consistent with Better Regulation Principles</p>	<p>The Council has consulted on these proposals twice before (see Section A.3(c), page 3).</p>
16.	<p>Compliance with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict)</p>	<p>A statement identifying regulators with whom conflict might arise and the work undertaken to date and proposed to avoid this, in particular in relation to the interaction between an individual regulated by one Approved Regulator and an employing entity regulated by another Approved Regulator</p>	<p>See Section D.6(b), page 27 and Section D.6(b)(iii), page 28.</p>
17.	<p>Compliance with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints)</p>	<p>Current or draft policies showing compliance with any rules made under sections 112 and 145 of the Act and any OLC guidance</p>	<p>See Section D.6(c), page 28. The draft Complaints Code & Guidance forms part of the Rules Application.</p>
18.	<p>The rules made for the purposes of sub-paragraph 2(a) must in</p>	<p>Statement on how the arrangements comply with the</p>	<p>The Council has no representative function – see Section</p>

	particular require the Board to be satisfied that the exercise of the Applicant's regulatory functions would not be prejudiced by any of its representative functions	principles of the Act and such rules as the Board may make from time to time	B.3(f), page 9.
19.	The rules made for the purposes of sub-paragraph 2(a) must in particular require the Board to be satisfied that decisions relating to the exercise of the Applicant's regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of the Applicant's representative functions	See Item 18	The Council has no representative function – see Section B.3(f), page 9.

Evidence in relation to Regulatory Arrangements

	Principles (each principle may relate to more than one risk)	Risks	Evidence to underpin approval of designation as an Approved Regulator	
1.	Clients money must be protected	Clients money is misused by regulated person or unprotected from entity failure	Approved Regulators must ensure that Authorised Persons must keep clients money separate from own. Approved Regulators must be able to compensate clients as per section 21(2). May involve client account rules; insurance requirements; compensation fund or insurance or alternatives	See the draft Accounts Code & Guidance (part of the Rules Application) for handling client funds. See the draft Compensation Fund Code & Framework, and the draft Professional Indemnity Code and Guidance, for client financial protection.

2.	Authorised Persons must act in clients' interests subject to duty to court	Authorised Persons do not or are unable to act in the clients interest	<p>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</p> <p>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</p>	<p>See the draft Compensation Fund Code & Framework, and the draft Professional Indemnity Code and Guidance, for client financial protection.</p> <p>See those elements of the draft Code of Conduct specific to the current application (at Section D.3, page 19).</p>
3.	Reserved Legal Services should only be delivered by regulated persons of appropriate skill and competence	Reserved Legal Services are not of the appropriate quality	<p>Approved Regulators must ensure that definitions of appropriate skill and competence are proportionate in order to ensure both value and professionalism</p> <p>Easily accessible redress should be in place</p>	See the draft Student Training Code & Framework (part of the Rules Application) and Section D, page 13.
4.	Compliance with professional principles should be enshrined in regulation	Reserved Legal Services are not delivered in accordance with professional principles	Approved Regulators must have a code of conduct that defines the professional principles that are compulsory for regulated community	See the draft Code of Conduct.
5.	Ditto above	Authorised Persons and entities do not comply with regulation	Approved Regulator must have a disciplinary remit and processes that allow for setting standards and managing compliance of Authorised	See the draft Enforcement Policy (part of the Rules Application).

