



# APPLICATION TO BECOME A LICENSING AUTHORITY

February 2011



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Council for  
**Licensed  
Conveyancers**

**Licensing Authority**

**Application February 2011**

**1. Background information**

- 1.1 The Council for Licensed Conveyancers (CLC) was established by the Administration of Justice Act 1985 to regulate licensed conveyancers in the provision of legal services (currently conveyancing and probate).
- 1.2 Our role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
- 1.3 As an Approved Regulator under the Legal Services Act 2007 we must operate in a way which is compatible with the regulatory objectives. These objectives focus upon the principled behaviour of legal services providers and ensuring provision is in the interests of both the public and the consumer. We consider the objectives to be best supported through principles-based regulation which is explicitly focused upon positive Outcomes for the public and for clients and have revised our regulatory arrangements accordingly.
- 1.4 Our regulated community currently comprises an estimated 10-15% of the residential conveyancing market share and consists of:
- 1103 licensed conveyancers
  - 301 Managers
  - 215 practices.
- 1.5 As a quarter of these practices are owned or managed by Non-Authorised Persons we already have experience of regulating a form of Alternative Business Structure. We regulate specialists as we license by activity – residential conveyancing; commercial conveyancing; and probate – and have a proven track record in doing so.
- 1.6 Both the adoption of an outcomes-focused regulatory approach and designation as a Licensing Authority that is able, and competent, to license a range of business types

should enable us to deliver our policy aim for a legal services market in which: 'Consumers have better choice and excellent access to high quality and affordable legal services.' It is with such a policy in mind that we are applying to the Legal Services Board to be designated as a Licensing Authority.

- 1.7 The CLC was originally conceived and created as a product of innovation. We are very proud of having achieved this. The introduction of Alternative Business Structures, and the adoption of an outcomes-focused regulatory approach will allow for innovation in the delivery of legal services. Our expertise lies in consumer-focused retail legal services and in licensing these new entities we seek to maintain both our existing reputation and our high standards of innovative and proportionate regulation across an expanded licensee group with the aim of delivering our vision to be 'the innovative legal regulator'.

#### **Application Contact**

Contact: Simon Blandy, Director of Policy and Standards

Email: [simonb@clc-uk.org](mailto:simonb@clc-uk.org)

Telephone no: 01245 349599

## 2. Policy Statement

*Legal Services Act 2007, S82: Each licensing authority must prepare and issue a statement of policy as to how, in exercising its functions under Part 5, it will comply with the requirements of section 28 – in discharging its regulatory functions the approved regulator must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives:*

- *Protecting and promoting the public interest;*
- *Supporting the constitutional principle of the rule of law;*
- *Improving access to justice;*
- *Protecting and promoting the interests of consumers;*
- *Promoting competition in the provision of services;*
- *Encouraging an independent, strong, diverse, and effective legal profession;*
- *Increasing public understanding of the citizen's legal rights and duties;*
- *Promoting and maintaining adherence to the professional principles.*

*and must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principle appearing to it to represent the best regulatory practice.*

### The Regulatory Objectives

2.1 The CLC aims to nurture an environment which enhances client protection, promotes effective competition and provides informed choice for consumers. Our regulatory arrangements:

- are devised to ensure those who deliver legal services act in a professional, transparent and principled manner;
- are focused on the outcomes which must be delivered for clients of legal service providers;
- are based on high-level principles which allow those we regulate some flexibility in how they deliver their services; and
- respond to risk without restricting innovation.

- 2.2 The Licensed Body Framework is framed to promote competition in the provision of legal services, to offer choice (to both legal service providers and potential clients) and to provide consumers with protection by raising awareness of the positive Outcomes those we regulate should deliver to them, and providing the opportunity to make a complaint and receive compensation should the service they receive not live up to those Outcomes. It is intended to ensure that clients receive a service tailored to their needs and legal service providers develop new and better ways of delivering services to their customer. It encourages the profession to be independent. This increased flexibility – combined with the increased ownership and management options afforded by ABS – intended to enable innovation in the interests of both consumers and the legal profession.
- 2.3 Protecting the interests of the public is as important as offering the consumer choice; it is essential that legal services providers act in a principled manner, and support the constitutional principle of the rule of the law, by complying with the professional principles identified in the Legal Services Act 2007 (LSA). The Overriding Principles in the CLC’s Code of Conduct (together with its subsidiary Codes) explicitly promote the LSA’s professional principles. The Code states that it is the responsibility of everyone within the Licensed Body to ensure compliance with the Overriding Principles and so deliver the specified Outcomes.
- 2.4 Our licensing approach will be explicitly focused upon Outcomes which all whom we regulate must deliver to their Clients. This renders Licensed Bodies accountable to consumers. Delivery of these Outcomes is based upon Licensed Bodies, their employees and their owners, demonstrating professional behaviour through compliance with higher level ‘principles’; this flexibility is provided to help promote competition and a strong, diverse legal profession. More prescriptive ‘specific requirements’ are present only where such rules are required in the public interest and to protect the consumer. Such specific regulatory requirements will be applied in a principled-based manner so that any enforcement action is proportionate to the breach.
- 2.5 Our outcomes-focused regulatory arrangements will be supplemented by guidance so the public can have confidence that legal service providers are afforded appropriate support where it is needed. In order that competition of legal services is promoted, the guidance also seeks to mitigate the disproportionate cost of regulation that small businesses are often required to bear.
- 2.6 The public must have confidence that Licensed Bodies are well regulated. Therefore we will only license entities/persons which/who are compatible with the LSA’s regulatory objectives. We will base this compatibility assessment upon the applicant’s willingness and capacity to deliver positive Client Outcomes. The assessment will be informed by the data the applicant provides – including their Compatibility Statement - and our verification and assessment of this information. If an applicant is considered likely to put at risk one or more of the regulatory objectives the body will not be licensed, unless we

are satisfied that the imposition of one or more licence conditions would bring the risk within acceptable parameters. The provision of adverse information through the Fit and Proper Test does not mean the automatic refusal of a licence. The risks identified by the information provided in the context of the individual, their role and the body's proposed arrangements will all be taken into consideration.

- 2.7 We will require licensable bodies to provide us with an Access to Justice Statement. This must explain how the entity will respond to the needs of consumers and improve the public's access to justice opportunities. We may decline an application on the basis of access to justice, though this is likely to be only in the most exceptional circumstances. We will also require applicants to provide us with their diversity profile.
- 2.8 We shall improve access to justice opportunities for the public as well as opportunities for its providers. We will minimise entry barriers, enabling a range of ABS structures and arrangements in the interests of a diverse and strong legal profession. For instance, in a small firm the HoLP and HoFA could be the same person and the HoFA need not have an accountancy qualification (though accountancy experience would be required). This discretion is based upon the size and profile of the licensable body and will only be afforded where consumer protection is not threatened.
- 2.9 Licensing requirements will be sufficient to afford consumers an appropriate level of protection, but not so burdensome that they create a disproportionate barrier to an otherwise interested entrant. We will place no unnecessary prescriptive restrictions on structural arrangements - it is for the body to determine what is appropriate. The entry criteria of Licensed Bodies aim to promote a diverse profession. It is very much in the public interest that the legal profession is representative of those to whom it may offer its services.
- 2.10 A less prescriptive approach by the CLC as regulator means that each regulated entity must determine their own arrangements and systems, enabling the regulated community to be stronger, more diverse and potentially more effective and competitive. We will quality assure these arrangements to ensure they are appropriate to the entity and will not be to the detriment of either the public or the profession. Our licensing approach will take account of an entity's own quality assurance or accreditation scheme participation; depending upon the nature and profile of the scheme this may result in lower risk profile as the entity is likely to have demonstrated its focus on the needs of consumers and its commitment to professional standards.
- 2.11 For the profession to be independent it must be free of improper influence and conflicts of interest. Licensed Bodies must have arrangements in place to prevent, identify and mitigate both. Should we not be satisfied with the entity's proposed arrangements we will require the applicant to remedy them to our satisfaction. Should the applicant not do so they will not be granted a licence. Where we have concerns of improper influence



concerning a Licensed Body we will take action so the constitutional principle of the rule of law is supported.

- 2.12 In order that the public understands the legal rights and duties of the citizen we will require Licensed Bodies to provide clarity and demonstrate transparency in all matters. This should help protect and promote the interests of both the public and consumers. This increased understanding has the potential to reduce both conflict and complaint.
- 2.13 In a climate of competition, timely, comprehensive, impartial and accessible complaints-handling processes become increasingly important. The potential for consumer redress is an essential element in protecting the interests of consumers. It is equally vital that those consumers are not only made aware of this entitlement but also that the procedures for accessing redress are available to all. We will place much emphasis upon the effectiveness and responsiveness of an applicant's complaints process. In this way the public will have confidence that any complaints will be considered properly, promptly and fairly if they do not receive the standard of service they reasonably expect. If an entity is not learning from its complaints, it is not continuously improving the service the consumer receives (nor increasing its competitive standing); data received from the Legal Ombudsman will inform an entity's risk profile.
- 2.14 Applying equal regulatory activities in respect of all businesses overseen by a regulator demonstrates little value for money and fails to satisfy the Better Regulation Principles. We will collect information to help monitor how effectively our regulatory arrangements are working and to ensure the Overriding Principles are being applied across the regulated community. We will analyse the information provided, assessing the risk it presents to the regulatory objectives measured against the threat it poses to the delivery of the Outcomes. Members of the regulated community are allocated an overall regulatory risk profile according to the information held. This enables us to focus our attention and resources on those most likely to harm the interests of the public and legal services consumers. Those identified as presenting a higher risk to the regulatory objectives will have a more intensive regulatory relationship with the CLC than lower-risk entities.
- 2.15 Where a potential risk is identified we will investigate. This could include an inspection, which may be carried out remotely or through a site visit. Wherever possible, we provide support and advice to address the risks identified; quick informal resolution of this nature is in the interests of the consumer.
- 2.16 Whenever possible or appropriate we will work with regulated entities to address any risks, but where serious issues are apparent or suspected, we will take enforcement action to safeguard the interests of the public and clients (though we will be open to the individual or entity providing fresh evidence not previously available and consider carefully any proposal to remedy the failing which has been identified).

- 2.17 In order that the interests of the key stakeholders, namely the public, consumers and the profession, are protected, our approach to regulation and enforcement will support the Better Regulation Principles. Any enforcement determination will be proportionate to the impact any specific regulatory breach has on these stakeholders. The initial determination will be made by the CLC Authorised Officer) or the Adjudication Panel. At the request of the respondent the determination may then be reviewed by the Review Panel (and then appealed to the First Tier Tribunal).
- 2.18 It is important that not only is enforcement action taken to address unprincipled behaviour, but that stakeholders are aware we have taken such action. It is equally important that the reputation of those providing legal services is not adversely impacted by a minority acting in a manner which is inconsistent with the professional principles. To raise awareness and to deter non-compliance we will publish enforcement determinations.
- 2.19 We will take a comprehensive, evidence-based approach to policy formulation and implementation, enforcement, evaluation and review; monitoring, publishing and reviewing our regulatory decisions, actions and their outcomes.

#### **Better Regulation Principles**

- 2.20 Accountable: we will justify our decisions and subject them to public scrutiny. We will ensure that our regulatory activities demonstrate accountability to all those with a vested interest by monitoring and publishing our regulatory performance and seeking to address any issues or inconsistencies identified. Enforcement decisions are made on the basis that they can be challenged on review and subsequently on appeal.
- 2.21 We will operate and publish an accessible, impartial procedure for investigating, determining and enforcing disciplinary complaints reinforced by a robust review and appeal process.
- 2.22 Consistent: we will operate joined-up regulatory arrangements which are implemented fairly. We have signed up to the Alternative Business Structures Multi-Disciplinary Practice's Memorandum of Understanding to ensure our regulatory approach is consistent with those of other regulators and Licensing Authorities.
- 2.23 All formal enforcement decisions will be determined applying a sliding scale standard of proof ranging from the 'balance of probabilities' where the allegation (if proved) is less serious and is likely to lead to little (if no) loss to the consumer and minimal adverse impact on the rest of the profession, to 'beyond reasonable doubt' where the allegation is serious, particularly where dishonesty is alleged (the exception being intervention). We will review our compliance monitoring approach and the responses generated to ensure they are consistently applied.

- 2.24 *Proportionate:* An issue which gives rise to, or is likely to give rise to, a risk to the delivery of the Outcomes will be discussed with the individual entity. Their capacity and/or willingness to address the issue will help inform our response. Wherever possible we will consider an educative, rather than a punitive response.
- 2.25 An informal approach will be adopted wherever possible but those who deliberately, repeatedly or seriously, fail to uphold the principles will be subject to formal disciplinary process. We will take disciplinary action when the severity of the risk posed requires it, particularly where there is a serious risk to the public interest. Conversely, those who actively uphold the overriding principles will be rewarded by less direct and intrusive contact.
- 2.26 We aim to use the least intrusive methods to achieve the regulatory objectives. Our response will be proportionate to the seriousness, circumstance and impact - actual or potential – of the risk to legal services consumers, the public and legal profession. The frequency and content of our data submission requirements will be proportionate and informed by the risk profile of the entity. Where regulatory breaches are made and a penalty is considered an appropriate sanction, the fine will be proportionate; we will not seek to cause unnecessary expense.
- 2.27 *Targeted:* Our regulatory arrangements will be clear and not unnecessarily cumbersome. Our regulatory activities will be focused on the problem (and minimising unintended side effects). We will only provide specific requirements where they are required to mitigate risk. We will systematically review our regulatory arrangements to test whether they still effective; where they are not, they will be modified or removed.
- 2.28 Our risk-based approach identifies those bodies or activities that pose the greatest risk to the delivery of the regulatory objectives. These risk profiles will inform the manner of our regulatory relationship with the entity.
- 2.29 *Transparent:* our regulatory arrangements will be simple and user-friendly with the consequences of non-compliance made clear. We will provide advice and guidance to support bodies in their compliance.
- 2.30 We will make every effort to ensure that the regulated community and other stakeholders are kept informed about the aims and the requirements of the regulatory arrangements; and any threats to their effective operation.

### **Statutory Code of Practice for Regulators**

*Hampton Principle: Regulators should recognise that a key element of their activity will*

*be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*

2.31 The principles-basis of our regulatory arrangements seeks to allow and encourage innovation and economic progress. Our regulatory arrangements contain specific requirements only where the risk presented to the delivery of Outcomes is too significant to tolerate.

2.32 We will only adopt a regulatory or disciplinary response where we are satisfied it will be of benefit to clients and the cost and resource allocations are justified.

*Hampton Principle: Regulators and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*

2.33 Our assessment of the risk presented by a Licensed Body, or by the individuals concerned with it (such as its owners) includes an evaluation of the entity's arrangements, the qualifications and experience of its HoLP and HoFA, and its compliance record. This informs our identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm.

2.34 By basing our regulatory approach on an assessment of the risks to the regulatory outcomes, we will target our resources. A risk-based approach to enforcement will provide increased value for money as resources will be targeted where they will be most effective and where the risk(s) to consumers is highest.

*Hampton Principle: Regulators should provide authoritative, accessible advice easily and cheaply*

2.35 Principles-based regulatory arrangements provide Licensed Bodies with an element of flexibility and choice. In this environment it is important that we provide information and guidance to ensure these bodies understand and meet their regulatory responsibilities. This will include case studies and subject-specific toolkits where a thematic issue is identified.

2.36 We will be open to Licensed Bodies seeking advice from us. We will support those who alert us to their own regulatory failings. As long as clients are not at risk and the relevant

entity or individual is addressing the failure(s) in a reasonable way we are less likely to take formal enforcement action.

- 2.37 We will assess the effectiveness of this information and support provision by monitoring awareness and understanding of regulatory responsibilities.

*Hampton Principle: No inspection should take place without a reason.*

- 2.38 The intensity of our monitoring activity in respect of any particular entity will be determined by its risk profile. However, our inspection programme will include random inspections so our risk methodologies and the effectiveness of our regulatory actions can be tested.

- 2.39 When we visit or carry out an inspection, we will provide positive feedback to encourage and reinforce good practices. We will publish good practice case studies on the website and circulate via emailshot.

*Hampton Principle: Businesses should not have to give unnecessary information or give the same information twice.*

- 2.40 The frequency and nature of data requests will principally be dictated by the entity's risk profile. Our Management Information System enables electronic submissions. Our requests for information will be targeted. We shall not ask for information which we are not satisfied is reasonably required to enable us to carry out our regulatory functions.

- 2.41 We shall have arrangements in place to ensure this is provided electronically and securely.

- 2.42 We will obtain information from a range of sources and will only ask Licensed Bodies to provide us with information relevant to our monitoring practices. We will not normally ask for the same information twice unless it is necessary to do so, particularly for verification purposes.

*Hampton Principle: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.*

- 2.43 Bodies which consistently achieve good levels of compliance will be rewarded with less onerous reporting requirements and a less intensive regulatory oversight.

- 2.44 When considering formal enforcement action, we will, where appropriate, discuss the circumstances with those suspected of a breach and take their representations into account when deciding on the best approach.

*Hampton Principle: the enforcement policy aims to change behavior of offender, eliminate any financial gain or benefit from non-compliance, be responsive and proportionate, restore harm and deter future compliance.*

- 2.45 In accordance with the Macrory principles and characteristics, we will:

- publish our Enforcement Policy;
- measure both outputs and outcomes (and capture the principal risks these indicate);
- follow-up enforcement actions where appropriate;
- be transparent in the way we enforce and in the way in which we apply and determine penalties – setting out the criteria we will apply in determining the appropriate penalty (but in order to avoid perverse incentives, not defining any absolutes of enforcement action in response to a specific non-compliance issue);
- review and publish our enforcement actions;

- 2.46 We will provide the Licensed Body, or the person concerned with that entity, with the reasons for the formal enforcement action to be taken against them at the time the action is determined.

- 2.47 We will measure our performance against the following standards:

- Regulatory outcomes
- Costs to regulated entities of regulatory activities; and
- Perceptions of those we regulate (and other interested parties) about the proportionality of regulatory approach and costs.

## **Code of Practice on Guidance on Regulation**

- 2.48 Based on a good understanding of users – a good understanding of the regulated community and the many forms this may take as well as the variety of risks and complexities these present, require comprehensive Guidance – accompanied by specialised provision, such as toolkits, where required – which is widely distributed and publicised so it reaches them. The regulatory responsibilities will be set out in the CLC Handbook and available on the CLC website: [www.clc-uk.org/](http://www.clc-uk.org/)
- 2.49 Designed with input from users and their representative bodies – input will be sought from the regulated community to ensure our regulatory arrangements are designed and communicated effectively.
- 2.50 Organised around the user's way of working – Codes and Guidance will be designed around common business processes, helping Licensed Bodies understand what actions should be taken and when. This must be balanced alongside the innovation and flexibility which Licensed Bodies should be afforded wherever possible. Therefore, high-level principles are provided, accompanied by guidance which provides a range of information to enable the entity to make an informed decision as to how it will comply with the principles. Guidance may take the form of relevant information, example procedures, considerations or good practice.
- 2.51 Easy for the intended users to understand – Codes and Guidance will be relevant, accessible and jargon-free. Where appropriate our information will be presented in graphics, flowcharts and videos posted on the website. We will provide toolkits, good practice case studies and introductory guides where needed.
- 2.52 Designed to provide users with confidence in how to comply – the Guidance accompanying Codes is aimed at helping bodies understand how to comply with their regulatory responsibilities should they need guidance in doing so. It will be concise, accurate and current. The introductory text of Codes & Guidance clearly states who it applies to and in which circumstances it applies.
- 2.53 Issued in good time - all new or revised regulatory arrangements will be issued at least twelve weeks before coming into effect, (except where exceptional circumstances dictate otherwise).
- 2.54 Easy to access - our regulatory arrangements will be easily available to the user. They will be provided in a CLC Handbook and will be accessible via [www.clc-uk.org/](http://www.clc-uk.org/). We will also use the emailshot facility to provide Heads of Legal Practice with revised or new Codes & Guidance. NB. The CLC Handbook can be found at Annex A of this application.
- 2.55 Reviewed and improved - we will operate a programme of systematic review to ensure that our regulatory arrangements remain up-to-date and relevant. We are eager to demonstrate continuous improvement and welcome feedback on our arrangements;

feedback can be provided via the CLC website. Should this feedback indicate that difficulties are being experienced the arrangements will be reviewed and revised. In the case of inaccurate or inconsistent regulatory arrangements the entity can register a complaint through the CLC's Complaints Procedure.



### **3. Competition**

3.1 With the following three of the Legal Services Act 2007's eight regulatory objectives in mind:

- (c) improving access to justice;
- (d) promoting competition of services provided by Authorised Persons; and
- (f) encouraging an independent, strong, diverse and effective legal profession

we are proposing regulatory arrangements which are outcomes-focused and principles-based. We have removed prescriptive rules wherever possible - retaining only those specific requirements where we judge that allowing flexibility of approach would present too great a risk to the entity's consumers – so that regulated bodies can determine how to achieve these positive outcomes for their clients. This flexibility seeks to enable innovation and promote competition of Authorised Persons, to the benefit of both the public and the profession.

3.2 Our licensing requirements are the minimum we consider is required to ensure the interests of the public and consumers are protected, whilst not creating any unnecessary access barriers to applicants. Such barriers would not promote the interests of consumers who should have access to the type of legal services which most meet their needs.

3.3 We do not wish to create competition barriers which cannot be objectively justified and so have not placed specific restrictions on the nature and extent of external ownership. We have carried out a large body of work to identify the risks which different ABS structures may present and have put in place - or in some instances are in the process of putting in place – the appropriate systems and resources to ensure we are competent to regulate these structures. (Please see 7 below for more information on our risk analysis).

3.4 We place no restrictions on the extent to which non-lawyers are allowed to own law firms. We require Licensed Body applicants to declare the ultimate beneficial owners to us – we have not lowered the 10% material interest declaration that the Act suggests – and subject those parties to fit and proper tests. The results of these tests are implemented in a proportionate way - provision of adverse information may not automatically result in the proposed owner being declined. A licence application will only be refused, if to approve the application is likely to compromise the regulatory objectives and this risk could not be mitigated by the imposition of targeted licence conditions.

3.5 We do not set any limits on the ownership of shares, voting rights, or profit-sharing, or prohibit the flotation of licensed bodies on a recognised investment exchange. We consider setting of thresholds in these areas to be a commercial decision for the

applicant entity. Where we are not able to give approval before a proposed purchase of an interest of 10% or more in an entity has been completed, we anticipate making any transfer of the licence conditional on the CLC confirming within a specified period (of no more than 90 days) that it is satisfied that the purchaser has passed the fitness to own test. In the absence of notification within the specified period (or any extension of that period up to a total of 120 days) that it is not satisfied that the purchaser has satisfied the fitness to own test the CLC will be deemed to have approved the purchase. If there is an appeal against any refusal, or against the imposition of conditions, in respect of that purchase the purchaser will continue to be treated as having an interest in the entity pending determination of the appeal.

- 3.6 Though we do not restrict foreign ownership, nor ban certain categories of foreign ownership we may impose special conditions where needed e.g. where an owner may benefit from legal immunity or where our data verification assessment has been limited in scope because of the territories in which the owner is located. Subject to the CLC being satisfied that the owner should be entitled to invest in an entity, it is likely that the conditions imposed will ensure that the CLC can quickly contact the owner, and that no issues about ineffective service of notices will arise.
- 3.7 We will make public information regarding ultimate beneficial owners of Licensed Bodies. Only in exceptional circumstances – where a real risk of physical harm has been demonstrated – will we not do so.
- 3.8 Information on an applicant’s financial resources will necessarily inform our assessment of the entity’s risk profile - though we will not carry out a capital adequacy test we will expect them to satisfy us that their funds were legitimately acquired.
- 3.9 The Legal Services Board’s Guidance suggests that applicants provide a Licensing Authority with a Compatibility Statement which includes declaration of any incompatibility with the Legal Services Act 2007’s regulatory objectives. We consider it unlikely that an applicant would declare any issue with, for instance, the public and consumer interest. We shall therefore require applicants to provide us with a statement of compatibility with our regulatory arrangements, and identification of any risks to these, in particular, delivery of the Code of Conduct Outcomes and compliance with the Licensed Body Code provisions. They must advise us of the steps taken, or to be taken, to mitigate these risks. All CLC regulatory arrangements are based on the regulatory objectives, in particular the protection and promotion of public and consumer interest, increasing public understanding of the legal rights and duties of citizens and adherence to the professional principles. These arrangements include the duty to notify us of improper influence, conflict of interest concerns, and the proposed or actual acquisition of material interest or equivalent.

- 3.10 We are likely to expect Licensed Bodies offering non-reserved legal activities closely related to the reserved legal activities they undertake (such as will writing where they provide probate activities) to provide those activities through the regulated entity. We believe this to be in the interests of consumer protection since consumers “assume that someone is making sure standards are being maintained”<sup>1</sup>. Otherwise, we will expect the Licensed Bodies to explain why they consider such an approach to be in the best interests of consumers and how they plan to address any risks identified.
- 3.11 The governance and management arrangements are for the applicant entity to determine. We provide some high-level guidance of our expectations but consider more prescription on this matter to be disproportionate; arrangements appropriate for the business are for the entity and its Head of Legal Practice to determine.
- 3.12 All structural arrangements are in keeping with the Legal Services Act 2007 and Legal Services Board’s Guidance as we do not consider prescriptive supplementary arrangements necessary. Our assessment of applications has been devised so we are able to determine whether the entity’s proposed arrangements – including the individuals nominated as Head of Legal Practice and Head of Finance and Administration and their management status within the entity - are appropriate to its structure (including its size), its Clients and the nature of the services it provides.
- 3.13 There is no prohibition within our regulatory arrangements against a Licensed Conveyancer working in a Licensed Entity regulated by another Licensing Authority.
- 3.14 We require all applicant entities to provide us with an Access to Justice Statement. Our Licensed Entity Framework provides examples of what may constitute access to justice, although it is for the individual applicant to explain how they will improve it. As suggested in the LSB’s guidance, it is only in exceptional circumstances that an application will be refused because the access to justice requirements have not been satisfied. By ‘exceptional circumstances’ we mean, for example, that a company’s Business Plan identifies that it proposes to buy up all of the conveyancing companies in a large area, with the intention to close them. This would afford consumers in that area with very little, or no, choice as to where they can access these services. As part of our monitoring processes we shall check whether entities are acting in accordance with their access to justice statement.
- 3.15 We will publish a summary of the declared access to justice improvements after six months of operation as a Licensing Authority and every year after. Our annual information requirements of all bodies will include a declaration of how access to justice

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<sup>1</sup> Para 1.2 Legal Services Consumer Panel paper “Quality in Legal Services” published November 2010 [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ConsumerPanel\\_QualityinLegalServicesReport\\_Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_QualityinLegalServicesReport_Final.pdf)

has been improved and consumer needs met. We will draw attention to good practice examples through publication of case studies.

#### **4. Framework Services Directive**

- 4.1 We have carried out a risk assessment to determine the minimum data considered necessary to inform our assessment of the risk an applicant may pose to the regulatory objectives. Our application process has been designed to be strictly relevant to our determination process so as to minimise the cost (in terms of time and money) to the applicant.
- 4.2 Information on both our application process and regulatory arrangements will be easily accessible via the CLC website - and provided in a readily understandable format. The new website was launched in late January and will be able to accept online applications.
- 4.3 The Licensed Body Framework provides a step-by-step guide explaining our application, assessment, determination and review/appeal process. An example application form will be provided for guidance and employees at the CLC will be available to answer queries.
- 4.4 We will send acknowledgement of an application within 3 working days of its receipt. The acknowledgement will specify the determination timeframe and the routes of review and appeal available to the applicant if they do not accept our determination.
- 4.5 Our fees will be broadly reflective of a range of key factors including cost, size and risk profile of Licensed Bodies and are published in the Licensed Body Framework which prospective applicants receive. Our risk assessment identified that some applicant body types may require more intensive data verification and assessment work. Our fees for those bodies reflect this. Where the definitive cost cannot be pre-determined for overly-complex applications or applications from foreign owners (which are likely to take more than the expected average of 2 days determination); we have provided our method for calculating the resultant fee.
- 4.6 We aim to notify all applicants of the licence determination within the 90 days (which begins on receipt of a complete application). Though we seek to determine all applications as quickly as possible, it will necessarily take us longer to determine applications where we identify specific risks to the regulatory objectives which have not been appropriately addressed in the application. In these cases we will inform the applicant, within the published initial determination timeframe, of the reasons for the extension and its intended period. Our determination period will not in any case take longer than 180 days from receipt of a complete application.
- 4.7 If the CLC does not notify an applicant within 90 days from receipt of their application whether the determination of the application has been extended, or the application has been approved, approved subject to conditions or refused, the application will be treated as having been refused. The applicant may then ask for the application to be reviewed by the Adjudication Panel.

- 4.8 We provide information on the factors which will be taken into account in determining an application and guidance on the adverse information which may lead us to decline an application.
- 4.9 The Licensed Body Framework encourages the development of independent assessments, particularly by consumer associations, in keeping with our client outcomes-focused regulatory arrangements. Our application process allows for applicants to provide us with certification or assessment by independent/accredited bodies. Such information will help inform our determination and is likely – depending upon the scope of the accreditation, its sources and credence - to lead to the applicant’s risk profile being lowered.
- 4.10 Where a licence application is approved, it will be granted for an indefinite period. As with non-ABS bodies, should the entity not be open for business within 6 months of the licence being granted we will require a revised plan from them.
- 4.11 We will publish our licence determination timescale targets and our achievement against these. We will review our licensing determinations after the first six months of operation as a Licensing Authority and then once in every following year to evaluate the consistency of the scheme. This will help us to decide whether changes need to be made to the application process. Any changes will be made with the approval of the LSB if such approval is required.
- 4.12 Our regulatory arrangements do not prohibit any commercial communications; requiring only that, in the interests of the public, any advertising is clear, accurate and fair and that unsolicited communications are not made in person or by telephone (as these are deemed more intrusive than other methods).
- 4.13 Our commitment to becoming a Licensing Authority is predicated upon providers offering the public the opportunity to access multidisciplinary services. Those we license must comply with our Code of Conduct in doing so. The Code requires them to act, amongst other behaviours, with independence and integrity and to act in the best interests of their clients. This includes the need to keep client information safe. Prevention, detection and mitigation of conflicts of interest and improper influence are essential elements of the licensing requirements.
- 4.14 We will operate outcomes-focused regulatory arrangements which are principles-based. Wherever possible allowing regulated entities to demonstrate flexibility in their approach as to how the outcomes are delivered. The removal of prescriptive requirements allows for an element of self-regulation e.g. we require Licensed Bodies to have appropriate governance and risk management systems in place but allow them to determine what constitutes ‘appropriate’ to their particular entity.

- 4.15 Both the application and its determination process are devised with the intention that they are transparent, accessible and objective. We recognise that it is in the interests of both the legal profession itself and the public it aspires to serve, for the profession to be diverse. We have arranged our procedures with the intention that they avoid any unnecessary barriers which may deter prospective applicants from applying, whilst simultaneously seeking to instill consumer confidence that applicants are only licensed when it is in the public interest.
- 4.16 We will accept a certificate/attestation/other documents from another EU Member State which serves an equivalent purpose.

## **5. CLC Licensed Body Framework**

- 5.1.1 The Licensed (ABS) Body Licensing Framework has been informed by both the provisions of the Legal Services Act 2007 (LSA) and Legal Services Board's Licensing Rules Guidance. The Framework sets out the operating parameters within which we will license Alternative Business Structures. Both the Framework and the CLC Handbook – which sets out the regulatory responsibilities of all whom we regulate - will be provided to all interested applicant bodies. A summary of both these documents is provided in this immediate section (5). The Handbook and Licensed Body (ABS) Framework themselves are provided at Annex A and B respectively.
- 5.1.2 Our existing regulatory arrangements have been revised so they are explicitly outcomes-focused and principles-based, in keeping with the flexibility and innovation that Alternative Business Structures herald. Where specific requirements are retained these will be operated on a principles-basis, with any penalty imposed being proportionate to the breach.
- 5.1.3 All of the CLC's regulatory arrangements are explicitly focused upon the positive Outcomes those we regulate must deliver for their Clients. These Outcomes are:
- set out in the Client Charter which explains the standards of service consumers can expect from bodies and individuals regulated by the CLC;
  - supported by the regulatory relationship the CLC adopts to oversee an entity's delivery of these standards; and
  - enforced through the informal and disciplinary options available to us, and the routes of redress available to the Client, should they not receive such standards.
- 5.1.4 The arrangements of applicants will be assessed to ensure these principles are upheld and the Outcomes can be delivered. Where arrangements are lacking the applicant will be required to improve them. When licensed, if we identify a risk to the Outcomes through our monitoring processes, action proportionate to the risk will be taken.
- 5.1.5 Regulatory arrangements for the regulation of Licensed Bodies have been devised to provide consistency with the regime for non-ABS wherever possible; where this differs – due to the risk(s) posed to the ABS consumer - we will identify this and provide evidence to objectively justify the difference of approach.
- 5.1.6 We consider that the approach identified here, in the Policy Statement, and the draft regulatory arrangements set out in the following sections is essential to upholding the eight regulatory objectives identified in the Legal Services Act, all of which are fundamentally in the interests of the consumer (and are substantiated in each section below). Our approach is also devised with the intention that it help delivers the



following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

*Consumer trust in the provision of legal services improves.*

## **Section 83 Requirements**

### **5.2 Appropriate qualification regulations**

LSA, s83(5)(a)

*'Licensing rules of a Licensing Authority must contain appropriate qualification regulations in respect of Licensable Bodies to which the Licensing Authority proposes to issue licences'*

LSB, ABS: approaches to licensing, Guidance para. 37-39

- *Qualifications and experience of those who work in an ABS are matters for the ABS to decide, based on the requirements of its business and the expectations of its staff;*
- *Qualifications and experience of the HoLP and HoFA are, broadly, matters for the ABS to decide, though LA should be looking for high quality individuals to fill these roles;*
- *It may be appropriate to have a requirement for targeted continuous professional training (the case for this is likely to be stronger in the HoLP);*
- *Do not expect a LA to decline an HoLP/HoFA candidate unless they are demonstrably inappropriate for the role;*
- *Legitimate for LAs to have expectations that an accountancy qualification may be the normal requirement for the HoFA in many cases;*
- *HoLP/HoFA qualifications and experience information should inform the LA's risk assessment;*
- *Expect LAs to provide guidance on above issues, including the way they will approach their risk assessment;*
- *It may be appropriate in some circumstances for the LA to interview the HoLP/HoFA as part of their designation.*

5.2.1 Our Licensed Body Framework requires all applicant bodies to provide us with information on the entity's employment procedures and arrangements. This is to determine whether the entity has in place arrangements which ensure it employs only fit and proper persons (and certainly no-one disqualified by a Licensing Authority as holding a post in a Licensed Body). We also require information on the staff structure so we can determine the ratio of Authorised Persons to those who are not, to determine if this is appropriate to both the requirements of the business and to our expectations.

- 5.2.2 They are also required to provide us with information regarding the experience, qualifications, training and professional history of both the proposed Head of Legal Practice (HoLP) and Head of Finance & Administration (HoFA).
- 5.2.3 We expect licensable bodies to nominate 'high quality' candidates, whilst advising that we are likely to only refuse the appointment of an individual who is 'demonstrably inappropriate' e.g. the HoFA in a medium to large-sized company has neither accountancy qualification or experience, or the HoLP has a conviction for fraud etc. Where it is not satisfied that a HoLP or a HoFA has sufficient qualifications or experience the CLC may require the HoLP or the HoFA to undertake enhanced and targeted Continuous Professional Development (CPD).
- 5.2.4 The suitability criteria requires a HoFA to demonstrate that they have 'accountancy experience, competence and/or whether they have a recognised accountancy qualification'.
- The determination will in turn be informed by the entity's structure and profile. For instance, our framework makes an accountancy qualification a recommendation, not an absolute requirement, for a HoFA, in order that we do not create unnecessary entry barriers for smaller firms (accountancy training would then become a CPD requirement of that individual); and it may also be acceptable in such firms for the HoLP and the HoFA to be the same person. The appropriateness of the candidates is for the entity to demonstrate and for us to approve, approve subject to conditions or decline (when demonstrably inappropriate), depending upon our assessment.
- 5.2.5 The Licensed Body Framework provides that the employment arrangements and the qualifications and experience of both the HoLP and HoFA candidates will inform our risk profile of the applicant entity. This should provide licensable bodies with the incentive for them to nominate the high quality candidates we seek.
- 5.2.6 We will interview the HoLP or HoFA candidate candidates when we consider their application for designation. This will cover any suitability concerns and provide clarification (or reassurance) concerning application details/proposals. Please see 5.17 below for more details on HoLP/HoFA arrangements. We also reserve the right to interview any employees or owners where we consider it necessary to do so.
- 5.2.7 Providing applicants with the right to determine the skills, qualifications, experience and arrangements suitable to the entity is intended to create an operating environment which is competitive and strong, as well as diverse, composed of individuals and structures which might not have been part of the legal services sector.
- 5.2.8 We consider these arrangements to be fundamental to the public interest, ensuring that all of the entity's stakeholders support the constitutional principle of the rule of law and

demonstrate professional standards of behaviour. They also seek to promote the competition of legal services by allowing the applicant to determine their own arrangements and to nominate their HoLP and HoFA (subject to the CLC's approval). These arrangements are also intended to help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

*High quality Heads of Legal Practice (HoLPs) and Heads of Finance and Administration (HoFAs) who come from a wide range of backgrounds and diversity reflecting the commercial decisions and commercial operations of the ABS as well as the statutory requirements.*

### 5.3 Regulatory Objectives/improving access to justice

LSA, s83(5)(b)

*'Licensing rules of a Licensing Authority must contain provision as to how the Licensing Authority, when considering the regulatory objectives (in compliance with its duties under section 3(2) or 28(2)) in connection with an application for a licence, should take account of the objective of improving access to justice'.*

LSB, ABS: approaches to licensing, Guidance para. 40-44

- *Licensing rules able to demonstrate how they have taken regulatory objectives into account;*
- *Not appropriate to assess the impact on access to justice solely or mainly based on requirements such as the provision of face to face services, the number of traditional firms in a given area, or categories of legal advice provided, nor define access to justice based on the categories of legal advice that an ABS wishes to provide;*
- *Do not place access to justice obligations on ABS that are not placed on non-ABS (unless specific consumer risk identified);*
- *Expect LAs to ask applicants to explain how they anticipate they will improve access to justice; would not expect a licence application to be refused on the basis of the response to this question;*
- *Expect LAs to gather evidence of the approaches to access to justice taken by ABS.*

5.3.1 The LSB Guidance recommends that Licensing Authorities require Licensed Body applicants to declare any incompatibility with the Regulatory Objectives. We consider it unlikely that an applicant would ever declare an incompatibility with principles as abstract and broad as the objectives may appear to some e.g. an applicant is not likely to declare any genuine reason as to why licensing them would fail to protect the public interest or would hinder competition in the provision of reserved legal activities. All of

our regulatory arrangements are devised with the intention that they promote the regulatory objectives so we consider that our application process would be both more relevant and transparent if Licensable Bodies declare any issues of compliance with these.

- 5.3.2 The Licensed Body Framework explicitly states that licence assessment and determinations are based upon the applicant's compatibility with the regulatory objectives. This is judged on our assessment of its capability and capacity to deliver the Outcomes required by our regulatory arrangements. Applicants are required to provide us with details of the arrangements they have in place for complying with the Code of Conduct (the parent document of our regulatory arrangements) and the Licensed Body Code, as well as outlining any current incompatibility with the Codes (and how it has, or intends to, address this).
- 5.3.3 The framework signposts applicants to the Regulatory Objectives (defined in the CLC Handbook) so applicants are able to understand the framework within which all the CLC's regulatory arrangements are drafted and the way they function, informing them of the requirements which inform our assessment, and subsequent determination, of their application.
- 5.3.4 Applicants must also provide us with a distinct Access to Justice Statement. The Licensed Body Framework explains in broad terms what is meant by Access to Justice:
- 'An applicant must be able to demonstrate that licensing the body would improve access to justice i.e. recognition of, and response to, potential and actual, consumer needs. This may take the form of provision of a greater range of services and methods of accessing these services, lower prices, extended opening hours, accessibility, online provision, or other factors.'*
- 5.3.5 Access to justice is not only defined by the Framework; it is for the individual applicant to suggest how they aim to improve access to justice. However, as explained in the LSB's guidance<sup>2</sup>, only in exceptional circumstances would an application be declined on an access to justice basis - e.g. the applicant is buying up all of the competition in a local geographical area, affording the consumer no choice.
- 5.3.6 We will publish a summary of the declared access to justice improvements after twelve months of operation as a Licensing Authority and every year thereafter. Our annual information requirements of all bodies will include a declaration of how access to justice has been improved and consumer needs met. We will draw attention to good practice examples of access through publication of case studies. As with all declarations made by

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<sup>2</sup> Para 43 LSB Guidance "Alternative Business Structures: approaches to licensing" March 2010

applicants during the currency of the licence we may seek to verify that the statement or declaration made as part of the application is in actuality happening.

- 5.3.7 Improved access to justice for the public is dependent on access to the profession which would serve them. Licensing application requirements include the provision of the entity's diversity profile, which must be broken down by management level. (We will also extend this requirement to non-ABS bodies we regulate). One of the intentions of the flexibility of ownership and management afforded by ABS is to help encourage a diverse legal profession. Collecting diversity data will help us evaluate the extent to which this is delivered.
- 5.3.8 A Client will be regarded as being well-informed, independently-advised and adequately protected where the Licensed Body acting on their behalf has delivered the following Code of Conduct Outcomes for that Client:

- 1.1 Clients receive good quality independent information, representation and advice;
- 3.1 Each Client's best interests are served;
- 3.2 Clients receive advice appropriate to their circumstances;
- 3.3 Clients have the information they need to make informed decisions;
- 6.1 The service is accessible and responsive to the needs of individual Clients, including those who are vulnerable.

All of which aim to ensure that a CLC-regulated entity systematically acts in a way which provides access to justice and so improves the service it delivers. We have drafted a Client Charter to promote awareness of the standard of service both the public and consumers can expect from a member of the CLC's regulated community. This is provided at Annex C.

- 5.3.9 We consider these arrangements to be fundamental to improving access to justice – capturing the improvements licensable and licensed bodies can and do provide, identifying any gaps, and providing case studies to encourage more improvements. They are also in the interests of the public i.e. potential consumers, who should be offered more access routes to provision of legal services. They are also devised with the intention that they help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *ABS allow the provision of legal services to develop in ways that help encourage diversity.*
- *ABS provide examples of innovative and flexible ways of providing a greater range of services and enhanced value for money for consumers.*
- *ABS provide examples of improving access to justice that can be used by Approved Regulators, Licensing Authorities and the Legal Services Board as examples of good practice in improving access to justice in general.*
- *Consumer awareness and understanding of their right to, and how to get, legal advice improves.*
- *Consumer trust in the provision of legal services improves.*

#### **5.4 Regulatory arrangements, inc. Conduct, Discipline & Practice Rules**

*LSA, s. 83(5)(c)*

*'Licensing rules of a Licensing Authority must contain appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the Licensing Authority will be able to regulate the conduct of bodies licensed by it, and their managers and employees.'*

*LSB, ABS: approaches to licensing, Guidance para. 45-48*

- *Guidance on good governance and operating procedures including dealing with conflicts of interest;*
- *Individual ABS approach to conflicts of interest to inform the LA's risk assessment of the ABS*
- *A credible and effective compliance and enforcement policy, including an approach to risk assessment that enables it to identify developing risks and to respond quickly and effectively;*
- *Take into account Better Regulation Principles and have regard to the Regulator's Compliance Code;*
- *Seek to resolve issues of non-compliance informally at first (unless the non-compliance is so serious as to merit immediate action);*
- *Licensing rules should set out the LA's approach to monitoring and information gathering.*

5.4.1 CLC regulatory arrangements: all bodies and individuals regulated by the CLC are required to comply with the following 'Universal' Codes, as provided in the CLC Handbook at Annex A:

- Accounts
- Anti-Money Laundering & Combating Terrorist Financing
- Complaints
- Conduct
- Conflicts of Interest
- Continuing Professional Development
- Dealing with Non-Authorised Persons Third Parties
- Disclosure of Profits & Advantages
- Estimates & Terms of Engagement
- Equality
- Management & Supervision Arrangements
- Notification
- Professional Indemnity Insurance
- Undertakings.