			Persons and entities, efficient investigatory systems and disciplinary powers in the event of breaches of the regulatory framework	
6.	Responsibilities for front line complaints handling and interactions with the OLC should be clear	Consumers do not receive timely complaint investigation or redress when justified	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	An updated Complaints Guidance note and suggested procedure was approved by the LSB in August 2010. This will be incorporated in slightly different format in the revised regulatory arrangements which are due to be submitted to the LSB for approval
7.	Regulatory Arrangements should advance the objective of supporting competition	Regulatory requirements act as a barrier to competition by restricting legitimate entry	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	We believe that the proposals made in this application maximise the opportunities for licensed conveyancers and CLC bodies to extend the scope of services which they deliver to the benefit of consumers whilst at the same time maintaining appropriate safeguards to ensure that the interests of consumers are safeguarded
8.	Representative and regulatory functions should be discharged and decisions made, so far as reasonably practicable, independently of each other	Decisions lack credibility and independence because of actual or perceived influence from the representative arm of an Approved Regulator	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	The Council has no representative function – see Section B.3(f), page 9.
9.	Regulation should clearly support the rules of law	Commercial considerations undermine duty to the court	Approved Regulators' rules and processes should unequivocally give priority to this duty	See its draft CLC Regulatory Policy framework (part of the Rules Application).
10.	The legal professions make up should reflect the population it serves	Public confidence is lost if the profession appears to be a "closed shop"	Approved Regulators should be able to demonstrate processes which address diversity concerns	The CLC has minimal education requirements for those wishing to train to become licensed conveyancers although students are required to attain standards of education and training which ensure that these legal services they provide when they are licensed are appropriate for the

				<p>protection of consumers. The graduated approach to entitlements enables the CLC to satisfy itself of the competence of individual practitioners. The same approach is applied to the bodies it regulates.</p> <p>This is underpinned by 1 of the 6 Overriding Principles equality of access and service which extends to staff, trainees, and job applicants in addition to clients.</p>
11.	Consumers should be actively involved in decision making throughout their dealings with the profession	Consumers poor understanding restricts their ability to access justice	Approved Regulators can demonstrate how their processes address public legal education	we have drafted a client charter (included in our Licensing Authority application) identifying the standards potential and actual clients have the right to expect and their options for redress where these expectations are not met. This will be published and freely available when our regulatory arrangements have been approved

K. The Council: governance details and organisational charts

Council governance

The Council has wide and direct responsibility for determining our strategic direction, finance and governance. Members of the Council sit on two committees: the Audit and Selection and Remunerations Committees. As an interim measure from 1 May 2010 until 30 April 2011 we have two committees dealing with regulatory matters: the Licence and Practice Committee and the Investigating Committee. No member of the Council sits on either of these committees. The current members of both committees were members of the Council until 30 April 2010.

The Licence and Practice Committee reviews determinations made by CLC officers, principally the issue or refusal of licences (under s.15 of the 1985 Act), the issue or refusal of a certificate of recognition (s.32 of the 1985 Act and the Regulation of Practices (Recognised Bodies) Regulations 2009), applications in relation to the licensed conveyancer students (particularly registration) and the approval or refusal of a grant from the CLC's Compensation Fund (s.21(2) of the 1985 Act and the Compensation Fund Rules 2009).

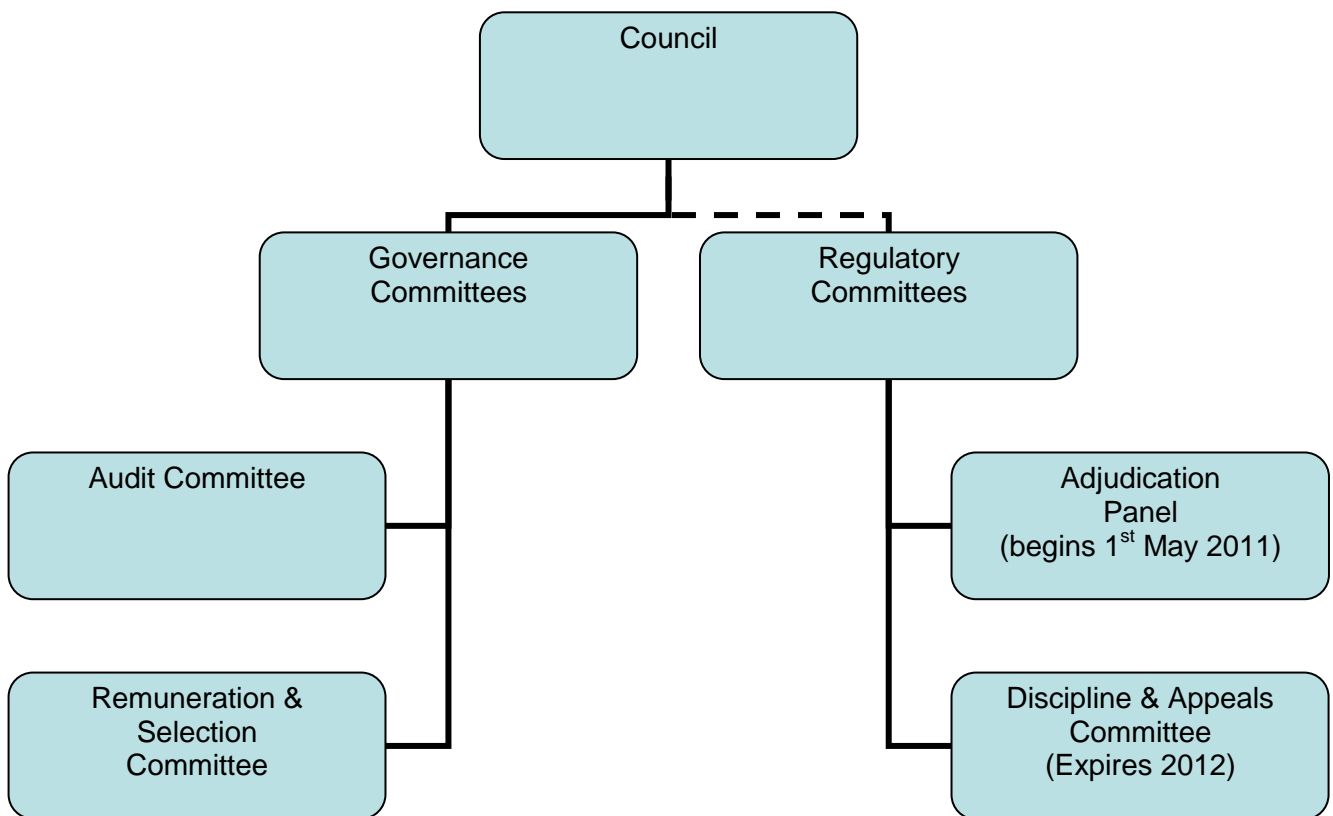
The Investigating Committee (established under s.24 of the 1985 Act) carries out preliminary investigations of complaints in conduct against licensed conveyancers and recognised bodies with a view to determining whether there is a case which ought to be referred to the Discipline and Appeals Committee (**DAC**) for hearing and determination. It also has power to make determinations of conduct complaints under s.24A of the 1985 Act. However, until 6 October 2010 its main function was to determine service complaints made against licensed conveyancers and recognised bodies under paragraph 14 and 15 schedule 8 of the 1990 Act. On 6 October 2010 the Legal Ombudsman started to accept service complaints. The CLC's jurisdiction to determine service complaints ceases on 31 March 2011.

The CLC intends that with effect from 1 May 2011 the functions of the Licence and Practice Committee and the Investigating Committee are transferred to a newly established panel, called **the Adjudication Panel**. The Adjudication Panel will comprise up to nine members though the intention is that it will usually sit as a panel of three. It will meet as frequently as required. It will have jurisdiction to determine any of the matters previously determined by the Licence and Practice Committee or the Investigating Committee, but its main function will be to review determinations made by CLC officers. It will be possible for the panel at one meeting to determine matters which previously would have been determined by different committees. This will substantially accelerate the time for matters to be reviewed. (It is also anticipated that the Adjudication Panel will also review determinations by the CLC acting as a Licensing Authority – if its application is successful.