NB. Depending upon the nature of the business the following Codes may also be applicable:

- Acting as Insurance Intermediaries
- Acting for Lenders
- Licensed Body
- Litigation & Advocacy
- Recognised Body
- Transaction Files.

5.4.2 The Code of Conduct is the umbrella Code with all other Codes in our regulatory arrangements supporting it. All employees, managers, office holders and owners of Licensed Bodies are required to comply with the CLC Code of Conduct. The Code is composed of six Overriding Principles (OPs):

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| OP1. Act with independence and integrity;                                    |
| OP2. Maintain high standards of work;  |
| OP3. Act in the best interests of Clients;                                   |
| OP4. Comply with your duty to the Court;                                     |
| OP5. Deal with regulators and ombudsmen in an open and co-operative way; and |
| OP6. Promote equality of access and service;                                 |

which must at all times be demonstrated in order that professional and principled behaviour help delivers the following Outcomes:

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|-----|---|
| 1.1 | Clients receive good quality independent information, representation and advice;  |
| 1.2 | Clients receive an honest and lawful service;   |
| 1.3 | Client money is kept separately and safely.   |
| 2.1 | Clients are provided with a high standard of legal services;  |
| 2.2 | Client matters are dealt with using care, skill and diligence;  |
| 2.3 | Appropriate arrangements, resources, procedures, skills and commitment are in place to ensure Clients always receive a high standard of service.                                  |
| 3.1 | Each Client's best interests are served;  |
| 3.2 | Clients receive advice appropriate to their circumstances;  |
| 3.3 | Clients have the information they need to make informed decisions;  |
| 3.4 | Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC;   |
| 3.5 | Clients are aware of any limitation or any condition resulting from your relationship with another party;   |
| 3.6 | Clients' affairs are treated confidentially (except as required or permitted by law or with the Client's consent).  |
| 4.1 | You act in the interests of justice;  |
| 4.2 | You act in good faith towards Clients.  |
| 5.1 | You act in accordance with your regulatory responsibilities.  |
| 6.1 | The service is accessible and responsive to the needs of individual Clients, including those who are vulnerable;  |
| 6.2 | No-one - Client, employee, colleague, job applicant, trainee or other party - you deal with feels discriminated against (whether directly or indirectly), victimised or harassed; |
| 6.3 | You accept responsibility where the service you provide is not of the expected standard and provide appropriate redress for the Client where necessary;                           |
| 6.4 | Handling of complaints takes proper account of Clients' individual needs,   |



including those who are vulnerable;

6.5 Complaints are dealt with swiftly, impartially and comprehensively.’

- 5.4.3 Improper influence and conflicts of interest: to encourage compliance with the Overriding Principles the Licensed Body Framework is clear in its requirement that the entity must have appropriate arrangements in place to prevent, identify and mitigate any issues of this nature before we will consider licensing them. The Licensed Body Code is explicit in its requirements that these arrangements are satisfactorily maintained and that any concerns are reported to us.
- 5.4.4 These requirements are underpinned by the Conflicts of Interest and Management & Supervision Codes and their accompanying Guidance. The Guidance sets out what needs to be taken into account in deciding to whether a conflict has arisen and the factors to be taken into consideration in determining whether work is being effectively supervised and the sufficiency of arrangements in place. Please see 5.17 for information on the governance/ management arrangements for the HoLP/HoFA.
- 5.4.5 Both our Regulatory Policy (provided in CLC Handbook at Annex A) and the Licensed Body Framework state that the individual entity’s approach – of prevention, identification and mitigation - to Conflicts of Interest and improper influence will inform our assessment of the risk the applicant poses. Where arrangements are found lacking - and so present a risk of non-compliance with the Overriding Principles to act with independence and integrity; and in the best interests of Clients - we will require the applicant to make improvements to their arrangements before the licence is granted. We may impose conditions upon the licence where such undertakings have not delivered the desired outcomes. We will check these have been made and are being adhered to after the licence has been granted; where they are not, we will take action proportionate to the impact of the breach.
- 5.4.6 Our Framework makes clear the requirement of owners and the duty of the entity/HoLP to inform us of improper influence. Where there are concerns that the owner(s) of a Licensed Body may be exerting improper influence – e.g. an owner appears to be influencing, or attempting to influence the decisions of the Licensed Body or the conduct of Authorised Persons in a way which would constitute a breach of licensing requirements and regulatory duties - we will take action. Where there are less serious concerns this is likely to take the form of dialogue leading possibly to the imposition of conditions.

5.4.7 Where the divestiture condition has been satisfied<sup>3</sup> in relation to a non-authorised person and a Licensed Body we will issue the owner/body with a Restriction Notice informing them of our intention to apply for the holding to be divested. We will notify the Legal Services Board of any objections/conditions imposed regarding a Non-Authorised Person's material interest as required by the Legal Services Act. Our approach in such matters adheres to the provisions provided in Schedule 13 and is set out in detail in the Licensed Body Framework.

5.4.8 We consider that arrangements which seek to ensure that Licensed Bodies owned by non-Authorised Persons do not allow a conflict of interest, or an owner's self-interest, to influence how the entity provides legal services to be fundamental to supporting the constitutional principle of the rule of law. For an entity not to do so would be contrary to the interest of both the public at large and of the body's consumers; their rights and interests must be protected. These arrangements are also devised with the intention that they help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

*Both lawyer and non-lawyer employees, office holders and owners behave in ways that ensure that:*

- justice and the rule of law are upheld;*
- they act with integrity and respect the professional principles;*
- they act with independence and in the best interests of their clients, ensuring that confidentiality and client money are protected;*
- they provide good standards of service to all their clients; and*
- they are trusted by members of the public and do not behave in a way that undermines trust in the provision of legal services.*

5.4.9 Risk assessment: our regulatory relationship with a member of the regulated community is informed by an assessment of the risks they or their activities pose to the Code of Conduct's Outcomes. To be confident of our resource allocations we must identify and measure the capacity for, or, actual harm, and of the likelihood of an occurrence of actual harm, to these. This includes consideration of factors such as:

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<sup>3</sup> Para 41 pt 3 sch 13 LSA

- reliability of the evidence provided;
- the entity's regulatory responsibility arrangements;
- seriousness of the act or omission and the likely impact on consumers, CLC's regulated community and public confidence;
- if the breach is/was deliberate or vexatious;
- seriousness of the information provided and the likely impact on a client, clients in general, the CLC's regulated community and public confidence;
- the entity's activities and/or client type;
- Information about the entity's finances;
- foreign ownership (our scope for data verification may be limited in some instances);
- past compliance performance;
- risk-management systems;
- management competence and inclination to address issues;
- qualifications and experience of the Head of Legal Practice and the Head of Finance and Administration;
- conflicts of interests arrangements;
- improper influence arrangements;
- complaints-handling arrangements;
- recognised external accreditation.

5.4.10 A range of information is collected, including CLC inspection findings; complaints record; Accountant's Reports; negligence claims; and information from other stakeholders, such as other Licensing Authorities, regulators and professional bodies, lenders, police or clients to help inform this consideration. Based on this information a risk profile is developed for each member of the CLC regulated community to determine the nature of the CLC's regulatory engagement. This is reviewed regularly (and no less than once each year). Newly licensed entities are inspected within six to nine months after they have begun to provide services.

5.4.11 A licence will only be issued to an applicant which has signed the Inspection Co-operation Agreement which commits a Licensed Body to co-operate with an inspection and gives the CLC full and unimpeded access to the entity's papers and any information requested (as well as to office facilities to enable us to carry out an inspection). This declaration is to be extended to all entities regulated by the CLC.

5.4.12 Annual returns from the regulated community require a wide range of information, such

- Managers, owners and Authorised Persons (including any changes in their circumstance);
- Manager CPD Records;
- Who is involved in dealing with and managing Client Money;
- Breakdown of work;
- Volume of transactions;

- Profile of work by complexity;
- Referral arrangements;
- Significant new sources of work;
- The type of services provided;
- Turnover and profit;
- How clients access services;
- Complaints data;
- Any additional information the entity may wish to provide e.g. evidence of recognised external accreditation, customer satisfaction feedback results, findings from internal compliance activity.

5.4.13 We will also require periodic smaller returns during the year. Returns will be made simpler and quicker to complete through the online Management Information System. The system is currently being reviewed so the profiles it creates are explicitly linked to risks to Client Outcomes, as provided in our revised regulatory arrangements, and take account of the complexities of risk that different types of Alternative Business Structures potentially present. We have reviewed the proportionality of the frequency/size of our submission requests so we are able to respond more quickly to identified risks and provide support if appropriate, or take action in a more timely manner where bodies are potentially failing. We will arrange where appropriate direct remote access to case management and accounting systems, as well as the use of data transfer to accounting systems at our offices. According to the risk posed by the entity – as identified through their data submissions and information gathered from other sources, such as complaints and information from other regulators and professional bodies – we may require information more frequently (and more varied). This provision will only be required when justified by risk assessment.

5.4.14 The aim of our Enforcement Policy is to deter inappropriate behaviour and encourage appropriate conduct in order that clients receive the standard of legal services that they could reasonably expect to receive. We provide guidance throughout our regulatory arrangements, as well as advice and toolkits on specific issues to help the regulated community deliver the necessary Outcomes. We will expect to resolve a wide range of compliance issues by dialogue with the entity usually resulting in the entity taking an agreed course of action, so providing a more timely and satisfactory outcome for clients and saving the resources of both the Licensed Body and the CLC.

5.4.15 A number of CLC employees at senior level (referred to as CLC Authorised Officers) have delegated powers to enable them to take forward an informal approach in a timely fashion. This may include an undertaking on terms agreed with the CLC to take, or cease taking, a particular action; inspection or re-inspection; a reminder of responsibilities; and/or provision of information and advice. Another CLC officer (of equivalent or senior position to the CLC Authorised Officer) or Director can informally review the decision made.

5.4.16 We shall take a proportionate approach to enforcement determinations which are made at a range of levels:

- a CLC Authorised Officer can determine less serious regulatory matters where they are satisfied that a penalty of up to £1,000 and the payment of costs is appropriate. After carrying out a preliminary assessment, the CLC Authorised Officer may refer matters to the Adjudication Panel for determination where they consider the nature of the matters warrants it. The respondent may ask for the determination of the CLC Authorised Officer to be reviewed by the Adjudication Panel;
- the Adjudication Panel deals with serious regulatory matter and can impose a financial penalty which is fair and reasonable having regard to the breach (especially its impact), suspend or revoke a licence, and disqualify an individual from a role in a Licensed Body; at the request of the respondent, the Review Panel will review the determination of the Adjudication Panel. Following the review, the respondent may appeal to the First Tier Tribunal;
- the Review Panel can review determinations made by the Adjudication Panel where such determinations are made as a tribunal of first instance; where Adjudication Panel has reviewed a first instance decision of the CLC Authorised Officer, the CLC's review process will be treated as having been concluded. The respondent will then have the entitlement to appeal to the First Tier Tribunal.

5.4.17 Our Regulatory and Enforcement Policies take account of the Better Regulation Principles and the Regulators' Compliance Code. Please see our Policy Statement at section 3 and the policies themselves at Annex A. Where an informal approach has been unsuccessful or is judged inappropriate because of the actual (or perceived risk to) the delivery of the Outcomes we will initiate the disciplinary powers available. The following are the examples of allegations of breaches – identified in our Enforcement Policy - which may lead to formal enforcement proceedings (the list is not exhaustive and is not ranked):

- Persons no longer 'fit and proper';
- Failures in governance arrangements;
- Fraud and dishonesty;
- Improper influence;
- Failure to comply with the CLC's Regulatory Arrangements;
- Ineffective complaints-handling procedures;
- Failure to provide the CLC with information, or provision of false, incomplete or misleading information;
- Failure to pay any CLC annual fee or contribution.

5.4.18 Following referral from the CLC Authorised Officer, in making a determination the Adjudication Panel will take account of the nature of the evidence, the impact on

consumers (of both the entity's activities and its client types), and the impact on the respondent and the following specific factors<sup>4</sup>:

- the seriousness of the act or omission and the likely or actual impact on an individual client, clients in general and the regulated community;
- the intended outcome for clients in taking action compared with the impact of not taking action;
- the effect the particular breach is likely to have on:
  - the reputation of the legal profession; and
  - public confidence in those services and on the CLC's Regulatory Arrangements;
- the extent to which the act or omission is a one-off occurrence or is part of a series of similar matters or appears to be deliberate or vexatious;
- the period of time over which the act or omission has occurred;
- management competence and willingness to comply;
- the existence of good systems for managing risks;
- evidence of recognised external accreditation;
- whether the resource requirements needed are proportionate to achieving the desired results; and
- any other matters that it appears appropriate to take into account.

in determining the appropriate sanction to apply.

5.4.19 The disciplinary options available are as follows:

- a Licensed Body owner:
  - Place conditions on the owner's material interest;
  - Object to the owner's material interest;
  - Divest the owner of their material interest;
  - Direct the payment of a fine.
- a Licensed Body:
  - Reprimand the entity;
  - Direct the issue of a licence subject to conditions it may specify;
  - Direct the payment of a fine;
  - Suspend the licence of the entity;
  - Revoke the licence of the entity;
  - Intervene;

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<sup>4</sup> Based on para 48 ABS Guidance

- a Head of Legal Practice (HoLP) or Head of Finance & Administration (HoFA):
  - Require the CLC to take such steps as it may specify in relation to the HoLP or HoFA;
  - Direct the payment of a fine;
  - Withdraw approval of the individual for the role;
  - Disqualify the individual from a role within a Licensed Body;
  
- a manager or employee:
  - Direct the payment of a fine;
  - Require the CLC to take such steps as it may specify in relation to the manager or employee;
  - Require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee;
  - Disqualify the individual from a Licensed Body role.

The Regulatory Policy (provided at Annex A) provides information on the circumstances in which these tools may be used. The CLC will provide the Licensed Body/HoLP and any relevant individual in respect of which the enforcement applies with a warning notice of the action intended, when it will come into effect, and why it is considered necessary.

5.4.20 Aside from the payment of a fine of up to £1,000 and other limited sanctions (which may be determined by the CLC Authorised Officer) all disciplinary sanctions will be determined by the Adjudication Panel. Determinations of the Adjudication Panel made may be reviewed by the Review Panel, and subsequently appealed to the First Tier Tribunal. The Review Panel and comprise members of the Adjudication Panel with no prior involvement in the matter which is the subject of review. The Review Panel will have a quorum of two, no less than one of whom will be a Lay Member.

5.4.21 It is equally important that those we regulate – as well as their customers - know that we will take action in the interests of their consumers, where this is not the case. It is integral to the strength and independence of the profession that disciplinary determinations are proportionate and made by an independent panel. The arrangements have also been devised with the intention that they help deliver the following Outcomes (as identified in the LSB’s Licensing Rules Guidance, ‘Regulating for Outcomes’ section):

- *Consumers are confident that their advisors are regulated appropriately.*
  
- *LAs’ approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services.*

- *ABS compliance with licence requirements is high, with minimum enforcement required by LAs.*

## 5.5 Appropriate indemnification arrangements

LSA, s83(5)(d)

*‘Licensing rules of a Licensing Authority must contain appropriate indemnification arrangements’*

LSB, ABS: approaches to licensing, Guidance para. 51 - 53

- *Set minimum requirements for an appropriate level of consumer protection that reflect the risk posed by the activity (or activities) or type of client of the ABS*
- *Tiered approach to the level of cover required is acceptable;*
- *ABS have flexibility to increase the level of indemnity as they see fit;*
- *Sufficiently flexible to allow other products and approaches to develop to meet changing market conditions;*
- *Provide evidence that shows indemnification arrangements remove where possible structural barriers;*
- *LAs should note that the definition of ‘authorised insurer’ is wide and does not require the use of a pre-approved insurer;*
- *Arrangements in place with insurers and other regulators to exchange information and enforcement procedures deal adequately with such allegations;*
- *May be appropriate to require licence applicants to agree to information being disclosed to other bodies.*

- 5.5.1 The LSA identifies a number of indemnification arrangements options including: a Licensing Authority establishing/maintaining a fund or taking out/maintaining insurance with authorised insurers; or requiring applicants to take out insurance with authorised insurers. The LSB’s Guidance requires that, ‘indemnification requirements must be sufficiently flexible to allow other products and approaches to develop to meet changing market conditions’.
- 5.5.2 Professional Insurance Indemnity (PII) cover is a mandatory requirement of those we regulate, as set out in both our Conduct and Professional Indemnity Codes. Currently this cover is in the form of the CLC’s Master Policy. This provides protection for both CLC regulated bodies and their clients, covering negligence; acts, errors and omissions; breach of duty; civil liability; and fraud claims (provided the indemnified is not party to the fraud).
- 5.5.3 Our Outcomes-Focused Regulation consultation document of autumn 2010 raised the subject of whether or not we should offer an opt-out from the Master Policy. As a result of the consultation, and to meet the LSB’s recommendation of flexible indemnity



insurance arrangements, we will proceed with offering a Master Policy opt-out. We have considered the risks and implications of offering such as opt-out and are satisfied that to do so does not create a risk to the policy's viability.

- 5.5.4 We shall permit Licensed Bodies to opt-out from the Master Policy where they are able to obtain equivalent cover from an alternative source. This opt-out will apply equally to non-ABS firms which the CLC currently regulates as an Approved Regulator. Whether the cover is sourced through the Master Policy or through a policy provided by an Authorised Insurer, Licensed Bodies must be in all respects equivalent to the cover provided through the Master Policy. We will obtain advice from insurance brokers to help inform our verification of the cover's sufficiency. On positive verification we will initiate information-sharing agreements with the insurance provider prior to the licence being issued. We will work with the insurance provider to make sure relevant data is provided to us as and when required. Those we regulate will be encouraged, where appropriate, to increase the level of indemnity above the minimum required to reflect the services they provide and the risks (whether generic or specific) to which they give rise. Where we are not satisfied that with an applicant's indemnity insurance cover and conditions we will not license the applicant until we have proof that their policy has been amended to reflect the risk identified.
- 5.5.5 Premiums for the Master Policy are determined by a combination of turnover, the level of excess and claims records. Standard rates are agreed with insurers who are able to increase the premiums dependent on the claims record (if any) of the individual entity. Bodies with a substantial annual turnover are able to seek to negotiate preferential rates. However, cover for civil liability is standard.
- 5.5.6 Licence applicants are required to agree to their information being disclosed to other bodies in order to assist in the prevention and detection of prevent fraud. We have signed up to the ABS Multi-Disciplinary Practice Memorandum of Understanding to enable us to exchange information about suspected or fraudulent activity or dishonesty. Allegations or suspicions of fraud or dishonesty will be treated very seriously as they present a significant threat to the Overriding Principle of 'Act with independence and integrity'.
- 5.5.7 The Code of Conduct requires compliance with the following:

- |  |
|--|
| <p>OP3i) You only provide reserved legal activities whilst you have CLC-approved professional indemnity insurance in force.</p> <p>OP3o) 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.</p> |
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- OP3p) If you seek to exclude or limit liability, you do so only to the extent that such exclusion or limitation is above the minimum level of cover provided by CLC-approved professional indemnity insurance; you must obtain the informed consent of the Client for such exclusion or limitation to be effective.
- OP3q) 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.

5.5.8 We consider the mandatory requirement that all Licensed Bodies have appropriate indemnification arrangements in place to be fundamental to the protection of consumer interests. We consider that their interests are promoted through the Code of Conduct requirement that clients are advised if activities are not covered by their indemnification arrangements. These requirements are also devised with the intention that they help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Regulatory arrangements provide appropriate levels of redress and protection for consumers against negligence and fraud for the services being provided, comparable to those enjoyed by consumers of non-ABS firms, whilst not unduly restricting commercial activity.*
- *Consumers are more informed about the risks and potential compensation for fraud and misconduct when obtaining legal advice from any legal service provider.*

## 5.6 Appropriate compensation arrangements

LSA, s83(5)(e)

*'Licensing rules of a Licensing Authority must contain appropriate compensation arrangements'*

LSA, Sch 11, para. 19

*For the purpose of giving effect to indemnification arrangements and compensation arrangements, licensing rules may:*

- *authorise or require the Licensing Authority to establish and maintain a fund or funds;*
- *authorise or require the Licensing Authority to take out and maintain*

*insurance with authorised insurers;*

- *require licensed bodies or licensed bodies of any specific description to take out and maintain insurance with authorised insurers.*

*LSB, ABS: approaches to licensing, Guidance para. 54 - 57*

- *As far as possible, ABS should be subject to the same compensation arrangements as non-ABS firms;*
- *Parent company guarantees are not appropriate forms of compensation;*
- *Letters of credit – carefully worded and the cost may be an unnecessarily high barrier to entry;*
- *Compulsory contributions shown clearly in a breakdown of annual licence fee;*
- *Requirement for ABS to make consumers more aware of the possible risks.*

- 5.6.1 The CLC operates a Compensation Fund to which all members of its regulated community must contribute. Contributions are calculated as a percentage of the turnover of the entity and are dependent upon the financial requirements of the Fund each year. The rate of contribution for the current year of 1 November 2010 to 31 October 2011 is nil. We will apply in the early summer to the Legal Services Board for agreement to the rates to be applied for contributions in the year beginning 1 November 2011.
- 5.6.2 The fund's purpose is to relieve or mitigate losses suffered by persons in consequence of the negligence, fraud or other dishonesty, or failure to account for money received. The Fund is a discretionary fund of last resort and grants will only be made where the CLC is satisfied that it is appropriate to do so and the loss compensated is attributable wholly or substantially to an entity regulated by CLC. Please see the CLC Handbook at Annex A for the CLC Compensation Fund Operating Framework and Code.
- 5.6.3 In order to allow compensation grants to be paid to consumers of ABS the remit of the compensation fund needs to be widened. This will ensure that the CLC has the power to make rules permitting grants to be made out of the fund in respect of any legal services regulated by the CLC as we are currently only able to do so in respect of conveyancing and probate services. We have applied to the LSB to enable such grants. If this amendment is not made, the level of protection afforded to clients would be determined by the particular legal services provided.
- 5.6.4 In determining the payment level we will take into account a range of factors, including whether the claimant has any responsibility for the loss, steps taken to mitigate loss and whether they are protected by any other scheme or guarantee. An interim payment from the fund may be made if during a claim investigation a claimant is suffering severe

hardship. Please see the Compensation Fund Operating Framework in Annex A for more details.

- 5.6.5 The compensation arrangements are also devised with the intention that they help deliver the following Outcomes (as identified in the LSB’s Licensing Rules Guidance, ‘Regulating for Outcomes’ section):

- *Regulatory arrangements provide appropriate levels of redress and protection for consumers against negligence and fraud for the services being provided, comparable to those enjoyed by consumers of non-ABS firms, whilst not unduly restricting commercial activity.*
- *Consumers are more informed about the risks and potential compensation for fraud and misconduct when obtaining legal advice from any legal service provider.*

## 5.7 Resolution of regulatory conflict

LSA, s83(5)(f)

*‘Licensing rules of a Licensing Authority must contain the provision required by Sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by Section 103)’*

- 5.7.1 The CLC is a signatory to the Alternative Business Structures Multi-Disciplinary Practices Memorandum of Understanding set out at Annex D. (The MoU has yet to be signed by all signatories. The final, signed version will be submitted to the LSB shortly). One of its purposes is to meet the requirements of s.54 of the LSA, which is cited in its introductory paragraph,

‘to 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 which arise; and
- (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body’.

5.7.2 The MoU seeks to clarify so far as is practicable the roles of the regulators and professional bodies in the oversight of Licensed Bodies. It provides a framework for co-operation, co-ordination and exchange of information in order to facilitate effective public protection and working relationships. Its basis is one of co-operation and co-ordinated oversight, information-sharing (where it is lawful and in the public interest to do so), and resolution of regulatory conflicts. Its aim is to provide consistency in that regulators will work together to agree common standards, minimise duplication and future conflict so far as is reasonably practicable, enable structured sharing of intelligence at both market and entity level, and protect the (financial) interests of consumers and ensure they do not suffer detriment as a result of failure to co-operate or co-ordinate. The MoU is a statement of intent, comprising principles to which the signatories will adhere to so far as they practicably and lawfully can. Its signatories are the:

- Bar Standards Board
- Council for Licensed Conveyancers
- Financial Services Authority
- Institute of Chartered Accountants in England and Wales
- ILEX Professional Standards
- Intellectual Property Regulation Board
- Law Society of Scotland
- National Federation of Property Professionals
- Royal Institute of Chartered Surveyors
- Solicitors Regulation Authority.

5.7.3 Working groups composed of representatives of these signatory bodies began meeting in June 2010 in order to establish a co-operative framework. The MoU was agreed at the November 2010 with all parties committing to obtaining sign-up from their relevant Boards/Executives. The agreement commits regulators to working together to establish appropriate arrangements to prevent and, where necessary, to resolve conflict. This may take the form of continuation of the working groups (to reduce inconsistency or uncertainty regarding regulatory arrangements); informal resolutions mechanisms for procedural issues and informal resolution mechanisms for consumer risks; and further, subject-specific MoUs.

5.7.4 Investigations will usually be undertaken or led by the Licensing Authority of the Licensed Body rather than the regulator of any particular individual within it. When a Licensed Authority identifies the need for an investigation of a Licensed Body or any person concerned with it i.e. manager, employee or owner, it will use reasonable endeavours to identify whether any of the other signatories has an interest in the issue/person. Where this is the case, it will approach the relevant regulator/professional body and discuss the proposed investigation with them to determine whether one or both of them should pursue it. This seeks to mitigate the risks posed by duplicative

and/or potentially inconsistent acts and decisions by disciplinary committees and tribunals.

- 5.7.5 Specific issues being subject to dispute in more than one forum – engaging witnesses and respondents in parallel or sequential proceedings – may result in the making of inconsistent determinations, as well as imposing unnecessary costs on both respondents and regulators. Both our Licensed Body Framework and Enforcement Policy allow for the formal findings of other regulators (or any court or tribunal) to be admissible in our own licensing and disciplinary proceedings and the MoU provides for this in the arrangements of others. We will inform other signatories of any findings against members of their regulated or professional community.
- 5.7.6 It has been agreed that Licensed Bodies hold money in relation to legal services provision separately from other money it holds, though it is acknowledged that this may be difficult where money is arguably held for more than one purpose; therefore the overarching principle is that client monies are protected at all times. The MoU declares the intention that regulators will work together to reduce uncertainties and inconsistencies by making standards and definitions as similar as possible and to assist Licensing Authorities to deal with complex situations. Collaboratively, the signatories will,
- ‘assist consumers to understand what activities of a Licensed Body are, and are not, subject to regulatory protections and in particular indemnification and compensation arrangements’.
- 5.7.7 It also commits us to use ‘reasonable endeavours’ when clients or others suffer a loss that may be covered by indemnification arrangements or compensation arrangements through signposting, minimising delays/complexities, resolving any uncertainty promptly (and where this is not practicable, directing particular insurers or schemes to deal with claims/ applications on the basis that responsibility will be resolved subsequently), and providing clear guidance.
- 5.7.8 We consider these arrangements to be fundamental to protection of the public interest; it is only when regulatory and professional bodies are working to the same objectives, intentions and similar standards in an area of commonality that this interest is secured. The MoU has also been drafted as an accessible document so that it available to consumers. It seeks to be transparent in its commitment to protecting consumer interests, ensuring that those who provide them with legal services only do so whilst complying with the professional principles; should they not do so, the regulatory and professional bodies which oversee their conduct will take action. They are also devised with the intention that they help deliver the following Outcome (as identified in the LSB’s Licensing Rules Guidance, ‘Regulating for Outcomes’ section):

*A single framework Memorandum of Understanding (“MoU”) is implemented by all relevant bodies and provides a mechanism to resolve overlaps in ways which:*

- *provide the best form of consumer protection and redress;*
- *minimise confusion for market participants; and*
- *reduce/remove conflict in future.*

## **5.8 Complaints handling requirements**

*LSA, s83(5)(g)*

*‘Licensing rules of a Licensing Authority must contain the provision required by Sections 112 and 145 (requirements imposed in relation to the handling of complaints)’*

*LSB Requirement, ABS: approaches to licensing, Guidance para. 59*

- *Ensure the potential complexities of complaints handling for multidisciplinary practices do not have an adverse effect on the complainant;*
- *Provide flexibility for an ABS to adapt how it deals with complaints to the needs of consumers;*
- *Regulatory requirements should build on best practice...not undermine existing systems or create unnecessary requirements;*
- *Complaints are dealt with fairly, promptly, constructively and honestly;*
- *Complaints against lawyers and non-lawyers are considered and there is clarity of responsibility for complaint handling;*
- *Information to be given to complainants and the way in which complainants should be treated.*

5.8.1 It is essential to the consumer interest that Licensed Bodies handle complaints impartially, comprehensively and in a timely manner. They should offer redress where appropriate. It is equally important that they learn from the feedback they are given, continuously improving the service consumers receive. Complaints are an important measure of customer satisfaction for businesses. Our regulatory arrangements place much importance upon effective complaints-handling and all whom we regulate must deliver the following Outcomes:

- Handling of complaints takes proper account of Clients’ individual needs, including those who are vulnerable;

- Complaints are dealt with impartially and comprehensively.
- 5.8.2 The Complaints Code and Guidance seeks to support the delivery of these Outcomes. It also contains specific requirements for those we regulate, including timelines within which complaints must be answered and the duty to inform clients within the Terms of Engagement of their right to make a complaint. This must include information as to who the complaint should be made to, and of the Client’s right to escalate that complaint to the Legal Ombudsman should they be dissatisfied with how the Licensed Body dealt with their complaint. The contact details and timescales of the ombudsman must be disclosed. Complainants should also be reminded of this right – and the ombudsman’s timescale/contact details - at the end of the complaint-handling procedure.
- 5.8.3 Other specific requirements include details which must be included in the full response; provision for an internal review as to how the complaint was handled (only where this can be delivered in a timely manner and where proportionate to the entity’s size and profile); and investigation of complaints under the supervision of a senior manager. The CLC believes that these requirements are essential for the delivery of positive Client Outcomes providing the Client with the opportunity to have their concerns properly considered and to be given redress where appropriate. It is also an opportunity for Licensed Bodies to learn from the experience of complaints. We are not prepared to tolerate the risk that an entity’s complaints procedure does not provide for these.
- 5.8.4 The Code also requires a number of higher-level requirements in the form of principles such as prompt provision of redress where offers have been made and accepted; a procedure which is clear, well-publicised, and free; and appropriate to the needs of Clients, allowing complaints to be made by any reasonable means. The ‘reasonable means’ by which complaints can be made is at an entity’s discretion (though we would consider that complaints can be registered in person, telephone and/or letter to be the minimum). We, however, do not prescribe how the procedure is tailored to the needs of clients, the type/scale of redress options, or how the procedure should be publicised, as we consider these to be decisions for the entity.
- 5.8.5 Given the importance afforded to effective complaints-handling alongside the flexibility we must allow bodies to tailor their procedures to the needs of clients we have provided a range of Guidance to support the Code. This includes an Example Procedure. The Guidance makes clear that the Example Procedure is just that – i.e. it is not a *Recommended* or *Suggested* Procedure – and though it seeks to provide the regulated community with an idea of the minimum that we would expect (in order that positive Client Outcomes can be delivered), it is by no means mandatory for this to be adopted by the entity.
- 5.8.6 The Guidance also provides Good Practice pointers: for example, the ability for complaints to be logged on an entity’s website; provision of a Customer Feedback



leaflet; recording complaints by themes or categories meaningful to the business; review of complaints trends by senior management and regular surveys to determine how well the entity is handling the complaints it receives. It is not mandatory for an entity to adopt any of these examples. They are provided for consideration only and should only be adopted if appropriate to the entity, its circumstances and clients.

5.8.7 Good communication lines between regulators are essential to ensure there is minimum inconvenience and/or delay for the consumer. The Framework MoU should aid the referral of complaints handling for multidisciplinary practices.

5.8.8 We believe that simple and transparent procedures for considering complaints and providing redress promote the interests of consumers. These arrangements are devised with the intention that they help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Consumers of legal services provided by ABS are afforded the same protections as consumers from non-ABS providers for first line complaints handling and access to the Legal Ombudsman.*
- *Referral of complaints to other bodies is done in a way that minimises inconvenience for consumers.*

## 5.9 Any other provision in Act's Licensing Rules

LSA, s83(5)(h)

*'Licensing rules of a Licensing Authority must contain any other provision required to be contained in licensing rules by the Act'*

- 5.9.1 Our approach to licensing Alternative Business Structures is based upon the Act and its Schedules. It is intended that the Framework covers all necessary provisions.

## Schedule 11 Requirements

### 5.10 Licence Applications

LSA, Sch. 11, paragraph 1

*'Licensing rules must make provision about the form and manner in which applications for licences are to be made, and the fee (if any) which is to accompany an application (Sch. 11, paragraph 1(1)) Licensing rules may make provision about:*

- *the information which applications must contain; and*
- *the documents which must accompany applications (Sch. 11, paragraph 1(2))'*

LSB, ABS: approaches to licensing, Guidance para. 61

- *Licence fees to be broadly cost effective and to allow for different annual licence fees for different types of ABS*
- *Publish licence fees but retain the ability to charge additional amounts for particularly complex applications*

5.10.1 Licensable bodies need to have arrangements in place to identify risks to their compliance with the regulatory responsibilities, and explain the steps they will take to mitigate the risks and the outcomes they seek. We will provide interested parties with an example of a completed application form so they are informed of the type/depth of information we are after. Our licence application process requires applicants to provide us with the following information:

<b>Persons</b>	<ul style="list-style-type: none"> <li>• Declaration of Persons with a material interest (together with associates of 3% or more material interest) of 10% or more interest in the body;</li> <li>• Declaration of Head of Legal Practice accompanied by details of relevant experience, qualifications, training and professional history information;</li> <li>• Declaration of Head of Finance and Administration accompanied by details of relevant experience, qualifications, training and professional history information</li> <li>• Declarations of all Managers;</li> <li>• Declarations of Authorised Persons (including identification of activities they are authorised to provide and by which Approved Regulator);</li> <li>• Staff structure, including numbers of Authorised Persons and non-Authorised Persons.</li> </ul>
<b>Financial</b>	<ul style="list-style-type: none"> <li>• Proof of funding source;</li> <li>• Business Plan &amp; Financial Forecasts;</li> </ul>

	<ul style="list-style-type: none"> <li>• Bank details;</li> <li>• Where applicable, the organisation's last 3 years of accounts.</li> </ul>
<b>Statements</b>	<ul style="list-style-type: none"> <li>• An outline of the services proposed and how you will ensure they are delivered to a high standard;</li> <li>• Statement outlining compatibility with delivery of the <b>Code of Conduct</b> Outcomes (and where there are issues, details of how these have been, or will be resolved) and the <b>Licensed Body Code</b>;</li> <li>• Who will carry out Reserved Legal Activities;</li> <li>• Diversity profile of body;</li> <li>• How the body aims to improve access to justice.</li> </ul>
<b>Arrangements for:</b>	<ul style="list-style-type: none"> <li>• Compliance with CLC regulatory arrangements;</li> <li>• Notifying us of a breach of regulatory responsibilities;</li> <li>• Notifying us of a proposed change of material interest;</li> <li>• Provision of any non-reserved legal activities;</li> <li>• Governance and management;</li> <li>• HoLP and HoFA to have management level status and entitlement to dissent from decisions made by the management;</li> <li>• Preventing and dealing with conflicts of interests and improper influence;</li> <li>• Complaints-handling;</li> <li>• Ensuring the body employs only fit and proper persons (and no-one disqualified by a Licensing Authority).</li> </ul>
<b>Fit and Proper Declaration – Persons with material interest, HoLP, HoFA &amp; Managers</b>	<ul style="list-style-type: none"> <li>• Any criminal charge or conviction (including spent convictions and cautions) or cases pending in the UK or elsewhere;</li> <li>• Any previous disciplinary proceedings commenced by a professional or regulatory body in the UK or elsewhere (whether concluded or not);</li> <li>• Any adverse order or finding of a civil court or employment tribunal;</li> <li>• Any disqualification as a director;</li> <li>• Any declaration of bankruptcy (and whether or not this has been discharged) or Individual Voluntary Arrangement;</li> <li>• Disqualification from acting in any capacity for a legal services, financial or other provider (including a Licensed Body);</li> <li>• Any other information that could reasonably be expected to have a bearing on the individual being fit and proper to own or manage a Licensed Body.</li> </ul>

NB. The requirement for accounts for the 3 years immediately preceding an application applies to companies which own (10% or more) of the licensable body.

- 5.10.2 All persons with, or proposing to acquire, a material interest (this includes a declaration of any holding company which would be caught by the fit and proper test), associates, HoLP, HoFA, Authorised Persons and Managers must be declared, proof of their identity provided and completed (and signed as accurate) fit and proper declarations. The HoLP/HoFA/Non-Authorised Persons - both Managers and those with a material interest - data will be formally verified (please see below). We will liaise with the Approved Regulator of any Authorised Persons to determine any fit and proper issues (though we reserve the right to have that data externally verified where needed).
- 5.10.3 As stated previously, applicants must also provide us with an Access to Justice Statement and the entity's diversity profile. Ultimately, as a member of the CLC regulated community a Licensed Body will be required to publish their diversity profile (this data collection exercise will need to be carried out annually, or every three years for firms with 20 or fewer employees), should the Legal Services Board's current proposals on diversity transparency be taken forward. This will hold them accountable to corporate and individual consumers, which/who will be able to make informed choices about where they procure their legal services. This requirement will also be made of the non-ABS firms we regulate.
- 5.10.4 Applicants are also afforded the opportunity to provide us with supplementary information, such as membership of accreditation schemes or awards received. Depending upon the nature of that external assessment, its source, relevance and timing - e.g. if the award is recent, is related to consumer service or quality assurance (or a similar area) and is made by a well-recognised body - this is likely to positively inform our risk profiling of the entity.
- 5.10.5 The Licensed Body Framework sets out the application fees for applicants. Taking into account the methodology adopted by the LSB, the CLC has determined that applicants should pay a set fee calculated to recover the CLC's direct cost of the staff resources and the associated overheads deployed on considering a typical application including other factors that may be applicable from time to time. The benefit of this approach is that it avoids adding to the Regulatory Fee that is applied to all CLC Regulated Bodies for costs that relate to the activities of one entity only. The CLC acknowledges it is not sensitive to the actual level of work on any individual application.
- 5.10.6 Adopting the methodology proposed, our current estimated cost per hour of processing a standard application is about £80-£100 per hour. On the basis that the standard application will take 2 days to process the fee for a first time Licensed Body application is £1200. The CLC reserves the right to review annually the fee policy and vary the methodology and fees as appropriate.
- 5.10.7 We reserve the right to require further information and/or statements should we see reasonable grounds to do so. We also reserve the right to charge additional amounts

above the standard fee for applications which take more than the expected determination period of 2 days e.g. bodies with unusual or complex ownership, structures, particularly where there is a foreign – i.e. not in England or Wales - ownership element (which may require more extensive data verification endeavours), or where incomplete information has been provided. These will be charged at £80-£100 per hour.

5.10.8 The CLC will use external advisers where it feels that it is necessary, more appropriate or more efficient to consider parts of the application (e.g. to deal with technically complex, unusually data intense, poorly prepared or urgent applications). It will ask the applicant to pay for the work performed.

5.10.9 We anticipate that an application from an existing Recognised Body will require less resource to assess than a brand new applicant as their structures, systems and controls are well-known to us. Accordingly, the standard application fee for such an entity will be lower, at £600. The CLC reserves the right to review annually the fee policy and vary the methodology and fees as appropriate.

5.10.10 All applicant entities will be required to pay for the data verification services we will procure to check the fit and proper details – e.g. criminal record, bankruptcy and disqualification declarations - provided by those with a material interest, the HoLP and HoFA are correct. Permitted by the LSB’s amendment of the Rehabilitation of Offenders Act 1974 we will be able to secure Standard Criminal Record Bureau (CRB) checks (which include information on both spent and unspent convictions, cautions and charges, rather than the unspent convictions scope of Basic CRB checks). We will extend the data verification exercise across all new Recognised Body and Licensed Conveyancer applicants. In addition, we will expect the employee and management arrangements of the applicant to include appropriate and relevant checks for all employees with authority to transfer Client and Office Money.

5.10.11 The CLC has procured the services of a data verification company to carry out the following standard checks:

Standard checks

	HOLP	HOFA	Non-Authorised Person with Material Interest
ID	√	√	√
Standard CRB	√	√	√
Adverse financial	√	√	√

CCJs, adverse orders	√	√	√
Licensing Auth disqualification	√	√	√
Prof/Regulatory body discipline	√	√	√
Criminal convictions	√	√	√
Bankruptcy/IVA	√	√	√
Academic qualifications	√	√	
References	√	√	
FSA sanctions		√	√
International financial		√	√
Company Reports			√
Director disqualification			√

Depending upon the area of management allocated to a Non-Authorised Person Manager, the data verification will follow that of the HoLP or the HoFA.

5.10.12 The cost to the CLC of these checks will be passed onto the applicant. As identified above, although we apply the same fit and proper declaration to each person regardless of their proposed role, we will vary the verification of the data provided according to their position. For instance, the academic qualifications of an owner will have no bearing upon whether or not they are fit to own, whereas the qualifications of HoLP/HoFA candidates will impact upon their fitness to assume their proposed roles. As the data checks will vary, so will the standard fees for each: the fees currently quoted are: for the HoLP £67.50; for the HoFA £74.00; for Non-Authorised Person owners £61.50; and for Non-Authorised Person Managers either £67.50 or £74.00. Our Licensed Body (ABS) Licensing Framework makes clear the differential costs of the checks but does not

identify which checks apply to what role as we do not wish to provide a perverse incentive for false declarations in particular areas.

- 5.10.13 The package we have procured is sufficiently flexible to allow for additional checks should a standard one identify the need for such. We reserve the right to charge the applicant the increased cost.
- 5.10.14 CLC Legal Practice Inspectors will check the financial and other relevant information provided to ensure we have no concerns with the source of funding and are confident that Business Plans are viable. They, together with the CLC Authorised Officer, will determine whether the statements provided and arrangements declared are appropriate.
- 5.10.15 We anticipate that licence modifications/removal of condition requests will take no more than 4 hours to determine. The standard application fee for such requests will be £320. We reserve the right to charge additional amounts for more complicated applications which take longer than this to determine. These will be charged at £80 per hour.
- 5.10.16 Should a Licensed Body apply to change the individual person occupying the role of HoLP or HoFA the standard application fee will be £240. Applicant bodies will in addition be required to pay for the data verification which needs to accompany the application.
- 5.10.17 The annual Regulatory Fee will be determined, and approved by the LSB, each year. The current rates are set out in the Fees Rules 2010 at [www.clc-uk.org](http://www.clc-uk.org).
- 5.10.18 We consider these arrangements to be fundamental to the interests of consumers as the application information will inform our determination of the risk to the consumer posed by the entity receiving a licence. These requirements are the minimum we consider should be imposed with this interest in mind. In the interests of competition, they are intended to be proportionate so that an access barrier is not created to would-be applicants. They have also been devised with the intention that they help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

*Better information on diversity allows consumers a clearer insight into the providers they choose, provides individuals the information needed to make an informed decision about their careers and allows law firms to differentiate themselves in a liberalising market.*



## 5.11 Licence Determinations

LSA, Schedule 11, para. 2: Determination of applications

- (1) *‘Licensing rules must make the following provision about the determination of applications for licences.*
- (2) *Before the end of the decision period the licensing authority must –*
  - (a) *decide the application,*
  - (b) *notify the applicant of its decision, and*
  - (c) *if it decides to refuse the application, set out in notice the reasons for the refusal.*
- (3) *The decision period is the period of 6 months beginning with the day on which the application is made to the licensing authority in accordance with its licensing rules.*
- (4) *The licensing authority may, on one or more occasions, give the applicant a notice (“an extension notice”) extending the decision period by a period specified in the notice.*
- (5) *But –*
  - (a) *an extension notice may only be given before the time when the decision period would end, but for the extension notice, and*
  - (b) *the total decision period must not exceed 9 months.*
- (6) *An extension notice must set out the reasons for the extension. ‘*

5.11.1 An application will be determined by the CLC Authorised Officer and their team as advised by other colleagues, particularly Legal Practice Inspectors, who will assess the inherent risks of licensing the applicant. In the case of a more involved application or where adverse information is provided the application will be determined by the CLC Authorised Officer in conjunction with a Director.