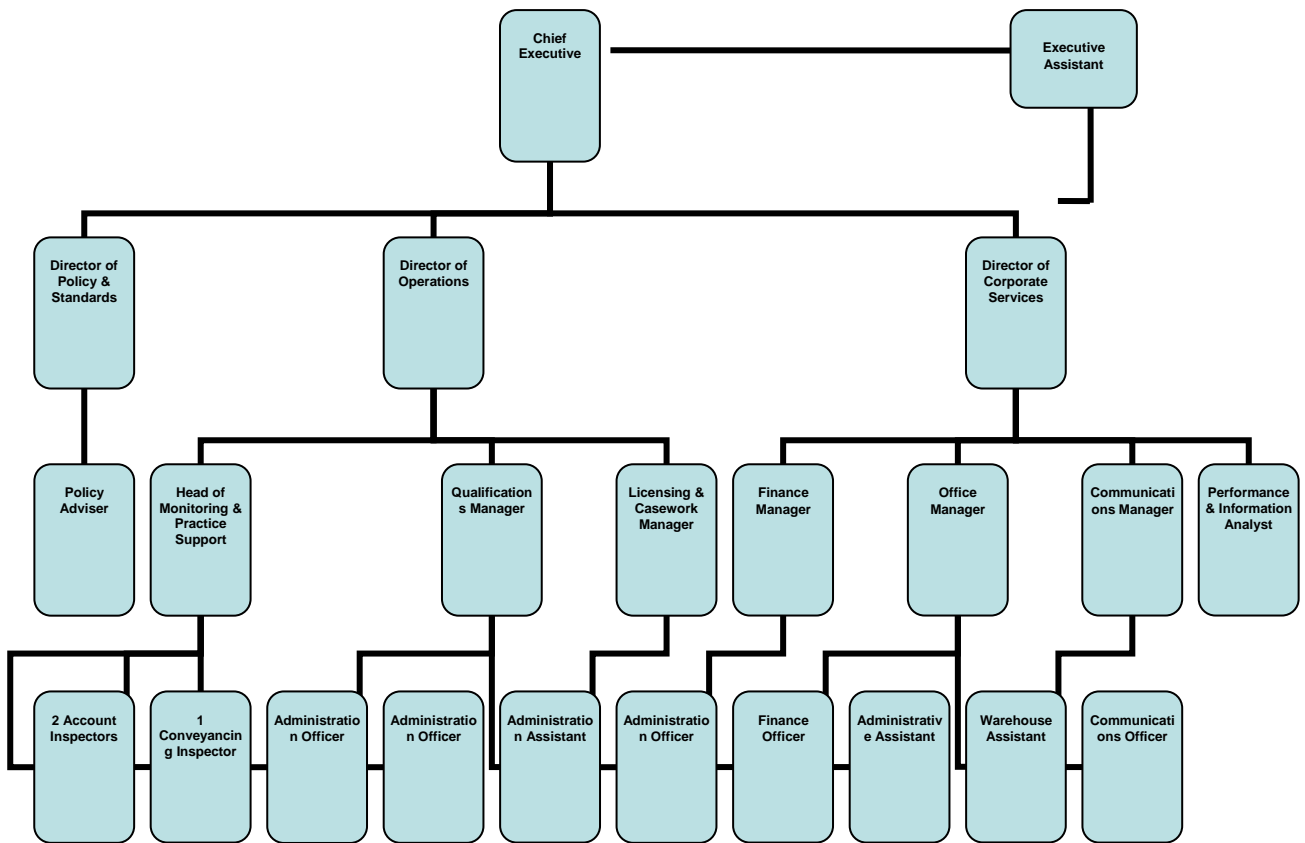
The DAC (comprising entirely non-Council members) will continue to have jurisdiction to hear appeals in relation to licences (under s.29 of the 1985 Act) and certificates of recognition (under paragraph 8 schedule 6 of the 1985 Act). It will also continue to determine disciplinary matters referred to it in relation to licensed conveyancers (s.25 and 26 of the 1985 Act) and recognised bodies (schedule 6 of the 1985 Act).