5.11.2 Our determination will be informed by an assessment of the following factors:

- The entity’s activities and Client type (including whether the non-reserved legal activities the entity is proposing to provide are closely related to the reserved legal activities proposed);
- The quality of the governance/management arrangements (including regulatory compliance arrangements such as ensuring non-Authorised Persons do not cause or substantially contribute to a regulatory breach by the Licensed Body, or Authorised Persons within it) and risk management strategies;
- The quality of the arrangements to prevent and deal with Improper Influence and Conflicts of Interest, ensuring Authorised Persons maintain the Overriding Principles and comply with their own individual regulatory arrangements;
- Probity of funding source;
- Financial viability of the entity and the integrity of the Business

- Plan/financial projections in light of the entity's proposals;
- Client money handling arrangements;
- The quality of operating procedures including complaints-handling;
- Resources allocated to, and arrangements for reserved legal activities (in particular who will be providing them or supervising their provision), this will include an assessment of the ratio of Authorised Persons to non-Authorised Persons;
- Resources allocated to, and arrangements for, non-reserved activities;
- Suitability of proposed Non-Authorised Persons with material interests and how they may impact upon the entity's independence and integrity (they must not threaten a) delivery of the Code of Conduct's outcomes or b) the ability of Authorised Persons to meet their regulatory duties);
- Suitability of proposed Head of Legal Practice (HoLP) and Head of Finance & Administration (HoFA);
- The arrangements in place which permit the HoLP and HoFA to report on matters direct to the CLC without prior consultation or approval from the entity, its Managers, owners or associates;
- Where the applicant is proposing that the designated HoLP and the HoFA are the same person whether this is appropriate taking account of the size and risk profile of the entity;
- Where the entity has chosen to opt out of the CLC Master Policy whether their own arrangements provide their clients with cover equal to that which would be provided by the Master Policy;
- Quality of employment arrangements, particularly procedures for ensuring managers and employees are fit and proper persons;
- Any significantly prejudicial access to justice barriers;
- Any other factors which the CLC believes may pose a risk to delivery of the Code of Conduct's Outcomes.

to determine the entity's capacity and capability to deliver the Outcomes our regulatory arrangements seek.

5.11.3 Having assessed the risks an applicant and its stakeholders present we will determine one of the following:

- To grant a Licence free of conditions;
- To grant a Licence which imposes conditions (to mitigate less serious risks posed to the regulatory objectives);
- To refuse the application (due to the severity of the risk(s) posed to the regulatory objectives).

Where a licence is subject to conditions or an application is refused we will inform the applicant of the reasons for this.

5.11.4 We aim to notify all applicants of our determination within 90 days of receipt of their application. If an application is of a complex nature, is incomplete, or we require additional information we will extend the determination period beyond this timescale in order that any risks to the regulatory objectives can be properly assessed. Where this is

the case we will notify the applicant before the end of the original 90 day determination period. The extension notice will inform the applicant of the reasons for the extension and its intended period, which will not exceed a further 90 days. The standard determination period is half that stated in the Act based on our experience, through Recognised Bodies, of licensing a form of ABS. The determination period for applicants who are currently Recognised Bodies will remain at 42 days as we already have much of the information needed to inform their determination.

- 5.11.5 Where a Licence is granted it will be issued as soon as is practicably possible and no later than 7 days after having been granted. We will provide the Licensed Body with any support and guidance they may require and may also require them to periodically provide us with information to satisfy us that the systems in place are operating satisfactorily.
- 5.11.6 The Licence will specify the endorsements on which it has been granted: it will stipulate the Reserved Legal Activities which the Licensed Body is authorised to carry on; the non-reserved legal activities which it is authorised to provide; and any conditions on which the licence is granted.
- 5.11.7 We will publish our licensing determination timescales and achievements against these after functioning as a Licensing Authority for six months. These will then be published on an annual basis.
- 5.11.8 We consider these arrangements to be fundamental to the interests of consumers as we will only license those bodies which do not pose a risk to consumers, or where the risks presented are those which can be mitigated through the imposition of licence conditions, or can be tolerated. They have also been devised with the intention that they help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Regulation is focused on consumer protection.*

## 5.12 Licence Determination Review

LSA, Sch. 11, paragraph 3

*'Licensing rules must make provision for review by the Licensing Authority of:*

*a decision to refuse an application for a licence;  
if a licence is granted, the terms of the licence'*

LSB Requirement, ABS: approaches to licensing, pg. 14 Guidance para. 63

- *A published, comprehensive and quick internal review*

- *Conducted by a person or people who have not been involved in considering the application itself*
- *A review of the legal adequacy of the process undertaken or a reassessment of the application*

5.12.1 Any applicant or Licensed Body dissatisfied with our determination of their application has the right to a review of the decision. This includes refusal of an application, a licence is subject to conditions, the material interest has been conditionally approved or objected to, or a HoLP or HoFA candidate has been declined. A review must be requested within 28 days of their being notified of our determination.

5.12.2 The review will be carried out by the CLC Adjudication Panel. The Adjudication Panel does not include any persons who are members of the CLC Council or CLC staff. There will be a majority of lay members on the panel. At least two lay members and one Licensed Conveyancer member must attend for the meeting to be quorate. No-one on the panel will have been involved in the original determination of the licence application.

5.12.3 We will provide the applicant with a written notice, stating the date, time and place of the review. They will be able to make representations in writing and/or in person before the panel. The panel will re-assess the application and the resultant determination, providing the applicant with its decision within 42 days of the determination review request, though we reserve the right to extend this to 90 days in complex cases. Where the determination review period needs to be extended, we will inform the applicant (within the original 42 days timeframe) of the extension, its reasons and within what timeframe the panel aims to have carried out the review. Please see 5.4 above for more information on the Adjudication Panel.

5.12.4 After operating as a Licensing Authority for six months we will assess the consistency of our licensing determinations – including the circumstances in which conditions are made and how often – to ensure we are employing a consistent approach. This quality control exercise will be carried out every year thereafter to ensure our licensing approach is consistently applied. With the approval of the LSB we shall make such changes as we consider necessary in light of these assessments.

### **5.13 Licence Period/ Renewal**

*LSA, Sch. 11, para. 4*

*'The licensing rules may make provision:*

- *limiting the period for which any licence is (subject to the provision of Part 1 of Schedule 11 and of the licensing rules) to remain in force;*
- *about the renewal of licences, including provision about the form and manner in which an application for renewal is to be made, and the fee (if any) which is to accompany an application*

*The licensing rules may make provision about:*

- *the information which applications for renewal must contain; and*
- *the documents which must accompany applications;*

*Licensing rules must provide that a licence issued to a Licensed Body by the Licensing Authority ceases to have effect if the Licensed Body is issued with a licence by another Licensing Authority.*

*LSB, ABS: approaches to licensing, Guidance para. 64—66*

- *Licences should not be time-limited, other than if a temporary licence is granted;*
- *Appropriate for licensing rules to make provision about data collection (expected to be similar to any information requirements on non-ABS).*

- 5.13.1 As recommended by LSB guidance, we will issue Licensed Body licences for an indefinite period. These will remain valid as long as the entity pays its annual regulatory fee and provides and complies with its regulatory responsibilities (including Compensation Fund contributions and Professional Indemnity Insurance). Should the entity be issued with a Licensed Body Licence by another Licensing Authority the CLC Licence will automatically cease to have effect (as clearly stated in the Framework).
- 5.13.2 Our licences for Licensed Conveyancers and Recognised Bodies are currently valid for one year. From the autumn of 2011 these licences will be indefinite, or for such period as may be specified, in order that the licence duration is consistent across all CLC regulated entities. This will benefit both the CLC and those we regulate, enabling us to move resources away from annual administrative functions towards risk-based monitoring.
- 5.13.3 The risk that an entity presents is unlikely to remain constant. It is important that we systematically collect data to help us determine the nature of the risk any entity poses at any one time. Historically we have required annual submission of data from the regulated community. We are already operating a risk-based information system and monitoring approach. The introduction of our new Management Information System in February 2011 will enable online submissions to be made, easing the process for both ourselves and those we regulate. We have also reviewed our annual submissions and have reduced the comparative burden these presented, placing increasing emphasis upon more timely submissions.
- 5.13.4 The submission of data on a more regular basis from those we regulate helps inform risk profiles for entities (and enables us to react in a timely manner to support an entity which is either failing or at risk of failing). The data sought from Licensed Bodies will not

differ significantly from that required of other entities we regulate. Please see 5.4.12 for details.

- 5.13.5 We consider these arrangements to be fundamental to encouraging the independence, strength, effectiveness and competitiveness of the legal profession, reducing the time and resources they, and we, allocate to an annual renewal process, replacing it with regular online submissions and proportionately less onerous requirements for the submission of information annually. It is also in the interests of both the public and the consumer that we as a regulator are more able to focus our resources according to the risk an entity poses, and are able to react to that risk in a more timely manner.
- 5.13.6 They have also been devised with the intention that they help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Regulation is focused on consumer protection.*

#### 5.14 Continuity of Licences

LSA, Sch. 11, para. 5

*Licensing rules may make provision about the effect, on a licence issued to a partnership or other unincorporated body ("the existing body"), of any change in the membership of the existing body. The provision which may be made includes provision for the existing body's licence to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business.*

LSB, ABS: approaches to licensing, Guidance para. 67-68

- *Expect LAs to enable either the:*
  - *Transfer of a licence, including the circumstances (if any) in which a licence can be transferred, info which must be provided and process used to decide whether body continues to be licensed; or*
  - *Issue of a temporary licence, including the circumstances (if any) in which a temporary licence will be granted (which may need to be before a change of ownership takes place) and the application process;*
- *It may be appropriate for both options to be available;*
- *It is acceptable for a LA to charge a cost-reflective fee for either approach.*

- 5.14.1 An existing Licensed Body's licence can be transferred where the entity ceases to exist and another entity succeeds to the whole or substantially the whole of its business. In

this event, the licence will be temporarily transferred. The licence will assume indefinite status upon our approval of the transferee.

- 5.14.2 The CLC accepts that whatever contingency plans an entity has in place in the event of exceptional circumstances, an instance may occur when an entity is unable to comply with the CLC's regulatory requirements. In those or similar circumstances the CLC may determine - having regard to the regulatory objectives and the interests of consumers in particular- that rather than withdrawing the entity's licence the most proportionate response is to issue a temporary licence to the entity (say for 28 days which is capable of being extended) in order to give the entity an opportunity to comply with the regulatory requirements (such as appointing a HoLP or HoFA). The entity must apply for a temporary, licence using the appropriate CLC form. As with all CLC applications, the fee is likely to be broadly cost-reflective.
- 5.14.3 Where there is a change in the membership of a Limited Liability Partnership of 2 members, the HoLP, HoFA, or in the case of a sole Authorised Person Manager the licence will assume temporary status, or will be subject to conditions, and will only continue to have effect if the remaining person is an Authorised Person, and within 28 days of the occurrence an additional person has become a Limited Liability Partnership Member. The licence will assume indefinite status upon our approval of the new candidates. In all instances the 28 day period can be extended on request by the Licensed Body (provided this is agreed by the CLC) and we must be provided with details of the replacement so we can approve the proposed candidate.
- 5.14.4 Where we are notified of a proposed step of acquiring a material interest of 10% or more the licence's status will become temporary and will only be reinstated as indefinite upon our approval of the Non-Authorised Person.
- 5.14.5 They have also been devised with the intention that they help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *LAs' approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services.*

## 5.15 Licence Modification

*LSA, Sch. 11, para. 6  
Licensing rules must make provision about the form and manner in which applications are to be made for modifications of the terms of a licence under Section 86, and the fee (if any) which is to accompany the application*

*Licensing rules may make provision as to the circumstances in which the Licensing Authority may modify the terms of a licence under Section 86 without an application being made*

*Licensing rules must make provision for review by the Licensing Authority of:*

- *a decision to refuse an application for modification of the terms of a licence;*
- *if the Licensing Authority makes licensing rules under sub-paragraph 6(2), a decision under those rules to modify the terms of a licence*

*LSB, ABS: approaches to licensing, Guidance para. 69 – 72*

- *Expect LAs to publish a straightforward licence modification request process;*
- *Process should indicate information required, indicative decision timescales and the appeal process*
- *Fees should be broadly cost reflective, not overly complex and published, with the ability to charge additional amounts for particularly complex applications;*
- *It is appropriate for LAs to offer an indicative, exhaustive, list of circumstances in which they might modify licence conditions without consent and set out the appeal process;*
- *Expect LAs to have a comprehensive and quick internal review system to consider modification requests, conducted by a person(s) not involved in the original decision (for the LA to consider how far this process should review the process' legal adequacy or constitute a reassessment of the application.*

5.15.1 A Licensed Body is entitled at any time to apply for a modification of its licence terms. However, if the application refers to the removal of licence conditions and is made within 12 months of those conditions being imposed it is likely that the request will not be granted, unless exceptional circumstances apply. It is a matter for the Licensed Body to satisfy us that the condition(s) should be removed. We will not issue any automatic waivers of regulatory arrangements due to an entity's structure; an entity wishing to waive a regulatory responsibility will need to apply.

5.15.2 A Licensed Body wishing to modify its licence terms must complete the appropriate CLC form and provide us with evidence to justify the modification. The standard modification fee will be £320 based on the 4 hours we judge will be required to assess the modification application. We reserve the right to charge additional amounts above the standard fee for particularly complex applications which take more than the expected time. These will be charged at £80 per hour. The request will be determined



by the CLC Authorised Officer. The determination will be made within 28 days of receipt of the complete modification application.

5.15.3 We will only modify a licence without notice where we are satisfied there is a legitimate need to do so, in the interests of consumers and/or consistent with the wider regulatory objectives. For example:

- There has been a change in legislation or in our regulatory arrangements which impacts upon the terms of the licence;
- Where a licence condition is only to have effect for a period of time, that period has expired – we may decide to remove the condition if we are satisfied it is no longer applicable, or where we believe there are good reasons to do so we may extend the period the condition is to have effect
- The CLC is satisfied any condition in force is no longer applicable – we may decide to remove the condition or to substitute it with a further condition which in the circumstances of the case is more likely to address the regulatory concerns we have identified
- We have identified a significant and/or immediate risk to consumers which justifies the imposition of a condition(s) for the protection of consumers or it is consistent with the regulatory objectives for a condition(s) to be imposed as a matter of emergency pending a more detailed investigation, particularly of the alternative would be to require the body to cease trading.

5.15.4 The CLC will impose Licence Conditions where specific steps need to be taken to provide the additional safeguards needed to protect the body's clients. Conditions include:

- Limiting the non-reserved services a Licensed Body may provide where the CLC is not satisfied that the body's arrangements for their delivery are in the best interests of consumers;
- Requiring the Licensed Body as a whole or a person within, or connected to it, must take a specific step e.g. where the CLC is not satisfied that the HoLP or HoFA remains 'fit and proper' for the role, we may withdraw our approval of that individual (requiring another individual be designated for the role);
- Limiting the duration of the licence (applied only in exceptional circumstances

and in conjunction with other conditions e.g. in the event of the running down of a practice).

5.15.5 In all instances, we will give the Licensed Body written notice. The modifications will have effect from the time we give the notice, or such later time as may be specified in the notice. As with all of our determinations, any person subject to a condition may apply for a review. Please 5.27 for our determination review system.

5.15.6 As transitional arrangements are to remain in place until April 2012 our Framework states that we cannot (currently) accept applications made under section 106. Assuming that our application to become a Licensing Authority is approved, we will work with the Legal Services Board and other relevant partners to determine the appropriate approach to the licensing of these bodies owing to the very nature of these Special Bodies.

5.15.7 They have also been devised with the intention that they help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Regulation is focused on consumer protection;*
- *LAs' approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services;*

## 5.16 Management

### LSA, Sch. 11

*Licensing rules must require a licensed body to comply with the requirements set out:*

- *At least one of the licensed body's managers must be a person who is an authorised person in relation to a licensed activity;*
- *No manager of the licensed body may be a person who is disqualified from acting as a manager of a licensed body*

*Licensing rules may make further provision as to:*

- *the managers of licensed bodies; and*
- *the arrangements for the management by them of the licensed body and its activities*

*Licensing rules must not require all managers of a licensed body to be authorised persons in relation to a reserved legal activity.*

### LSB, ABS: approaches to licensing, Guidance para. 74 – 77

*LAs should provide objective justification should their requirements differ from equivalent provisions in non-ABS, licensing rules that place restrictions*

*on manager types and management arrangements (in these circumstances, would not normally approve the rules unless the AR changed its regulatory arrangements so they do not restrict an individual they regulate from working in an ABS regulated by another LA with a wider range of competencies).*

- 5.16.1 As with our management arrangements requirements for Recognised Bodies we require that at least one Manager in the Licensed Body is an Authorised Person. It is generally expected that there will be at least one Authorised Person who is a manager in respect of each Reserved Legal Activity the entity provides. However, in order to provide flexibility of structure, the management element of this provision is discretionary i.e. the entity must have Authorised Persons in respect of each RLA it provides, but it is not mandatory that they are Managers. It is the responsibility of the HoLP to ensure Authorised Persons are enabled to fulfill their regulatory duties. We do not require all managers to be Authorised Persons - a provision which applies to Recognised Bodies – and are satisfied that this is in the interests of the entity, which may well benefit from having managers of varying specialties, and ultimately of consumers who will receive a more effective and targeted service.
- 5.16.2 The responsibilities of the HoLP/HoFA are already regulatory requirements of Recognised Bodies. We do not consider it proportionate, particularly for the smaller Recognised Bodies we regulate, to specify who these responsibilities should be allocated to so providing greater flexibility to determine the governance arrangements which best suit the requirements of the business e.g. it may share the responsibilities amongst two or more managers.
- 5.16.3 All other structural arrangements are consistent with the Legal Services Act and LSB guidance. We do not consider supplementary management arrangements to be necessary because we anticipate that the provisions we have in place as identified in the Licensed Body Code and in the assessment of licence applications will enable us to identify specifically any governance and management arrangement concerns. Where we have such concerns we will require improvements to be made, which are likely to be capable of being managed by the imposition of appropriate conditions e.g. CPD or supervision requirements, or we may prescribe the ratio of Authorised to non-Authorised Persons. Our risk-based monitoring approach will help us to determine if the arrangements the entity stated would be implemented have in fact been put in operation.
- 5.16.4 There is no requirement within our regulatory arrangements that prevents a Licensed Conveyancer from working in a Licensed Body regulated by another Licensing Authority.
- 5.16.5 By not being unnecessarily prescriptive in our management requirements we consider these arrangements will encourage the profession to be independent, strong, diverse

and effective. To require all Licensed Bodies and the different structures they manage to employ the same management arrangements would not take account of their different business needs and risks. We believe that we need to give them the maximum flexibility to be competitive, innovative and effective, provided the regulatory objectives are not put at risk.

5.16.6 The arrangements are devised with the intention that they also help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *LAs' approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services.*

#### **5.17 Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA)**

LSA, Sch. 11, para. 11 & 13

*Licensing rules must make provision:*

- *about the procedures and criteria that will be applied by the Licensing Authority when determining whether an individual is a fit and proper person;*
- *for a review by the Licensing Authority of a determination that an individual is not a fit and proper person;*
- *about the procedures and criteria that will be applied by the Licensing Authority in determining whether to withdraw its approval;*
- *for a review by the Licensing Authority of a determination to withdraw its approval;*
- *about the procedure which is to apply where a licensed body ceases to comply with the requirement to have at all times an individual designated as Head of Legal Practice/Head of Finance and Administration (rules made may in particular provide that the designation requirement is suspended until such time as may be specified by the Licensing Authority if the licensed body complies with such other requirements as may be specified in the rules).*

LSB, ABS: approaches to licensing, Guidance para. 78 – 80

- *Appropriate for fit and proper test of the HoLP/HoFA to be the same as the test for external owners and to require full disclosure of:*

	<ul style="list-style-type: none"> <li>○ <i>Criminal charges, convictions, cautions or cases pending in the UK or elsewhere;</i></li> <li>○ <i>Any previous disciplinary action taken by a professional or regulatory body in the UK or elsewhere, whether concluded or not;</i></li> <li>○ <i>Whether the person has been disqualified has ever been disqualified as a director;</i></li> <li>○ <i>Whether the person has ever been declared bankrupt (and whether or not this has been discharged) or entered into an Individual Voluntary Arrangement; and</i></li> <li>○ <i>Any other material information that could reasonably expected to have a bearing on their fitness as to be a HoLP/HoFA.</i></li> </ul> <ul style="list-style-type: none"> <li>● <i>It is reasonable for a LA to verify the given info and to consider refusing to grant a licence if false, misleading or insufficient information is provided;</i></li> <li>● <i>It may be acceptable for a person to be an owner of an ABS but not to be a HoLP/HoFA – expect LAs to provide guidance on the types of issues that may mean someone if not fit and proper for their proposed role.</i></li> <li>● <i>Other things being equal, a LA should not use the decision against an individual nominated for the role as a reason to deny a licence subsequently if a more satisfactory individual is identified.</i></li> </ul>
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5.17.1 The fit and proper test is the same for both these roles (and for external owners) and requires full disclosure of the information set out in the table at 5.10.1 above. We shall verify the declarations and information disclosed. As trust is integral to our regulatory relationship with these individuals and with the entity they represent, we are unlikely to approve their designation where information which is materially incorrect is provided. In this case, provided all other aspects of the application are satisfactory, we may determine not to refuse the application but may require the applicant to nominate an alternative HoFA or HoFA, as appropriate.

5.17.2 A HoLP must be an Authorised Person. In determining the suitability of the proposed HoLP we will consider the following factors:

- Any concerns identified by the fit and proper test;
- Whether they have been disqualified by a Licensing Authority from acting as a HoLP, or any other role, in a Licensed Body;
- Whether they have been subject to disciplinary proceedings or disciplinary investigation;
- Their competence and credibility to fulfil the role effectively; and
- Their level of seniority within the entity and whether this is appropriate for its size and structure.

5.17.3 In determining the suitability of the proposed HoFA we will consider their accountancy experience and/or accounting qualifications in addition to the factors set out at 5.17.2.

5.17.4 Where adverse fit and proper information is provided the CLC Authorised Officer will determine whether a HoLP or HoFA candidate is considered fit and proper for their assigned role. Adverse information on either of these candidates will not result in automatic rejection. Our determination will depend upon the nature of the information provided and whether this puts at risk compliance with the entity's regulatory responsibilities. For instance, we are likely to disregard spent convictions for less serious offences, provided they are not dishonesty or fraud related. We consider that dishonesty or fraud related convictions are likely to present too great a risk to delivery of positive Outcomes for Clients. In such instances, we are likely not to be confident that the entity will meet *Overriding Principle 1 Act with Independence and Integrity*; and *Overriding Principle 5 Deal with regulators and ombudsmen in an open and cooperative way*. Where an individual has been declared bankrupt or has been subject to an Individual Voluntary Arrangement (particularly if it is recent), it is likely that an application for that individual to be approved as a HoFA will be refused as the role requires both financial capability as well as probity. In each instance we will take account of the circumstances of the information provided, whether the individual has learnt from it, and the individual's representations.

5.17.5 Should a HoLP/HoFA applicant be found demonstrably inappropriate and all other aspects of the entity's application are satisfactory (or could be rendered so through an undertaking or a condition) the licence will be granted, but the entity will not be entitled to start trading until the CLC has approved an alternative nominee.

5.17.6 Risks which may be tolerated in an owner are unlikely to be acceptable in either of these candidates. The CLC's principle objective is that the HoLP and HoFA in any Licensed Body will be of sufficiently high quality and the entity's arrangements sufficiently robust so as to prevent any owner from seeking to exercise any improper influence. Because HoLPs

and HoFAs are required to have such a pivotal role in the regulatory life of the entity, we must be confident in the probity and professional competence of the individuals which assume these roles.

- 5.17.7 Applicants must seek high quality candidates for these vital roles. Where we consider either candidate to be demonstrably inappropriate e.g. they have a conviction for fraud, or the entity's proposed HoLP/HoFA arrangements are unsuitable having regard to the risk profile of the Licensed Body e.g. an entity identified as having an increased risk profile proposes that its candidate for the HoLP and HoFA roles is the same person and that person has neither an accountancy qualification or experience, we will not approve the candidate. We will require the candidate to undertake targeted Continuous Professional Development where we have identified any specific weakness, in addition to any other CPD requirements for HoLPs/HoFAs.

LSB, ABS: approaches to licensing, Guidance para. 80

- *LAs may consider that there should be a requirement to notify them of any potential or actual fit and proper changes as they arise and/or if the HoLP/HoFA changes.*

- 5.17.8 A candidate approved as HoLP/HoFA may subsequently become unsuitable. The HoLP has a duty to notify us of any fit and proper issues concerning the HoLP or HoFA. As with the fit and proper test applied at application stage an identified issue would not automatically result in the withdrawal of our approval but would be based on an assessment of the risk posed by the individual continuing in their role (and whether imposition of conditions might render this risk acceptable)
- 5.17.9 Where a HoLP/HoFA we have approved is subsequently found not to be suitable or evidences conduct which makes him unsuitable, we shall seek to resolve this informally in the first instance where this is possible and appropriate. If this is not appropriate because of the impact of the breach on the regulatory objectives we may impose conditions on the licence pertaining to the individual. In the case of a more serious breach we may withdraw our approval, requiring the entity to replace the relevant individual with another candidate. If we are satisfied that the HoLP or HoFA has been in breach of their duties or has caused, or substantially contributed to a significant breach of the licence terms, endorsements, or its conditions we may disqualify them from continuing to act as HoLP or HoFA, or indeed any role in a Licensed Body. In that case we shall notify the LSB so that the individuals disqualified are included in the LSA s.100 list it will maintain.

LSB, ABS: approaches to licensing, Guidance para. 85

- *Comprehensive and quick internal review system.*

5.17.10 Should a HoLP/HoFA applicant be determined demonstrably inappropriate by the CLC Authorised Officer and the Director of Operations, or an existing HoLP/HoFA has given the Adjudication Panel sufficient cause for our approval to be withdrawn the individual/entity has the right to request that this decision is reviewed. They must make this request within 28 days of being notified of our determination. Please see 5.27 for our determination review system.

LSB, ABS: approaches to licensing, Guidance para. 84

- *Set out a process for notifying the LA that there is no longer a HoLP/HoFA & the possible approaches the LA might take in such circumstances (including maximum time for an interim, and an alternative, arrangement to be in place).*

5.17.11 Licensed Bodies must have succession arrangements in place for these roles. Should an entity cease to comply with the requirement to have at all times a HoLP and HoFA the Licensed Body Code requires that they notify us of this (unless we have withdrawn approval of the individual, in which case we will inform the entity of this). The entity will have 28 days – unless they request a longer period and we grant this - to find an appropriately qualified and suitable replacement, and during this period it is likely that the entity will be issued with a temporary licence. The licence will not be fully reinstated until we have applied the fit and proper test to the replacement and are satisfied with its findings.

5.17.12 In the temporary absence of an HoLP we will designate another manager within the entity to notify us of any regulatory concerns. Should the entity fail to put in place a HoLP or HoFA in the timeframe we have agreed with them they will have breached their licensing terms and we may seek to suspend the licence.

LSB, ABS: approaches to licensing, Guidance para. 80

- *Not proportionate for the fit and proper tests to be renewed on an annual basis.*

5.17.13 We agree with the LSB's stance that an annual fit and proper test would not be proportionate. Instead, the Licensed Body Code requires the HoFA to notify the HoLP of any factors impacting upon their fit and proper status. The HoLP is required to inform us of any such factors pertaining to either their own or to the HoFA's fitness. In turn, the entity is required to inform us if either of the individuals in these roles changes.



5.17.14 The Licensed Body Code (provided within the Handbook at Annex A) clearly defines these roles and their responsibilities, specifying a number of Principles and Specific Requirements of both the individual – i.e. they are fit and proper and declare any factors affecting this - and of responsibility – e.g. ensuring that the Licensed Body complies with the terms/endorsements/conditions of its licence. These cover areas such as ensuring the entity meets its regulatory responsibilities (and informs us where this is not the case); ensuring Authorised Persons are able to comply with their duties; complying with the CLC’s treatment of money requirements; and keeping up to date with legislative and regulatory requirements through targeted Continuous Professional Development.

LSB, ABS: approaches to licensing, Guidance para. 83

- *LAs to give guidance on the appropriate level of seniority for a HoLP/HoFA and who they report to (taking into account the size of the ABS); it would be considered appropriate to have a requirement for the HoLP/HoFA to be of, or to report to, the most senior level of management;*
- *Must have the freedom to dissent from collective responsibility when reporting on matters to the LA;*
- *Expect there to be a requirement for their roles and responsibilities within an ABS to be clearly defined.*

5.17.15 Given the importance of both these roles it is essential that they are at a management level which should mean the entity’s directors will listen to them. Our Specific Requirements include the requirement that both posts are a member of, or report to, the senior management team. The Code is also explicit in its expectation that they have access to the entity’s managers, staff and the CLC whenever needed, their views are taken into account and wherever possible, their recommendations taken forward. In addition, they must be specifically authorised by the entity to dissent from collective responsibility when reporting to us.

5.17.16 Both roles are clearly defined in the Licensed Body Code to provide clarity of responsibilities and functions and, equally, to emphasise their importance to licensable and Licensed Bodies. It is also fundamental to protecting the public interest and the consumer interest that the candidates for such a role are aware of the areas for which they will be responsible. The HoLP’s responsibilities include ensuring that all persons employed by, or owners of, a Licensed Body are aware of their own responsibilities and will act in a professional and principled manner (and must inform us if this is not the case). The Licensed Body Code requires the entity to have in place a mechanism by which staff can report regulatory concerns to the HoLP. The HoFA must ensure that

client money and assets are protected at all times and that the entity complies with our treatment of money requirements, as per the CLC Accounts Code, Anti-Money Laundering & Combating Terrorist Financing Code as well as the Code of Conduct.

- 5.17.17 It is recognised that there is a potential conflict between the corporate objectives a senior management team may pursue and the HoLP/HoFA's duty to report to the CLC. Therefore, the Code also requires that the entity specifically authorises both roles *to dissent from collective responsibility when reporting to the CLC* and the entity enables both roles to *discharge their regulatory responsibilities*. The applicant needs to provide us with evidence this is the case. Where this is not the case we will require an undertaking to be made or may impose a condition upon the licence. Where we consider that neither of these will mitigate the risk we will not grant the licence. Where we have licensed an entity and subsequently determine that the arrangements declared are not being implemented we will take action. The action taken will be in accordance with the approach identified in our Enforcement Policy (provided at Annex A).
- 5.17.18 We consider these arrangements to be fundamental to the public and consumer interest, both of which dictate that the constitutional principle of the rule of law is supported by those providing legal services. A HoLP who is not fit and proper for the role is unlikely to be able, or possibly unwilling, to ensure that others in the business demonstrate this. It is the responsibility of the HoLP that this is the case. In doing so, legal service providers must act in a principled manner which adheres to the professional principles. It is very much in the interests of the consumer that their money is kept safe at all times. Again, it is essential that the HoFA is appropriately fit and proper to ensure that the entity delivers on this.
- 5.17.19 However suitably qualified and fit and proper a candidate for either of these roles may be, it would be of little tangible benefit to either the profession or the entity's consumers if the entity within which they are employed did not enable them to meet these responsibilities and to carry out their duties. Therefore, we have clearly defined the responsibilities of each role, alongside the requirements placed upon the entity and its owners to enable each role to meet these. It is in the interests of both the profession and its consumers that the profession is encouraged to be as diverse, effective and strong as possible and to this end our requirements – the responsibilities of both these individuals as well as the entity's arrangements to enable them – are principles-based wherever possible, in order that the entity is provided with the flexibility as to how these requirements are met. Where requirements are specific they are judged essential to safeguarding the interests of the consumer, the public and the profession.
- 5.17.20 It is in the interests of the consumer that a change in circumstances of the individuals which assume either of these roles does not invalidate the entity's licence and so interrupt, or terminate the entity's entitlement to provide services to consumers. It is in their interests that the entity continues to function (and has in place succession

arrangements to enable this). We do not anticipate suspending (or revoking) the licence unless there is a substantial and immediate threat to the regulatory objectives.

5.17.21 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *High quality Heads of Legal Practice (HoLPs) and Heads of Finance and Administration (HoFAs) who come from a wide range of backgrounds and diversity reflecting the commercial decisions and commercial operations of the ABS as well as the statutory requirements;*
- *Strong governance arrangements to:*
  - *Provide HoLP and HoFA with access to CEO, Board, non-executives whenever necessary;*
  - *Ensure compliance with LSA and licence requirements;*
  - *Ensure appropriate operating procedures; and*
  - *Provide a mechanism for ABS staff to raise concerns which are acted upon appropriately.*
- *ABS compliance with licence requirements is high, with minimum enforcement required by LAs.*

*NB. LSB Guidance paragraphs 81-82 – regarding qualifications and experience of these roles – is covered at section 5.2 (Qualifications).*

## **5.18 Practising Address**

*LSA Requirement, Sch. 11, para. 15*

*Licensing rules must require a licensed body at all times to have a practising address in England and Wales. [This] does not apply to a licensed body:*

- *which is a company or limited liability partnership; and*
- *the registered office of which is situated in England and Wales (or in Wales)*

5.18.1 The Code of Conduct requires that the control of an entity is England and Wales – that is an address from which the entity is managed and from which services which consist of or include the carrying on of reserved legal services are provided - in England and Wales.

The Act specifies that this requirement does not apply to a company or limited liability partnership or an entity which has a registered office in England and Wales. The CLC requires each entity to have a physical presence in England and Wales from which the services it provides and its accounts functions can be controlled. This is essential so that in the event it is required to intervene into a practice the CLC is able to exercise such powers promptly and effectively.

- 5.18.2 In instances of a foreign legal qualification or a foreign company we will require a certified translation.

## 5.19 Licensed Activities

*LSA Requirement, Sch. 11, para. 16*  
*Licensing rules must provide that a licensed body may carry on a licensed activity only through a person who is entitled to carry on the activity*

- 5.19.1 The Code of Conduct requires that a Reserved Legal Activity is only carried on through a person entitled to carry on that activity. Our licence application requirements include provision of information on who will carry out each Reserved Legal Activity to be undertaken by the entity. The resources allocated to, and arrangements for, reserved legal activities will inform our assessment of an application, with particular reference to who will be carrying on the activity.
- 5.19.2 The Licensed Body Licence will specify as authorisations the Reserved Legal Activities which an entity is authorised by the CLC to provide.
- 5.19.3 We consider this arrangement to be fundamental to the public interest as only those who have the appropriate qualifications, knowledge, skills and competence to carry on a Reserved Legal Activity, and will be supported by the entity's arrangements in doing so.

## 5.20 Compliance with regulatory arrangements

*LSA Requirement, Sch. 11, para. 17)*

*Licensing rules must include the following provision:*

*A licensed body must at all times have suitable arrangements in place:*

- to ensure its managers and employees comply with s.176 duties; and any manager or employee who is an authorised person in relation to a reserved legal activity maintains the professional principles;*
- non-authorised persons subject to the s.90 duty in relation to the*

*licensed body comply with that duty;*

*Licensing rules may make provision as to the arrangements suitable for the above*

*LSB, ABS: approaches to licensing, Guidance, para. 90-91*

- *It is a commercial decision for the ABS to decide what its overarching compliance policies;*
- *LAs set out their expectations of:*
- *Good governance and strong operating procedures to ensure licence compliance;*
- *Identification by the ABS of risks, in particular to consumers, of its activities;*
- *Ensure lawyers' duty to comply with their professional principles is not compromised by external owners or non-authorised persons and that consumers are properly protected and receive good quality advice.*

5.20.1 The quality of governance and management arrangements will inform our decision whether to grant a licence. These arrangements will include confirmation in the arrangements that Authorised Persons will comply with the Overriding Principles and their own individual regulatory arrangements; and non-Authorised Persons will comply with their duties not to breach or substantially contribute to a regulatory breach by the Licensed Body or any Authorised Person within it. This is set out at the licence application stage which requires applicants to provide us with a Compatibility Statement which must include declaration of compatibility, and any incompatibility with it, and steps taken as a result, with the Licensed Body Code (and Code of Conduct) which is explicit in its requirements of these duties being met. Our Management and Supervision Guidance outlines our high-level expectations of appropriate arrangements. The Code of Conduct requires the systematic identification and mitigation of risks to the business and to Clients, and the provision of good quality advice to clients. These are two of several outcomes which the entity and its arrangements will need to satisfy us they can deliver. The Compatibility Statement licensing requirement will be extended to Recognised Bodies (and will cover the Code of Conduct and Recognised Body Code).

5.20.2 The Code requires that all Authorised Persons are able to comply with their individual regulatory responsibilities and that non-Authorised Persons understand their regulatory responsibilities and do not compromise the entity's duty to the Court or to the Client. These duties are then specified as the responsibility of the HoLP, who must ensure they are upheld, and promptly notify us where this is not the case.

- 5.20.3 We agree with the LSB suggestion that the form of arrangements is a commercial decision and therefore we have not been prescriptive, providing only the high-level principles that must be complied with in order to meet our expectations of good governance and strong operating procedures.
- 5.20.4 The Code of Conduct is the parent document of our regulatory arrangements. It is based upon the LSA's Professional Principles and identifies the Outcomes for Clients to which we expect all bodies to work. All other regulatory arrangements, such as the Licensed Body Code, are devised to help support the delivery of these Outcomes. Where our expectations are not met, because the Outcomes are being threatened, we will pursue the matter as provided in our Regulatory and Enforcement Policies.
- 5.20.5 All bodies regulated by us are required under the Notification Code (provided in the CLC Handbook at Annex A) to inform us should their management arrangements change from those identified in their application. Upon notification we will determine whether the information provided alters the entity's risk profile.
- 5.20.6 We consider the avoidance of highly prescriptive and detailed requirements regarding a Licensed Body's arrangements to be fundamental to the promotion of legal services competition. Whilst allowing some flexibility as to how these principles are met, it is essential that Authorised Persons promote and maintain adherence to the professional principles, and that there are arrangements in place to ensure non-Authorised Persons do not cause them, or the entity itself, to act in breach of these arrangements. Where this is not the case the entity and its stakeholders run the unacceptable risk that the constitutional principle of the rule of law will not be supported; therefore these are explicit requirements of the Licensed Body Code. The high-level principles we provide are designed to encourage an independent and strong legal profession. The provision of equally high-level guidance seeks to protect the public interest by affording those in need of a direction with some assistance.
- 5.20.7 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Both lawyer and non-lawyer employees, office holders and owners behave in ways that ensure that:*
  - *justice and the rule of law are upheld;*
  - *they act with integrity and respect the professional principles;*
  - *they act with independence and in the best interests of their clients, ensuring that confidentiality and client money are protected;*

- *they provide good standards of service to all their clients; and*
- *they are trusted by members of the public and do not behave in a way that undermines trust in the provision of legal services.*

## **5.21 Disqualification**

*LSA, Sch. 11, para. 18*

*Licensing rules must include the requirement that a licensed body may not employ a person who under Part 3 of Schedule 11 is disqualified from being an employee of a licensed body*

- 5.21.1 An applicant must provide us with information on their employment procedures and arrangements. The Licensing Approach section of the Framework makes it clear that we will assess these to ensure the entity only employs ‘fit and proper’ persons. Our proposed regulatory arrangements are explicit in their requirement that the entity has arrangements in place to ensure that it does not employ persons disqualified from assuming a role in a Licensed Body. The Licensed Body Licensing Framework informs applicants that the Legal Services Board will maintain and publish the list of persons disqualified from Licensed Body roles and a hyperlink to the LSB’s website is provided.
- 5.21.2 An applicant which has a member of staff who has been disqualified from being an employee of a Licensed Body will not be licensed until the employee has been removed from the entity.
- 5.21.3 A Licensed Body who employs, or continues to employ, a disqualified employee will have breached their regulatory responsibilities. In such circumstances we will take into account whether the act or omission was deliberate, the impact (potential or actual) of the behaviour on consumers, the reputation of the legal services sector, whether the breach was an isolated incident or repeated and the attitude of the individual or entity. This will be informed by a range of factors including whether the entity identified the issue to us in the first instance, if they have resolved the issue or volunteered proposals to do so, any additional regulatory risk to which the entity was exposed (including the risk generated by the quality of that individual’s work), whether the appointment was made knowing that the individual had been disqualified. Depending upon the findings of our assessment our response could range from a warning to the imposition of a penalty (which may be substantial) and/or suspension/revocation of the entity’s licence.
- 5.21.4 In turn, should we disqualify a Licensed Body employee we will inform the Legal Services Board of the disqualification. (Our approach to disqualification is set out at 5.25).

5.21.5 We consider these arrangements to be fundamental to consumers' interests, which require that all employees of an entity providing legal services do so with competence and probity. It is also in the interests of the profession's reputation and in the interests of the public that bodies providing legal services uphold the principle of the rule of law and the professional principles. An individual who has been disqualified from a Licensed Body role will have been disqualified because of a significant failure on their part to uphold these requirements. In the interests of the public, consumers, and the profession our arrangements seek to prevent such individuals being employed by Licensed Bodies. Where an entity does not comply with these arrangements we will take action. These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Both lawyer and non-lawyer employees, office holders and owners behave in ways that ensure that:*
  - *justice and the rule of law are upheld;*
  - *they act with integrity and respect the professional principles;*
  - *they act with independence and in the best interests of their clients, ensuring that confidentiality and client money are protected;*
  - *they provide good standards of service to all their clients; and*
  - *they are trusted by members of the public and do not behave in a way that undermines trust in the provision of legal services.*

## 5.22 Accounts

LSA, Sch. 11, para. 20

*The licensing rules must make provision:*

*as to the treatment of money (including money held on trust) which is received, held or dealt with by the Licensed Body, its managers and employees for clients or other persons; and*

*the keeping of accounts in respect of such money (Sch. 11, paragraph 20(1))*

LSB, ABS: approaches to licensing, Guidance para. 95

- *Expect the requirements to be the same as those for non-ABS carrying out the same reserved legal activities and/or holding client money.*

5.22.1 All bodies regulated by the CLC must comply with the Code of Conduct which requires the safe keeping of client money and that client money is kept entirely separate from



other monies. The Licensed Body Code echoes this, requiring the HoFA to protect client money and assets at all times and to ensure that the entity complies with our treatment of money requirements as set out in the CLC Accounts, Aged Balance and Anti-Money Laundering & Combating Terrorist Financing Codes (and reports to us any breach of these), as all bodies regulated by us must. All of these Codes are provided at Annex A.