Under s.80 of the 2007 Act the DAC is named as the appellate body to hear appeals against determinations made by the CLC as a Licensing Authority. Subject to resolution of some outstanding issues, the LSB has proposed with the support of the CLC and the SRA that the appellate functions at s.80 of the 2007 Act be transferred to the First Tier Tribunal (with the possibility of a further appeal on a point of law to the Upper Chamber).

Committee arrangements



Operations



L. A summary of NARIC's work for the Council in developing a higher education credit framework

Scope and Purpose

The Council for Licensed Conveyancers (CLC) has worked in partnership with the UK National Recognition and Information Centre (UK NARIC) to develop an integrated qualification and credit framework for the CLC professional training programmes in probate and conveyancing. UK NARIC is the national agency responsible for providing expert advice and guidance on the recognition of qualifications. The agency also provides bespoke consultancy services assisting national and international organisations in developing qualification standards and frameworks. For more information about UK NARIC, please follow the link to the company website www.uknaric.org.uk.

The CLC framework has been designed to provide an overarching structure for the professional training programmes, demonstrating how the CLC modules fit together. This will enable stakeholders to easily identify the different levels of achievement gained by individuals taking CLC modules. It is also envisaged that the framework will allow stakeholders to accurately measure the value and transferability of study completed towards the CLC training programme and licence in terms of credit accumulation.

The framework comprises the following elements;

- Foundation level programme modules in conveyancing and probate
- Final level programme modules in conveyancing and probate
- Licence in conveyancing including the practical training element
- Licence in probate including the practical training element

The five level framework has been developed based on a secure methodology which draws upon best practices in qualification framework design and implementation and has been validated by expert opinion.

The framework has been designed to deliver the following benefits;

- Progressive qualification structure, that builds on existing knowledge at each level
- Credit-accumulation system allowing progress at different speeds
- Recognition of prior learning
- Formal recognition on completion of a qualification
- Facilitates lifelong learning
- Supports competence and compliance activity
- Aligns with the Qualifications and Credit Framework (QCF)

Methodological Approach

A robust process has been used to develop the CLC qualification framework which drew upon UK NARIC's expertise in qualification framework design methodologies. The process firstly involved a comparative analysis of qualification and credit frameworks operating in the UK. This analysis sought to identify the key features of framework design according to best practices. The frameworks examined as part of this process included the Qualifications and Credit Framework (QCF) and the Framework of Higher Education Qualifications (FHEQ). Level descriptors and credit accumulation systems were considered in further detail.

Four key framework features were identified as follows;

- Level descriptors
- Credit allocation and accumulation
- Credit transfer guidelines

- Framework diagram

The first development stage involved applying the models of best practice to create a set of descriptors that were designed to be both relevant and specific to the CLC training provision in conveyancing and probate and that could be closely aligned with the Qualification and Credit Framework (QCF). For the development of the level descriptors, four main areas were considered; the structure and format, the number of levels, the content and terminology and pathways and progression.

It was agreed to design a five level framework, based upon the results of UK NARIC benchmarking exercise which aligned the programmes and constituent modules to comparable QCF levels. The descriptors were divided into four components, the first comprised a summary of the generic legal skills and competencies acquired at each stage of the programmes. The second, third and fourth components were developed to provide guidance on the subject specific competencies in conveyancing and probate, with reference to the following;

- Knowledge and understanding
- Application
- Independence and autonomy

The subsequent stage encompassed the development of a credit framework, which incorporated the assignment of credit to each CLC module and training stage as well as a series of guidelines for the transfer of credit. Credit allocations for each module were calculated based on the total number of study hours taken to complete the module in accordance with standard practice, ten hours learning represents the award of one credit. This calculation was based upon statistics compiled by CLC on the number of guided learning hours and recommended independent learning hours supplied by CLC.

The guidelines for credit transfer were developed in accordance with principles of best practice identified by the QCF, the Higher Education Credit Framework (HECF) and the South England Consortium for Credit Accumulation and Transfer (SEEC). The guidelines have been formulated to provide a framework for students wishing to apply for recognition of prior learning attained via other accredited qualifications in conveyancing and property law related subjects. Guidelines have also been provided on the transfer of credit gained via the CLC conveyancing and probate programmes and how credit may be used effectively for CLC students intending to enrol upon other HE level courses.