- 5.22.2 The Accounts Code begins with a number of principles which we consider essential to the delivery of positive Outcomes for consumers. These are underpinned by a large number of specific requirements which cover areas such as: payment into, withdrawal and transfer from client account; accounting records; reconciliations; record retention; misappropriation of clients' money; deposit interest; accountant's reports (and the reporting accountant's terms of engagement); and general savings provision.
- 5.22.3 The Accounts Code is the most prescriptive of all of the CLC's regulatory arrangements as we consider the protection of client money to be an area which allows little flexibility - especially in the fields of conveyancing and probate where considerable amounts of client money are handled – in order that the interests of the consumer are protected. The first Specific Requirement of the Code is that 'You keep Client money entirely separate from your money or the money of the entity' and the remainder of the Code (and its Guidance) seeks to reinforce the outcomes identified at the Code's outset, setting out in prescriptive terms how this should be maintained.
- 5.22.4 The Accounts Code/Guidance also refers to our monitoring processes and the possible disciplinary consequences e.g. providing a report to the Crown Prosecution Service, the Serious Organised Crime Agency or an accountancy body recognised by the CLC.
- 5.22.5 The Combating Anti-Money Laundering & Terrorist Financing Code requires all bodies regulated by the CLC to meet their responsibilities under the regulations covering these areas. Requirements include a distinct policy and the appropriate arrangements, systems and controls in order to comply with this legislation. Should a client lose out we will require that the loss is made good immediately and then consider whether any disciplinary proceedings should follow.
- 5.22.6 We consider these arrangements fundamental to the interests of consumers; their money must be kept separate in order that it is protected and not used for purposes other than in accordance with the lawful instructions of the client. It is in the interests of the public that bodies support the constitutional principle of the rule of law by complying with anti-money laundering and combating terrorist financing legislation. Should the public be concerned that their money will not be handled with probity and care, they are likely to be deterred from seeking legal advice where it is appropriate which would have potential access to justice implications. It is therefore essential that we require client money to be kept safe, the main element of which is that it is kept separate from other monies held by the entity.

5.22.7 These arrangements are also devised to help deliver the following Outcome (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *Strong governance arrangements to ensure appropriate operating procedures.*

## 5.23 Fees

LSA, Sch. 11, para. 21

*The licensing rules must require licensed bodies to pay periodical fees to the Licensing Authority. The rules may provide for the payment of different fees by different descriptions of Licensed Body.*

LSB, ABS: approaches to licensing, Guidance para. 96

- *LAs must have regard to the regulations to be made pursuant to the Framework Services Directive which seek to ensure transparency of cost when licensing;*
- *Expect annual fees to be broadly cost-effective and to allow for different annual licence fees for different ABS types;*
- *Recognise that in some circumstances, foreign ownership may result in a higher risk profile and/or greater investigation costs, which should be reflected in a differential annual licence fee.*

5.23.1 As previously stated, licences will not be time limited, removing the need for an annual licence renewal process. We will however require the payment of annual regulatory fees in order that we are able to continue to perform our regulatory function. Licensed Bodies will also be required to make a contribution to the CLC's Compensation Fund. The overall amount and how it is calculated – i.e. application fee, Compensation Fund contribution - will be clearly stated, in keeping with the Framework Services Directive. Please see section 4 of this application for information on our compliance with the Framework Services Directive.

5.23.2 The fees will be determined on the basis the CLC considers appropriate. This is likely in the short to medium term to be broadly based upon a range of factors, principally, cost size and risk profile of the entity, reflecting the average amount of regulatory activity we would expect the average entity to present. However, we reserve the right to determine fees on an alternative basis which can be objectively justified. We agree with the LSB's hypothesis that an entity under foreign ownership may present a higher risk profile and/or greater investigation costs and reserve the right to charge a higher annual regulatory fee than for other entities which do not present the same or a similar risk profile.

5.23.3 In the longer-term we would like increasingly to reflect the risk presented by an entity of a particular type – e.g. large, medium, small, and also differentiate between private and floated companies, entities under foreign ownership etc – in our regulatory fee but this will only be achievable when we have historical data to inform this. The charging structure will be reviewed annually and updated as appropriate. We anticipate that in the future we shall be in a position to determine the fee structure according to the type of Alternative Business Structure and their respective risk profile.

5.23.4 Our current view is that determining licence fees which take into account the risk profile presented by Licensed Body type will be proportionate, transparent and provide value for money in the interests of the consumer and of those we regulate as they provide increased transparency. These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB’s Licensing Rules Guidance, ‘Regulating for Outcomes’ section):

- *Regulation is focused on consumer protection. LAs’ enforcement powers are targeted on areas of high risk and consumer detriment, act as an effective deterrent and are able to be used proportionately in response to a wide variety of compliance and enforcement issues involving both individuals and entities to reduce the risk to consumers.*
- *ABS compliance with licence requirements is high, with minimum enforcement required by LAs [only relevant if licence fee can be informed by ‘bad’ compliance]*

#### **5.24-5.26 Enforcement – financial penalties, disqualifications & licence suspension/revocation**

*The following sections take into account LSB, ABS: approaches to licensing, Guidance para. 45-50*

- *Give examples of the circumstances in which the LA is likely to take action and the form of that action, without fettering its discretion; this should include how it takes into account, the risk that is posed to one or more of the regulatory objectives and professional principles;*
- *Expect a LA’s approach to enforcement to cover a wide range of issues that might result in a breach of licence requirements;*
- *Follow Schedule 14 powers and requirements and ensure LA is able to intervene and/or suspend or revoke a licence in appropriate circumstances.*

#### **5.24 Financial penalties**

LSA, s95 & Sch. 11, para. 22

*The licensing rules must make provision as to:*

- *the acts and omissions in respect of which the Licensing Authority may impose a penalty under Section 95;*
- *the criteria and procedure to be applied by the Licensing Authority in determining whether to impose a penalty under that section, and the amount of any penalty;*

LSB, ABS: approaches to licensing, Guidance para. 97 – 99

- *Financial penalties are likely to be used to attempt to change the behaviour of the licensed body or an employee or manager, and to deter future non-compliance;*
- *Expect LAs' licensing rules to set out the criteria it will apply in deciding whether to impose a penalty and the factors it is likely to take into consideration when deciding the appropriate penalty level;*
- *Important that LAs retain flexibility to decide whether to impose a penalty on an individual or an entity or both, and the amount – do not consider it reasonable for a LA to set out indicative penalties as this can distort behaviours and provide an incentive to 'game' the compliance regime;*
- *Take into account the LSB's own enforcement process and regulators' best practice, including the Code of Practice for Regulators;*
- *Expect a LA's provisions (if any) for making oral and/or written representations prior to a final decision to impose a financial penalty to be consistent with those of non-ABS.*

- 5.24.1 Our Regulatory Policy sets out the circumstances in which we are likely to direct the payment of a financial penalty. Both this and our Enforcement Policy make it clear that we reserve the right to impose a financial penalty on either the entity itself or an individual concerned with it, or both. We are likely to direct payment of a financial penalty exceeding £50,000 only in serious circumstances. Such a direction can only be made by the CLC Determination Panel. A financial penalty will be imposed to penalise a breach of the regulatory arrangements as evidenced by a specific act or omission and to deter future breaches, by both the individual/entity and others (through publication of our enforcement determinations) e.g. employment of a disqualified person.
- 5.24.2 Where there are a number of breaches we may determine it appropriate to impose a separate penalty in each case.
- 5.24.3 We will take into account whether the act or omission was deliberate, the impact (potential or actual) of the behaviour on consumers, the impact the breach has or is likely to have on the reputation of the legal services sector, whether the breach was an isolated incident or a series of breaches and the attitude of the individual

or entity. The amount will be proportionate to the size/resources of the entity whilst also set at a level likely to give both consumers and the regulated community confidence that we will deal with issues which cause prejudice to consumers, the regulated community or the public.

- 5.24.4 We will not create a perverse incentive by providing details of the exact criteria/procedure which will be applied in setting the penalty level. We will always seek to ensure it is fair and proportionate taking account of the particular circumstances of the case and the financial resources of the body or individual the subject of the penalty.
- 5.24.5 As with all CLC disciplinary proceedings, the respondent will be afforded the opportunity to make representations to the CLC Authorised Officer of the Adjudication Panel prior to a final decision being made. (Please see 5.27 for our determination review system).

## 5.25 Disqualifications

LSA, Sch 11, para. 23

*Licensing rules must make provision as to the criteria and procedure to be applied by the Licensing Authority in determining whether a person should be disqualified under Section 99*

*Licensing rules must make provision:*

- *for a review by the Licensing Authority of a determination by the Licensing Authority that a person should be disqualified;*
- *as to the criteria and procedure to be applied by the licensing authority in determining whether a person's disqualification should cease to be in force; and*
- *requiring the Licensing Authority to notify the Board of any determination by the Licensing Authority that a person should be disqualified, of the result of any review of that determination, and of any decision by the Licensing Authority that a person's disqualification should cease to be in force.*

LSB, ABS: approaches to licensing, Guidance para. 100 -101

- *Explain how this power fits within its overall approach to compliance and enforcement;*
- *Must have a published, comprehensive and quick internal review system to consider representations against a decision to disqualify a person – review should be conducted by a person or people not involved in considering the disqualification itself (for LA to consider how far the process should involve a review of the legal adequacy of the process undertaken or should constitute a re-assessment.*

- 5.25.1 We are likely to disqualify an individual from a role, or any role, within a Licensed Body only in exceptional circumstances and where the seriousness of the act or omission means that no other enforcement action is judged adequate to address it. This is likely to be in the circumstances of a HoLP, HoFA, manager or employee who has intentionally, or through willful neglect, significantly breached their duties, or caused, or substantially contributed to, a significant breach of the licence terms or its conditions.
- 5.25.2 As with all regulatory enforcement determinations we will determine the impact that risk is likely to have on the professional principles and the Outcomes they seek to deliver. We will take into account some or all of the following:

- the seriousness of the act or omission and the likely or actual impact on an individual client, clients in general and the regulated community;
- the intended outcome for clients in taking action compared with the impact of not taking action;
- the effect the particular breach is likely to have on:
  - the reputation of the legal profession; and
  - public confidence in those services and on the CLC's Regulatory Arrangements;
- the extent to which the act or omission is a one-off occurrence or is part of a series of similar matters or appears to be deliberate or vexatious;
- the period of time over which the act or omission has occurred;
- management competence and willingness to comply;
- the existence of good systems for managing risks;
- evidence of recognised external accreditation;
- whether the resource requirements needed are proportionate to achieving the desired results; and
- any other matters that it appears appropriate to take into account.

- 5.25.3 We will disqualify an individual only in exceptional circumstances and where the seriousness of the act or omission and its impact upon the Overriding Principles and the outcomes they seek means that no other enforcement action is judged adequate to address it. We may disqualify an individual from holding a particular post e.g. HoLP, or disqualify them from holding a post in any Licensed Body. The judgement will depend upon the risk they would pose by continuing to act in any particular capacity – i.e. as an HoLP, HoFA, manager or employee - having regard to the factors identified at 5.25.1 & 5.25.2.
- 5.25.4 Due to the seriousness of this sanction only the Adjudication Panel may disqualify an individual. If this decision is taken the individual affected may ask for a review of the decision by the CLC Review Panel, and subsequently has an entitlement to appeal to the

First Tier Tribunal. We will notify the Legal Services Board of a decision to disqualify an individual, and of the finding of any subsequent review of or appeal from that determination. Please see 5.27 for our determination review system.

## 5.26 Suspension or revocation of licence/Intervention

LSA, Sch. 11, para. 24-26

- *Licensing rules may make provision about other circumstances in which the Licensing Authority may exercise its powers under Section 101 to suspend or revoke a licence*
- *Licensing rules must make provision about the criteria and procedure the Licensing Authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence, under Section 101*
- *Licensing rules must make provision for a review by the Licensing Authority of a decision by the Licensing Authority to suspend or revoke a licence*

ABS: approaches to licensing, Guidance para. 102 -105

- *LA's licensing rules should set out the approach the LA will take in the events specified; and explain how (if at all) it interacts with their powers to intervene in the running of an ABS. Customer protection issues such as transfer of files, client money and indemnity/insurance should be included.*

5.26.1 We are likely to suspend or revoke a licence where there has been a significant breach of the regulatory arrangements or the entity has changed its structure/provision arrangements so it is no longer licensable. This will be due to the seriousness of the act or omission and the severity of the threat it poses to the delivery of positive Outcomes for the entity's clients. We will only use this measure where no other enforcement action is judged adequate to address the identified issue. Such a determination will only be made where it is judged that there is no other enforcement action adequate to address the identified issue.

5.26.2 The circumstances in which such a determination may be applicable are informed by Schedule 11 paras.24 & 25 and are outlined in the Licensed Body Framework i.e. a licence may be suspended or revoked if:

- a) The entity changes its structure and/or arrangements so it is no longer a Licensed Body;
- b) A Reserved Legal Activity is not carried out by an Authorised Person entitled to carry out that activity;
- c) An employee/manager/non-Authorised Person with material interest causes or substantially contributes to the Licensed Body breaching our regulatory

- arrangements, or one of its Authorised Person managers or employees to breach their regulatory duties;
- d) The Licensed Body, or one of its Authorised Person managers/employees, breach its/their regulatory arrangements;
- e) The entity employs a person disqualified from being a manager/employee of a Licensed Body as a manager/employee and that person was disqualified for breaching their duties (as set out at c) & d));
- f) The Licensed Body does not have a designated Head of Legal Practice or Head of Finance & Administration approved by the CLC;
- g) A non-Authorised Person with material interest has not notified us of their interest;
- h) A non-Authorised Person with material interest is in breach of the conditions (or further conditions) we have placed upon the (notifiable or existing) interest;
- i) We have objected to the (notifiable or existing) holding of a non-Authorised Person's material interest;
- j) The Licensed Body is in breach of the terms or conditions applicable to its licence if the breach is incapable of being remedied or has not been remedied within a reasonable period;
- k) The Licensed Body is the subject of an allegation or complaint which, if substantiated, is likely to have serious implications for that entity.

5.26.3 Where an allegation or complaint has been made regarding the conduct of a entity (or persons within/concerned with it) or any of the conditions provided at 5.26.2 is satisfied, the CLC Authorised Officer will carry out a preliminary assessment. Where, due to significant/immediate threat to delivery of Client Outcomes (or an allegation of such which needs to be investigated and in the interim clients must be afforded immediate protection), a prompt suspension is required the CLC Authorised Officer may, in consultation with the Adjudication Panel, make the decision to suspend the licence. Alternatively, the Adjudication Panel may make this decision following a hearing. Only the Adjudication Panel can revoke a licence, not a CLC Authorised Officer. When the direction is published, we will notify the entity of its entitlement to apply to have the direction of suspension set aside. Alternatively, the entity may be given an opportunity to make representations before a direction to suspend has been made.

5.26.4 The direction to suspend a licence will be set aside if the allegation/complaint is not proved to the satisfaction of the CLC Authorised Officer, alternatively the Adjudication Panel, or the risk previously identified does not prove to have been as significant as previously assessed, or the CLC is satisfied that the entity can take appropriate steps to mitigate the risks identified. In the absence of the entity providing justification for the suspension to set aside it will continue. Where it is satisfied that there has been a deliberate and/or persistent breach presenting a significant risk to consumers (existing, actual or potential) the CLC Adjudication Panel is likely to determine that the licence should be permanently revoked. A licence will only be revoked where the CLC is satisfied



that continuing to license the entity will pose too substantial a threat to positive client outcomes and this risk cannot be mitigated by alternative means.

- 5.26.5 The powers of licence suspension and revocation are inextricably linked with those of intervention. That is not to say that in all instances of licence suspension we would intervene e.g. if an entity changed its structure so it was no longer a Licensed Body. Neither would all interventions necessarily result in licence revocation i.e. an intervention and/or a licence suspension direction may be withdrawn where an entity has satisfied us that to withdraw the direction would not present a risk to Clients. Where this is the case, the entity will be subject to a more intensive regulatory relationship to ensure this continues to be the case.
- 5.26.6 We will only intervene where the interests of clients have been seriously compromised or are at grave risk of being seriously compromised, and where no other enforcement action is judged adequate to address a serious and or persistent issue, or if the entity's viability is threatened or it becomes insolvent. This power can be invoked even after the Licensed Body Licence has ceased/been revoked. We will exercise the CLC's powers of intervention in respect of an entity where its licence has expired (and has not been renewed or replaced) or the CLC is satisfied that one or more of the conditions identified in the Framework (informed by Schedule 14) applies i.e.:

- The licence terms are not being complied with;
- Persons have been appointed receiver or manager of the Licensed Body's property;
- A relevant insolvency event has occurred;
- We have reason to suspect a Manager's or employee's dishonesty in connection with the Licensed Body's business, any related Trust or the business of another entity in which a Manager or employee is or was employed;
- Undue delay by the Licensed Body in any matter in which it is/was acting for a client or with any related trust;
- Undue delay by a Manager or employee in connection with any trust of which that persons is/was a trustee (in their capacity as such a Manager or employee)
- It is necessary to protect the interests of Clients or the beneficiaries of a related Trust;

- 5.26.7 In accordance with our Regulatory Policy we would only seek to use the extreme measure of intervention where, due to the seriousness and/or persistence of the act or omission, no other enforcement action is judged adequate or appropriate. Where a Licensed Body asks for its licence to be revoked we will work with them to ensure there is a managed closure.
- 5.26.8 In all instances of intervention, the entity's licence will be withdrawn with immediate effect. The decision to intervene will be taken by the Director of Operations (or another

- director of the CLC) after consultation with the Adjudication Panel. Pending later determination by the Adjudication Panel, the licence may ultimately be revoked if it is judged to be in the public interest to do so. The CLC may choose to withdraw and cease to exercise its powers of intervention in whole or in part. Most often this step is taken when the entity wishes to dispose of all or part of its business.
- 5.26.9 It is possible for an entity to apply for a licence to be reinstated at any time, but only in exceptional circumstances will the application be granted within 12 months after the powers of intervention were first exercised.
- 5.26.10 The sums of money and the right to recover or receive them will vest in us and will be held by us on trust and for the persons beneficially entitled to them. If, having taken all reasonable steps (please see the Aged Balance Guidance at Annex A for what constitutes 'reasonable steps'), we have been unable to trace the person(s) beneficially entitled to a vested sum we may pass a resolution transferring the sum(s) to our Compensation Fund. If the rightful recipient is subsequently identified the sum to which they are beneficially entitled will be paid from the Compensation Fund.
- 5.26.11 We will need to be satisfied that the entity had accepted it owed the money – usually by reference to the client ledger – to the client/applicant and that the sum had been paid to the CLC. If satisfied that a sum of money is, or should be, owed, by the entity to the client, then the client would be entitled to make a claim on the CLC's Compensation Fund. Under s.22 and para 16(2), sch. 6, licensed conveyancers and Recognised Bodies may agree with the client not to account to them for payment of interest on monies they hold on account of the client.
- 5.26.12 Should a communications redirection Order be applied for, this would not exceed the 18 months in duration as provided by the Legal Services Act 2007. Communications may be directed to us, or to our intervention agents, depending upon the size of the entity which has been subject to intervention. As required by the Act we shall pay the person from either the relevant Licensed Body's assets or the CLC's Operations Account - specified in the order the charges (if any) which would have been payable if the addressee had permanently ceased to occupy/use the premises.
- 5.26.13 It is in the interests of both the public and consumers that we will do all things reasonably necessary to facilitate our intervention powers and will exercise these in relation to sums of money, documents or other property, where needed, irrespective of any lien on them or right to possession. Clients' cases will be promptly transferred to another legal services provider.
- 5.26.14 We consider the arrangements set out at 5.24-5.26 to be fundamental to the interests of the public, consumers and the profession itself. We must demonstrate that action will be taken where needed and that the action will be proportionate to the regulatory breach:

- the public needs to know that we will take action to ensure the professional principles are upheld;
- consumers need to know that where they have been prejudiced as a result of default on the part of the entity or of any individuals connected with that entity we will take action and will seek to deter the entity/individual (and others in the sector) from repeating the wrong doing; and
- the legal profession needs to know that we will take action against those who have harmed, or who are at immediate risk of harming, the reputation of the sector.

5.26.15 It is also in the interest of all of these parties that any regulatory action taken is in keeping with our Policy Statement (see section 2 of this application) and is compatible with the Code of Practice of Regulators i.e. it is proportionate, taking into account the resources of the entity and does not impact upon the entity's competitiveness by proving so punitive that it unnecessarily threatens the entity's viability. Our commitment to becoming a Licensing Authority and the regulatory arrangements we operate in doing so are informed by our commitment to promote competition between providers of legal services, but not at the expense of consumer protection. Where consumers' interests are threatened we will take appropriate action and this may, in the most severe of cases, result in licence revocation.

5.26.16 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB's Guidance, 'Regulating for Outcomes' section):

- *Regulation is focused on consumer protection. LAs' enforcement powers are targeted on areas of high risk and consumer detriment, act as an effective deterrent and are able to be used proportionately in response to a wide variety of compliance and enforcement issues involving both individuals and entities to reduce the risk to consumers.*

## **5.27 Determination review**

5.27.1 Enforcement determinations such as those identified at 5.24-5.26, are made by the CLC Adjudication Panel. At least three members of the Adjudication Panel must be present for a meeting to be quorate.

5.27.2 Enforcement determinations made by the CLC Authorised Officer can, at the request of the entity or individual in respect of which a direction has been made, be reviewed by the CLC Adjudication Panel. The entity or the individual may ask for a review by the Adjudication Panel within 28 days after notification of the determination has been sent. Where the Adjudication Panel acts as the first instance tribunal (i.e. where the CLC

Authorised Officer has not previously made a determination in a matter), the respondent may apply within 28 days after notification of the determination to the Review Panel for the determination to be reviewed.

- 5.27.3 The membership of the Review Panel considering an application to review a determination made by the Adjudication Panel will comprise members of the Adjudication Panel, who have not previously had any substantive dealings with the matter. Since its members are drawn from membership of the Adjudication Panel, no one on the Review Panel will contain any CLC Council member or CLC employee and no one involved in the original determination of the application will conduct its reassessment. The Review Panel will have a quorum of two, at least one of whom must be a lay member.
- 5.27.4 Wherever possible, reviews of determinations (whether to be made by the Adjudication Panel or by the Review Panel) will be made within 42 days of the CLC's receipt of an applicant's request, though this may be extended by up to 90 days with complex cases or in exceptional circumstances. The respondent will be able to make written and/or oral representations to the panel. The individual/ entity has a right to representation at the meeting if they wish to be represented by a counsel or solicitor, an officer or member of any professional organisation of which they are a member, a Licensed Conveyancer, or one of an entity's Managers or employees. Please see 5.4 and our Enforcement Policy at Annex A for more information.
- 5.27.5 Following the review, the respondent may appeal to the First Tier Tribunal. Please see 5.29 for information on the appellate body.
- 5.27.6 We consider the opportunity for a timely review of a regulatory determination to be a fundamental provision to encourage a legal profession which is strong, independent and regulated in the public interest.

## **Schedule 13**

### **5.28 Owners**

*LSA, Sch. 11,*

*Approval requirements are met in relation to a person's holding of a restricted interest if:*

*(a) the person's holding of that interest does not compromise the regulatory objectives (the "regulatory objectives test")*

*(b) the person's holding of that interest does not compromise compliance with the duties imposed by section 176 by the licensed body or [any employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity], (the "regulated person's duties test") and*

*(c) the person is otherwise a fit and proper person to hold that interest (the "fitness to own test").*

*The licensing authority must in particular have regard to: (a) the person's probity and financial position, (b) whether the person is disqualified as mentioned in section 100(1), or included in the list kept by the Board under paragraph 51, (c) the person's associates, and (d) any other matter which may be specified in licensing rules.*

*Licensing rules must make provision about the procedures that will be applied by the licensing authority when determining whether it is satisfied of the matters mentioned.*

*Licensing rules may provide that:*

*(a) a non-authorised person may not have a shareholding in a licensed body, or in a parent undertaking of a licensed body, which exceeds a limit specified in the rules ("the share limit");*

*(b) a non-authorised person may not have an entitlement to exercise, or control the exercise of, voting rights in a licensable body, or a parent undertaking of a licensable body, which exceeds a limit specified in the rules ("the voting limit");*

*(c) the total proportion of shares in a licensed body, or a parent undertaking of a licensed body, held by non-authorised persons may not exceed a limit*

*specified in the rules;*

*(d) the total proportion of voting rights in a licensed body, or a parent undertaking of a licensed body, which non-authorized persons are entitled to exercise or control the exercise of, may not exceed a limit specified in the rules.*

*Rules may specify different limits in relation to the licensed body and the parent undertaking. May provide that references in those rules to a person, in relation to a person's shareholding or entitlement to exercise or control the exercise of voting rights, are to (a) the person, (b) any of the person's associates, or (c) the person and any of the person's associates taken together.*

*LSB, ABS: approaches to licensing, Guidance para. 106 -128*

#### Ownership of Licensed Bodies, Sch. 13

- *In principle (subject to the competence of the LA to regulate them), there should be no restrictions on the extent to which non-lawyers should be allowed to own law firms;*
- *Ownership tests required by the Act to be implemented in a proportionate way (not unduly restricting different types of ABS ownership);*
- *Bear in mind that the need for governance and transparency of ownership are at least as important (as detecting people with improper significant influence) in helping to ensure a proper level of consumer protection;*
- *Pay particular attention to how an ABS will ensure that owners, managers and employees understand the regulatory duties that apply to its commercial activity and that a duty to a shareholder/stakeholder does not compromise the duties owed to the court and to the client;*
- *Not considered necessary to impose requirements additional to s.90 & s.176, though an LA may require additional ownership or influence safeguards in the particular circumstances of a licence applicant;*
- *Require disclosure of the ultimate beneficial owners and for this information to be made public (some limited public disclosure exceptions).*
- *An ABS application must identify any non-authorized person subject to the fitness to own test.*

#### Material interest definition

- *LA should define 'material interest' as less than 10% only if they can objectively justify this;*

#### Approach to associates

- *LAs should avoid introducing overly prescriptive/burdensome checks on*

*relationships likely to be de minimis/irrelevant – appropriate to have regard to other regulatory tests (in particular the 3% disclosure in threshold in company law and requirements of codes concerning takeovers and mergers);*

- *LAs must have the capability to react rapidly- introducing supplementary requirements - if improper influence is indicated;*
- *Expect licensing rules to set out Sch. 13 prescribed periods and appropriate to enable prompt ownership clarification;*

- 5.28.1 We have not imposed any restrictions on the extent to which non-lawyers can own Licensed Bodies regulated by us over and above the restrictions prescribed by schedule 13 of the Act. We have carried out a large body of work to identify the risks different structures may present and have put in place, or are in the process of putting in place, the appropriate systems and resources so that we are competent to regulate these structures and safeguard the public and consumer interest in doing so. Please see section 6 below.
- 5.28.2 As set out at 5.4 and 5.20 we place much emphasis upon quality and appropriateness of the entity's governance arrangements to ensure that they not only deter improper influence and conflicts of interest, but that all of an entity's stakeholders are aware of both their own and the entity's regulatory responsibilities.
- 5.28.3 We require the entity in its application to disclose to us all persons with 10%, or equivalent, material interest in the entity. It follows that the holders of those interests are subject to the fit to own test. They must also declare their associates (of 3% or more material interest).
- 5.28.4 The holding of any associate (of 3% or more holding) of a Non-Authorised Person with a material interest is taken into account in determining the fitness of a person's interest. The term 'associate' applied is that defined at paragraph 5(2) schedule 13 of the Act (and set out in CLC Handbook's Glossary).
- 5.28.5 Our licensing approach is based upon identification, and mitigation, of threats to the Outcomes. We must be satisfied that the holder of an interest (however that is held) is correctly identified as such. We will look at each interest and associate declaration and look at the reality of the position. We will seek additional information, or require information to be verified only where there are concerns about the significant influence or control of an associate(s).

5.28.6 When we have concerns about the information we receive about a holding we will take the steps available to us, as set out in the framework and Regulatory/Enforcement Policies.

5.28.7 We will publish details of the beneficial owners of Licensed Bodies on our website. Only in very exceptional circumstances would we waive this i.e. where a significant threat of physical harm is demonstrated.

Regulatory objectives and regulated persons' duties test

- *Must require applicants to identify any issues that they may consider may compromise the regulatory objectives (to include identification of anyone holding a material interest that is subject to other duties which may conflict with the ROs and the steps taken to avoid a material conflict of interest); LAs may wish to include guidance about the types of matters that they consider may compromise the regulatory objectives (not considered appropriate to assess whether an ABS will enhance any of the ROs);*
- *Should require information about how the ABS will ensure managers and employees are protected from owner/non-lawyer improper influence (LA should appoint an appropriately senior person for HoLP to report this to and LA can use its enforcement powers, including divestiture);*

5.28.8 The owner declaration required at application will include identification of any other duties which may conflict with our regulatory arrangements. The application will need to demonstrate how this conflict has been mitigated. In determining the suitability of those who propose to hold material interests we will consider the following factors:

- a) Whether there is a risk that the person's holding of interest is likely to compromise the regulatory objectives and the regulatory duties of the Licensed Body or its Authorised Persons;
- b) Any concerns identified by the fit and proper tests;
- c) Their financial position;
- d) Whether they have been disqualified by a Licensing Authority from acting as an HoLP, HoFA, manager or employee of a Licensed ABS Body;
- e) The person's associates.

5.28.9 Licensing will be evidence and risk based and will be determined by the applicant's compatibility with the regulatory objectives. This will be judged on their capability and capacity to deliver the Code of Conduct Outcomes and their compliance with the Licensed Body Code through an assessment of factors (which are then specified) and include:



- The entity's activities and Client type (including whether the non-reserved legal activities the entity is proposing to provide are closely related to the reserved legal activities proposed);
- The quality of the governance/management arrangements (including regulatory compliance arrangements such as ensuring non-Authorised Persons do not cause or substantially contribute to a regulatory breach by the Licensed Body, or Authorised Persons within it) and risk management strategies;
- The quality of the arrangements to prevent and deal with Improper Influence and Conflicts of Interest, ensuring Authorised Persons maintain the Overriding Principles and comply with their own individual regulatory arrangements;
- Probity of funding source;
- Financial viability of the entity and the integrity of the Business Plan/financial projections in light of the entity's proposals;
- Client money handling arrangements;
- The quality of operating procedures including complaints-handling;
- Resources allocated to, and arrangements for reserved legal activities (in particular who will be providing them or supervising their provision), this will include an assessment of the ratio of Authorised Persons to non-Authorised Persons;
- Resources allocated to, and arrangements for, non-reserved activities;
- Suitability of proposed Non-Authorised Persons with material interests and how they may impact upon the entity's independence and integrity (they must not prejudice a) delivery of the Code of Conduct's outcomes or b) the ability of Authorised Persons to meet their regulatory duties);
- Suitability of proposed Head of Legal Practice (HoLP) and Head of Finance & Administration (HoFA);
- The arrangements in place which permit the HoLP and HoFA to report on matters direct to the CLC without prior consultation or approval from the entity, its Managers, owners or associates;
- Where the applicant is proposing that the designated HoLP and the HoFA are the same person whether this is appropriate taking account of the size and risk profile of the entity;
- Where the entity has chosen to opt out of the CLC Master Policy whether their own arrangements provide their clients with cover equal to that which would be provided by the Master Policy;
- Quality of employment arrangements, particularly procedures for ensuring managers and employees are fit and proper persons;
- Any significantly prejudicial access to justice barriers;
- Any other factors which the CLC believes may pose a risk to delivery of the Code of Conduct's Outcomes.

5.28.10 The Framework – and 5.10.1 above - set out the factors to be taken into account in determining an application and this provides guidance about the types of matters which may lessen our confidence in a proposed, or actual, owner.

*Fitness to own test*

- *Considered reasonable for a LA to verify the information given (if they can) – require applicant agreement to information being checked with other bodies & LA to have formal information sharing powers with other professional bodies and regulators;*
- *Rules must explain LA’s approach to assessing outcomes of checks and how the outcomes of these will be taken into account – reasonable to LA to consider refusing to grant a licence if false, incomplete or misleading information is provided;*
- *Considered appropriate for fit and proper test for external owners to be the same as HoLP and HoFA test – reasonable for LAs to require disclosure of disqualification from, for example, ABS and non-ABS, and to provide info about other companies which would be caught by test if applied to them;*
- *Consider that LAs should have the flexibility to disregard, for example, minor convictions (in other cases, licence conditions may be appropriate, rather than disqualification);*
- *LAs may consider that there should be a requirement for an ABS to notify them of any potential or actual governance problems as they arise and/or if the owner changes;*

5.28.11 The fit and proper test for owners is the same as for the HoLP/HoFA set out at 5.17.

The applicant is required to declare that the information provided is true and to agree to the information being checked with other bodies. We have instructed an independent supplier to carry out checks on criminal records, disqualifications, credit etc. on our behalf.

5.28.12 We consider it vital that from the outset, applicants are aware that a regulatory relationship places much importance on trust. The Licensed Body Framework clearly states that the provision of false, incomplete or misleading information is likely to result in the application not being granted. We have not committed ourselves to an outright refusal of such an application – e.g. it may be that an omission is an accidental oversight, and ultimately the information omitted has marginal relevance on the applicant’s suitability as an owner - to give ourselves the flexibility to respond to each application on a case by case basis.

5.28.13 The material interest declaration will also require the identification of other companies that would be caught by any aspect of the fit and proper test if applied to them. Though the test itself may be the same for owners as it is for the HoLP/HoFA, its results may not be applied using the same criteria. We are likely to be less stringent regarding some types of adverse information about an owner than we would for the role of a HoLP/HoFA. The combination of appropriate governance arrangements and operating procedures and high quality HoLP/HoFA candidates should limit the potential for owners to exercise improper influence over the entity. Therefore, we

have afforded ourselves the ability to disregard convictions for less serious offences, unless they are dishonesty or fraud related.

5.28.14 The provision of adverse information may result in the CLC approving the investor's holding of the notified interest subject to conditions, or to the CLC objecting to the investor's holding of that interest. Examples of adverse information which are likely to result in the CLC objecting to the notified interest include convictions for dishonesty and fraud. Where we are satisfied that the risk identified by the adverse information can be mitigated by approving a notified interest subject to conditions (rather than objecting to the notified interest), the conditions we anticipate will be imposed will be aimed at ensuring that the interests of consumers in particular are not prejudiced. These may include requirements to avoid the exercise of any improper influence supported by regular declarations by HoLP that the body has complied with the terms of such requirements.

5.28.15 The Licensed Body Code requires us to be notified of any potential or actual change in governance arrangements; any acquisition of interest or option; and any improper influence concerns. Where after a licence has been issued to an entity, a non-authorized person proposes to acquire, or acquires, a notifiable interest in the entity or changes the holding in the entity, notification must be given to the CLC. If we do not consider it appropriate to approve the notifiable interest without conditions, we may give conditional approval for a period of up to 90 days whilst we determine whether to approve the notifiable interest and, if so, whether it should be subject to any conditions. We may require the investor to provide us with such documents and information to enable us to make a determination.

5.28.16 The Code also requires that we are notified of any governance concerns, including those of improper influence.

- *Powers to impose share limit, voting limit etc. Sch. 13, para. 38*
- *Consider shares/voting/profit-sharing/flotation limits to be a commercial decision for the ABS, not an LA, unless LA can objectively justify – including an analysis of the impact of the proposal on competition - a restriction;*

Continuing Notification requirements, Sch. 13, para 21

- *Considered appropriate for floated ABS to have a licence condition that gives all new shareholders of a notifiable interest conditional approval for a set period during which they have to pass the relevant fitness test; LAs may also consider it appropriate to have a pre-approval process for these circumstances;*

5.28.17 We will not utilise the power to impose a share or voting limit, as we agree with the LSB's consideration that this is a commercial decision for the entity itself, not for ourselves. We have taken into account the potential risks to effective regulation which floated bodies may present and have tailored our licensing and regulatory approach accordingly. Our risk management approach is set out at section 6 below.

Foreign ownership

*Not expected that foreign ownership should be restricted, but recognise that special conditions may be needed where the owner may benefit from legal immunity (e.g. in a sovereign wealth context) – not appropriate to ban certain categories of foreign ownership.*

5.28.18 We have not imposed any specific restrictions on foreign ownership as we consider this would be contrary to the regulatory objective of encouraging competition. However, our risk analysis has confirmed that, in some circumstances, foreign ownership may result in a higher risk profile (because our ability to verify data provided is likely to be more limited for owners based abroad, than those situated in England and Wales). As a result, the CLC's costs of investigation into a licensing application are likely to increase. We agree with the LSB that additional costs incurred in investigating foreign owners should be reflected in a differential broadly cost-reflective application fee (and in the broadly cost-reflective annual licence fee). Once we understand the structure of ownership and have analysed the risk profile we shall be in a position to determine what (if any) additional safeguards are required, and whether the imposition of conditions is an appropriate way of enforcing those safeguards.

5.28.19 As a condition of approving a notified interest where the ultimate beneficial owner (or any of the intermediary owners) are situated outside England and Wales, the CLC will require confirmation of an address in England and Wales (which may be the address of the entity) to which any notice, request for information or service of proceedings may be sent and received by the investor, if not in person, then by a duly authorised agent. The CLC will require confirmation from the investor that that address shall remain valid and in force unless and until the CLC receives notification of an alternative address in England and Wales for the receipt of such communications.

LSB, ABS: approaches to licensing, Guidance para. 132

*Not considered appropriate for there to be a capital adequacy test for ABS – ABS finances info should be used to inform a LA's risk assessment of the applicant (and to ensure effective processes in place to deal with a failing entity).*



- 5.28.20 The financial resources of an applicant will be incorporated into our risk assessment. The standard information we require includes the entity's business plan, financial projections and information on funding sources. We reserve the right to require production of additional information if we consider it necessary in determining the application. In the first six months of operation a Licensed Body is likely to be required to provide us with online accounting and financial data. This will enable us to identify quickly if the financial projections included in the application are not being realised, ask the entity to provide an explanation, and propose remedial action.
- 5.28.21 The HoFA is required to inform us when the entity is in, or at risk of, financial distress. Where an entity is failing we will engage with them to identify the failures and agree a plan to remedy the perceived failures.
- 5.28.22 We consider the lack of barriers these arrangements present to be fundamental to encouraging an independent and diverse legal profession. The provision of increased choice of provider is also in the interests of the public. However, promotion of competition must not be at the expense of the entity's consumers (if licensed) or the reputation of the profession as a whole; a licence will be issued with conditions targeted upon a material interest where needed to safeguard the interests of the public and that entity's consumers.
- 5.28.23 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB's Guidance):

- *Consumer confidence in ABS that are owned by non-lawyers is at least as high as other law firms;*
- *LAs identify and manage any risks to the outcomes posed by owners and their associates;*
- *LAs' approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services.*

## Other

### 5.29 Appellate Body

LSB, ABS: approaches to licensing, Guidance para. 129 -130

- *Rules must explain how the appellate body has the competence to deal with the range of appeals that may be made to it*
- *Rules must make clear what (in addition to the Act's requirements) can be appealed;*
- *Provide evidence from the appellate body that it consents to the designation.*

LSB Alternative Business Structures: Appeals Arrangements consultation paper

- 5.29.1 As set out in our response to the consultation paper, we agree in principle with the LSB's proposal that the First-Tier Tribunal (FTT), General Regulatory Chamber (GRC) of the Tribunals Service should hear appeals from determinations made by the CLC as a Licensing Authority, rather than the Discipline and Appeals Committee (as specified in the LSA). We believe this is likely to be less costly to both us and the respondent whilst providing a more timely service. We understand that an order under s.80 of the Legal Services Act 2007 will direct appeals from determinations of the FTT will be determined by the Upper Chamber rather than by the High Court. The appeal route of our licensing framework is based upon the assumption that the Tribunals Service (the First-Tier Tribunal and the Upper Chamber) will assume the appellate functions conferred respectively on the CLC's Discipline and Appeals Committee and the High Court.
- 5.29.2 The existing expertise of the GRC in relation to regulatory matters, its infrastructure and administrative support can all be utilised in the expansion of its scope. It is envisaged that ABS appeals will be heard by members of the immigration panel, supplemented by members from across the wider GRC. The GRC President will consider the expertise of the existing panel bearing in mind the nature of ABS appeals to decide whether to "cross-ticket" other members of the first-tier tribunal. The Tribunals Service, along with the Tribunals judiciary, will also determine an appropriate name for its new jurisdiction.
- 5.29.3 The draft Memorandum of Understanding agreement between the LSB, the Tribunals Service, the SRA and the CLC is at Annex E. This MoU and our funding contribution is contingent on our designation as a Licensing Authority. The set-up costs and fixed

annual running costs will be incorporated as an element of the licence charged to Licensed Body applicants.

5.29.4 A Licensed Body, or an individual – i.e. the HoLP, HoFA, owner or employee - concerned may appeal to the FTT, from a review by the CLC’s Adjudication Panel or the Review Panel. The FTT may also hear appeals if the Adjudication Panel or the Review Panel fails to complete the review within the timescales published in the Framework.

5.29.5 The Framework is clear in the scope of the FTT, providing licensed bodies with information on its make-up, independence, remit, timeframes and awarding costs policy. They are also informed that it can reach any decision which the CLC could have made i.e. it can:

- Uphold the CLC’s decision wholly or in part;
- Quash the CLC’s decision wholly or in part;
- Substitute the whole or part of a CLC’s decision with a new decision of a kind the CLC could have made;
- Remit the matter to the CLC (generally, or for determination in accordance with a finding made or direction given by the Tribunal).
- A respondent can then appeal to the Tribunal Service’s Upper Chamber on a point of law.

5.29.6 We consider the opportunity for a timely appeal of a regulatory determination to be fundamental to encouraging a legal profession which is strong, independent and regulated in the public interest. It is also in the interests of those we regulate that the opportunity for them to appeal a determination against them is not too cost prohibitive and - as they will in part be funding these arrangements through their application and annual regulatory fees - demonstrates value for money.

5.29.7 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB’s Licensing Rules Guidance, ‘Regulating for Outcomes’ section):

- *One appellate body with sufficient resources and expertise to deal with complex issues whose processes and costs are transparent, efficient, fair and public.*
- *The appellate body is able to draw from experience across a wide range of regulatory issues and is able to come to consistent decisions about similar issues.*

### 5.30 Transitional arrangements for Recognised Bodies

Schedule 5 LSA

LSB, ABS: approaches to licensing, Guidance para. 131

- *Expect LAs' licensing rules to enable entities covered by Act's transitional arrangements to apply for licences before the end of the transitional period (12 months after introduction of ABS).*

- 5.30.1 As at February 2011 we regulate 214 CLC Recognised Bodies. Because they are owned or managed by non-authorized persons, approximately 50 of the Recognised Bodies we currently regulate must be licensed as Licensed Bodies if they are to continue to trade within 12 months after the CLC has become a Licensing Authority. Recognised Bodies are likely to fulfil many of the requirements of the Licensed Body Code - because they already comply with our existing regulatory arrangements - and we have a substantial body of regulatory information on these bodies. As a result we anticipate that the licence fee payable by these entities will be lower than for other applicant.
- 5.30.2 We will require these Recognised Bodies to confirm if the information we have about them is correct and to provide us with any information which we lack due to differences between the Licensed Body licensing requirements and those of Recognised Bodies. Any new or revised data will inform our risk profile of the entity. We will provide these bodies with the relevant information we already hold on them, requiring them to approve, or amend, as appropriate. We will then ask them for any additional information needed to ensure we have all licence application data needed e.g. the Access to Justice Statement. These bodies also will need to appoint their HoLP and HoFA and perform a gap analysis to determine any potential issues which need to be addressed to meet the Licensed Body Code's requirements. Data verification checks will be carried out on owner(s), the HoLP and HoFA, as with new Licensable Bodies.
- 5.30.4 We consider these arrangements provide both continuity and reassurance to these entities and their clients. We are already familiar with these entities, their structures, systems and controls. They have a track record with us and we have carried out monitoring inspections on them, often over a number of years. However, it is in the interests of the public that we do not provide these entities with an automatic pass to become Licensed Bodies and to this end we will require them to satisfy us that they do not present a threat to the Code of Conduct's Outcomes.
- 5.30.5 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB's Licensing Rules Guidance, 'Regulating for Outcomes' section):

- *There is a smooth transition for firms that currently have non-lawyer*



*managers or owners who wish to become ABS.*

### **5.31 Reserved and non-reserved legal activities**

*LSB, ABS: approaches to licensing, Guidance para. 133*  
*Expect rules to indicate the types of issues a LA will take into account when making conditions as to the non-reserved activities which the ABS may carry on.*

- 5.31.1 Our application process requires the applicant to provide us with information on their proposed arrangements for provision of any non-reserved legal activities. The resources allocated to, and arrangements for, non-reserved activities will inform our risk assessment of the applicant. Non-reserved legal activities will be regulated to the same standard as those which are reserved, affording the consumer the same level of protection.
- 5.31.2 In determining the appropriateness of the proposed non-reserved legal activities and their arrangements we will assess the competence of the applicant to deliver, the sophistication or vulnerability of their clients, how closely aligned the non-reserved legal activities the applicant proposes to provide are with the reserved legal activities the applicant has been or is likely to be licensed to provide, and the impact upon consumer choice and access to justice if the CLC does not permit the non-reserved activities to be provided, and the impact upon consumer choice and access to justice if the non-reserved activities are not permitted. The non-reserved legal activities which a successful applicant can provide will be specified as permissions on the licence (as detailed in our parallel application to regulate Litigation and Advocacy Services).
- 5.31.3 We shall specify in the licence we issue all legal activities which may be undertaken by a licensed body. This information will be published on our register which is accessible on our website, so that consumers are informed that the services provided to them are subject to regulatory control. We also consider it in the consumer interest that ABS are permitted to provide a range of activities - so potentially providing customers with a one-stop shop – but only if consumers are confident that they have the same level of protection in respect of all the activities provided by any specific entity.
- 5.31.4 These arrangements are also devised to help deliver the following Outcomes (as identified in the LSB’s Licensing Rules Guidance, ‘Regulating for Outcomes’ section):

- *Different forms of commercial arrangements for ABS emerge and effective regulation provides the same levels of consumer protection for reserved and unreserved legal activities as in the rest of the market.*

## 5.32 LA competence

LSB, ABS: approaches to licensing, Guidance, para. 134

- *Some LAs that will not be competent to regulate all ABS types – particularly those with complex structures – and rules must set out the ABS types that can apply to it for a licence;*
- *Should this place restrictions on external ownership nature/extent this must be objectively justified.*

5.32.1 We recognise that the varieties and complexities of ABS which may arise present real business opportunities for the profession and are intended to lead to increased choice for the consumer. Therefore we acknowledge that restrictions on ABS forms/structures should only be imposed where objectively justified. A range of business types should provide increased choice for consumers, but this must not be at their expense. The consumer interest – as well as our reputation and that of the profession, and us as a regulator of it - must not be put at risk by us, or any other Licensing Authority, not being competent to regulate Licensed Bodies.