A unified diagrammatic representation of the five level framework was designed to incorporate all the elements listed above with clear progression routes leading from foundation to licence level. The intention was to provide a transparent and accessible visual representation of the framework, demonstrating how the different training modules relate in terms of level. The diagram has been designed to demonstrate qualification pathways, illustrating how skills and knowledge are accumulated and built upon at each level. It summarises how both the probate and conveyancing programmes align against each other as well as how the programme modules fit together to form distinct qualifications. By providing a clearer picture of CLC qualification structure and the module alignment, the framework can facilitate the recognition of the licence, the training programmes and the constituent qualification modules.

Quality Assurance

The framework level descriptors and credit allocations have been validated by the framework development working group which was specially set up for this project to engage the opinion of key stakeholders in the conveyancing profession as well as education professionals. By using the working group as a means of quality assuring the framework, it has been possible to ensure the relevance and appropriateness of the levels, level descriptors and credit allocation and transfer system.

Working group meetings were conducted which provided an opportunity for CLC representatives to consult the UK NARIC project team and provide feedback on the key outcomes produced at the different stages of

this project, including to the methodological approach, level descriptors, credit allocations, credit transfer guidelines and the framework diagram. The minutes from these meetings were recorded and used to refine the methodological process for designing and quality assuring the framework.

The CLC level descriptors were mapped by UK NARIC against the Subject Benchmark Statement in law and the Common Professional Examination (CPE) learning outcomes in order to test the relevance and appropriateness of the specified CLC skills and competencies against established legal qualifications. The exercise revealed that there is a close correlation between the skills specified in the CLC descriptors and the benchmark qualification descriptors examined.

The descriptors were also compared against the UK NARIC Band Framework descriptors developed to reference international qualifications. Mapping against the Band descriptors demonstrated how the CLC qualifications relate in the broader international context. The mapping results demonstrated that the skills and competencies described in the CLC framework closely align with recognised international qualification standards.

Summary and Outcomes

The level descriptors have been formulated to accurately reflect the key skills and competencies which characterise the CLC programmes, demonstrating the graduation in skill level from one training stage to the next. The descriptors not only provide a structure which will enable the development and revision of the CLC conveyancing and probate programmes but also provide a reference point to help maintain standards. The descriptors have also been designed to provide a clear means of communicating the skills and competencies acquired throughout different modules and stages included within the CLC programmes, which may in turn assist with the external articulation and accreditation of awards. It is important to note that the framework descriptors have not been developed as qualification standards. Furthermore, they do not differentiate between varying levels of performance achieved in the module examinations. However, they can be considered as valuable guides exemplifying the main skills and competencies expected from typical students qualifying at different levels on the framework.

Allocating credits to modules has quantified the learning that takes place both at college and independently outside of college. The credit framework is designed to facilitate the recognition of the CLC professional training programme by enabling stakeholders to better understand the value of the award in terms of the quantity of learning that has taken place as well as the overall level of qualifications and constitute modules.

It is proposed that the accumulation of credit will enable students to transfer far more easily from the CLC programme to another programme of study. The CLC credit framework and guidelines have also been developed to enable students who have completed relevant learning elsewhere to transfer their skills and competencies to gain advanced standing onto the programme. The guidelines for the transfer of credit can be integrated and applied by CLC in the procedures for the accreditation of prior learning.

It is important to note that the framework as presented in its current form may be viewed as a working document, its flexibility should allow for additions and changes as applicable. CLC recognised the need for continuous reviews and further development of the qualification framework following consultations with other stakeholders, including feedback from teachers and students. Further review would ensure that the relevance and accuracy of the framework is maintained. For the purposes of carrying out reviews, CLC will seek feedback from stakeholders on the relevance and accuracy of the descriptors as well as the presentation of the framework.