5.32.2 We have approached this important criterion objectively and with appropriate self-awareness. Though we have a proven track record in regulating a model of ABS, in the form of Recognised Bodies, we appreciate that this is a restricted type of ABS. To this end we have carried out a significant body of work to determine the types of potential risks we are competent to tolerate and regulate and those we are not. Please see section 6 for more details on our risk analysis. Our Corporate Strategy, Business Plan (incorporates the Licensing Authority Implementation Plan) and Resources Statement set out our commitment to ensuring we have both the competency and capability to regulate all of the ABS types we have declared ourselves able to regulate. These are provided at Annexes F-H.

5.32.3 We recognise the particular challenges associated with applicants with complex structures, including floated companies, and remain convinced that this is a category we can competently license. The notification responsibilities and arrangements of a Licensed Body should ensure we are notified of those with a 10% or more material interest and we will carry out an assessment of the risks presented by those persons by applying due diligence processes. In all cases we will ensure we are confident of the beneficial owner. In the case of a corporate entity this will be subject to the same level of risk profiling and analysis as individual persons. The risk assessment of foreign companies/persons may potentially be a longer process but one which will not be lacking in its diligence.

- 5.32.4 We have considered the unique risks arising from foreign companies, particularly in the sovereign wealth/legal immunity context. We are aware of the risks associated with sovereign wealth funds – namely lack of transparency and the risk that political priorities may be adopted contrary to normal commercial objectives – which may impair the effectiveness of the governance arrangements and lead to independence, and the consumer/public interest, being compromised. However, we cannot find evidence in other sectors and jurisdictions where a blanket ban on such owners is a proportionate approach to mitigate those risks. Due to potential constraints of access to information to support our due diligence process we would expect such applicants to demonstrate comprehensively to us why they consider themselves a relatively low risk to our regulatory outcomes. A positive track record in other jurisdictions where appropriate will be required. In addition, we would expect them to demonstrate to us by subscription to voluntary codes such as the Generally Accepted Accounting Principles (GAAP) and to publish a Policy Statement confirming that the entity will not be influenced to advance, directly or indirectly, the geopolitical goals of the controlling government where that is relevant. Should our risk assessment identify improper influence concerns we may apply a condition which limits the size of the stake in the entity.
- 5.32.5 We consider that not limiting the ABS types that can apply to us for a licence is fundamental to the promotion of competition of services provided by Authorised Persons. The body of work carried out to help mitigate the risks different business types could potentially present should help us improve access to justice and ensure that the interests of both the public and consumers are protected through us being competent to both identify risks and to minimise them.
- 5.32.6 We do however recognise that there are limitations to our competence regarding non-legal services. Where an applicant proposes to provide non-legal services which are regulated by a body party to the ABS Multidisciplinary Practices MoU (Annex D) we will adopt a co-regulatory approach. Where the regulator is not signed up to the MoU we may seek to include them within it. Where an applicant is proposing to provide non-legal services which are not regulated by another entity we will ring-fence the ABS so it is clear to consumers which services are regulated and which are not. We consider this appropriate to safeguard the interests of the public and consumers and to ensure they are aware of where they are, and are not, afforded regulatory protection.
- 5.32.7 These arrangements have also been devised with the intention that they deliver the following Outcome (as identified in LSB Guidance):

- *ABS provide examples of innovative and flexible ways of providing a greater range of services and enhanced value for money for consumers.*

## **6. Explanatory material relevant to the purposes of Part 1 of Schedule 10**

- 6.1 The professional and supportive regulatory approach adopted by the CLC has maximised compliance and is highly regarded in the marketplace. We have successfully addressed potential capacity and capability challenges in the past and are actively doing so now in anticipation of accepting the first Licensed Body application in late August 2011. Our size, structure and technology, together with a thirst for innovation, gives us the flexibility to respond to challenges swiftly and positively.
- 6.2 We are fully aware of the complexities and risks of ABS and of the impact of high volumes of applicants and our internal arrangements have been, and are, being re-focused and our resources supplemented, to ensure we have both the competency and capacity to licence effectively.
- 6.3 The CLC has an embedded training and development process where individual and departmental performance plans are aligned with the CLC's Strategic Objectives. An induction programme for all staff ensures that everyone has an understanding about the new areas of work. Recently completed explanatory sessions and cross-team workshops have considered and clarified the implications of the new regulatory environment, its opportunities and threats. A structured training programme provided by a mix of internal and external providers will ensure that all staff have an appropriately in-depth understanding of outcomes-focused regulation and Alternative Business Structures. This will be accompanied by a bespoke element of training for other staff - e.g. Legal Practice Inspectors, CLC Authorised Officer - and Panel Members.
- 6.4 We are currently recruiting at least 2 more Legal Practice Inspectors as well as a Technical Adviser (to provide tailored guidance and support) in order that we have the capacity to regulate an increased number of entities. Should application numbers exceed our assumptions we have the opportunity to increase staffing or to divert the resources of those multi-skilled staff that we can easily backfill. In addition we continue to rely on our team of suppliers if we have unusual peaks in our workload. It is important that we develop new staff in order that they can perform their function effectively and we are able to retain them and their skills set. From the outset we will provide new staff with awareness training on our outcomes-focused regulatory approach and ensure our risk workshops include all relevant staff. We value our staff and wish to retain them and to this end provide a wide range of benefits including flexible working, health insurance, car parking and competitive salaries.
- 6.5 The introduction of new ways of working during the last 12 months has enabled more focused and less intrusive monitoring. The new online management information system will create risk profiles for each regulated entity and these inform our regulatory relationship with them. The system has been developed with built-in flexibility, making

- it easy to adapt to changes in the market. We are currently carrying out changes to ensure the system appropriately profiles the range of risks presented by different types of Licensed Bodies and is explicitly outcomes-focused. The system will then be continuously updated to ensure it stays relevant at all times. Risk profiling workshops which commenced in 2010 will continue up to and after the CLC becomes a Licensing Authority.
- 6.6 The CLC's Monitoring team carries out investigations and inspections across a wide range of business structures of varying shapes and sizes and has broad experience of identifying the strengths and weaknesses within them. A recruitment campaign is currently underway to attract additional staff to broaden the skills base even further. (Please see 6.3 above).
- 6.7 We have carried out a review of the risks presented by different types of business models likely to be seeking authorisation as Licensed Bodies. We have concluded that there is currently no particular business type we are not prepared to license, subject to satisfying ourselves that the outcome of our due diligence of application determination has not highlighted risks that cannot be reasonably mitigated. We recognise the particular challenges associated with dealing with complex structures and we remain convinced that this is an entity that in all its forms we can competently license. The periodic cross-departmental risk workshops will identify any thematic risks to the regulatory objectives presented by particular body types. The workshops will also aim to ensure we are taking a consistent and proportionate approach which does not present unnecessary entry barriers but at the same time affords the public and consumer interest with the very necessary protection.
- 6.8 Our approach to mitigating the risks presented by an applicant is underpinned by an assessment in terms of the probability they will give rise to risks to our regulatory outcomes and the likely impact if those risks materialise. In circumstances where there is a high impact coupled with a high probability, then our mitigation strategy will assess the extent to which the risks can be mitigated by the entity putting in place additional mitigation measures to significantly reduce its overall risk profile. Where this is a realistic possibility, we may place appropriate conditions on the applicant to reinforce the embedding of these additional controls. We will adopt a more intensive supervision approach with that entity to ensure that both its own mitigation controls and our own regulatory controls keep the body's risk profile at the acceptable level. However, where it is evident that the risk presented cannot be mitigated then we may consider rejecting the application. However in such instances – for example due to the complexity of an applicant's organisational and/or governance structure - we may utilise our external team of corporate lawyers and other relevant advisers to make sure our risk assessment has been accurately and properly calibrated.

- 6.9 Our risk mitigation strategy has intentionally adopted an approach which spans the entire organisation. Whilst our licensing team would be the primary liaison team with potential applicants, our assessment of risk for generic and unique models as well as individual applicants, relies on collaboration across the organisation. This means in practice that the team of inspectors responsible for ensuring that outcomes are delivered by a Licensed Body will have input in the risk assessment during the licence determination process. This ensures that the assessment of risk is not only theoretical but dynamic and based upon emerging issues. This will ensure the accuracy of our risk profiling (of both applicants and licensees) is up-to-date.
- 6.10 This cohesive collaborative approach seeks to ensure that we make competent licence determinations irrespective of the complexity of the applicant structure. It is also extended to external suppliers who will support us in making sure our risk mitigation strategy works in practice and delivers the right outcomes. In addition to working with a team of suppliers - including corporate lawyers, specialist accountants and specialist investigative agencies - we will be working closely with our outsourced internal audit provider (particularly in the first year of operation as a Licensing Authority) to ensure our strategy is, and remains, fit for purpose.
- 6.11 Taking into account the work to date and our proposed approach to risk management, we are confident that we are competent and capable of licensing a diverse range of potential applicants including those with very complex arrangements.
- 6.12 Our Corporate Strategy (provided at Annex F) sets out our 4 Strategic Objectives:
- 1) Developing and delivering innovative and excellent regulatory services;
  - 2) Deepening our understanding of the markets that we regulate;
  - 3) Strengthening and growing our regulated community;
  - 4) Building our capability and capacity;
- all of which have an impact upon our competence and capability to effectively regulate Alternative Business Structures.
- 6.13 Our Business Plan (provided at Annex G) provides the programme of work by which these objectives will be delivered. It is based upon the assumption that the workload across the regulatory value chain will increase at least 10% year on year for the next 3 years. This will be accompanied by a 15% increase in expenditure alongside a 5% efficiency saving arising from new systems and processes. The budget afforded to the Business Plan allows a margin of discretion to enable the organisation to be dynamic in its response to the changing legal services market. In addition we have adequate financial reserves to support any necessary contingency arrangements if we receive an unanticipated high volume of applications. The Plan and this section constitute our

Licensing Authority Implementation Plan. We will systematically and regularly assess our progress.

- 6.14 The Resources Statement (provided at Annex H) identifies that we have sufficient processes and resources in place to enable these plans.

**7. Governance Arrangements - appropriate internal governance arrangements in place/independence from representative functions.**

- 7.1 The CLC, as created by the Administration of Justice Act 1985 (AJA), has an exclusively regulatory function. Therefore we are not at risk of undue influence from those with a representative function. Our Certificate of Regulatory Independence was signed off in May 2010.

- 7.2 In 2009/10 we undertook a governance restructure to ensure the CLC's governance arrangements were fit for purpose in light of the responsibilities and opportunities arising from the Legal Services Act. This included the CLC's commitment to extend its regulatory scope to include litigation and advocacy; to become a Licensing Authority; and to move towards outcomes-focused and principles-based regulation. The new Council, with a membership of six members and one Chair, took effect from May 2010.

- 7.3 We anticipate that the governance framework will need to be amended after an s.69 order sponsored by the LSB has been made. We have applied to the LSB to extend the definition of a 'licensed conveyancer' member of the Council to include an Authorised Person in an entity regulated by the CLC. This will mean that where we regulate an ABS which is a firm in which Authorised Persons (other than licensed conveyancers) are employees or managers then they will be eligible to be on the Council. The application is also seeking to reduce (from 11 to 10) the number of non-lay members of the Council in order to ensure a lay majority. The definition of 'lay member' is also being changed so it is in line with that of the Legal Services Act's definition for the LSB. We anticipate this will enable the Council to have a lay majority, expected in mid to late 2011.

- 7.4 The aim of the proposals set out at 7.3 is to enable the CLC and its Council to carry out its functions more effectively and efficiently, in particular to protect and promote the interests of consumers, by maximising the number of people who can apply to be members of the Council. We consider this will help ensure that our regulatory decisions are informed by the widest possible range of experiences and are not unduly influenced by provider interest.

Please see Annex I for the current CLC Appointment Regulations.

## **8. Equalities Considerations**

- 8.1 One of the intentions of the flexibility of ownership and management afforded by ABS is to help encourage a diverse legal profession. The creation of ABS should provide new and improved employment opportunities. In addition, large ABS firms are, arguably, more likely to offer flexible working and more diverse career options. These developments will provide significant career opportunities for those who might not otherwise have considered a legal career, in particular in an entity regulated by the CLC.
- 8.2 It is also intended that ABS will facilitate improved consumer access to legal services through a promotion of competition and choice. This should see businesses meeting the diverse needs of potential and actual consumers, through extended opening hours, provision of a greater range of services and methods of accessing these services and lower prices.
- 8.3 The CLC accepts there are concerns that this increased competition may lead to small firms closing, negatively impacting upon local communities (and possibly impacting disproportionately on Black and Minority Ethnic practitioners in the legal services sector, according to some analyses). This makes the provision of regulatory arrangements focused on consumer outcomes and based upon higher-level principles all the more vital. It is equally important that we provide guidance so that our regulatory arrangements do not have an unintended disproportionate impact upon small firms. Our Guidance seeks to provide a steer as to how they may (but importantly, not how they 'must') meet a regulatory requirement, and to suggest considerations to be borne in mind when formulating their approach.
- 8.4 Ultimately, neither we, nor anyone else, can say with any certainty that the LSA, and our – or any other Licensing Authority's – implementation of its provisions will inevitably increase the diversity of the profession and enhance access to justice for the public. However, we are committed to promoting both of these objectives and will emphasise their importance by requiring all bodies we regulate (not just Licensed Bodies) to provide us with information on both elements. We will publish an overview of this data on a regular basis. If the data indicate that these objectives are at risk of not being achieved we will work with our stakeholders to help address any areas of under-representation.
- 8.5 We will also publish case studies to congratulate those bodies demonstrating good practice and to encourage others to embrace both concepts and take forward their own initiatives.
- 8.6 Our regulatory arrangements are based upon 6 Overriding Principles (OPs) of principled behaviour, which all whom we regulate must at all times demonstrate; OP 6 requires the promotion of equality of access and service. This is underpinned by a number of principles and specific requirements which must be complied with in order that positive



outcomes can be delivered to consumers. The Equality Code provides an overview of the Equalities Act 2010 and an Example Policy which seeks to provide small firms with an idea of the minimum standard expected (with the assumption/suggestion that the firm tailors it to meet their business and customers).

**9. Declaration of truth and accuracy**

The date of this application is Friday 4<sup>th</sup> 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

A handwritten signature in black ink, appearing to read 'Anna Bradley', with a stylized flourish at the end.

Victor Olowe, CLC Chief Executive

A handwritten signature in blue ink, appearing to read 'Victor Olowe', with a stylized flourish at the end.

**10. Annex List**

- A. CLC Handbook (all elements subject to LSB approval via Schedule 4 application)
- B. Licensed Body (ABS) Licensing Framework
- C. Client Charter
- D. ABS MDP Memorandum of Understanding (draft)
- E. ABS Appeals: Memorandum of Understanding (draft)
- F. CLC Corporate Strategy
- G. CLC Business Plan (incorporates Licensing Authority Implementation Plan)
- H. CLC Resources Statement
- I. CLC Appointment Regulations
- J. Consultation themes



# CLC HANDBOOK

FOR LICENSED CONVEYANCERS,  
LICENSED BODIES &  
RECOGNISED BODIES

February 2011



## Introduction -

### **Outcomes-focused Regulation**

#### **The Legal Services Act**

The **Legal Services Act 2007 (LSA 2007)** introduced **Regulatory Objectives** championing the interests of consumers of legal services:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving **access to justice**;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties; and
- Promoting and maintaining adherence to the **professional principles**.

The objectives focus upon the principled behaviour of legal services providers and the interests of the consumer and the public. They are therefore best supported through regulation based in **principles** and focused upon positive **Client Outcomes**.

#### **Outcomes-focused and principles-based regulation**

Our **regulatory arrangements** must uphold the **Regulatory Objectives** and are therefore concentrated on delivery of high standards alongside the 3 Cs of **client**, competition and choice.

The **Code of Conduct** is the parent document of the **CLC Handbook**; it sits above all other Codes in our **regulatory arrangements** and must be complied with at all times. It specifies the **Outcomes** you as members of the **CLC** regulated community are expected to deliver. The following behaviours are considered essential to delivery of these **Outcomes**:

1. Act with independence and integrity.
2. Maintain high standards of work.
3. Act in the best interests of **Clients**.

4. Comply with duty to the court.
5. Deal with regulators and ombudsmen in an open and co-operative way.
6. Promote equality of access and service.

These six **Overriding Principles** are derived from the **Regulatory Objectives** set out above. The six have equal ranking and permeate our entire **regulatory arrangements**; you/the body you own or manage must act in this principled manner at all times. The **Overriding Principles** are underpinned by **Principles** and **Specific Requirements**:

**Outcomes** – *delivery of a positive result for clients; it is the end result of the applications of a principle or specific requirement;*

**Principle** – *an essential quality; a characteristic, behaviour or ethic, which must be demonstrated so that positive outcomes are generated for clients;*

**Specific requirement** – *a strict direction for conduct.*

Should a circumstance present an apparent conflict between a **principle** and another regulatory requirement you should opt for that which delivers the most positive Outcome for the **Client** concerned whilst maintaining independence, integrity and high standards of work. If in doubt, contact the **CLC** for advice.

### **Minimising prescription**

Our **regulatory arrangements** are intended to ensure that **clients** receive a service tailored to their needs; and legal service providers develop new and different ways of delivering services to their **clients**. We will always look to provide **principles** rather than **specific requirements** wherever possible in order that we promote, not just allow, competition and choice. More prescriptive, '**specific requirements**' are present only where they are required in the public interest and to protect the consumer. Such non-principled regulatory requirements will be applied in a principled-based manner wherever possible so that any penalty imposed is proportionate to a breach.

In providing you with flexibility we are also giving you responsibility - of good governance, quality assurance and risk management. The **Guidance** attached to Codes is there to provide useful information to the regulated community and in the case of **Example Policies or Procedures** to provide a possible route to the positive **outcomes** sought, but importantly, not the only route. If you are able to generate the same or better **outcomes** another way you are free to do so.

## Applicability of Codes

All individuals/bodies regulated by the **CLC** must comply with the Codes which the Index labels Universal. The Codes underpin the **Code of Conduct** and are in place to support the delivery of that Code's **Outcomes**. The relevant **Code of Conduct Principles** and **Specific Requirements** are referenced in each Code so each one can be referenced as a standalone document where needed. The Universal Codes pertain to all **Regulated Services** which a body provides. The Codes identified as Specific – located in the rear of this Handbook – are relevant only to those bodies/ individuals specified.

We retain the discretion to waive a particular requirement of the **regulatory arrangements**. A body may apply for a modification of its **licence** to this end or we may apply a waiver due to particular circumstances.

Words presented in bold italicised font – such as **Regulated Services** above - are defined in the Glossary of Terms provided at the rear of this handbook.

## Frameworks & Policies

We currently operate the following 7 Frameworks:

- **Compensation Fund** Operating Framework;
- **Continuing Professional Development** Framework;
- **Licensed Body (ABS)** Licensing Framework;
- **Licensed Conveyancer** Licensing Framework;
- **Professional Indemnity Insurance** Framework;
- **Recognised Body** Certification Framework; and
- Student Training Framework.

*[hyperlinks to each Framework will be inserted on website version]*

These define our operating parameters, setting out the process which will be followed in the relevant instances e.g. the **Compensation Fund** Operating Framework sets out the rules by which the **CLC** manages its compensation scheme. We have provided the **Compensation Fund**, **Continuing Professional Development** and **Professional Indemnity Insurance** Frameworks within the **CLC** Handbook for your reference. The remaining frameworks are available to view on the **CLC** website *[insert hyperlink]* (along with the 3 provided here and our Fees Framework) and are not provided in the Handbook as they are the frameworks under which you applied to be regulated by us, and through which your **licence** or **certificate** was granted.

Policies mandate the performance of our activities. They set out the principles and values which will be applied in our approach to the relevant instances. The **CLC** Regulatory and **Enforcement** Policies are provided in the Handbook due to their relevance to all of the **CLC** regulated community and to the **regulatory arrangements** set out in this Handbook.

The Regulatory Policy explains what we as a regulator of legal services are seeking to achieve and how our regulatory philosophy is put into practice. The **Enforcement** Policy explains how we identify and respond to non-compliance with our regulatory requirements and the factors which determine the form our response takes.

Welcome to the **CLC**!



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## Universal Arrangements



### *Code of Conduct*

#### **Introduction**

This *Code of Conduct* was made in accordance with s.20 of the *Administration of Justice Act 1985* and s.83 of the *Legal Services Act 2007*.

All individuals and bodies regulated by the **CLC** must comply with this Code and its associated *regulatory arrangements*. In this Code “you” refers to individuals and bodies (and the employees and managers within them) regulated by the **CLC**. 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. Your main driver should be the delivery of positive *client outcomes*. The Code comprises *principles* and *specific requirements*, which taken together deliver positive *Outcomes* for your *Clients* and, particularly in relation to *Overriding Principle 6*, for others you deal with.

To effectively secure the protection of, and the provision of choice for, the consumer of legal services, you must at all times comply with the following *Overriding Principles*:

1. Act with independence and integrity;
2. Maintain high standards of work;
3. Act in the best interests of your *Clients*;
4. Comply with your duty to the court;
5. Deal with regulators and ombudsmen in an open and co-operative way;
6. Promote equality of access and service.

These are underpinned by *principles* of behaviour which must be demonstrated and *specific requirements* which must be complied with in order that the *Overriding Principles* are supported.

Disciplinary proceedings may be taken against you if the *CLC* believes there has been a breach of this Code, meaning that *clients* do not receive the standard of legal services they should reasonably expect to receive. The *CLC*'s response will be informed by the *CLC*'s Regulatory and *Enforcement* Policies.

In exceptional circumstances the *CLC* may waive a provision, or provisions, of the *regulatory arrangements* for an individual, body or circumstance for a particular purpose, or purposes, and with the *conditions* specified in the waiver.

**Overriding Principle 1. Act with independence and integrity**

**Outcomes** - you must deliver the following **Outcomes**:

- 1.1 **Clients** receive good quality independent information, representation and advice;
  - 1.2 **Clients** receive an honest and lawful service;
  - 1.3 **Client money** is kept separately and safely.
- 

**Principles** - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You do not allow your independence to be compromised.
- b) You act honestly, professionally and decently.
- c) You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute.
- d) You **carry on** Reserved Legal Activity only through a person entitled to **carry on** that activity.
- e) You do not give false or misleading information relating to the provision of **Reserved Legal Activities**.
- f) You do not allow fee arrangements to prejudice your independence or professional judgement.
- g) You do not conduct business under a misleading name.
- h) You keep **Client money** safe.
- i) You do not publicise your business through unsolicited communications in person or by telephone.
- j) Your advertising is clear, accurate and fair.
- k) You keep **Client money** entirely separate from your money or the money of the entity.
- l) You do not take unfair advantage of any person, whether or not a **Client** of the business.

**Specific Requirements** - you must also comply with the following **specific requirements**:

- m) You comply with **anti-money laundering and prevention of financing terrorism legislation**.
- n) When acting as a **CLC** licensee, you accept instructions only to act in a matter which is regulated by the **CLC**.
- o) All business **communications**, websites and office premises display information confirming the entity is regulated by the **CLC** and the names of the **Managers** (identifying those who are **Authorised Persons**).

## **Overriding Principle 2. Maintain high standards of work**

**Outcomes**- you must deliver the following **Outcomes**:

- 2.1 **Clients** are provided with a high standard of legal services;
  - 2.2 **Client** matters are dealt with using care, skill and diligence;
  - 2.3 Appropriate **arrangements**, resources, procedures, skills and commitment are in place to ensure **Clients** always receive a high standard of service.
- 

**Principles** - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You provide the level of service appropriate for, and agreed with, the **Client**.
- b) You keep your skills and legal knowledge up-to-date.
- c) You ensure all individuals within the entity are competent to do their work.
- d) You supervise and regularly check the quality of work in **Client** matters.
- e) You comply fully with any undertaking given by you.
- f) You **systematically** identify and mitigate risks to the business and to **Clients**.
- g) You promote ethical practice and compliance with regulatory requirements.
- h) You enable staff to raise concerns which are acted on appropriately.
- i) You maintain proper governance, management, supervision, financial, and risk management **arrangements** and **controls**.
- j) You administer oaths, affirmations and declarations properly.
- k) You deliver services in accordance with timetables reasonably agreed with the **Client**.

**Specific Requirements** - you must also comply with the following **specific requirements**:

- l) **Control** of an entity is from a permanent fixed address in England or Wales.
- m) A **Manager** who is an **Authorised Person** is responsible for supervising the services provided by the entity's employees.
- n) You make provision for alternative supervision **arrangements** in case of illness, accident or other unforeseen event.
- o) You maintain proper records to evidence your **arrangements** and **controls** and how they are applied.

**Overriding Principle 3. Act in the best interests of your Clients**

**Outcomes** - you must deliver the following **Outcomes**:

- 3.1 Each **Client's** best interests are served;
- 3.2 **Clients** receive advice appropriate to their circumstances;
- 3.3 **Clients** have the information they need to make informed decisions;
- 3.4 **Clients** are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the **CLC**;
- 3.5 **Clients** are aware of any limitation or any condition resulting from your relationship with another party;
- 3.6 **Clients'** affairs are treated confidentially (except as required or permitted by law or with the **Client's** consent).

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**Principles** - delivery of these **Outcomes** requires you to act in a principled manner:

You only accept instructions and act in relation to matters which are within your professional competence.

- a) You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**).
- c) You do not act for a **Client** where you judge it is not in their best interests for you to do so.
- d) 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**.
- e) You disclose **client** information only as the **Client** has instructed (or as required by the **CLC's regulatory arrangements** or by law), keeping effective records of any disclosures you make.
- f) You only recommend a particular person, business or product when it is in the best interests of the **Client**.
- g) 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.
- h) You provide the **Client** with information which is accurate, useful and appropriate to the particular **Client**.

- i) You only provide **reserved legal activities** whilst you have **CLC**-approved **professional indemnity insurance** in force.
- j) You provide the **Client** with all relevant information relating to any fee arrangements or fee changes.
- k) 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.
- l) You consult **Clients** on key decisions in a timely way.
- m) You **promptly** advise **Clients** of any significant changes to projected **costs**, timelines and strategies.

**Specific Requirements**- you must also comply with the following **specific requirements**:

- n) 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.
- o) 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 practise.
- p) If you seek to exclude or limit liability, you do so only to the extent that such exclusion or limitation is above the minimum level of cover provided by **CLC**-approved **professional indemnity insurance**; you must obtain the written informed consent of the **Client** for such exclusion or limitation to be effective.
- q) When providing services which are not regulated by the **CLC**, you advise your **Client** of this and inform them in writing that the activity is not
  - covered by **CLC**-approved **professional indemnity insurance**,
  - covered by the **CLC Compensation Fund** administered by the **CLC**, and
  - the **Legal Ombudsman** does not have jurisdiction to determine **complaints** made about the service you are providing.
- r) Before or when accepting instructions, you inform **Clients** in writing 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.
- s) You **promptly** inform the **Client** in writing of the existence and amount of any sum payable (whether directly or indirectly) as a result of receipt of that **Client's** instructions.
- t) With the exception of **disbursements**, you do not delay completion because fees are outstanding to you.
- u) You discuss and agree with the **Client** how **costs** will be paid, whether directly by the **Client**, by public funding, through an insurance policy or otherwise.



**Overriding Principle 4. Comply with your duty to the court**

**Note: this Principle will only be applicable if the CLC's application to regulate *advocacy* and *litigation* services is successful**

**Outcomes** - you must deliver the following **Outcomes**:

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

---

**Principles** - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You promote and protect the **client's** best interests.
- b) You do not compromise your professional standards or independence.
- c) You assist the court in the administration of justice.
- d) You do not knowingly or recklessly mislead or deceive the court, or allow the court to be misled.
- e) 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).
- f) You comply with any Court Order (unless an application for a stay is pending or the Order has been revoked by the Court) ;
- g) You advise your **Client** to comply with Court Orders and of the consequences of failing to do so.
- h) You properly protect sensitive evidence.
- i) You safeguard the well being of children and other vulnerable persons.

**Specific Requirement** - you must also comply with the following specific requirement:

- j) 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.

**Overriding Principle 5. Deal with regulators and ombudsmen in an open and co-operative way.**

**Outcome** - you must deliver the following **Outcome**:

5.1 You act in accordance with your regulatory responsibilities.

---

**Principles** - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You are open and honest in your dealings with us.
- b) You comply with the **CLC Code of Conduct** and the **CLC's** other **regulatory arrangements**.
- c) You comply **promptly** and fully with a **CLC** direction or request.
- d) You comply with any **authorisation, permission** or **condition** endorsed on your **licence, Recognised Body Certificate** or **Licensed Body Licence**.
- e) You co-operate with any **CLC** investigation.
- f) You co-operate with any **Legal Ombudsman** investigation.
- g) You comply **promptly** and fully with any **Legal Ombudsman** Order.
- h) You co-operate with other regulators and ombudsmen.

**Specific Requirements** - you must also comply with the following **specific requirements**:

- i) You make the **Compensation Fund** contribution determined by the **CLC**.
- j) You **systematically** identify, monitor and manage risks to the delivery of this Code's **outcomes**.
- k) You **promptly** notify insurers in writing of any facts or matters which may give rise to a **claim** under **CLC**-approved **professional indemnity insurance**.
- l) You **promptly** notify the **CLC** in writing of any facts or matters which may give rise to a **claim** under its **Compensation Fund**.
- m) 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.
- n) You obtain permission from the **CLC** before offering **Reserved legal activities**:
  - as a new business;
  - in an entity regulated by another **Approved Regulator**; or
  - through an entity with a **Manager** who is not a **Licensed Conveyancer**.
- o) You notify the **CLC** of any material breach of this Code, whether by you, the entity or any other person.

- p) You notify the **CLC** of a change as set out in the **CLC**'s Notification Code.

**Overriding Principle 6. Promote equality of access and service.**

**Outcomes** - you must deliver the following **Outcomes**: -

- 6.1 The service is accessible and responsive to the needs of individual **Clients**, including those who are vulnerable;<sup>1</sup>
- 6.2 No-one - **Client**, employee, colleague, job applicant, trainee or other party - you deal with feels discriminated<sup>2</sup> against (whether directly or indirectly), victimised or harassed;
- 6.3 You accept responsibility where the service you provide is not of the expected standard and provide appropriate redress for the **Client** where necessary;
- 6.4 Handling of **complaints** takes proper account of **Clients'** individual needs, including those who are vulnerable;
- 6.5 **Complaints** are dealt with impartially and comprehensively.

---

**Principles** - delivery of these **Outcomes** requires you to act in a principled manner:

- a) You comply with **Equalities legislation**.
- b) You make reasonable adjustments to prevent persons with disabilities from being placed at a substantial disadvantage.
- c) You provide equal opportunities for all partners, employees or applicants in employment and training.
- d) You make all reasonable efforts to ensure your service is accessible and responsive to **Clients**, including those with vulnerabilities.
- e) Your **complaints** procedure is clear, well-publicised and free.
- f) You treat **complaints** seriously and provide appropriate redress options.
- g) You deal with **complaints** fairly and within 28 days.
- h) You identify and address systemic **Client Complaints** issues.

**Specific Requirements** - you must also comply with the following **specific requirements**:

- i) Any allegation of (direct or indirect) discrimination, victimisation and harassment is investigated thoroughly, resulting, where appropriate, in disciplinary action.

- j) You advise **Clients** from the outset of their right to make a **complaint**, how to make it, to whom, and the timeframes involved.
- k) You advise **Clients** of their right to have their **complaint** escalated to the **Legal Ombudsman** and provide them with contact details and timeframes of that body.
- l) You keep a record of **complaints** received and any action taken as a result.

<sup>1</sup> a **Client** may be vulnerable because of a range of characteristics such as low-literacy levels; disability; distress; limited knowledge of, or limited skills in, use of English; or lack of knowledge of their legal entitlements. Vulnerability can only be assessed on a case-by-case basis.

<sup>2</sup> On the grounds of age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation.



## Accounts Code & Guidance

### Accounts Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

In the case of an **Authorised Person** who no longer holds a **Licence** or **Certificate of Recognition**, this Code applies as if that **Licence** or **Certificate of Recognition** were still in force until such time as any relevant part of this Code has been fully and appropriately complied with.

### Outcomes-Focused

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

- **Clients receive an honest and lawful service (Outcome 1.2);**
- **Client money is kept separately and safely (Outcome 1.3);**
- **Appropriate arrangements, resources, procedures, skills and commitment are in place to ensure Clients always receive a high standard of service (Outcome 2.3);**
- **Each Client's best interests are served (Outcome 3.1).**

Appropriate handling of **Client money** helps you deliver these **Outcomes** and requires you to act in a Principled Manner:

1. **Act with Independence and Integrity. (Overriding Principle 1)**

2. **Maintain High standards of Work. (Overriding Principle 2)**
3. **Act in the Best Interests of your Clients. (Overriding Principle 3)**
4. You keep **Client Money** Safe. (CoC P1h)
5. You promote ethical practice and compliance with regulatory requirements.(CoC P2g)
6. You maintain proper governance, management, supervision, financial and risk management **arrangements** and **controls**. (CoC P2i)

You must also comply with the following **specific requirements**:

7. You keep **Client money** entirely separate from your money or the money of the entity. (CoC P1k)
8. You comply with anti-money laundering and prevention of financing terrorism legislation. (CoC P1m)
9. You:
  - 9.1.1 ensure that your partners, employees and directors (including partners, employees and directors who are not **Authorised Persons**) comply with this Code;
  - 9.1.2 use each **Client's money** only for that **Client's** matters;
  - 9.1.3 only pay money into, and withdraw money from, the **Client Account** and the **Office Account** for purposes related to the provision of services regulated by the **CLC**;
  - 9.1.4 establish and maintain proper accounting systems, procedures, processes and internal **controls**, to ensure compliance with this Code;
  - 9.1.5 ensure there is no debit balance on the **client** side of a **client** ledger account nor a credit balance on the office side of a **client** ledger account;
  - 9.1.6 remedy any breach of these requirements **without delay**;
  - 9.1.7 account to the **Client** as soon as possible after completion of any transaction or after a retainer has been terminated.

**Payment into Client Account**

- 10.1. Subject to the provisions of the 10.4 and 11.1 requirements, upon receiving **Client Money** you pay it into a **Client Account without delay**.

- 10.2 Money held in a **Client Account** is available immediately, even at the sacrifice of interest, unless the **Client** otherwise instructs.
- 10.3 Money held in **Separate Designated Accounts** is not aggregated with money held in other **Client Accounts**.

**Guidance – Payment into Client Account**

(i) When a **client account** is being opened, written notice should be given to the **Bank** or **Building Society** concerned in clear terms that the account is to be a **Client Account** and, in particular, that it may not be resorted to for the purpose of setting off against any other account of the body. The **Bank** or **Building Society** should also be asked to acknowledge its acceptance of this in writing.

(ii) You/the entity may keep one **Client Account** or as many **Client Accounts** as you think fit.

(iii) Subject to Requirement 10.3, the **CLC** permits schemes proposed by **Banks** to aggregate sums held in a number of **Client Accounts** in order to maximise the interest payable.

(iv) **Client Accounts** are not intended to provide banking facilities for **Clients**.

(v) There are criminal sanctions against assisting money launderers – see Anti-Money Laundering and Combating Terrorist Financing Code.

- 10.4 Only **Client Money** is paid into or held in a **Client Account** except:
- 10.4.1 such money belonging to you as an **Authorised Person** as may be necessary for the purpose of opening or maintaining the **Client Account**;
- 10.4.2 money to replace any sum which for any reason has been or is about to be withdrawn from the account in breach of 12.5, such money then becoming **Client Money**;
- 10.4.3 where you receive money and are in doubt as to whether it is wholly **Office Money** you pay such money into a **Client Account** and within one calendar month of receipt ascertain and withdraw such part as is **Office Money**.

**Guidance – Client Money**

(i) **Client Money** includes money held or received:

(a) as agent, bailee or stakeholder;

(b) for payment of stamp duty land tax, Land Registry fees and telegraphic transfer fees (this does not become **Office Money** unless an obligation to pay out of **Office Account** has been incurred and the payment is recorded in the office columns of the appropriate **client** ledger

account).

(c) as a payment on account of **costs** generally.

(ii) Money held to the sender's order is **Client Money** if accepted and must be held in a **Client Account** unless it is received on the express terms that the cheque or draft (as opposed to the money itself) may not be presented for payment without the sender's consent. In this case you are under a professional obligation to return the cheque or draft to the sender on demand.

(iii) A payment made by you to a **Client** which is credited to **Client Account** in accordance with requirement 10.4.2 becomes **Client Money** and must be recorded in both the **client** and office columns of the appropriate **client** ledger account.

(iv) You cannot be your own **Client** for the purposes of this Code; if a transaction is conducted for a **manager**, money held or received on your behalf is in principle **Office Money**. However, money received in such a case may still be **Client Money**, e.g.:

(a) where you/the entity act for a lender, money held or received on behalf of the lender is **Client Money**;

(b) where you/ the entity act for a **manager** and his spouse jointly (assuming that the spouse is not also a **manager** in the entity), money received on their joint behalf is **Client Money**;

(c) where you/the entity acts for an employee (whether or not a **Licensed Conveyancer**), consultant or director, such person is regarded as a **Client** of the entity and money received on his behalf is **Client Money**, even if that person conducts the transaction himself.

### **Money to be withheld from Client Account**

11.1 Notwithstanding the provisions of this Code, you do not pay into a **Client Account** money:

11.1.1 which a **Client** instructs you to withhold from such an account, such instruction being either on a **Durable Medium** from the **Client** or acknowledged by you on a **Durable Medium** to the **Client**; or

11.1.2 which has been withheld from **Client Account** with the written authorisation of the **CLC**. (Authority is given only in very exceptional circumstances).

### **Withdrawal and Transfer from Client Account**

12.1 Subject to requirement 12.3, there must be withdrawn from a **Client Account**:

12.1.1 **Without Delay** following discovery, money that has been incorrectly paid into it;



- 12.1.2 as soon as possible and in any event within one calendar month of receipt,  
**Office Money** paid into it in accordance with requirement 10.4.3;
- 12.1.3 **Without Delay Office Money** no longer necessary to maintain a **Client Account**;
- 12.1.4 within 28 days of the date on which a bill of **costs** is sent to a **Client**, money held on account of **Costs** and **Disbursements**, provided it is made clear to the **Client** or the paying party on a **Durable Medium** either before or at the time the bill of **costs** is sent that such money will be applied towards or in payment of that bill of **costs**. (The work for which the money is applied under this requirement must have been completed, whether at the end of a matter or at an interim stage (with the **Client's** agreement)).
- 12.2 In addition to the withdrawals referred to in requirement 12.1 and subject to requirement 12.3, there may only be withdrawn from **Client Account** money:
- 12.2.1 properly required for payment to or on behalf of a **Client**;
- 12.2.2 properly required for payment of a Disbursement on behalf of a **Client**;
- 12.2.3 properly required in full or partial reimbursement of money already expended by you out of the **Office Account** on behalf of a **Client**;
- 12.2.4 properly required in full or partial reimbursement of money for which you have incurred a liability to make a payment out of **Office Account** on behalf of a **Client**;
- 12.2.5 which is transferred to another **Client Account** ;
- 12.2.6 Where the **CLC** has given written authority for a specific payment to be made to a nominated payee or where the **CLC** has approved a scheme for automated payments direct from **Client Account**.
- 12.3 Withdrawals out of **Client Account** under requirements 12.1.4, 12.2.3 and 12.2.4 are specific sums relating to **Costs** or **Disbursements**. Round sum withdrawals on account of **Costs** or **Disbursements** are not permitted.
- 12.4 Money withdrawn under 12.1 and 12.2 does not exceed the total of the money held to the credit of both the **Client** and the **Client Account** in which the money is held.
- 12.5 You replace **Without Delay** any shortfall to a **Client** or to a **Client Account** by payment into **Client Account** under 10.4.2.

**Guidance – Client Account Withdrawal & Transfer**

- (i) Money held on account of **Costs** and **Disbursements** becomes **Office Money** on the date the bill of **costs** is sent to the **Client** (requirement 12.1.4).
- (ii) Money is 'expended' under requirement 12.2.3 at the time when a cheque is

despatched, not when it is cleared. Money is also regarded as expended by the use of a credit account so that, for example, search fees, taxi fares and courier charges incurred in this way may be transferred to the **Office Account**.

(iii) Requirement 12.2.4 permits you to transfer from **client** to office **bank** account monies where a direct debit scheme is in operation. A liability to pay out of **Office Account** is deemed to have incurred when the anticipated payment from office **bank** account has been evidenced on a **Durable Medium** and recorded on the office side of the appropriate **client** ledger account.

(iv) The purpose of requirement 12.2.6 is to enable you, with the written authority of the **CLC**, to participate in schemes for automated payments to be made direct from **Client Account**. The **CLC** will generally only authorise individual payments to enable **aged balances** to be cleared.

(v) Bearing in mind note (ii), you should take care in drawing against a **Client Account** cheque or draft which has not yet been cleared. If the cheque or draft should be dishonoured, you will have to make a payment under requirement 10.4.2 to ensure there is no breach of requirement 12.4.

(vi) Similarly, if when acting for a **Client** you withdraw money from **Client Account** on the strength of information that a telegraphic transfer is on its way, but that transfer does not arrive, you will have to make a payment under requirement 10.4.2 to ensure there is no breach of requirement 12.4.

(vii) A manager of a body or the Head of Finance & Administration of a **Licensed Body** must be able to operate the **Office Account** of the body in order to be able to comply with requirement 12.5.

12.6 Undrawn **Costs** or **Disbursements** must not remain in **Client Account** either in anticipation of future errors which could result in a shortage on that account or any current shortage on that account and are not available as a set off against any general shortage on **Client Account**.

12.7 Any withdrawal in your favour is recorded in both the **client** and office columns of the appropriate **client** ledger account in accordance with requirement 13.

12.8 Subject to requirement 12.9 a withdrawal from **Client Account** is made as follows:-

12.8.1 cheques or other written instructions for withdrawal from **Client bank** account are signed by an **Approved Person**;

12.8.2 where CHAPS terminals or other electronic systems are used to withdraw monies from **Client bank** account and authority has not been given in accordance with requirement 12.8.3, such systems are operated by an **Approved Person**;

12.8.3 where payments are authorised electronically, such authority is only given by an **Approved Person**.

**Guidance – Withdrawals**

(i) Nothing under requirement 12.8 shall prevent any other person from operating such systems or processes in conjunction with an **Authorised Person**, provided that such systems or processes cannot be operated by that other person alone.

(ii) Oral authorisations to the **Bank** are no longer permitted without confirmation of such authorisation on a **Durable Medium**.

12.9 Authority in accordance with requirement 12.8 is not required for the transfer of money from one **Client Account** to another **Client Account** at the same **Bank** or **Building Society** except where either is a **Separate Designated Account**. (Authority for any such transfer is required in accordance with requirement 12.8).

12.10 A transfer of money from the ledger account of one **Client** to that of another **Client** is only made if it would have been permissible under this Code for the money to be withdrawn from **Client Account** in the case of the first **Client** and for the money to be paid into **Client Account** in the case of the second **Client**.

12.11 A withdrawal from a **Client Account** in your favour is by way of a cheque to you or by way of a transfer to your **Office Account**.

12.12 Withdrawals in cash from a **Client Account** are not permitted.

12.13 Except with the prior written authority of both **Clients** no sum in respect of a **Private Loan** from one **Client** to another is paid out of funds held for the lender:

12.13.1 to the borrower directly; or

12.13.2 by a payment from one **Client Account** to another; or

12.13.3 by a transfer from the ledger account of the lender to that of the borrower;

12.14 All monies held in the **Client Account** are paid to the **Rightful Recipient** as soon as there is no longer any proper reason to retain these funds.

**Guidance – Withdrawals & Transfers**

(i) Monies remaining in **Client Account** that cannot be paid to the **Rightful Recipient** can be dealt with under requirement 12.2.6 (bearing in mind the Aged Balance **Guidance** attached to this Code).

(ii) Provided certain criteria have been met, withdrawals are allowed where the **CLC** has given authority and the balance has been static for over 12 months.

**Accounting Records**

13.1 You update **Accounting Records** at least once a week and ensure they are properly written up to show clearly all dealings with:

13.1.1 **Client Money** received, held or paid, including **Client Money** withheld from a **Client Account** under 11.1; and

13.1.2 **Office Money** and any other monies received, held or paid in any **Office Account**.

13.2 **Accounting Records** are sufficient to:

13.2.1 show and explain accurately every transaction relating to each **Client**;

13.2.2 disclose at any time total indebtedness to each **Client** and also each **Client's** total indebtedness to you/the entity.

13.3 All dealings with **Client Money** are appropriately recorded:

13.3.1 In a **client** cash account or in a record of sums transferred from one **client** ledger account to another; and

13.3.2 on the **client** side of a separate **client** ledger account for each **Client** or for each **Client** matter;

13.3.3 with sufficient narrative on the ledger and cash account to explain each entry.

**Guidance – Accounting Records**

(i) Where **Banks** operate automatic transfers to **Client Accounts** offering a higher rate of interest, separate cash accounts are not required to record these transfers.

(ii) Only **client** ledger accounts in the name of a **Client** are allowed. General or suspense **client** ledger accounts are not permitted.

- 13.4 If **Separate Designated Accounts** are used:
- 13.4.1 a combined cash account must be kept in order to show the total amount held in **Separate Designated Accounts**; and
- 13.4.2 a record of the amount held for each **Client** must be made either in a deposit column of a **client** ledger account, or on the **client** side of a **client** ledger account kept specifically for a **Separate Designated Account**, for each **Client**;
- 13.4.3 upon receipt of information that interest has been credited to the Separate Designated Account, corresponding entries must be made in the Accounting Records.
- 13.5 The current balance on each **client** and office ledger account is shown, or is readily ascertainable, from **Accounting Records** kept in accordance with this Code.
- 13.6 All dealings with **Office Money** relating to any **Client** must be appropriately recorded in an office cash account and on the office side of the appropriate **client** ledger account.
- 13.7 When acting for both lender and borrower in a mortgage transaction between them, separate **client** ledger accounts for both **Clients** need not be opened provided that the funds belonging to each **Client** are clearly identifiable and the lender is an institutional lender which provides mortgages in the normal course of its activities.

**Guidance – Separate Designated Accounts**

(i) 'Clearly identifiable' means that, looking at the ledger account, both the nature and owner of the mortgage advance are unambiguously stated.

(ii) Although a separate ledger account is not opened for the lender, the mortgage advance credited to the **client's** ledger account belongs to the lender, not to the borrower, until completion takes place.

Improper removal of such funds from a **Client Account** is contrary to requirement 12.4.

- 13.8 You retain on a **Durable Medium** a central record or file of copies of all bills of **costs** distinguishing in each bill between **Costs**, paid **Disbursements** and **Disbursements** not yet paid at the date of the bill and VAT.

**Reconciliations**

- 13.9 At least once in each calendar month you:
- 13.9.1 prepare a **bank** reconciliation statement by comparing the balance on the **client** cash account with the balances shown on the **client bank** statements and passbooks (after

- allowing for all unrepresented items) of all **Client Accounts** and **Separate Designated Accounts** and any **Client Money** held by you/the entity in cash;
- 13.9.2 as at the same date prepare a listing of all the balances shown by the **client** and office ledger accounts and compare the total of the **client** ledger credit balances with the balance on the **client bank** reconciliation statement; and
- 13.9.3 prepare a reconciliation statement showing the cause of the differences (if any) shown by each of the above comparisons.
- 13.10 The steps required under requirement 13.9 are:
- 13.10.1 prepared to a date not more than five weeks after the date to which they were last prepared; and
- 13.10.2 completed within 7 days of the date to which they are prepared.
- 13.11 Records maintained in accordance with requirements 13.1 to 13.9 are kept separate from those for any other business. Where the accounts of more than one business are maintained on the same system, they are capable of being reproduced independently by the system.
- 13.12 You have immediate and unrestricted access to the **Accounting Records**.

**Guidance – Reconciliation Statements**

(i) Where, as a result of carrying out the comparisons and preparation of the reconciliation statement under requirement 13.9, any shortfall on **Client Account** is revealed it must be made good **Without Delay** by a payment into **Client Account** in accordance with requirement 10.4.2.

(ii) Where, as a result of carrying out the comparisons and preparation of the reconciliation statement under requirement 13.9, any credit balance on the office side of a **client** ledger account is revealed, it must be rectified by the appropriate action **Without Delay**.

(iii) Any outstanding credit on the **client bank** reconciliation should be cleared by a payment into **client bank** account **Without Delay**. The absence of a corresponding entry at the **bank** may create a shortfall on the relevant **client** ledger account.

**Retention of Records**

- 13.13 You retain on a **Durable Medium** for at least six years from the date of the last entry all documents or other records required by requirement 13.1 to 13.9.

13.14 You retain for at least two years:

13.14.1 all paid cheques, unless any relevant **Bank** or **Building Society** has agreed on a **Durable Medium** that it will retain such cheques or copies of the cheques on a **Durable Medium** on his behalf for that period; and

13.14.2 originals or copies of all other authorities for the withdrawal of money from the **Client Account**.

13.15 All statements and passbooks, as printed by the **Bank** or **Building Society** for **Client Accounts, Separate Designated Accounts**, accounts in which **Client Money** has been held and any **Office Account** is retained for at least six years from the date of the last entry.

#### **Misappropriation of Clients' Money**

13.16 Upon discovery of any misappropriation of **Client Money** you notify the **CLC Without Delay**. (The shortfall caused by the misappropriation must be rectified **Without Delay** by payment into **Client Account** in accordance with requirement 10.4.2).

#### **CLC Monitoring**

14.1 In order to monitor compliance with the **CLC's Code**, at the time and place determined by the **CLC**, you produce all information held on a **Durable Medium** relating to the business (to include his **Accounting Records**, papers, files and financial accounts) as would be reasonably required to enable the preparation of a report.

14.2 For the purposes of requirement 14.1, you hold **Accounting Records** on a **Durable Medium** and produce/make these available to the **CLC's** appointee in the manner required by the **CLC**.

#### **Guidance – CLC Monitoring**

- (i) Reasons are not required to be given for an inspection.
- (ii) You are required to provide, where required by the **CLC's** appointee, access to any computerised system.

#### **Guidance - Disciplinary Consequences**

(iii) If it appears to the **CLC** that there has been a contravention of this Code, disciplinary proceedings may be taken against you as **Manager** or as an entity under the **Code of Conduct**.

(iv) Where following an inspection instituted under requirement 14.1 it appears to the **CLC** that there is reason to believe you have failed to comply with a provision of this Code, the **CLC** may require you to pay a reasonable sum as is determined by the **CLC** to cover the cost

of a further inspection.

(v) Any report made by the *CLC*'s appointee may be sent by the *CLC* to the Crown Prosecution Service or the ***Serious Organised Crime Agency*** or to any of the accountancy bodies recognised by the *CLC*. It may be used as the basis for a preliminary investigation and may be taken into account by the *CLC* in relation to the possible disqualification of a ***Reporting Accountant*** under requirement 16.7.3.

- 14.3 The *CLC* is entitled to seek verification from your ***Clients***, staff and ***Banks*** or Building Societies. If necessary, you provide written permission for such information to be given.
- 14.4 If you do not give the *CLC* permission to remove original documents from your premises, you provide us with photocopies on our request.

#### **Deposit Interest**

- 15.1 When holding ***Client Money*** in a ***Separate Designated Account*** you seek a reasonable rate of interest on money held in that account and must account to the ***Client*** for all interest earned on that account.

#### **Guidance – interest directions**

Without prejudice to any other remedy, a ***Client*** may apply to the *CLC* for a direction as to whether or not interest should have been earned in respect of ***Client Money*** held on his behalf by an ***Authorised Person***. If the *CLC* directs that interest should have been earned then it may issue a direction as to the sum you pay to the ***Client*** in lieu of interest.

- 15.2 If the *CLC* directs pursuant to paragraph 22 of Schedule 8 to the ***1990 Act*** that such a sum should be paid, you pay to the ***Client*** the amount directed within fifteen days of the *CLC* sending notification of that direction.

#### **Guidance – Deposit Interest**

(i) If appropriate, the *CLC* may require you to obtain an interest calculation from the relevant ***Bank*** or ***Building Society***.

- 15.3 You provide sufficient information in writing to enable the ***Client*** to give informed consent in writing if it is felt appropriate to depart from requirement 15.1. This includes



expressly drawing the **Client's** attention to any contracting out provision which may be contained in **terms of engagement**.

**Guidance – Informed Consent/contracting out**

(i) Whether it is appropriate to contract out depends on all the circumstances, for example, the size of the sum involved or the nature or status or bargaining position of the **Client**.

(ii) The larger the sum of interest involved, the greater your obligation to demonstrate that a **Client** who has accepted a contracting out provision was properly informed and has been treated fairly and reasonably.

**Accountant's Reports**

- 16.1 If you have at any time during an **Accounting Period** held or received **Client Money** you procure the delivery by the **Reporting Accountant** to the **CLC** of an Accountant's Report for that period.
- 16.2 The **Accountant's Report** is delivered to the **CLC** within six months of the end of the **Accounting Period** except that, where on the date of coming into force of this Code, the **Accounting Period** has already ended. The form of the **Accountant's Report** to be delivered shall be that prescribed by this Code.
- 16.3 If you have two or more places of business and choose separate **Accounting Periods** for these, you provide a separate **Accountant's Report** for each place of business.
- 16.4 You immediately notify the **CLC** of any changes to the identity, address and other relevant details of the **Reporting Accountant**.
- 16.5 Subject to Requirement 16.7 the **Reporting Accountant** is qualified to sign and give an **Accountant's Report** on behalf of an **Authorised Person** if he is a member of an accountancy body recognised by the **CLC** and holds a current practising certificate issued by that body when he signs the report.

**Guidance – Accountant's Reports (1)**

(i) Even when this Code does not require delivery of a Report, a condition on a **licence** to practise may impose a separate and binding obligation to that effect.

(ii) When **Client Money** is held or received by an entity, any **Manager** will have held or received **Client Money**.

(iii) Employees do not usually hold **Client Money**, even if they are signatories on an entity's **Client Account**.

(iv) If an employee does hold **Client Money**, an **Accountant's Report** will need to be delivered.

(v) You must apply to the **CLC** for consent to vary the **Accounting Period**.

(vi) When an entity is being wound up, you may be left with **Client Money** which is unattributable or belongs to a **Client** who, despite efforts, cannot be traced. It may then be appropriate to apply to the **CLC** for authority to withdraw this money from the **Client Account** under requirement 12.2.6 (see **CLC's Aged Balance Guidance** attached to this Code).

(vii) It is not a breach of requirement 16.5 for you to retain an independent accountant to write up the books of account and to instruct the same person to prepare and sign the **Accountant's Report**. However, the accountant will have to disclose these circumstances in the **Accountant's Report**.

#### **Requirements to be qualified to certify Accountant's Reports**

16.6. The **Accountant's Report** is certified by a member of one of the following accountancy bodies:

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Institute of Chartered Accountants in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Association of Authorised Public Accountants.

16.7 The **Accountant's Report** is not certified by an accountant who:-

16.7.1 either at any time between the beginning of the **Accounting Period** to which the **Accountant's Report** relates and the signing of the **Accountant's Report** they were a partner, employee or officer in the entity to which the **Accountant's Report** relates or was employed by the same employer as the **Authorised Person** for whom the **Accountant's Report** is given; or

16.7.2 they have been disqualified under 16.7.3 and have been given by the **CLC** notice of disqualification which has not been withdrawn.

#### **Guidance - Disqualification of Accountants**

(i) The **CLC** may disqualify an accountant from giving an **Accountant's Report** if:

- a) they have been found guilty by the disciplinary tribunal of their professional body of professional misconduct or discreditable conduct; or
- b) it is satisfied that the **Reporting Accountant** has failed in their **Accountant's Report** to properly identify and explain to the satisfaction of the **CLC** any breaches of this Code.

(ii) In coming to a decision the **CLC** will take into account any representations made by the accountant and their professional body.

(iii) The **CLC** shall notify you if you are likely to be affected by an accountant's disqualification, and may also publish notification of such disqualification in the **CLC's** 'Chronicle' or other publication.

- 16.8 You ensure that your **Reporting Accountant's** rights and duties are stated in **terms of engagement**, which include the terms set out in the Schedule. The **terms of engagement** and a copy are signed by both you and the **Reporting Accountant** and you retain the copy.
- 16.9 The **Reporting Accountant** examines your **Accounting Records** and other relevant documents at your office, not their own, and does not remove any original records from the premises.
- 16.10 You provide the **Reporting Accountant** with details of all accounts kept or operated by you in connection with your entity at any **Bank** or **Building Society** at any time during the **Accounting Period** to which the **Accountant's Report** relates, including **Client Accounts, Office Accounts** and accounts which are not **Client Accounts** but which contain **Client Money**.
- 16.11 The **Reporting Accountant** examines your **Accounting Records** to ensure compliance with this Code and carries out the checks and tests as prescribed on the **CLC** website and Management Information System.
- 16.12 The **Reporting Accountant** signs and delivers to the **CLC** the **Accountant's Report** together with the completed checklist in the form prescribed by the **CLC**.

**Guidance – Accountant's Report (2)**

(i) Although requirement 16.12 requires the **Reporting Accountant** to deliver to the **CLC** the Accountant's Report together with the completed checklist, requirement 16.1 requires you to procure the delivery of the **Accountant's Report** to the **CLC** by the **Reporting Accountant** within the due date. The **Reporting Accountant** must provide you with a copy of the **Accountant's Report** and completed checklist.

(ii) Factors to be considered in determining whether a breach is 'trivial' include the amount involved, the nature of the breach, whether the breach was deliberate or accidental, how often the same breach occurred, and the time which passed before discovery and correction (especially the replacement of any shortage).

(iii) If an **Accountant's Report** is qualified only by reference to trivial breaches but which shows a significant difference between liabilities to **Clients** and **Client Money** held, either you or the **Reporting Accountant** must provide the **CLC** with an explanation for this difference, as required by the Accountant's Report Form.

### General Saving Provisions

17.1 When acting on a **Client's** instructions, you have the general right on the grounds of **Client** privilege to decline to produce any document the **Reporting Accountant** requests for examination purposes. Where such a refusal occurs, the **Reporting Accountant** must qualify his **Accountant's Report** and include an explanation for such qualification.

#### Guidance – General Savings Provisions

(i) Upon receiving a written application from you the **CLC** may waive in writing in any particular case any of the provisions of requirement 16 and may revoke any waiver.

(ii) Nothing in this Code deprives you of your entitlement to money standing to the credit of a **client** ledger account.

### **Reporting Accountant's Terms of Engagement - Schedule 1**

18.1 The terms on which you instruct a **Reporting Accountant** include the following:-

18.2 'In accordance with the **CLC** Accounts Code you are instructed:

18.2.1 to conduct tests and checks prescribed by the **CLC**;

18.2.2 to sign and deliver to the **CLC** the **Accountant's Report** together with the completed checklist in accordance with requirement 16.11; and provide me with a copy;

18.2.3 to report directly to the **CLC** without prior reference to me/this firm/this company if, in the course of carrying out work in preparation of the **accountant's report**, you discover evidence of theft or fraud affecting **client money** or information which is likely to be of material significance in determining whether I am/this entity is a **fit and proper person** to hold **client money**;

- 18.2.4 to report directly to the **CLC** should your appointment be terminated following the issue of, or the indication of intention to issue, a qualified **Accountant's Report** or following the raising of concerns prior to the preparation of an **Accountant's Report**;
- 18.2.5 to retain these **terms of engagement** for at least two years after termination of the retainer and to produce them to the **CLC** on request; and
- 18.2.6 following any report made to the **CLC** under 18.4 and 18.5, to provide to the **CLC** on request any further relevant information in your possession or in the possession of your firm.
- 18.3 By accepting instructions under requirement 16 of the Accounts Code you agree that:-
- 18.3.1 the **CLC** will rely upon the content of your Report,
- 18.3.2 a duty of care is owed by you to the **CLC**; and
- 18.3.3 your liability to the **CLC** will be limited to the loss and costs suffered by the **CLC** arising from items which you have negligently failed to specify in your Report.
- 18.4 To the extent necessary to enable you to comply with the preceding paragraphs, I/We waive my/the firm's/the company's right of confidentiality. This waiver extends to any report made, document produced or information disclosed to the **CLC** in good faith in accordance with these instructions, even though it may subsequently transpire that you were mistaken in your belief that there was cause for concern'.

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## ***Aged Balances Guidance***

### ***Purpose of Guidance***

The purpose of this **Guidance** is to help the regulated community resolve the problem of **Aged Balances**; this money cannot be withdrawn from the **client account** without written authority of the **CLC**. The **Guidance** intends to highlight issues which may arise and suggest possible solutions. However, it is up to the individual **Authorised Person** to decide which options best suit their circumstances.

**Part 1** of this note sets out ways in which you can avoid or minimise **Aged Balances**; and

**Part 2** sets out the procedure which the **CLC** will adopt when it considers whether to give written authority in accordance with requirement 12.2.6 of the **CLC** Accounts Code.

### ***Part 1 ~ How to Avoid Aged Balances - Example Procedure***

**On Receipt of Instructions: -**

1. (a) obtain the **client's bank** details (name and address of **bank**, sort code, account number and name) e.g. by keeping a copy of cheques issued by the **client**;  
  
(b) alternatively, obtain the **client's** credit card details.

### **Completion Statements**

2. (a) "Completion Statement" means an itemised statement of money paid in and out concluding with a balance either owed by or to be paid to the recipient.  
  
(b) Draft Completion Statements should be prepared and checked prior to exchange of contracts.  
  
(c) All Completion Statements (whether in draft or final form) should be checked for accuracy by reference: -
  - (i) to the account or alternatively to their credit card account; and
  - (ii) to the **client** ledger, with evidence from the **rightful recipient** on **Durable Medium**.

### **Client Ledger Card**

3. The **client** ledger card should be checked to ascertain whether a balance remains after the last payment is made and, if so, the balance should be accounted for immediately to the **Rightful Recipient**.
4. It is good practice to ensure that: -
  - (i) the **client** ledger balances are reviewed monthly to identify unexpected or dormant **client** balances;
  - (ii) If a balance is held against a contingent liability, a note is made on the **client** ledger card (alternatively the file) clearly identifying that liability; and
  - (iii) a schedule of **client** balances held for 3 months or more is maintained stating in each case the **client(s)** name(s), file/ledger number, the **Rightful Recipient**, the balance outstanding, the date of last movement and the reason for the balance.
5. Before a file is closed or archived: -
  - (a) the **client** ledger card should be checked to ensure: -
    - (i) no balance is outstanding;
    - (ii) all cheque payments have been cleared by the **bank**;
  - (b) a copy of the **client** ledger card showing a nil balance on both the **client** and **office account** should be placed on the file.

### Unpresented Cheques

6. Unpresented cheques should be reviewed on a regular basis.
  - (a) Unpresented Mortgage Redemption Cheques ~ the **Rightful Recipient** should be contacted within 12 days or no later than one month after payment has been tendered and then at frequent intervals; *[do we need to define 'frequent'??]*
  - (b) All other cheques ~ the **Rightful Recipient** should be contacted after no more than two months after the cheque has been tendered and then at a minimum of two monthly intervals.
7. If a cheque has been lost or remains unpresented after six months: -
  - (a) a stop should be placed on the original cheque;
  - (b) the cheque should be written back to the **client** ledger account; and
  - (c) the monies paid: -
    - (i) either direct to the **Rightful Recipient's bank** account, alternatively credit card account; or
    - (ii) at the **Rightful Recipient's** direction.

### Retention Monies

8. Where possible you should seek agreement providing for retention monies to be held on terms that provide for payment to a named person at a specified **bank** account if the terms for their release have not been satisfied within a specified period.
9. If no such term has been agreed: -
  - (a) the file should be reviewed every three months; and
  - (b) you should seek to obtain such an agreement.
10. It is good practice to maintain: -
  - (a) a schedule of retention balances stating in each case the **client(s)** name(s), the file/ledger number, the amount of and the reason for the retention and the last date for release; and
  - (b) a separate note of the reason for the retention and the last date for release on the **client** ledger card.

### Aborted or Delayed Transactions

11. Regular contact should be maintained with the **client** where the matter has either aborted or been delayed.

## **Part 2 - Obtaining Authority from the CLC**

1. Requirement 12.2.6 of the *CLC* Accounts Code provides that money may be withdrawn from **Client Account**, where -

“the **CLC** has given written authority for a specific payment to a nominated payee”.

### **Authorisation**

2. The **CLC** will consider giving this authorisation as follows: -

- 2.1 where the Aged Balance is less than £20.00:-

(a) the **CLC** must be provided with: -

(i) an Undertaking in the following terms: -

“In consideration of the **CLC** giving written authority in accordance with Requirement 12.2.6 of the **CLC** Accounts Code for the withdrawal of the monies set out in the schedule to this Undertaking (the “Annex”) I/We [names] undertake to the **CLC** that I/we shall within 14 days of a request from the **Rightful Recipient** pay the sum outstanding as set out in the Annex in accordance with this direction.”

(ii) the Annex which sets out in each case the **client(s)** name(s), the file/ledger reference, identifying the property to which the transaction related, the **Rightful Recipient**, the balance outstanding and the date of last movement;

(b) on receipt of the Undertaking the **CLC** may give written authority for withdrawal of the sums set out in the Annex from the **client account**;

(c) on receipt of the written authority from the **CLC** you can transfer the balances as set out in the Annex from **client** to office **bank** account providing the relevant entries have been made to a suitable office nominal ledger account e.g. “Write Offs” and places a copy of the authority issued by the **CLC** on the **clients’** file.

- 2.2 Where the Aged Balance amounts to £20 or more but less than £100 the **CLC** must be provided with: -

(a) a schedule setting out in each case the **client(s)** name(s), the file/ledger reference, identifying the property to which the transaction related, the **Rightful Recipient**, the balance outstanding and the date of last movement;

(b) a copy of the **client** ledger card(s); and



(c) a signed certificate giving brief details of how the balance has arisen and stating you have taken all Reasonable Steps to trace the **Rightful Recipient** but have been unable to trace that person.

The **Rightful Recipient** is the person to whom monies held by the **CLC Body** on **client account** are correctly due.

2.3 'Reasonable Steps' are dependent on the particular circumstances and the sum involved. Examples are: -

- attempting to contact the **Rightful Recipient** at all known addresses, by all known telephone numbers and at any known e-mail address, or through Estate Agents;
- attempting to return funds using available **bank** or credit card details of the **Rightful Recipient**;
- contacting known friends/relatives of the **Rightful Recipient**;
- advertising in a local newspaper.

2.4 Where the Aged Balance is £100 or more the **CLC** must be provided with the information set out in 2.2(a) and (b) and, in addition: -

(a) details of the Reasonable Steps taken to trace the **Rightful Recipient**;

(b) brief details indicating how the balance has arisen; and

(c) any other information the **CLC** may request.

2.5 If authority is given by the **CLC** for a withdrawal under paragraph 2.2 or 2.4

it will only be on the basis that a cheque or funds transfer for the sum so authorised must be drawn on the **client account** payable to the **CLC**. On receipt, the cheque will be placed to the credit of the **CLC's Compensation Fund** and utilised for the benefit of such Fund. You should place a copy of the authority issued by the **CLC** on the **clients'** file.

2.6 Where the **Rightful Recipient** cannot be identified, the **CLC** will, in exceptional

circumstances, give authority under Requirement 12.2.6 of the **CLC** Accounts Code for the withdrawal of funds from **client account** on the basis that a cheque or funds transfer for any sum so authorised must be drawn on the **client account** payable to the **CLC**. On receipt, the cheque will be placed to the credit of the **CLC's Compensation Fund** and utilised for the benefit of such Fund. You should place a copy of the authority issued by the **CLC** on the **clients'** file (or if this is not available in a central record hold it on a **Durable Medium**).

- 2.7 If the **Rightful Recipient** contacts you after funds have been paid into the **CLC's Compensation Fund** you should contact the CLC with a view to the **Rightful Recipient** making a **claim** for reimbursement on the **Compensation Fund** unless the body is no longer trading in which case they should contact the **CLC** directly.



## Anti-Money Laundering & Combating Terrorist Financing Code & Guidance

### Anti-Money Laundering & Combating Terrorist Financing Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### **Outcomes-Focused**

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

- **Client matters are dealt with using care, skill and diligence. (Outcome 2.2)**

Combating Money Laundering (AML) and Terrorist Financing (CTF) helps you deliver these **Outcomes** and act in a principled manner:

1. **Act with independence and integrity. (Overriding Principle 1)**
2. You comply with anti-money laundering and prevention of financing terrorism legislation. (**CoC P1m**)
3. You **systematically** identify and mitigate risks to the business and to **Clients**. (**CoC P2f**)
4. You promote ethical practice and compliance with regulatory requirements. (**CoC P2g**)
5. You maintain proper governance, management, supervision, financial and risk management **arrangements** and **controls**. (**CoC P2i**)

You must also comply with the following **specific requirements**:

6. You have appropriate management **arrangements** and systems and **controls** in place to comply with anti-money laundering regulations.

7. You ensure that management **arrangements**, systems and **controls** enable the identification, assessment, monitoring and management of AML/CTF risk and are appropriate to the nature, scale and complexity of your activities.
8. You carry out regular reviews of the adequacy of management **arrangements**, systems and **controls**.
9. You ensure that, in order to meet your responsibilities under the AML/CTF Legislation Regulations your management **arrangements**, systems and **controls** include:-
  - (a) an appropriate AML/CTF policy ;
  - (b) appropriate and regular training for employees (of which a record must be kept) in relation to AML/CTF to enable employees to recognise and deal with transactions and other activities which may be related to AML/CTF;
  - (c) appropriate internal reporting procedures;
  - (d) management and retention of records of **CDD** and information about, suspicion reports received by the business;
  - (e) appropriate measures to ensure that AML/CTF is taken into account in the day to day operation, including the application of appropriate **CDD** for:-
    - (i) dealing with existing **clients**;
    - (ii) the taking on of new **clients**;
    - (iii) dealing with **Beneficial Owners**;
    - (iv) incorporating changes in the services provided;
  - (f) appropriate **CDD** measures to ensure that procedures for identifying and verifying new **clients** and **Beneficial Owners** do not unreasonably deny access to the services to potential **clients** who can not reasonably be expected to produce detailed evidence of identity.
10. You :-
  - (a) appoint a Nominated Officer with responsibility to receive suspicion reports and make reports to SOCA;
  - (b) appoint a **manager** (who may or may not be the Nominated Officer) with responsibility for ensuring the business complies with these;

(c) ensure that the Nominated Officer or **manager** has an appropriate level of authority and independence , and access to resources and information sufficient to enable them to carry out that responsibility.

11. Records must be stored on **Durable Medium**.
- 

## **Anti-Money Laundering and Combating Terrorist Financing *Guidance***

### **Introduction**

1. **Overriding Principle 2** of the **CLC Code of Conduct** requires you to Maintain High standards of Work. The approach set out below aims to help you comply with that principle. You are not obliged to adopt this approach, but it offers you an example of the minimum commitment that the **CLC** considers is likely to be needed for compliance. Should you use the provided example as your starting point, it is likely that you would need to make amendments to ensure that it matches your particular circumstances. The procedures you adopt should apply a risk-based approach, taking into account the nature of your work, **clients**, and the number of employees.
2. For more detailed **guidance** on this please see the **CLC's** Interim **Guidance** on prevention of Money Laundering and Combating Terrorist Financing [[insert hyperlink](#)].

### Contents:

3. AML/CTF **Example Policy**
  4. AML/CTF **Example Procedure**
  5. AML/CTF Nominated Officer **Example Policy**
  6. Training Records Example
  7. Internal Reporting Form and Record of Decision Example
  8. Wording to be incorporated into the **Terms of Engagement** Example
  9. For Information - External Reporting
-

### 3. AML/CTF Policy Example

#### 'IMPORTANT

It is essential that that the business and its employees comply with the letter and spirit of this policy since failure to do so may amount to a criminal offence for which it is possible to be sentenced to a term of imprisonment.

1. As a business, we are committed to complying with the **anti money laundering legislation**, in particular the Proceeds of Crime Act 2002, the Terrorism Act 2000 (each as amended) and the Money Laundering Regulations 2007.
2. We must at all times take steps to ensure that our business is not used to launder the proceeds of crime or to assist terrorist financing.
3. We must explain to **clients** the need to obtain proof of identity and the limitations on our duty of confidentiality to them either in our **terms of engagement** or otherwise in writing.
4. We accept that the Nominated Officer has full autonomy in carrying out their duties.
5. We will ensure that you are given appropriate and regular training to help you comply with AML/CTF, this policy and the procedures of the business.
6. We will communicate to you details of any types of business we have decided not to accept.
7. We will regularly monitor and review our policies, procedures and training.
8. We require all of the business's members to follow carefully the procedures set out in the Procedures Manual.

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### 4. AML/CTF Procedures Example

#### 'IMPORTANT

It is essential that that the business and its employees comply with the letter and spirit of these procedures since failure to do so may amount to a criminal offence for which it is possible to be sentenced to a term of imprisonment.

#### Procedures

1. You must not act or continue to act for a **client** until all requirements for **Customer Due Diligence (CDD)** or Enhanced **Customer Due Diligence (EDD)** have been met. If these cannot be met, you must

- not establish a new business relationship; or
- terminate any existing business relationship.

You must then consider whether to make an internal report to the Nominated Officer.

2. The purpose of **CDD** and EDD is to help you decide whether your **clients** are the persons they say they are and that you can:

- know with some certainty whether your **clients** are acting on behalf of another (called a **beneficial owner**)
- establish there is nothing to prevent you providing the service requested
- assess whether the purpose of the instruction is consistent with the lifestyle and economic means of your **clients**
- establish there are no obvious elements which suggest that any transaction is unusual or over complex in the context of those instructions.

3. Whenever instructed by any **client** you must obtain evidence as early as possible that:

- the **client** is the person he or she claims to be, for example, by a current signed passport or current UK photo driving licence; and
- a person of that name lives at the address given, for example, by a utility bill less than 3 months old or mortgage statement;

unless we already hold evidence of that **client's** identity which is both relevant and up-to-date and there are no reasons to believe that any of the details have changed.

4. You should find out whether there is a **beneficial owner** in which case you must be satisfied who that person is. A **beneficial owner** is the person who ultimately owns and controls the **client** on whose behalf a transaction is being conducted (see further paragraphs 6.14 – 6.19 of the **CLC's** Interim **Guidance** for the Prevention of Money Laundering and Combating Terrorist Financing). There may be more than one. If the **client** is a **company** you must identify who owns 25% or more of the structure and who exercises effective management and control.

5. Further examples of acceptable ID evidence are set out in the Acting for Lenders and Mortgage Fraud Code and **Guidance**. Photocopies should always be certified as being true copies of the original and signed and dated by the person making the copies.

6. EDD checks must be made in any situation which by its nature can present a higher risk of money laundering or terrorist financing. The 2007 Regulations identify two specific examples where EDD must be carried out:

- where the **client** has not been physically present for identification purposes; or
- where the **client** is a Politically Exposed Person

7. The most frequent circumstance in which you must carry out EDD is likely to be when you do not meet your **client** at the time you establish and verify identity. In addition to the usual steps taken to verify identity for **CDD**, you should obtain at least one additional document of identity or verify identity electronically through [state specific source the business uses].
8. Further **CDD guidance** can be found in the Acting for Lenders and Prevention & Detection of Mortgage Fraud Code and **Guidance**.
9. You keep a record and take copies of all relevant documentation about the **client's** identity and address and we must keep them for at least 5 years.
10. You make reasonable enquires and take copies of all relevant documentation relating to the source of funds and we must keep them for at least 5 years.
11. If you are not satisfied with the documentation or explanation you are given you should consider whether to make further enquires (either orally or in writing), where appropriate, seeking **guidance** from a supervisor or someone with more experience within the business.
12. Examples of Warning Signs which you should take into account in deciding whether to make an internal suspicion report are set out in the Acting for Lenders and Prevention & Detection of Mortgage Fraud Code and **Guidance**, paragraph 15, and include:
  - secretive **clients**;
  - involvement of unconnected third parties
  - unusual instructions
  - overpayments of money.No list of examples provided at any one time can ever be exhaustive and you will need to exercise your skill and judgment to assess any circumstances involved in a transaction which may seem to you or to an ordinary member of the public to be unusual or out of the ordinary.
13. You should not accept payments of cash in excess of [£100] either made directly to you or into the firm's **bank** account.
14. If the nature of the transaction, the documentation or information you have been given would have aroused suspicions for a reasonable and honest **Authorised Person**, then you must immediately make an internal suspicion report in writing using our prescribed form to [name] who is our Nominated Officer (or in his absence [name]). [The business should suggest a procedure to support its employees when dealing with customer enquiries once a report has been made.]



15. Once you have made a report to the Nominated Officer, no further action should be taken regarding the transaction without the specific authority of the Nominated Officer.
16. You must not disclose your suspicions or the fact that you have made a report to the Nominated Officer to any other person, in particular the person who is the subject of such a report, since this may amount to “tipping off”, which is also serious criminal offence for which you could be imprisoned.
17. You must respond **promptly** to requests from the Nominated Officer for any further information.

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**5. AML/CTF Example Policy for the body’s appointed Nominated Officer**

- ‘1. The business requires you as its Nominated Officer to comply with this policy in addition to complying with the business’s AML/CTF policy.
2. Failure to carry out your duties may cause you to commit a criminal offence.
3. You will have access to all files, records and information and be given sufficient resources and authority to fulfil the role and be allowed to carry out your duties without fetter, influence or interference.
4. Upon receipt of each internal suspicion report from any of the business’s members , you must acknowledge receipt in writing to the person making the report. You must then consider carefully whether a report should be made to the **Serious Organised Crime Agency (SOCA)**.
5. You must make a report to SOCA in the prescribed form where you have actual knowledge or suspicion, or where (based on what an ordinary member of the public might think) there are reasonable grounds to know or suspect a money laundering offence has been committed. You will need Consent from SOCA for an ongoing transaction to proceed.
6. If you do make a report to SOCA then you must ensure that you maintain regular telephone contact with them where Consent is required.
7. You must maintain a record of each decision you have made and keep it for at least 5 years whether or not you send a report to SOCA.
8. You must support and advise members of staff who make internal suspicion reports to you, emphasising the implications for them of “tipping off”. In particular you must do this where you are waiting for Consent to proceed from SOCA.
- [9. You may also be the MLRO of the business].’

**6. Example of AML/CTF Training Record**

Date	Details of training	Name of attendee	Attendee's signature	Trainer's signature

The signature of the attendee acknowledges that training has been received to satisfy the current requirements of the body's AML/CTF policy.

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**7. Example of Internal Reporting Form and Record of Decision**

**'Neither this form nor any copy is to be kept on the *client* file**

**PART 1**

Name of Person making report	
Name of Nominated Officer	
Name(s) of client	
File Reference Number	
Address of Property involved	
Reasons for making the report	
Additional Information	
Signature of person making the report:	
Date:	

<b>PART 2</b>	
(To be completed by the Nominated Officer)	
Date received	
Additional information requested	
External report: Yes / No	Ref
Reason for decision	
Signature of Nominated Officer	Date

**8. Example of wording to be incorporated into the *Terms of Engagement***

8.1. Proof of Identity

We must by law obtain satisfactory evidence of your identity and address. Please help us to do so by giving us the information and documentation we ask for. We are unable to proceed with your transaction and will not be able to exchange contracts until this has been provided.

8.2. Confidentiality

As lawyers, we are under a general professional and legal obligation to keep your affairs private. However, we are required, by current legislation, to make a report to the Serious Organised Crime Agency (SOCA) where we know or suspect that a transaction involves Money Laundering or Terrorist Financing. By instructing us to act on your behalf in accordance with these ***terms of engagement*** you give us irrevocable authority to make a disclosure to SOCA if we consider it appropriate.

- 8.3. You agree that this authority overrides any confidentiality or entitlement to legal professional privilege. We shall be unable to tell you if we have made a report.

-----End of Examples -----

**9. External Reporting Form**

- 9.1. A copy of the current Suspicious Activity Report (SAR) may be accessed on the website for the **Serious Organised Crime Agency** by following the links at [www.soca.gov.uk](http://www.soca.gov.uk) and downloading the form. Alternatively, a SAR may be filed electronically by registering for and activating the On-line service on the Reporting SARs” button.
- 9.2. For information or assistance with submitting SARs, SARs online queries, consent issues or general Financial Intelligence Unit matters telephone the UK Financial Intelligence Helpdesk on 020 7238 8282 and select the appropriate option. The UKFIU Dialogue Team can be contacted 24/7 by email on [fudialogue@soca.x.gsi.gov.uk](mailto:fudialogue@soca.x.gsi.gov.uk). Any messages on SAR-related issues will be dealt with through the Proceeds of Crime Dialogue Office. This is not to be used for SAR reporting – it is a means of addressing concerns via e-mail. Urgent disclosures (e.g. those requiring consent) can be transmitted electronically or by fax on 020 7238 8256.

UKFIU

**Serious Organised Crime Agency**

PO Box 8000

London

SE11 5EN



Council for  
**Licensed  
Conveyancers**

***Complaints Code  
& Guidance***

***Complaints Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

***Outcomes-Focused***

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

- **You accept responsibility where the service you provide is not of the expected standard and provide appropriate redress for the *Client* where necessary (Outcome 6.3);**
- **Handling of *complaints* takes proper account of *Clients'* individual needs, including those who are vulnerable (Outcome 6.4);**
- ***Complaints* are dealt with impartially and comprehensively (Outcome 6.5).**

Effective handling of ***complaints*** helps you deliver these **Outcomes** and requires you to act in a principled manner:

1. **Maintain high standards of work. (*Overriding Principle 2*)**
2. **Promote equality of access and service. (*Overriding Principle 6*)**
3. You make all reasonable efforts to ensure your service is accessible and responsive to ***Clients***, including those with vulnerabilities. (**CoC P6d**)
4. Your ***complaints*** procedure is clear, well-publicised and free. (**CoC P6e**)

5. You treat **complaints** seriously and provide appropriate redress options. (CoC P6f)
6. You deal with **complaints** fairly and within 28 days. (CoC P6g)
7. You identify and address systemic **Client complaints** issues. (CoC P6h)
8. You operate a procedure which is appropriate to the needs of **clients** and which allows **complaints** to be made by any reasonable means.
9. You deal with **complaints** constructively and impartially, basing decisions upon a sufficient investigation of the circumstances.
10. Where redress offers are accepted, these are actioned within 28 days.
11. You treat fairly members of staff who are the subject of a **complaint**.

You must also comply with the following **specific requirements**:

12. You advise **Clients** from the outset of their right to make a **complaint**, how to make it, to whom, and the timeframes involved. (CoC P6j )
13. You advise **Clients** of their right to have their **complaint** escalated to the **Legal Ombudsman**, and provide them with contact details and timeframes of that body. (CoC P6k)
14. You keep a record of **complaints** received and any action taken as a result. (CoC P6k)
15. **Complaints** are investigated under the supervision of one of your senior **managers**/members.
16. You respond in writing to **complaints** within 7 days. Where a full response cannot be given in this timeframe, you acknowledge receipt of the **complaint**, give the reason for the delay and commit to responding fully within 28 days of receipt of their initial **complaint**.
17. The response includes:
  - a clear explanation of your assessment of the **complaint**;
  - your decision on it,
  - offer of remedial action and/or redress where a **complaint** is upheld;
  - information on your **complaint**-handling review procedure (if applicable), its timeframes and how it can be accessed;
  - information on the complainant's right to refer the **complaint** to the **Legal Ombudsman**, its timeframes and contact details.
18. Should your procedure make provision for review of how a **complaint** was handled it must be carried out in a timely manner and not inconvenience the complainant.

## **Complaints Guidance**

### **Legal Ombudsman**

1. We have adopted the **Legal Ombudsman's** definition of a **complaint**. Please see this Handbook's Glossary.

2. Contact information for **Legal Ombudsman**:

Tel no: 0300 555 0333

Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Website: [www.officeforlegalcomplaints.org.uk](http://www.officeforlegalcomplaints.org.uk) <http://www.legalombudsman.org.uk/>

### **Legal Ombudsman**

PO Box 15870

Birmingham

B30 9EB

3. The **Legal Ombudsman** can normally only investigate a **complaint** if it has already been through your own **complaints** procedures. If the ombudsman receives a **complaint** concerning you/the body which has not been through your **complaints** process, it will be referred to you to be dealt with in the first instance. It is therefore acceptable for you to include the following terms in any **complaints** procedure,  
  
"Unless it agrees there are good reasons not to do so, the **Legal Ombudsman** will expect you to allow us to consider and respond to your **complaint** in accordance with the procedure set out above, before they will consider it."
4. The **Legal Ombudsman** can accept **complaints** up to 6 months after the completion of your own **complaints** process, or within 12 months of the complainant discovering a problem (whichever is later). The complainant may also refer their **complaint** to the **Legal Ombudsman** if your own **complaints** process has taken 8 or more weeks to complete.
5. The **Legal Ombudsman's** jurisdiction covers service-related **complaints**; the ombudsman will refer any conduct-related **complaints** to the **CLC**.
6. The **Legal Ombudsman** will charge a case fee (currently £400) if the **complaint** is upheld following a formal determination. It currently operates a 2 free upheld **complaints** system i.e. legal service providers pay the case fee for the 3<sup>rd</sup> upheld **complaint** over a 12 month period.



## Requirements of the Code

1. Should your response timescales be shorter than those identified in the Code we would not require you to alter them.
2. Provision must be made for **complaints** to be made by any 'reasonable means'; determination as to what constitutes 'reasonable' is at your own discretion, taking into account the body's size, profile and **clients**, though we would expect the minimum provision to be in person, telephone and by letter. NB. Bodies may wish to also provide Customer Feedback Forms and provide for **complaints** to be made via the body's website.

### Example Procedure

**Overriding Principle 6** of the **CLC Code of Conduct** requires you to promote equality of access and service. The Procedure template below aims to help you comply with that principle. You are not obliged to adopt this approach, but it offers you an example of the minimum that the **CLC** considers is likely to be needed for compliance. Should you adopt the procedure, it is likely that you would need to make amendments to ensure it works with the number of your employees, the nature of your work and your **Clients** e.g. sole **practitioners** should only have **complaint** determination review **arrangements** in place with other bodies if the review would be carried out in a timely manner. NB. If you do not have a review system in place, the complainant should be referred directly to the **Legal Ombudsman**.

### Complaints Example Procedure

**If you have any complaint about the way in which your matter has been dealt with this is the procedure which will be followed:**

1.	A complaint is an oral or written expressions of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience, or detriment.
2.	We aim to resolve any complaint you have about the service we have given you as quickly as possible. If you are unable to sort things out with the person who has been dealing with you please contact [name, contact details]. <b>[Alternatively, for a sole practitioner – If you are unable to sort things out with me please let me know in writing and I shall ask [name, contact details] to look into your complaint for me].</b>
3.	Once we have received your complaint, [name above] will write to you within 7 days to explain how your complaint will be investigated if a complete response to your complaint has not been made by that time. You will be told the latest date by which a complete answer will be given to your complaint (this should be not more than 28 days after we received your complaint). If you have made the complaint verbally - either at a meeting or on the telephone - we will set out in our full response our understanding of the nature of your complaint

4.	The assessment of the complaint will be based upon a sufficient and fair investigation. We will explain in writing our findings and where the complaint is upheld will offer remedial action or redress. This will be actioned promptly.
5.	[If you are dissatisfied with any aspect of our handling of your complaint, please feel free to contact [name, contact details], who will conduct a separate review of your complaint <b>[Alternatively, for a sole <i>practitioner</i> – If you are dissatisfied with the way your complaint is handled please let me know in writing and I shall ask [name, contact details] who will conduct a separate review of your complaint for me.]</b> You will be told about the conclusion of this review within [28] days.
6.	<p>If after following the review process you remain dissatisfied with any aspect of our handling of your complaint, you may contact directly the <b>Legal Ombudsman</b> to ask them to consider the complaint further:</p> <p>Tel no: 0300 555 0333</p> <p>Email: <a href="mailto:enquiries@legalombudsman.org.uk">enquiries@legalombudsman.org.uk</a> Website: <a href="http://www.legalombudsman.org.uk/">http://www.legalombudsman.org.uk/</a></p> <p><b>Legal Ombudsman</b>  PO Box 15870  Birmingham  B30 9EB</p> <p>Unless it agrees there are good reasons not to do so, the <b>Legal Ombudsman</b> will expect you to allow us to consider and respond to your complaint in accordance with the procedure set out above in the first instance. You can refer your complaint up to 6 months after you have received our final written response to your complaint. You can also use the Ombudsman service if we have not resolved your complaint within 8 weeks of us receiving it. A complaint can be referred to the <b>Legal Ombudsman</b> within 12 months of you discovering a problem. The ombudsman deals with service-related complaints; any conduct-related complaints will be referred to the Council for <b>Licensed Conveyancers</b>.</p>

### Good Practice

This section provides you with **guidance** and examples of good practice, which you are not required to adopt but which you may wish to consider.

1. Learning from **complaints** is an essential part of overall customer care. **Complaints** data provides you with a useful 'business barometer' to prevent recurrence of similar-themed **complaints**, identify any training needs and increase **client** satisfaction. To this

end, you may wish to record **complaints** by themes or categories which are useful to your business.

2. It is good practice to offer access to a review of how a **complaint** was handled. If you are the body's only **Manager** you may wish to arrange for another firm to carry out a separate review of the **complaint**. Any review should be completed within 28 days of the request for the separate review and should not inconvenience the complainant.
3. It is considered good practice for the senior management to review **complaints** trends. Lessons can then be learned and applied across the organisation, creating an environment in which **complaints** are seen as opportunities to improve systems and services. It is also considered good practice to periodically review the **complaints**-handling process to identify if there are any improvements needed.
4. **Complaints** enable staff to develop a better understanding of the service user's point of view. All staff should be aware of the **complaints** procedure and take **complaints** seriously. If **complaints** identify a systemic issue it may be appropriate to organise staff training to address it. Some organisations recognise and reward those members of staff who handle **complaints** well.
5. It is beneficial for staff to feel that their **complaints**-handling procedures support them. It would be in their interests if the procedure meant that any accusations made against staff were known only to them and to those investigating the **complaint**. It is likely to be beneficial to the body if its staff – and if possible, its **clients** - are involved in developing **complaints** procedures.
6. To enhance the accessibility of your **complaints** process you could give consideration to **clients** being able to lodge a **complaint** via your website; allowing someone else to make the **complaint** on behalf of a vulnerable **client**; and providing the **complaints** procedure in large print. This list is certainly not exhaustive; procedures should be tailored to the needs of **clients** wherever appropriate.
7. Some organisations produce customer feedback leaflets which include an overview of the body's **complaints** procedure and sometimes a **complaint** form or slip. Others survey complainants to gauge satisfaction with the **complaint**-handling process. Below are some possible questions which those considering customer satisfaction surveys may find useful.

Possible 'How well did we do?' Survey Questions

- How did you find out about our **complaints** procedure?
- Was the **complaints** procedure information useful and easy to understand?
- How did you initially contact us with the **complaint**?
- What was the nature of your **complaint**?
- Did staff make you feel it was okay to make a **complaint**?

- Were you given a clear explanation of the **complaints**-handling process?
- Did you need help from us to make your **complaint**? If yes, did you get it?
- Did we keep you well-informed about the progress of your **complaint**?
- Did you find our staff helpful in dealing with your **complaint**?
- Did you feel the **complaint** was dealt with quickly enough?
- Did you feel the investigation into your **complaint** was thorough?
- Did you feel the investigation into your **complaint** was conducted fairly?
- Did you feel we understood your **complaint**?
- Was our response meaningful?
- Was our response easy to understand?
- Did our response address all the points you had raised?
- After the investigation into your **complaint** did we do what we promised?
- Were you satisfied with the final outcome of your **complaint**?
- How do you rate your overall experience of the **complaints** process?
- Do you have any suggestions as to how we could improve how **complaints** are dealt with?
- Do you feel that your age, disability, ethnicity, gender, race, religion or sexuality led to any barrier in accessing the **complaints** procedure?
- Do you feel that age, disability, ethnicity, gender, race, religion or sexuality adversely impacted upon how your **complaint** was dealt with?
- Do you have any additional comments?

Some also profile the complainants to determine if there is a particular equalities group which feels disproportionately dissatisfied with the process.

8. In addition to **complaints**, any compliment and comments you receive provide you with an opportunity to learn what is working well, as well as what isn't. It may be appropriate to publicise these to staff so they know what customers want e.g. displaying thank-you letters, promoting service improvements made as a result of **complaints**.



## ***Conflicts of Interest Code & Guidance***

### ***Conflicts of Interest Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### ***Outcomes-Focused***

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

- ***Each Client's best interests are served; (Outcome 3.1)***
- ***Clients have the information they need to make informed decisions; (Outcome 3.3)***
- ***Clients are aware of any limitation or any condition resulting from your relationship with another party. (Outcome 3.5)***

The prevention, detection and mitigation of ***conflicts of interests*** help you deliver these ***Outcomes*** and act in a principled manner:

1. ***Act with Independence and Integrity. (Overriding Principle 1)***
2. ***Act in the best interests of your Clients. (Overriding Principle 3)***
3. You keep the interests of the ***Client*** paramount (except as required by the law or the ***CLC's regulatory arrangements***). (***CoC P3b***)

4. You do not act for a **Client** where you judge it is not in their best interest for you to do so. (CoC 3c)
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**. (CoC P3d)

You must also comply with the following *specific requirements*:

6. 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. (CoC P3n)
7. Before or when accepting instructions to act for a second **Client** you inform each **Client** in writing that the body has been asked to act for another **Client** in the same matter and you explain the relevant issues and risks to them.
8. You only act for both **Clients** if each **Client** has provided informed written consent that you may act for another **Client** in the matter.
9. You do not act, or do not continue to act, for a **Client** where your ability to give independent advice is in any way restricted. This may arise if:
  - (a) you owe separate duties to act in the best interests of two or more **clients** in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or
  - (b) your duty to act in the best interests of any **client** in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter.
10. If a conflict arises which was or should have been foreseen, you do not charge either **Client** a fee for the work undertaken (other than for **disbursements** properly incurred).
11. As an exception to requirement 6, and provided no conflict of interest arises, if you are a body with only one **Authorised Person** you may act for more than one **Client** where one of the **Clients** is a lender providing mortgages in the normal course of its business activities.

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## **Conflicts of Interest Guidance**

### **Assessment of circumstances**

1. You should assess all relevant factors to determine if there is a conflict of interest between **Clients**. For instance, if there is an imbalance in bargaining power between the

**Clients**, or a **Client** is vulnerable, or their interests are markedly different and cannot be reasonably reconciled.

2. You should assess all relevant factors to determine if there is a conflict of interest between yourself and a **client**. For instance, if there is a financial interest or a personal or commercial relationship.

#### **Arm's length transactions**

3. A body may act for two or more **Clients** in an arm's length transaction for value where each **Client** is represented by a different **Authorised Person**, except where a conflict of interest arises.

a) A matter will not generally be regarded as an arm's length transaction where the parties are related by blood, adoption or marriage or in a stable relationship (e.g. a cohabiting couple or the parties otherwise treat each other as family members).

b) The determining factor is not the specific relationship but the existence of any inequality of influence or disproportionate bargaining power which may give rise to a conflict of interest between the **Clients**.

#### **Conveyancing transactions**

4. You must consider carefully whether a conflict of interest arises or is likely to arise when the body receives instructions to act for different **Clients** in the same matter where the seller is:-

(i) a developer or builder; or

(ii) a lessor granting a lease



## ***Continuing Professional Development Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

### ***Outcomes-Focused***

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

- ***Clients are provided with a high standard of legal service (Outcome 2.1);***
- ***Client matters are dealt with using care, skill and diligence (Outcome 2.2);***
- ***Appropriate *arrangements*, resources, procedures, skills and commitment are in place to ensure *Clients* always receive a high standard of service (Outcome 2.3);***
- ***Each *client's* best interests are served (Outcome 3.1).***

Keeping your legal knowledge up-to-date and relevant helps you deliver these **Outcomes** and requires you to act in a principled manner:

1. **Maintain High Standards of Work. (*Overriding Principle 2*)**
2. **Act in the Best Interests of your *Clients*. (*Overriding Principle 3*)**
3. You keep your skills and knowledge up-to-date. (**CoC P2b**)
4. You ensure all individuals within the entity are competent to do their work. (**CoC P2c**)
5. You promote ethical practice and compliance with regulatory requirements. (**CoC P2g**)



6. You only accept instructions and act in relation to matters which are within your professional competence. (**CoC** P3a)
7. You provide equal opportunities for all partners, employees or applicants in employment and training. (**CoC** P6c)

You must also comply with the following *specific requirements*:

8. In each year in which you hold a *licence* you complete **Continuing Professional Development** in such courses, lectures, seminars or other programmes or other activities approved by the **CLC**.
9. You are able to demonstrate that the subject matter of the course or activity is relevant to your professional development or area of practice and to help you deliver positive **Outcomes** to your **Clients**.
10. Each year you inform the **CLC** - in such form as the **CLC** may from time to time prescribe - whether or not you have complied with the **CLC**'s requirements for **continuing professional development** as they apply to you.
11. You keep an up-to-date **training record**. You provide the **CLC** with this record upon its request.
12. You attend, and pay to attend, a specific course that the **CLC** has directed you to attend (as an alternative to disciplinary action).



## **Dealing with non-*Authorised Parties* Code and *Guidance***

### **Dealing with non-*Authorised Parties* Code**

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### ***Outcomes-Focused***

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

- ***Clients* receive an honest and lawful service; (Outcome 1.2)**
- ***Clients* are provided with a high standard of legal services; (Outcome 2.1)**
- ***Client* matters are dealt with using care, skills and diligence; (Outcome 2.2)**
- **Each *Client's* best interests are served; (Outcome 3.1)**
- ***Clients* are aware of any limitation or any condition resulting from your relationship with another party. (Outcome 3.5)**

Demonstrating probity in your dealings with non-***Authorised Person*** parties helps you deliver these ***Outcomes*** and act in a principled manner:

1. **Maintain High Standards of Work. (*Overriding Principle 2*)**
2. **Act in the Best Interests of your *Clients*. (*Overriding Principle 3*)**

3. You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute. (**CoC P1c**)
4. You do not take unfair advantage of any person, whether or not a **Client** of the business. (**CoC P1l**)
5. You promote ethical practice and compliance with regulatory requirements. (**CoC P2g**)
6. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (**CoC P3b**)

You must also comply with the following **specific requirements**:

7. You do not have dealings with any non-Authorised third person **carrying on reserved legal activities** including conveyancing (unless there is clear evidence that person is an **exempt person** (see schedule 3 **2007 Act**).
8. You report to the **CLC** (without submitting your transaction file) where a non-**Authorised person** is **carrying on reserved legal activities**, including conveyancing, which appears to be or to have been a breach of s.14-16 **2007 Act**.

#### **Dealing with non-Authorised Parties**

9. You :-
  - (a) avoid extending your duty of care to persons who are not **clients** by seeking to ensure that, to your knowledge, you do not provide legal advice (in the circumstances provided by *Hedley Byrne v Heller* [1964] AC 465) on which they may seek to rely;
  - (b) not accept any undertaking which an Unqualified Third Person may offer in the course of a transaction;
  - (c) incorporate special provisions into the draft contract to take account of the problems which arise because the other party has no **Authorised Person** acting (see below);
  - (d) ensure that any power of attorney is valid, properly granted and effective for all relevant purposes;
  - (e) advise the **client** in writing that you are dealing with a non-**Authorised Person** Party and explain all the steps which are being taken to protect the **client's** position.

#### **Acting for the Lender**

10. You do not give the unqualified agent additional assistance in a way which might establish a **Authorised Person/client** relationship either with the Non-**Authorised Person**

Party or with the borrower, or leave you open to a negligence claim either from your lender **client** or from the borrower.

11. You comply with s. 69 Law of Property Act 1925, by allowing mortgage advances to be paid only to those properly entitled to receive them.
12. You ensure that on completion, any payments are sent to a named **bank** or **building society** account held by you, an **Authorised Person, licensed body** or their **clients**, and not to some intermediate party.

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## Dealing with Non-*Authorised Parties* Guidance

### The Effect of s.14-16 *Legal Services Act 2007*

1. It is an offence for a person who is not an **Authorised Person** and is not an **Exempt Person** to carry out **Reserved Legal Activities**.
2. Where a non-**Authorised Person** person carries out **reserved legal activities**, the non-**Authorised Person's client** is likely to be guilty of aiding and abetting the offence. The **Authorised Person** acting for the other party may also be guilty of procuring the commission of an offence by inviting or urging the non-**Authorised person** to provide a draft contract or transfer or to progress the transaction.
3. An undertaking offered by a non-**authorised** third person should not generally be accepted as it is not enforceable in the same way as an undertaking given by you or by another **Authorised Person**.

### Checks

4. You should first check with the **CLC**, the Law Society or other **Approved Regulator** whether a person is an **Authorised Person** entitled to provide reserved instrument activities, as required by paragraphs A3.2 and B3.2 of the CML Handbook, or is otherwise an **Exempt Person** (schedule 3 **2007 Act**).
5. If unable to obtain that confirmation you should write immediately:-
  - (a) to the non-**Authorised Person**:-
    - (i) asking for an explanation why the prohibition under s.14-16 **2007 Act** does not apply to them; and
    - (ii) stating that in the absence of such explanation you cannot enter into any dealings with him unless there is clear evidence that no offences will be

committed. An example of clear evidence would be a letter from an **Authorised Person** confirming that he will prepare the relevant documents;

(b) to your own **client** explaining why you can not deal with the non-**Authorised Person** unless clear evidence is forthcoming.

#### **Conveyancing - Acting for the Buyer**

6. You should consider the following and, if appropriate, amend the contract:-

(a) replies to the Property Information Questionnaire and all other preliminary enquiries and requisitions signed by the seller;

(b) the deposit must be paid to you as stakeholder. If the seller will not agree to this, it may be possible to agree to place the deposit in a deposit account in the joint names of you and the seller;

(c) either the seller must attend personally at completion, or an authority must be handed over on completion signed by the seller for the purchase money to be paid to his agent. The reason for this is that the protection provided by s. 69 Law of Property Act 1925 only applies when a document containing a receipt for purchase money is handed over by a **Recognised Body** or solicitor, or the seller himself;

(d) deeds and keys are given to the person entitled to receive them (the buyer). If an authority on behalf of the buyer is offered to you, it is for you to decide whether or not to accept it, bearing in mind that no authority, however expressed, can be irrevocable;

(e) The purchase money, including any deposit, is paid either to the seller or to the seller's properly authorised agent.

#### **Conveyancing - Acting for the Lender**

7. You are not obliged to undertake work which would normally be carried out by the borrower's legal adviser (such as drafting and preparation of the instrument of transfer). However, it is essential to the lender **client** that good title is transferred to the borrower.

8. Compliance with s. 69 Law of Property Act 1925 may mean that you require either that the borrower to attend personally on completion, or that a signed authority from the borrower in favour of his agent is received on completion.

9. On completion, title documents should normally be handed over to the borrower.



## Disclosure of Profits & Advantages Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

### **Outcomes-Focused**

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

- **Clients receive good quality independent information, representation and advice; (Outcome 1.1)**
- **Clients receive an honest and lawful service; (Outcome 1.2)**
- **Clients have the information they need to make informed decisions; (Outcome 3.3)**
- **Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC. (Outcome 3.4)**

Transparent referral arrangements help you deliver these **Outcomes** and act in a principled manner:

1. **Act with independence and integrity. (Overriding Principle 1)**
2. **Maintain high standards of work. (Overriding Principle 2)**
3. You do not allow your independence to be compromised. (**CoC** P1a)
4. You act honestly, professionally and decently. (**CoC** P1b)
5. You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute. (**CoC** P1c)

6. You promote ethical practice and compliance with regulatory requirements. (**CoC** P2g)
7. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (**CoC** P3b)
8. You only recommend a particular person, business or product when it is in the best interests of the **Client**. (**CoC** P3f)
9. You provide the **Client** with all relevant information relating to any fee arrangements or fee changes. (**CoC** P3j)
10. 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. (**CoC** P3n)

You must also comply with the following **specific requirements**:

11. When accepting instructions, you inform the **Client** in writing:-
  - 11.1 of the existence of any arrangement for the introduction of the **Client** to the body by another person; and
  - 11.2 any sum paid in connection with the introduction, or, if it is not practicable to inform the **Client** of the exact sum, the maximum sum which may be paid.
12. When introducing a **Client** to another person you inform the **Client** in writing:-
  - 12.1 of the existence of any arrangement for the introduction of the **Client** by the body to another person; and
  - 12.2 any sum received in connection with the introduction, or, if it is not practicable to inform the **Client** of the exact sum, the maximum sum which may be paid.



Council for  
**Licensed  
Conveyancers**

## **Equality Code & Guidance**

### **Equality Code**

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### **Outcomes-Focused**

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

- **The service is accessible and responsive to the needs of individual *Clients*, including those who are vulnerable; (Outcome 6.1) <sup>1</sup>**
- **No-one – *Client*, employee, colleague, job applicant, employee or other party – you deal with feels discriminated against (whether directly or indirectly), victimised or harassed. (Outcome 6.2) <sup>2</sup>**

Accessible employment and business **arrangements** help you deliver these **Outcomes** and requires you to act in a principled manner:

1. **Promote Equality of Access & Service. (Principle 6)**
2. You comply with relevant **Equalities legislation**. (**CoC P6a**)
3. You make reasonable adjustments to prevent persons with disabilities from being placed at substantial disadvantage. (**CoC P6b**)
4. You provide equal opportunities for all partners, employees or applicants in employment and training. (**CoC P6c**)
5. You make all reasonable efforts to ensure your service is accessible and responsive to **Clients**, including those with vulnerabilities. (**CoC P6d**)



You must also comply with the following specific requirement:

6. Any allegation of (direct or indirect) discrimination, victimisation and harassment is investigated thoroughly, resulting, where appropriate in disciplinary action. **(CoC P6i)**

<sup>1</sup> A **Client** may be vulnerable because of a range of characteristics such as low-literacy levels; disability; distress; limited knowledge of, or limited skills in, use of English; or lack of knowledge of their legal entitlements. Vulnerability can only be assessed on a case-by-case basis.

<sup>2</sup> On the grounds of age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation.

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## Equality Guidance

This **guidance** aims to help you deliver these **Outcomes** by providing you with an overview of the effect of the Equality Act. You should refer to the Act itself in determining what steps are appropriate and reasonable for you to take in meeting the Act's requirements.

[Government Equalities Office - Equality Act 2010](#)

### Scope of the Equality Act 2010

1. The Equality Act 2010 received Royal assent on 8 April 2010. The Act not only amalgamates existing discrimination law but strengthens the law by:
  - protecting a broader range of characteristics, and
  - extending the duties regarding age, sexual orientation and religion or belief.

### Characteristics protected by the Act

2. The Act protects the following characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation:

<b>Age</b>	A person belonging to a particular age group. This applies to both young and older people, though much of the Act's emphasis is upon equality for older people.
<b>Disability</b>	A person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This

	can also apply to a person who has previously had a disability.
<b>Gender reassignment</b>	A person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. A transsexual person is a person who has the protected characteristic of gender reassignment.
<b>Marriage and civil partnership</b>	A person who is married or is a civil partner. This does not include someone who is engaged or a divorcee or person whose civil partnership has been dissolved.
<b>Pregnancy &amp; Maternity</b>	This includes any illness the woman may suffer as a result of the pregnancy.  Covers the period from when the pregnancy begins to 26 weeks after she has given birth.
<b>Race</b>	Includes colour, nationality and ethnic or national origins.
<b>Religion and Belief</b>	Any religion and includes a lack of religion. Belief means any religious or philosophical (not political) belief and includes a lack of belief.
<b>Sex</b>	A man or a woman.
<b>Sexual orientation</b>	A person's sexual orientation towards—  (a) persons of the same sex,  (b) persons of the opposite sex, or  (c) persons of either sex.

### What does this all mean for me?

- 3.1 You must ensure that service delivery and if you are an employer, employment **arrangements**, provide equality of opportunity and experience for individuals or groups with the protected characteristics.

- 3.2 You must not discriminate, victimise or harass anyone on the basis of the protected characteristics. Terms in contracts, collective agreements or rules of undertakings are unenforceable/void if they result in unlawful discrimination or victimisation. In some circumstances, employers are explicitly liable for harassment by third parties in the workplace.
- 3.3 You are required to make reasonable adjustments to prevent a person with a disability being placed at a substantial disadvantage from someone who does not have a disability. An adjustment can be a one-off, physical, action such as making premises more accessible, or it may be an adjustment which is made on numerous cases, such as visiting a **client** at home if they are unable to access your premises.
- 3.4 You are not permitted to ask job applicants questions related to health or disability prior to offering a position (unless the questions are made for prescribed relevant reasons).
- 3.5 You cannot discriminate against someone because they are perceived to have, or are associated with someone who has, a protected characteristic e.g. carers. NB. This is bolstered by the concept of 'discrimination arising from disability'.
- 3.6 The enforceability of pay secrecy clauses is limited.
- 3.7 Tribunals are able to make recommendations that will affect all of an employer's staff, not just the claimant.
- 3.8 The Act also repeals or replaces rules of family property law which discriminated between husbands and wives.

**What is meant by discrimination, harassment and victimisation?**

4. This table provides an overview of each term:

<b>Direct discrimination</b>	A person is treated less favourably than another person because of their age, disability, marital status, race, religion or belief, sex, or sexual orientation.  Includes less favourable treatment because of the victim's association with someone who has that characteristic (e.g. is disabled), or because the victim is wrongly thought to have it (e.g. a particular religious belief).
<b>Indirect discrimination</b>	A requirement or condition has a disproportionately adverse effect on a particular equalities group and cannot be objectively justified.
<b>Victimisation</b>	A person is treated less favourably than other persons because

	they have made allegations of discrimination or harassment.
<b>Harassment</b>	A person feels that the behaviour of another has violated their dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for them.

### Reasonable adjustments

- 5.1 You have a duty, wherever reasonable, to remove barriers which would place a disabled person at a substantial disadvantage due to:
- a) a provision/criterion/practice (PCP) e.g. making information available in an accessible format, such as large print;
  - b) a physical feature e.g. making premises accessible; or
  - c) the absence of an auxiliary aid or service e.g. providing special computer software for a disabled employee.
- 5.2 The cost of a reasonable adjustment must be incurred by the business and cannot be passed onto a disabled **client** by way of a disbursement or additional charge.
- 5.3 The definition of what constitutes 'reasonable' is based upon a 'substantial disadvantage' or 'unreasonably adverse experience' threshold.

### Service Provision

6. A provider of services to the public or a section of the public (for payment or not) must not discriminate, harass or victimise a person requiring the service.

### Employment Arrangements

- 7.1 Employers must not discriminate, harass or victimise any person in their employment **arrangements**, offers, terms and opportunities for promotion, transfer or training (or for any other benefit, facility or service).
- 7.2 As an employer you are responsible for the actions of your employees and as a **manager** you are responsible for the actions of agents.

### Partnerships

8. A firm or proposed firm must not discriminate, harass or victimise any person in its partner **arrangements**, offers, terms and opportunities for promotion, transfer or training (or for any other benefit, facility or service).

### ***Limited liability partnerships (LLP)***

9. An LLP or proposed LLP must not discriminate, harass or victimise any person in its partner ***arrangements***, offers, terms and opportunities for promotion, transfer or training (or any other benefit, facility or service).

### **Ancillary Duties**

- 10.1 You must not discriminate or harass where the discrimination or harassment arises out of, or is closely connected with, the end of a service or employment relationship.
- 10.2 You must not instruct, cause, induce or aid another party to contravene their responsibilities under the Act.

### **Family Law**

11. The Equality Act abolishes the presumption of advancement, by which, for example, a husband is presumed to be making a gift to his wife if he transfers property to her, or purchases property in her name.

### **Human Rights Act 1998**

12. You should also be mindful of the Human Rights Act which incorporated the European Convention on Human Rights into English Law. The basic human rights protected by this legislation include:
- the right to liberty;
  - the right to a fair trial;
  - the right to respect for private and family life;
  - freedom of thought, conscience and religion, and freedom to express your beliefs;
  - freedom of expression;
  - freedom of assembly and association; and
  - the right not to be discriminated against in respect of these rights and freedoms.

### ***Enforcement***

- 13.1 The **CLC** will investigate concerns relating to discrimination and disciplinary proceedings will be taken if it is satisfied that there is a case to answer.
- 13.2 Where a court or tribunal decides that you have committed an unlawful act of discrimination that finding will be treated by the **CLC** as a breach of the ***Overriding Principle to Promote Equality of Access and Service***.

## Equality – Example Policy

### Introduction

Principle 6 of the **CLC Code of Conduct** requires you to promote equality of access and service. The Policy template aims to help you comply with that principle. You are not obliged to adopt this approach, but should you implement a written policy, the example provided offers you an idea of the minimum that the **CLC** considers is likely to be needed for compliance. Should you use the provided example as your starting point it is likely that you would need to amend this policy to ensure that it matches your particular circumstances. The policy you adopt should take into account the number of employees, the nature of your work and your **Clients**.

### Equality & Diversity Policy [Example]

#### 1. Our commitment

We are committed to:

- recognising diversity;
- preventing and tackling unlawful discrimination;
- promoting equality of opportunity for all our clients and staff; and
- providing an equally high standard of service to all clients, irrespective of their age, disability, marital status, race, religion or belief, sex (including people who have had gender reassignment), or sexual orientation;
- making reasonable adjustments so a person with a disability is not placed at a substantial disadvantage to a person without a disability;
- all stakeholders and employees complying with the commitments of this policy.

2. We will comply with Principle 6 of the **CLC Code of Conduct** which requires us to promote equality and diversity, and with the duties of the Equality Act 2010.

3. We will neither enable nor tolerate any of the following:

<b>Direct discrimination</b>	A person is treated less favourably than another person due to their age, disability, marital status, race, religion or belief, sex, or sexual orientation.
<b>Indirect discrimination</b>	A requirement or condition has a disproportionately adverse effect on a particular equalities group and said requirement/condition cannot be justified.
<b>Victimisation</b>	A person is treated less favourably than other persons because they have made allegations of discrimination.

<b>Harassment</b>	A person feels that the behaviour of another has violated their dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for them.
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**4. Clients**

- 4.1 We will ensure that no individual client, or a client group, is discriminated against in accessing our services and functions or in the quality of service provided.
- 4.2 Instructions will not be refused on the basis of unlawful discrimination.
- 4.3 Our complaints handling-process is responsive to Client’s individual needs (particularly those that are vulnerable or have disabilities).

**5. Employees**

- 5.1 We will ensure that all partners, employees and applicants have equal employment opportunities. Our recruitment, appointment, appointment terms and conditions, promotion, training and benefits opportunities will not be discriminatory.

**6. Policy Implementation & Evaluation**

- 6.1 A senior member of staff is responsible for the implementation of this policy and ensuring all employees are aware of their duties under it, providing training and information as appropriate.
- 6.2 This member of staff will monitor the extent of compliance with this policy across the organisation. Appropriate data will be collected to inform this review.
- 6.3 Allegations of discrimination will be investigated under our grievance procedures. We will take such allegations very seriously and where an employee or stakeholder is found not to have complied with the policy we will take disciplinary action against them.
- 6.4 We will provide training to ensure staff are aware of their responsibilities under this Policy.
- 6.5 This policy will be updated as legislative and regulatory requirements are revised, in light of lessons learned by the business and in view of any good practice identified.

-----End of Example Policy -----

## Good Practice

### Introduction

1. Equality is about providing everyone with the same level of fairness i.e. an equal chance to contribute and participate. Diversity is about understanding and treating people as individuals i.e. recognising difference.
2. The recognition of diversity and promotion of equality should not be an additional consideration but an intrinsic element of any business as it can bring great benefits and economic advantages - increasing your capacity to serve a diverse **client** base, offering **clients** a range of skills sets and attributes, and the opportunity to harness creativity and continuously improve and enhance your reputation as both an employer and a service provider – but it is only when a body's cultural ethos and structural factors recognise this that these benefits can truly be felt. The following section highlights some principles of good practice that you may wish to consider adopting in order to feel these benefits.

### Equality Policy

3. It is important that the implementation and success of an organisation's Equality & Diversity Policy is **systematically** monitored, reviewed and evaluated. The policy is only likely to be successful if it is accompanied by a diversity training plan and communications plan which embeds diversity within the organisation's culture. This may include education provision to ensure senior partners/ **managers** are aware of the benefits of diversity and providing frontline staff with training to equip them for dealing with the different needs of a diverse range of **clients**.

### Flexible and part-time working

4. Working parents have the right to request flexible working. It is likely to benefit both staff and the needs of the business if flexible and part-time working patterns are available on request to all staff, not just those with child care responsibilities.
5. Arrangements might include four-day weeks or nine-day fortnights, working from home, working hours other than 9 to 5, career breaks, sabbaticals, or longer periods of unpaid leave over the summer months,
6. Provision of such arrangements can help you retain existing staff (who feel that the business allows them to achieve an appropriate work/life balance) as well as recruit new staff (who are drawn to you as an employer who provides such arrangements). It can also enable the business to better meet the needs of **clients** e.g. open for business at times other than Monday to Friday 09.00-17.00.
7. Provision of such arrangements should be positively promoted. It is important that these working patterns are not equated with lesser commitment, meaning those



choosing to work flexibly are penalised for doing so i.e. adoption of flexible working patterns should not adversely impact upon an individual's career progression – transparent work allocation and promotion procedures will aid this - and terms/targets/workloads should be rearranged appropriately.

### **Outreach/mentoring**

8. The combination of an outreach programme and provision of formal support networks and mentoring schemes (as opposed to informal mentoring which can cause, or reinforce, diversity-based segmentation and segregation) can help make entry into, and retention and progression within, the legal profession less challenging for those from 'non-traditional' backgrounds. Where such schemes are in place they should be evaluated to determine their effectiveness.

### **Accreditation Schemes**

9. Equality accreditation and organisational assessment schemes - such as those provided by [Cornwall Diversity Toolkit](#), [Stonewall Diversity Champions Programme](#) , [Job Centre Plus Two Ticks Disability Scheme](#) , the [Working Families Charity](#), [Back to Work Company](#) and the jobs recruitment website [Where to Work](#) - can assist you in benchmarking your procedures against best practice as well as giving the business external endorsement of its diversity credentials.

### **Diversity Profile**

10. Recording, monitoring and publishing the body's diversity profile will provide potential staff and **clients** with information on the representative nature of the business and help you identify any under-representation at varying stages of recruitment and career progression, indicating areas where action may be needed to address under-representation.
11. Equality Impact Assess every major activity or policy decision you plan to undertake, enabling you to ensure that in delivering the **outcomes** you intend does not have an unintended consequence on, or create an unnecessary barrier to, different groups. The [local government website](#) gives you an overview of Equality Impact Assessments, but you may wish to develop your own toolkit.



## **Estimates & Terms of Engagement Code & Guidance**

### **Estimates & Terms of Engagement Code**

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### **Outcomes-Focused**

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

- **Clients receive good quality independent information, representation and advice; (Outcome 1.1)**
- **Client matters are dealt with using care, skill and diligence; (Outcome 2.2)**
- **Clients have the information they need to make informed decisions. (Outcome 3.3)**

Providing timely Estimates and **Terms of Engagement** which are easy to understand helps you deliver these **Outcomes** and to act in a principled manner:

1. **Act with independence and integrity. (Overriding Principle 1)**
2. **Maintain high standards of work. (Overriding Principle 2)**
3. **Act in the best interests of your Clients. (Overriding Principle 3)**
4. You act honestly, professionally and decently. (CoC P1b)
5. You do not give false or misleading information relating to the provision of **Reserved Legal Activities**. (CoC P1e)

6. You **promptly** advise **Clients** of any significant changes to projected **costs**, timelines and strategies. (CoC P3m)
7. 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. (CoC P3n)

You must also comply with the following **specific requirements**:

#### **Estimates**

8. Any estimate of **costs** is stored on a **Durable Medium** and states:-
  - 8.1 the name of the **Client**, and the nature of the transaction;
  - 8.2 the basis on which fees for abortive work will be payable;
  - 8.3 the proposed fees and other expenses (such as **bank** transfer fees) payable to you (such fees and other expenses are deemed to be inclusive of VAT unless VAT is separately itemised);
  - 8.4 any disbursement likely be incurred on the basis of the instructions received (such **disbursements** are deemed to be inclusive of VAT unless VAT is separately itemised);
  - 8.5 where the total sum payable as estimated under paragraph 8.3 is likely to be exceeded that the Body will advise the **Client** of that fact and provide an explanation and a revised estimate;
  - 8.6 in respect of paragraphs 8.3 and 8.4:
    - 8.6.1 unless otherwise stated fees will be deemed to be inclusive of the costs of post, telephone calls, facsimile communications and email;
    - 8.6.2 unless separately specified, the estimate of proposed fees payable to the body will be deemed to include fees for:-
      - representation of the lender;
      - service of notices on a landlord or management company.
  - 8.6.3 the **Client** is advised where it is not possible to provide an estimate of fees and **disbursements** because the relevant information is not available.
9. If it becomes apparent that the total sum payable as estimated under paragraph 8 is likely to be exceeded or that the relevant information has become available, as soon as practicable you:-

- 9.1 advise the **Client**; and
- 9.2 provide the **Client** with a written explanation on a **Durable Medium**.
- 10. Any fees, expenses, **disbursements** and VAT to be charged in respect of an abortive transaction are notified to the **Client** on a **Durable Medium** as soon as those matters can reasonably be calculated whether or not an invoice is delivered at this time.

**Terms of Engagement**

- 11. You provide **Clients** with **Terms of Engagement** with a request that the **Client** confirms their agreement to the terms.
- 12. The **Terms of Engagement** summarise the nature of instructions and with sufficient clarity so as to be readily understandable to the **Client**.
- 13. The **Terms of Engagement** include:-
  - 13.1 your name, address, telephone and other contact details;
  - 13.2 if not included in paragraph 13.1, the name of one of your **Managers**;
  - 13.3 the name of the individual having day-to-day conduct of the matter and where applicable the name of the individual responsible for its overall supervision;
  - 13.4 if the matter is to be conducted by a team, the identity of that team and the name of its leader(s);
  - 13.5 the name of the individual to whom any **complaint** should be made;
  - 13.6 an explanation of the procedure to be adopted where the **Client** is dissatisfied with the services or conduct of any of your **Managers** or employees. This information must also include the **Client's** right to complain to the **Legal Ombudsman** at the conclusion of the **complaint** process, the time limits for doing so and full details about how to contact the **Legal Ombudsman** (see **Complaints Code**).
  - 13.7 the following wording:-

“If you make a valid **claim** against us for a loss arising out of work for which we are legally responsible, and we are unable to meet our liability in full, you may be entitled to **claim** from the **Compensation Fund** administered by the Council for **Licensed Conveyancers** (from whom details can be obtained”).
  - 13.8 You keep a copy of, and any evidence that the **Client** has agreed, the estimate and **Terms of Engagement** on a **Durable Medium**.

## **Estimates and *Terms of Engagement* Guidance**

### **Estimates**

1. It is advisable to set out the likely fees to be incurred in an estimate rather than in a quotation since a quotation will be treated as a fixed price contract which cannot be varied notwithstanding any provision in the ***Terms of Engagement*** to the contrary.

### ***Terms of Engagement***

2. It is good practice for ***Terms of Engagement*** to include:
  - authority for you to retain or destroy the contents of a ***Client's*** file or transfer the data onto another ***Durable Medium*** (see Transaction Files Code & ***Guidance***, paragraph 5 of the ***Example Approach***)
  - The wording suggested at Chapter 8 of Combating Anti Money Laundering and Terrorist Financing Code and ***Guidance – Example of Wording to be incorporated into the Terms of Engagement.***



## Management & Supervision *Arrangements* Code & *Guidance*

### Management & Supervision *Arrangements* Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### **Outcomes-Focused**

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

- ***Clients* are provided with a high standard of legal services (Outcome 2.1);**
- ***Client* matters are dealt with using care, skill and diligence; (Outcome 2.2)**
- **Appropriate *arrangements*, resources, procedures, skills and commitment are in place to ensure *Clients* always receive a high standard of service. (Outcome 2.3)**

Appropriate management and supervision **arrangements** help you deliver these **Outcomes** and require you to act in a principled manner:

1. **Maintain high standards of work. (Overriding Principle 2)**
2. You ensure all individuals within the entity are competent to do their work. (CoC P2c)
3. You supervise and regularly check the quality of work in ***Client*** matters. (CoC P2d)

4. You **systematically** identify and mitigate risks to the business and to **Clients**. (CoC P2f)
5. You promote ethical practice and compliance with regulatory requirements. (CoC P2g)
6. You enable staff to raise concerns which are acted on appropriately. (CoC P2h)
7. You maintain proper governance, management, supervision, financial and risk management **arrangements** and **controls**. (CoC P2i)
8. You maintain proper records to evidence your **arrangements** and how they are applied. (CoC P2o)

You must also comply with the following **specific requirements**:

9. A **Manager** who is an **Authorised Person** is responsible for supervising the services provided by the entity's employees. (CoC P2m)
10. You make provision for alternative supervision **arrangements** in case of illness, accident or other unforeseen event. (CoC P2n)
11. You **systematically** identify, monitor and manage risks to the delivery of this Code's [the **Code of Conduct**] **Outcomes**. (CoC P5j)

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## Management and Supervision **Guidance**

### Supervision **arrangements**

1. Factors in determining whether the work is being effectively supervised include:-
  - (a) the number of **Authorised Persons** available to supervise each office;
  - (b) the volume and nature of the work undertaken;
  - (c) the number, competence, training and duties of unqualified staff;
  - (d) **arrangements** for an **Authorised Person** to monitor incoming and outgoing communications.
2. The way in which a body's **arrangements** ensure compliance with the **Code of Conduct** (and thereby, all **regulatory arrangements**) is a matter for the individual body. However, each body must be able to show that **arrangements** are in place and are operating in order to satisfy the **CLC** it is compliant.
3. Matters to be taken into account in determining whether the management **arrangements** and systems adopted by the body are appropriate will include its size and

management structure; the number, experience and qualifications of staff; and the nature of work undertaken; and the mechanism for periodic review of their effectiveness.

### **Arrangements - examples of high-level good practice**

#### **Business Arrangements**

4. Effective supervision and quality assurance procedures are in place across the organisation and include suitably competent and experienced persons regularly checking the quality of work carried out in **client** matters.
5. Training **arrangements** enable all employees to maintain a level of competence appropriate to their work and level of responsibility.
6. Recruitment, selection and employment **arrangements** ensure that the body does not employ an unfit and improper person who could compromise the interests of the public and **clients**.
7. Compliance policies promote ethical practise, encouraging the body and its staff to act in a way which is compatible with the regulatory requirements.
8. Staff are aware how, and to which named individual, they can raise concerns of non-compliance or wrong doing. They are encouraged and feel able to raise concerns, and are confident these will be acted upon appropriately and they will not be victimised for raising them.
9. There is a clear and effective governance structure and reporting lines.

#### **Risk Management**

10. Appropriate **arrangements** and operating procedures mean that any risks to the achievement of regulatory responsibilities – in particular the delivery of the positive **outcomes** identified in the **Code of Conduct** - the best interests of individual **clients**; assets and money which **clients** have entrusted to you; business continuity; and the body's financial stability; are **systematically** identified, monitored, managed and determined efforts made to mitigate the risks presented.

### **In the event of Absence, Incapacity or Death Guidance**

#### **Introduction**

1. It is important that you are able to protect your business and its **clients** in an emergency such as incapacity or death. It is particularly relevant for Sole **Practitioners**. The **guidance** below is intended to highlight issues which may arise and to provide possible solutions. However, it is up to you to decide what options best suit your own



circumstances and which will enable the business to continue to deliver positive **Outcomes** for **Clients** even in exceptional circumstances/an emergency.

### Identifying Suitable Attorneys

2. You should appoint a suitable individual as Attorney to manage the business if you are not able to do so. The Attorney should be legally qualified and preferably an **Authorised Person**. The Attorney should be capable of dealing not only with the affairs of the **clients**, but also with your personal and business affairs. However, consideration should be given whether to appoint different individuals to manage personal affairs and those of the business.
3. An Attorney must be willing to take on the responsibility for managing the business. In an emergency they must be able to find contact names, addresses and files, obtain details of **client** ledgers and access the computer systems. You may wish to take account of the following:
  - any arrangement is more likely to be successful if, at the outset, it is reciprocal;
  - it should be kept under regular review;
  - whether your family and any employees should know of the arrangement;
  - whether there should be any specific Indemnity Insurance arrangements;
  - if the absence is planned, **clients** should be told who will be dealing with their matter.

### Absence

4. Specific Authority - Arrangements may be made with a **bank** for named Attorneys to operate specific **bank** accounts.
5. Power of Attorney - May be of general or specific application.

Each of these forms of authority ceases to have effect when either a donor or their attorney becomes incapable or dies.

### Incapacity

6. Lasting Power of Attorney (LPA):
  - the prescribed form should be used;
  - two Attorneys may be appointed jointly or jointly and severally;
  - consider including a clause entitling the Attorney to charge and be paid professional fees for managing the business (Charging Clause);

- the LPA ceases to be valid on your death or on the death or incapacity of the Attorney.

## Death

### 7. Will/Grant of Probate:

- the Will should provide for the business to be managed in the short term
- an **Authorised Person** should be appointed as Executor; alternatively, power should be given to the Executor to appoint an **Authorised Person** to manage the business
- a Charging Clause should be included
- specific instructions may be included in a “side” document to the Will which can be changed depending on circumstances.



## Notification Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

### **Outcomes-Focused**

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

- **You act in accordance with your regulatory responsibilities. (Outcome 5.1)**

Making sure both you and the **CLC** are aware of any notifiable changes helps you identify any potential threats to the delivery of all **Code of Conduct Outcomes** as well as helping you deliver the Outcome above. This requires you to act in a principled manner:

1. **Deal with regulators and ombudsmen in an open and co-operative way. (Overriding Principle 5)**
2. You notify the **CLC** of any material breach of this Code [**Code of Conduct**], whether by you, the entity or any other person. (**CoC P5o**)
3. You notify the **CLC** of a change as set out in the **CLC's** Notification Code. (**CoC P5p**)
4. You have systems and **controls** to enable you to identify any notifiable changes.

These responsibilities require you to notify us of any of the following changes:

5. To the extent it is reasonable to do so, you notify us no less than 14 days before a proposed change of business or registered office address, but in any event within 14 days of any change occurring.

6. You notify us within 14 days of any change in **manager** and/or management **arrangements**.
7. You notify us within 14 days of a change in structural **arrangements**.
8. In respect of the body you notify us within 7 days if:
  - A winding-up order or administration order is passed;
  - A resolution for voluntary winding-up is passed; or
  - An administration receiver is appointed.

### **CLC Licensed Conveyancers**

9. You notify us **promptly** if you:-
  - have been a director of a **company** which has gone into liquidation on the grounds of insolvency;
  - in your own right or as a director of a **company** have had an administrator or receiver appointed
  - have been a **licensed conveyancer** in, or **Manager** of, an entity which has had its authorisation refused, revoked or made subject to **conditions**;
  - have been charged, cautioned or convicted of a criminal offence, or if there is a case pending;
  - have been the subject of any disciplinary proceedings by a professional or regulatory body;
  - have been the subject of an adverse order or finding of a civil court or employment tribunal;
  - have been disqualified as a director;
  - have been declared bankrupt or have entered an Individual Voluntary Arrangement;
  - have been disqualified from acting in any capacity for a legal services, financial or other provider;
  - are aware of any other information which could reasonably be expected to have a bearing on whether you are fit and proper.

### **Recognised Bodies**

10. You notify us **promptly** after you have received information where any of the provisions identified in requirement 9 apply to a **Manager** of the body.
11. You notify us **promptly** of a change in ownership of the body.
12. You notify us **promptly** after you have received information that a person employed or paid by the **Recognised Body** to provide **reserved legal activities**:

- has been charged, cautioned or convicted of a criminal offence, or if there is a case pending;
- has been the subject of any disciplinary proceedings by a professional or regulatory body;
- has been the subject of an adverse order or finding of a civil court or employment tribunal;
- has been disqualified as a director;
- has been declared bankrupt or has entered an Individual Voluntary arrangement;
- has been disqualified from acting in any capacity for a legal services, financial or other provider;
- is the subject of any other information which could reasonably be expected to have a bearing on whether that person is fit and proper.

***Licensed Bodies (ABS)***

13. To the extent it is reasonable to do so, you notify us no less than 14 days before a proposed change in the person occupying the role of ***HoLP*** or ***HoFA***, but in any event within 7 days of any change occurring.
14. You notify us ***promptly*** after you have received information about any ‘fit and proper’ issue concerning the owner(s), the ***HoLP***, ***HoFA***, other ***Managers*** or ***Authorised Persons***:
- has been a director of a ***company*** which has gone into liquidation on the grounds of insolvency;
  - in their own right or as a director of a ***company*** has had an administrator or receiver appointed
  - has been a ***licensed conveyancer*** in, or ***Manager*** of, an entity which has had its authorisation refused, revoked or made subject to ***conditions***;
  - has been charged, cautioned or convicted of a criminal offence, or if there is a case pending;
  - has been the subject of any disciplinary proceedings by a professional or regulatory body;
  - has been the subject of an adverse order or finding of a civil court or employment tribunal;
  - has been disqualified as a director;
  - has been declared bankrupt or has entered an Individual Voluntary Arrangement;
  - has been disqualified from acting in any capacity for a legal services, financial or other provider;
  - is the subject of any other information which could reasonably be expected to have a bearing on whether that person is fit and proper.
15. You notify us ***promptly*** if you employ a person disqualified by a ***Licensing Authority***.

16. You notify us ***promptly*** if a non-***Authorised Person*** proposing to hold a ***material interest*** of 10% or more, or the holder of a ***material interest*** proposing to acquire an additional kind of interest, fails to give notification of such intended change after having been made aware of their duty to notify.
- 

### **Notification *Guidance***

1. Provision of adverse information under this Code does not necessarily mean we will withdraw our approval of the relevant individual. Where adverse information is provided it will be discussed with the body to determine the risk posed to the ***Code of Conduct's Outcomes***; resource implications for the ***CLC***; and the individual/body's willingness or capacity to address the issue.
2. Examples of what is meant by 'any other information that could reasonably be expected to have a bearing on their being fit and proper' under requirement 14 include:
  - by a reason of character, conduct or association and in particular has been in breach of statutory requirements regarding payment of tax or for a licence;
  - lacks capacity within the meaning of the Mental Capacity Act 2005 and powers under sections 15 to 20 or section 48 have been exercised.
3. An example of what is meant by 'structural ***arrangements***' under requirement 7 is a body no longer registered as a ***Limited Liability Partnership*** or a ***Company*** under the relevant Acts.
4. Persons disqualified by Licensing Authorities are identified on the [Legal Services Board website](#).



## ***Professional Indemnity Insurance Code & Guidance***

### ***Professional Indemnity Insurance Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

#### ***Outcomes-Focused***

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

- **Each *Client's* best interests are served; (Outcome 3.1)**
- **You act in accordance with your regulatory responsibilities. (Outcome 5.1)**

Providing **clients** with access to appropriate redress helps you deliver these **Outcomes** and requires you to act in a principled manner:

1. **Act in the best interests of your *Clients*. (Overriding Principle 3)**
2. **Deal with regulators and ombudsmen in an open and co-operative way. (Overriding Principle 5)**
3. You only accept instructions and act in relation to matters which are within your professional competence. (CoC P3a)
4. You only provide **Reserved Legal Activities** whilst you have **CLC**-approved **professional indemnity insurance** in force. (CoC P3i)

5. 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. (CoC P3o)
6. If you seek to exclude or limit liability, you do so only to the extent that such exclusion or limitation is above the minimum level of cover afforded by **CLC**-approved **professional indemnity insurance**; you must obtain the written informed consent of the **Client** for such exclusion or limitation to be effective. (CoC P3p)

You must also comply with the following **specific requirements**:

7. 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 **professional indemnity insurance** approved by the **CLC**, 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. (CoC P3q)
8. You **promptly** notify insurers in writing of any facts or matters which may give rise to a claim under **CLC**-approved **professional indemnity insurance**. (CoC P5k)

#### **Professional Indemnity Insurance**

9. When providing **CLC-regulated services** you must have **professional indemnity insurance** in place at all times, either through the **CLC's Master Policy** or with another **Authorised Insurer** (see requirement 11), provided the **CLC** is satisfied that in all its conditions and extent it is at least equivalent to the cover provided under the **CLC's Master Policy**.
10. You must:
  - 10.1 Pay the applicable annual premium for **Master Policy** cover;
  - 10.2 Comply with the Insurance terms as apply to you;
  - 10.3 Comply with the Self Insured Excess policy (set out at 14) and such other policies as the **CLC** may issue;
  - 10.4 Produce a current **Evidence of Insurance** when requested by the **CLC**;
  - 10.5 Permit the **Authorised Insurers** or the **Brokers** to notify the **CLC** should any circumstances arise whereby the **Authorised Insurers** or the **Brokers** consider that the body has failed to comply with their responsibilities as a **CLC** body or when any **Evidence of Insurance** is avoided.



***Professional Indemnity Insurance other than through the CLC's Master Policy***

11. If on application:

- 11.1 you satisfy the **CLC** that any **Professional Indemnity Insurance** policy obtained other than through the **CLC's Master Policy** is in all its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy** then you will be exempted from the obligation to comply with requirement 10.1 whilst the **Professional Indemnity Insurance** policy (and any agreement with the cover provider) remains in force and is complied with; or
- 11.2 to the extent it is not in its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy**, you obtain a **Supplemental Policy** from an **Authorised Insurer** so that the **CLC** is satisfied that the combined effect of the original and **supplemental policy** is in all its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy** you will be exempted from complying with requirement 10.1 whilst the **Professional Indemnity Insurance** policy (and any agreement with the cover provider) and **supplemental policy** remain in force and is complied with.

**European Union (EU) Bodies – if you are a European Lawyer**

12. If on application:

- 12.1 you satisfy the **CLC** that the **EU body** (of which you are a **Manager**) has **EU Professional Cover** equivalent to the **CLC Master Policy** in all its conditions and cover then the **EU body** will be exempted from obligation to comply with requirement 10.1 whilst the **EU Professional Cover** (and any agreement with the cover provider) remains in force and is complied with;
- 12.2 you satisfy the **CLC** that the **EU body** (of which you are a **Manager**) has **Partial EU Professional Cover** then the **EU body** and its **Managers** shall be exempted from the obligation to comply with regulation 10.1 whilst the **Partial EU Professional Cover** (and any agreement with the cover provider) and a **Supplemental Policy** remain in force and is complied with.

**Claims**

13. In the event of a **Master Policy claim** you produce any information the **CLC** deems appropriate within five **working days** of the **CLC's** information request.

**Self Insured Excess**

- 14.1 Should your self-insured Excess exceed:

(1) £3,500 or

(2) the sum of the following:

(i) 5% Fees (as defined in the **Master Policy**) where the Fees are

no more than £200,000; plus

(ii) 3% Fees on Fees between £200,001 and £500,000; plus

(iii) 2% Fees on Fees between £500,001 and £1,000,000;

you report this to the **CLC**. The **CLC** will need to be satisfied that the body will avoid additional exposure of the **CLC's Compensation Fund** to unpaid excesses.

14.2 If you are satisfied that the body you manage has the ability to meet additional liability over and above this you may make a specific application to the **CLC** to increase the self-insured Excess where Fees are greater than £1,000,000.

14.3 Your application outlines how the body intends to meet the obligation to avoid additional exposure of the **CLC's Compensation Fund** to unpaid excesses.

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### **Professional Indemnity Insurance Guidance**

1. A **Licence** will not be issued to a **Manager** unless the applicable **Evidence of Insurance** for your **Body** has been produced to the **CLC**.
2. As a guide to the provisions under requirement 15 a body should be able to demonstrate it can fund the self insured excess for no less than two **claims** per year.

#### Examples of Limits on Self Insured Excess:

- Fees £250,000 Maximum Excess = £200,000 X 5% + £50,000 X 3% = £11,500
- Fees £600,000 Maximum Excess = £200,000 X 5% + £300,000 X 3% + £100,000 X 2% = £21,000
- Fees £900,000 Maximum Excess = £200,000 X 5% + £300,000 X 3% + £400,000 X 2% = £27,000



Council for  
**Licensed  
Conveyancers**

***Undertakings Code  
& Guidance***

***Undertakings Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

***Outcomes-Focused***

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

- ***Client matters are dealt with using care, skill and diligence. (Outcome 2.2)***

Transparency and probity in ***undertakings*** helps you deliver these ***Outcomes*** and requires you to act in a principled manner:

1. **Maintain high standards of work. (Overriding Principle 2)**
2. You comply fully with any ***undertaking*** given by you. (CoC P2e)
3. You only accept instructions and act in relation to matters which are within your professional competence. (CoC P3a)
4. You keep the interests of the ***Client*** paramount (except as required by the law or the ***CLC's regulatory arrangements***). (CoC P3b)

You must also comply with the following ***specific requirements***:

5. You deliver services in accordance with timetables reasonably agreed with the ***Client***. (CoC P2k)
6. You consult ***Clients*** on key decisions in a timely way. (CoC P3l)

7. You **promptly** advise **Clients** of any significant changes to projected **costs**, timelines and strategies. (**CoC P3m**)
8. All **Managers** are equally responsible for the performance of **undertakings** given in a body's name and remain responsible for their performance even after they have left the body or it has been dissolved.
9. You do not breach an **undertaking**. Only the person entitled to the benefit of the **undertaking** or the Court may release you/the body from an **undertaking**.
10. You do not avoid liability on an **undertaking** by asserting that to comply with it would be a breach of duty owed to the **Client**.
11. Where you have given an **undertaking** to redeem a mortgage or charge you redeem it immediately following completion of the transaction occasioning the redemption.
12. In an **undertaking** to pay money out of the proceeds of sale of a property it is not implied that the **undertaking** is intended to take effect only if you receive the proceeds of sale.

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## **Undertakings Guidance**

### **Information**

1. Neither the **CLC** nor its disciplinary committees has power to direct the specific performance of an **undertaking** or to direct the payment of compensation to a third party but the breach of an **undertaking** may lead to disciplinary proceedings.
2. The **CLC** will treat a promise to give an **undertaking** as an **undertaking** provided the promise sufficiently identifies the terms of the **undertaking** and provided any prior conditions have been satisfied.
3. Should you incur loss arising directly from a **claim** based on an **undertaking** made in the course of practice you may be entitled to an indemnity under the **CLC Master Policy** or other **professional indemnity insurance**.

### **Example Approach**

You are not obliged to adopt the approach below. The following are provided only as good practice indicators for those seeking **guidance** on how to deliver the positive **Client Outcomes** which the Principle of Maintain High Standards of Work seeks:

1. To ensure that an **undertaking** is given only by an **Authorised Person** or other member of staff with authority expressly given on a **Durable Medium** by the body.

2. To ensure that all staff are aware of the terms of **undertakings** incorporated by the use of the Law Society's formulae for exchanging contracts by telephone and its code for completion by post.
3. To note on the file and confirm in writing to the other party any agreed variation to **undertakings** in the Law Society's formulae for exchanging contracts by telephone or its code for completion by post.
4. To note separately the terms of **undertakings** on file.
5. To give an **undertaking** only if the **Authorised Person** or duly authorised member of staff can be absolutely certain that it will be fulfilled.
6. Where making or accepting an **undertaking** "to pay **costs**" specify the amount of costs since if no sum is agreed the **undertaking** may be interpreted as meaning "to pay reasonable **costs**".
7. To ensure the wording of an **undertaking** is unambiguous, since only in exceptional circumstances will extraneous evidence be admitted to clarify an ambiguity;
8. Where an **undertaking** is dependent on the happening of a future event to notify the recipient immediately if it becomes clear that the event will not occur.
9. To specify both the identity of the lender and the date of each charge it is intended to discharge in reply to any requisitions on title or otherwise.
10. To give an oral **undertaking** only as a last resort and ensure that it is confirmed in writing as soon as is practicable.
11. To avoid either giving or accepting an **undertaking** using terms such as "best endeavours" or "reasonable endeavours": be specific.

## Specific Arrangements



### Acting as Insurance Intermediaries Code & Guidance

#### Introduction

The **CLC** is a Designated Professional Body under Part XX of **FSMA** and as such it must make arrangements to regulate **CLC** Bodies in the provision of **Regulated Activities** in relation to which the **General Prohibition** does not apply as a result of section 327 **FSMA**.

#### Acting as Insurance Intermediaries Code

In this Code 'you' refers to bodies regulated by the **CLC**; all bodies regulated by the **CLC** which act as insurance intermediaries 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. These requirements do not apply to a person authorised by the Financial Services Authority in accordance with s.31 **FSMA**.

#### Outcomes-Focused

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

- **Clients receive good quality and independent information, representation and advice (Outcome 1.1);**
- **Each Client's best interests are served (Outcome 3.1);**
- **Clients receive advice appropriate to their circumstances (Outcome 3.2);**
- **Clients have the information they need to make informed decisions (Outcome 3.3);**
- **Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC (Outcome 3.4);**
- **Clients are aware of any limitation or any condition resulting from your relationship with another party (Outcome 3.5);**

- **You act in accordance with regulatory responsibilities (Outcome 5.1).**

Demonstrating integrity and providing appropriate standards of work when acting as an Insurance Intermediary helps you deliver these **Outcomes** and requires you to act in a principled manner:

1. **Act with independence and integrity. (Overriding Principle 1)**
2. **Maintain high standards of work. (Overriding Principle 2)**
3. **Act in the best interests of your Clients. (Overriding Principle 3)**
4. **Promote equality of access and service. (Overriding Principle 6)**
5. You act honestly, professionally and decently. (CoC P1b)
6. You do not give false or misleading information relating to the provision of **Reserved Legal Activities**. (CoC P1e)
7. You keep the interests of the **Client** paramount (except as required by the law or by the **CLC's regulatory arrangements**). (CoC P3b)
8. You only recommend a particular person, business or product when it is in the best interests of the **Client**. (CoC P3f)
9. You provide the **Client** with information which is accurate, useful and appropriate to the particular **client**. (CoC 3h)
10. You provide the **Client** with all relevant information relating to any fee arrangements or fee changes. (CoC P3j)
11. 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. (CoC P3k)
12. 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. (CoC P3q)
13. You co-operate with other regulators and ombudsmen. (CoC P5h)

You must also comply with the following **specific requirements**:

14. Subject to Requirement 16 and provided it complies with this Code you are only permitted to provide **Regulated Activities** as specified by the **CLC** by resolution and which are incidental to **Regulated Services** provided to a **Client**.

15. To effectively oversee **Regulated Activities** you appoint a **Manager** as the person who:-
  - 15.1 is responsible for ensuring the body has procedures and practices to enable it to comply with this Code;
  - 15.2 will supply to the **CLC** or its agents information as required by the **CLC**; and
  - 15.3 will notify the **CLC** immediately and in any event no later than seven days after each such appointment is made.
16. You advise the **CLC** if there is an order or direction of the Financial Services Authority under sections 328 or 329 **FSMA** in force in respect of the body. Where such order is in force the **CLC** may withdraw permission without notice.
17. The manner of the provision of any service in the course of **carrying on a Regulated Activity** is incidental to the provision by you of **Professional Services**.
18. The **Regulated Activities** you **carry on** are not of a description, or relate to an investment of a description, specified in an order made by HM Treasury under section 327(6) **FSMA**.
19. The **Regulated Activities** are the only **Regulated Activities** carried on by the body (other than **Regulated Activities** in relation to which it is an **FSMA Exempt Person**).
20. You do not **carry on**, nor hold the body out as **carrying on**, a **Regulated Service** other than one which is permitted by this Code or one in relation to which it is a **FSMA Exempt Person**.
21. You do not **carry on** any Insurance Mediation Activity unless the body is included in the **Insurance Intermediaries Register**.
22. The body and all of its **Managers** at all times comply with **FSMA**, secondary legislation made under **FSMA** and the **IMD**, so far as they apply to them.
23. The body and all of its **Managers** comply with the terms and provisions of the **CLC's** Acting as an Insurance Intermediary Code.

#### **Acting as Insurance Intermediaries**

##### **Insurance Intermediaries Register**

24. You only act as an insurance intermediary if you are registered on the Financial Services Authority's (FSA) **Insurance Intermediaries Register**. The **CLC** is responsible for supplying details of bodies to the FSA.



25. Unless trading as a FSMA Authorised Person, you nominate one of your **Managers** to be listed on the Register as the main contact, with all correspondence relating to Insurance Intermediary Activities is addressed to that individual.
26. You check that the body is listed on the **Insurance Intermediaries Register** before conducting any activity covered by paragraph 4 of the **Guidance**.
27. You inform us within 5 working days of any changes being made to your entry in the FSA's register.

#### **Notifications provided to clients**

28. You provide two types of notification on a **Durable Medium** (eg in writing, by fax or by email):

(i) at the outset of instructions (and in any event before the contract of insurance is concluded);

(ii) before a contract of insurance is concluded

Notes:

- a) Some of the provisions are unlikely to vary from one matter to another and can be provided in standard terms.
- b) A clear statement of the basis a particular product has been chosen must be made.
- c) The **CLC** understands there are relatively few providers of Title Indemnity Policies. It is unlikely therefore that any advice on products can be given on the basis of a fair analysis. It is much more likely they will be made from a limited number of insurance undertakings or a single insurance undertaking.

(iii) information may be provided orally if the **Client** requires it or if immediate cover is required. To comply with Distance Marketing Regulations that information must be provided on a **Durable Medium** as soon as possible.

#### **Passporting**

29. If you wish to establish a branch or provide **Insurance Mediation Activities** in another EC State you complete the **FSMA** passporting process (**FSMA**, paragraph 21, part IV, schedule 3).
30. You do not provide **Insurance Mediation Activities** in another EC state unless you have given the FSA the necessary notice of the body's intention to do so.

## Terms & Information Provision

### Providing *Regulated Activities* (including acting as an Insurance Intermediary)

31. All information under paragraphs 32 and 33 must be provided in a way which is fair, clear and not misleading, no less prominent than any other information provided to the **Client** at the same time and in English or in any other language agreed by the you and the **Client**.

32. Before providing *Regulated Activities*, you provide the following information on a **Durable Medium** to the **client**:-

32.1 the name, address, telephone and other contact details;

32.2 if not included in 32.1, the names of the **managers**;

32.3 the name of the individual having day-to-day conduct of the matter and where applicable the name of the individual responsible for its overall supervision;

32.4 if the matter is to be conducted by a team, the identity of that team and the name of its leader(s);

32.5 the name of the individual to whom any **complaint** should be made;

32.6 an explanation of the procedure to be adopted where the **Client** is dissatisfied with the services received or conduct delivered; this must include the name and address of the **CLC** and the **Legal Ombudsman** (see further information provided in the **CLC's Complaints Code** and **Guidance**).

32.7 the following wording:-

"If you make a valid **claim** against us for a loss arising out of work for which we are legally responsible, and we are unable to meet our liability in full, you may be entitled to **claim** from the **Compensation Fund** administered by the Council For **Licensed Conveyancers** (from whom details can be obtained").

32.8 the following wording:-

“[this firm is/we are] not authorised by the Financial Services Authority. However, we are included in the register maintained by the Financial Services Authority so that we can **carry on Insurance Mediation Activities**, which is broadly advising on, selling and administration of insurance contracts. This part of our business, including arrangements for **complaints** or redress if something goes wrong, is regulated by the Council for **Licensed Conveyancers**. The register can be accessed via the Financial Services Authority website at ‘www.FSA.gov.uk/’.

33. Before concluding any contract of insurance, or the renewal or the amendment of a contract of insurance, you provide the **Client** with the following information, if you have not already done so, on a **Durable Medium**:-
- 33.1 whether the body has any holding, direct or indirect, representing more than 10% of the voting rights or of the capital in an insurance undertaking;
- 33.2 whether an insurance undertaking or parent of any insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the body;
- 33.3 whether the body has given or will give advice:-
- 33.3.1 on the basis of a fair analysis of the market; or
- 33.3.2 from a limited number of insurance undertakings; or
- 33.3.3 from a single insurance undertaking;
- 33.4 if paragraph 33.3.2 or 33.3.3 applies you must disclose whether the body is contractually obliged to conduct Insurance Mediation Activity in this way;
- 33.5 if the contract of insurance has not been selected on the basis of a fair analysis of the market that the **Client** can ask for a copy of the list of insurance undertakings from which the body selects or with which it deals in relation to the contract provided;
- 33.6 based on the information provided by the **Client**, a statement, reflecting the complexity of the contract proposed:-
- 33.7.1 sets out the **Client**'s demands and needs;
- 33.7.2 confirms whether or not advice on the contract has been given to the **Client**;
- 33.7.3 explains the reasons for giving advice on the contract where such advice is given to the **Client**.

34. You may provide the information at paragraphs 32 and/or 33 orally only if:
- 34.1 the **Client** requests it; or
  - 34.2 the **Client** requires immediate cover
- but in both cases you must provide the information on a **Durable Medium** immediately after the conclusion of the contract.
35. When informing the **Client** that advice is given on the basis of a fair analysis, in accordance with paragraph 33.3.1, you must:
- 35.1 give advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable it to make a recommendation, in accordance with professional criteria, as to which insurance contract would be adequate to meet the **Client's** needs; and
  - 35.2 explain to the **Client** that it has done so.

#### **Accounting to the Client**

36. You account to the **Client** for any pecuniary award or other advantage received by you from a person other than your **Client** arising out of you **carrying on** a Regulated Activity (s.327(3) FSMA).

#### **Other**

37. Where appropriate you refer, and if appropriate, take legal advice on the effect of IMD, **FSMA**, secondary legislation, and the **Guidance** (set out below).

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## **Acting as Insurance Intermediaries Guidance**

### **Legislative Background**

1. The Insurance Mediation Directive (2002/92/EC) requires that arrangers or sellers of insurance products be regulated. Generally providers must be regulated by the FSA (known as **FSMA Authorised Persons**). There is a limited exception for professionals, whose regulatory body is a Designated Professional Body under Part XX of **FSMA**. This exemption regime is designed to exclude professional firms which are not carrying on mainstream financial services activities from the requirement to be authorised by the FSA.

2. Any body wishing to provide **Regulated Activities** (to include insurance services) other than as permitted by the **CLC** or, as appointed agent for an insurer, may only do so if regulated by the FSA.
3. The **CLC** is itself regulated by the FSA and must comply with directions it is given.
4. With the agreement of the FSA, the Council has resolved  

“In accordance with requirement 14 of the ‘**CLC** Designated Professional Bodies Code’ each **CLC** Body is permitted to carry out all insurance activities incidental to **Regulated Services** provided by that body to any **Client** including (without limiting the generality of this Resolution) Abortive Costs Indemnity Insurance, Household and Estate Property Insurance, Term Policies for IHT, Missing Beneficiary insurance, Deposit Guarantee Insurance and Title Indemnity Policies relating in particular to Restrictive Covenants, Absence of Easements, Insolvency Acts, Registered Possessory Titles, Lost Title Deeds, Missing Particulars (Registered Titles), Good Leasehold, Absent Landlords, Missing Rent-charge Owners, Flat/Maisonette Indemnities, Flying Freeholds, Search Indemnities, Absence of Deeds of Postponement on Right to Buy Transactions, Defective Leases, Contingent Buildings Insurance, Forfeiture of Leases (Mortgagees only), Superior Leases, Lease Enlargements, Planning Permissions, Building Regulations and Endorsements, Chancel Liability and Contaminated Land.”
5. The term “arrange” is wide ranging and includes helping a **Client** to complete a proposal form.
6. This Code is drafted so that the range of products covered by the **CLC’s regulatory arrangements** may be extended by resolution of the **CLC** with the agreement of the FSA.

#### **Incidental**

7. The **Regulated Activities** you provide must be incidental in two senses:-
  - (i) In the provision of a particular **Regulated Service** to a particular **Client**,  

you must **carry on** only **Regulated Services** which arise out of, or are complementary to, the provision by the body of that Regulated Service to that **Client** (s.332(4) **FSMA** and requirement 14); and
  - (ii) Any service provided in the course of **carrying on** a **Regulated Service** must be incidental to the **Professional Services** you provide (s.327(4) **FSMA** and requirement 17).
8. (a) The FSA considers that to satisfy the condition in s.327(4) **FSMA Regulated Activities** cannot be a major part of the body’s practice.

(b) The FSA also considers the following further factors to be relevant:

(1) the scale of **Regulated Activity** in proportion to other **Professional Services** provided;

(2) whether and to what extent services that are **Regulated Activities** are held out as separate services; and

(3) the impression the body gives, for example, through its advertising or other promotions of its services, as to how **Regulated Activities** are provided;

(c) In the FSA's opinion, one consequence of this is that a body cannot provide services which are **Regulated Activities** if they amount to a separate business conducted in isolation from the provision of **Professional Services**. This does not, however, preclude it from operating its professional business in a way which involves separate teams or departments, one of which handles the **Regulated Activities**.

(d) For the purpose of s.327(4), **Professional Services** are services which do not constitute **carrying on a Regulated Service**, and the provision of which is supervised and regulated by a Designated Professional Body, such as the **CLC** (s.327(8) **FSMA** and Glossary of Terms)

Example: when acting for the buyer of a property you may arrange a missing landlord indemnity policy on behalf of that buyer. You may not arrange that same policy to a different **client** as a stand alone product.

#### **Accounts to**

9. The FSA considers that, in order for a **Client** to be accounted to for the purposes of s.327(3) **FSMA**, you must treat any commission or other pecuniary benefit received from third parties and which results from **Regulated Activities** carried on by the body, as held to the order of the **Client**. You will not be accounting to the **Client** simply by telling them that you receive commission. Unless the **client** agrees to you keeping it, the commission belongs to them and must be paid to them. There is no de minimis below which you may retain the sum. In the FSA's opinion, the condition would be satisfied if you pay over to the **Client** any third party payment received. Otherwise, it would be satisfied by informing the **Client** of the payment received and advising the **Client** that they have the right to require the body to pay them the sum concerned. This could then be used to offset fees due from the **Client** in respect of **Professional Services** provided or in recognition of other services provided. However, it does not permit retention of third party payments by seeking the **Client's** agreement through standard terms and conditions. Similarly, a mere notification to the **Client** that a particular sum has been received coupled with your request to retain it does not satisfy the condition.

***Enforcement:***

**Restrictions**

10. Where the FSA makes orders affecting individual bodies, the **CLC** may withdraw permission.

**Disciplinary Steps**

11. Where a body is in breach of the Code the **CLC**, may:-
- (i) impose a condition on a **licence**; or
  - (ii) take disciplinary proceedings against the body and its **Manager or Head of Finance and Administration**;
  - iii) withdraw its permission.



Council for  
**Licensed  
Conveyancers**

**Acting for Lenders and  
Prevention and Detection of Mortgage Fraud Code  
& Guidance**

**Acting for Lenders and Prevention & Detection of Mortgage Fraud Code**

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies providing **conveyancing 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.

**Outcomes-Focused**

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

- **Clients receive an honest and lawful service; (Outcome 1.2)**
- **Clients money is kept separately and safely; (Outcome 1.3)**
- **Client matters are dealt with using care, skills and diligence; (Outcome 2.2)**
- **Appropriate arrangements, resources, procedures, skills and commitment are in place to ensure Clients always receive a high standard of service; (Outcome 2.3)**
- **Clients' affairs are treated confidentially (except as required or permitted by law or with the Client's consent). (Outcome 3.6)**

Prevention and detection of mortgage fraud and acting properly in the interests of lenders helps you deliver these **Outcomes** and requires you to act in a principled manner:

1. **Act with Independence and Integrity. (Overriding Principle 1)**
2. **Maintain High Standards of Work. (Overriding Principle 2)**
3. **Act in the best interests of your Clients. (Overriding Principle 3)**



4. You **systematically** identify and mitigate risks to the business and to **Clients**. (CoC P2f)
5. You promote ethical practice and compliance with regulatory requirements. (CoC P2g)
6. You enable staff to raise concerns which are acted on appropriately. (CoC P2h)
7. You maintain proper governance, management, supervision, financial and risk management **arrangements** and **controls**. (CoC P2i)
8. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (CoC P3b)
9. 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 disclosures you make. (CoC P3e)

You must also comply with the following **specific requirements**:

#### **Part A – Acting for Lenders**

10. When acting for a Lender, you take all necessary steps to ensure that the **conveyancing services** provided by it do not fall below the reasonably competent standard which should be expected.
11. You take all relevant steps to comply with the general and particular mortgage instructions contained in the current edition of Parts 1 & 2 of the Lenders' Handbook for England & Wales issued by the Council of Mortgage Lenders ("the CML Handbook").
12. If you suspect a **client** of not being completely honest or transparent about any element of a proposed mortgage transaction, you must consider whether you should continue to act for the Lender and/or the **Client**.
13. You do not disclose confidential information to the Lender after you have ceased to act for a **Client**.

#### **Identity of the Client**

14. You establish and obtain proof of the identity of **Clients** in line with the requirements of the CML Handbook and the Money Laundering Regulations ("the Regulations"). You must advise the Lender if a Borrower **Client** is unable, reluctant or unwilling to provide this verification.
15. Any system or product you use must be sufficiently robust to provide the necessary degree of certainty and include data from a range of sources, across time and incorporate qualitative checks that assess the strength of the information supplied. Your evidence base and level of verification must be composite and comprehensive.

### Identity of the Property

16. You are certain you have correctly identified the property which is to be mortgaged and that the documents of title with which you have been presented accurately relate to and reflect that property, particularly where its name or its boundaries or other significant features have been changed.

### Transactions

17. In registered title property transactions, you obtain Official Copies of the title and a copy of the Official Plan produced by the Land Registry.
18. You do not complete a mortgage transaction without first obtaining the results of Land Registry, Land Charges or Company Searches, as appropriate.
19. You carry out a Bankruptcy Search (which must be current at completion) in the registered names of and any other names used by a Borrower or by which he is otherwise known.
  - 19.1 Where an entry is revealed against the name of the Borrower (or the mortgagor or guarantor) you must certify that the entry does not relate to the Borrower (or the mortgagor or guarantor) if you are able to do so from your own knowledge or enquiries; or if, after obtaining office copy entries or making other enquiries of the Official Receiver, you are unable to certify that the entry does not relate to the borrower (or the mortgagor or guarantor) you make a report to the Lender.
  - 19.2 You obtain clear bankruptcy searches against all parties to any deed of gift or transaction at an apparent undervalue (paragraph 5.15.4 CML Handbook).
20. You complete a mortgage for a registered title and the application for registration at the Land Registry lodged before the end of the priority period provided by the Land Registry Search. Any search application to create a fresh priority must be made in sufficient time before the expiry of the existing priority period to enable a substantive application to be lodged within the appropriate period if another "hostile" application is revealed.
21. You complete a mortgage over an unregistered title within the priority period provided by the Land Charges Searches. You register your application with the Land Registry within 2 months of the date of completion.
22. Where the Borrower is a **Company** you register the charge at Companies House within 21 days (a period which may only be extended by order of the Court).
23. When acting for a Seller or Buyer, Official Copies and Official Plan you must check no additional charges have been registered.

24. When acting for a Seller, you check the Title Entries on receipt from the Land Registry (and before issue to the Buyer's conveyancer) to ensure that any additional charges are noted and addressed at the outset. This will avoid causing problems in discharging **undertakings**.

### **Mortgage Redemption**

25. To ensure compliance with the **CLC's Undertakings** Code and with Clause 17 of Part 1 of the CML Handbook, you:-
- 25.1 ask a **client** at the outset of any sale or remortgage transaction whether there are any mortgages secured against the property and, if so, obtain details (including relevant mortgage account numbers);
- 25.2 specifically ask those **clients** whether, in addition to the principal mortgage account, they have any other loans with different account numbers with the same Lender (which may be secured against the property) or any other mortgages with any other Lenders and, if so, obtain details (including relevant mortgage account numbers);
- 25.3 request an illustrative redemption statement from the Lender at the outset of the transaction giving details of mortgage account numbers, and verify the outstanding amount(s) shown on those statements with your **clients**;
- 25.4 when obtaining either an illustrative or a final redemption figure from a Lender, request a statement of the total amount required to redeem all loans and monies secured by the Lender's charge over the property. Failure to ask for details of all loans and monies secured by the Lender may mean that the redemption figure will only relate to those accounts where details have been provided;
- 25.5 ensure any discharge **undertaking** given specifies both the identity of the lender and the date of each charge it is intended to discharge in reply to any requisitions on title or otherwise.

### **Mortgage Instructions**

26. You:-
- 26.1 check the Lender's mortgage offer and instructions carefully and ensure that they match the details of the transaction exactly or otherwise report any discrepancies to the Lender, having first obtained instructions from his Borrower **client** so to do or, if the **client** refuses to consent, to cease acting for the Lender;
- 26.2 question and clarify any unusual or uncertain instructions before proceeding;

- 26.3 cease to act for the Lender if his interests or the interests of anyone working within your body or the interests of the Borrower come into conflict with those of the Lender; and
- 26.4 comply with Part B - the Mortgage Fraud Code.

#### **Part B - Mortgage Fraud**

27. You immediately cease to act for a **client** in any circumstances where you are aware or suspect that the **client** is attempting to perpetrate fraud. If you decide to terminate the retainer, you must observe Principle 3 g) of the **Code of Conduct** unless to do so would constitute a "tipping off" offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
28. You maintain your duty of confidentiality to your **client** after ceasing to act for that **client** except where:
- a. a court orders such matters to be disclosed,
  - b. a warrant permits a police officer or other authority to seize confidential documents, or
  - c. there is compelling evidence that the **client** was using its services to further a criminal or fraudulent purpose, in which case disclosure should be made to the police.
29. In acting in the best interests of the Lender you may be required to pass on or report information to the Lender. Where the Borrower **client** declines consent to its disclosure, a conflict of interest will arise between the duty of confidentiality to the Borrower **client** and the duty to act in the best interests of the Lender. You must therefore cease to act for the Lender (and consider carefully whether you can continue to act for the Buyer).

#### **Identity of the Client and Client's Circumstances**

30. You:-
- 30.1 establish the **client's** identity in line with the **CLC's** Anti-Money Laundering Code and the current Money Laundering Regulations, obtaining proof of that identity to establish that a **client** is who he says he is and that he lives at the address given;
  - 30.2 advise the Lender if, in any case, a **client** is unable, reluctant or unwilling to provide this verification;
  - 30.3 identify all the other owners of the property and other persons who might have an interest in or rights over the property (if any) and ensure that the **client's** current co-owner/partner is, where applicable, the co-owner/partner referred to on the title of the property;

- 30.4 obtain confirmation of instructions direct from the **client** (and from all other interested parties) wherever possible, particularly where he or they communicate through an intermediary and
- (i) obtain detailed instructions ;
  - (ii) satisfy itself that the **client** is not subject to duress or undue influence and
  - (iii) satisfy itself that the **client** is entering into the transaction knowingly;
- 30.5 be satisfied that the **client's** economic position, wealth and lifestyle correspond with the mortgage that he is proposing to enter into and there are no facts which suggest the potential for mortgage fraud (e.g. that he has not overstated his income in the mortgage application or that he does not have substantial arrears on an existing mortgage account); and
- 30.6 check all signatures to reduce any risk of forgery of the signatures of other interested parties (e.g. a husband who forges his wife's signature).

#### **Linked Transactions**

31. Having obtained the **client's** instructions to do so, you notify the Lender of any sub-sale or back-to-back element in any transaction and ensure you have the Lender's written consent before proceeding. If the **client** refuses to consent to that disclosure, you cease acting for the **client** and the Lender.

#### **Identity of the other lawyers**

32. You check the identity of the **Licensed Conveyancers** or Solicitors acting for the other party by reference to the **CLC** or the Records Department of the Law Society of England & Wales respectively.

#### **Proceeds of Sale**

33. You pay particular attention to instructions given for the distribution of the net proceeds of a sale or remortgage:
- 33.1 If the property or the mortgage is held in joint names, the net proceeds of sale must be sent to an account in the joint names of all **clients** or a cheque must be written to all parties jointly.

- 33.2 The net proceeds are sent to all the parties except as otherwise instructed by all the parties in writing.

#### **Variations in Price, Incentives and other Material Considerations**

34. When acting for a Buyer and a Lender, you, with the *client's* consent, notify a Lender immediately where:-
- 34.1 there is an alteration to the purchase price or the details are different from the details set out in the mortgage offer (other than as permitted by the Lender).
- 34.2 you become aware of any other information which you would reasonably expect the Lender to consider important in deciding whether, or on what terms, it would make the mortgage advance available to the Buyer.
35. You do not complete the mortgage until the Lender has confirmed that it is happy to proceed and, if applicable, the terms upon which it is willing so to do.
36. You establish and maintain proper systems, procedures, processes and internal controls for approval of Certificates of Title prior to submission to the Lender.
37. You remain mindful of your duty to act in the best interests of the Lender as your *client*.

#### **General**

38. You do not witness any signature unless the person signing does so in your presence. You ensure that any signed document which has been witnessed other than by a conveyancer has been properly signed in the presence of a witness.
39. You verify the signatures of *clients* (and any other interested parties) on all documents connected with a transaction.

#### **Warning Signs**

40. You question the probity of unusual instructions and are particularly circumspect if any one or more of the circumstances set out in the "Summary of Warning Signs" Guidelines apply to a transaction where you are acting

### **Acting for Lenders *Guidance***

#### **Checking Identity by Documentary Means**

1. The identity of a Borrower can be verified by checking their identity against appropriate original documents provided to you which appear to be authentic, are current and, where applicable, have been signed in the relevant place. A document or a series of documents meeting the expectations contained in Clause 3.1.6 of Part 1 of the CML Handbook is likely to satisfy the Lender's requirements.

2. Care must always be taken to ensure that the extent of the evidence seen will also meet responsibilities for **client** identity verification under the Regulations and the expectations contained in the **CLC**'s Anti-Money Laundering and Combating Terrorist Financing Code.
3. Clause 3.2 of Part 1 of the CML Handbook prescribes requirements for safeguards and identity checks.

#### **Checking Identity by Electronic Means**

4. You must obtain "satisfactory evidence of identity", which must be reasonably capable of establishing (and does in fact establish to the satisfaction of the person who obtains it) that the potential **client** is the person he claims to be. The **CLC** considers verification of identity by appropriate electronic means to be acceptable, though urges caution. Electronic evidence obtained should provide you with a strong level of certainty that any individual is the person they claim to be and that a person of that name lives at the address given using the **client**'s full name, address and date of birth as its basis.
5. Any system or product used must be sufficiently robust to provide the necessary degree of certainty. Data accessed from a single source (e.g. the Electoral Roll) will not normally be sufficient on its own. Some databases will offer a higher degree of confidence than others.
6. Before using a commercial agency for electronic verification, you must be satisfied that:-
  - 6.1 the information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate; and
  - 6.2 the agency has processes which allow its users to capture and store the information that they have used to verify an identity.
7. The process should be cumulative and you may consider it appropriate to seek additional evidence (e.g. a copy of a document bearing a signature and a date of birth) in all cases or, at least, where any **client** poses a higher risk of identity fraud, money laundering or terrorist financing, or where the result of any electronic verification check gives rise to concern or uncertainty over the **client**'s identity.
8. You may wish to consider whether the provider meets each of the following criteria, namely that it:-
  - 8.1 is recognised to store personal data through registration with the Information Commissioner's Office;
  - 8.2 uses a range of positive information sources that can be called upon to link an applicant to both current and previous circumstances;

- 8.3 accesses negative information sources such as databases relating to identity fraud and deceased persons;
- 8.4 accesses a wide range of alert data sources; and
- 8.5 has transparent processes that enable you to know what checks were carried out, what the results of these checks were and what they mean in terms of how much certainty they give as to the identity of the subject of the identity enquiry.
9. Data from more robust sources where inclusion is based on proof of identity (such as government departments) ought to be included (under paragraph 8.2). Negative information checks (under paragraph 8.3) minimise the risk of impersonation fraud.
10. It is also important for:-
- 10.1 the process of electronic verification to meet a standard level of confirmation before it can be relied on. In circumstances which do not give rise to concern or uncertainty, the standard level would be expected to be:
- (i) one match on an individual's full name and current address *and*
  - (ii) a second match on an individual's full name and *either* his current address *or* his date of birth.
- If the result of a standard verification check gives rise to concern or uncertainty over the **client's** identity, the number of matches required to provide reasonable satisfaction as to his identity should increase.
- 10.2 You should ensure you understand the basis of the system you use in order to be satisfied that the sources of the underlying data reflect the **CLC's** requirements and cumulatively meet the standard level of confirmation set out above as commercial agencies use various methods of displaying results (e.g. by the number of documents checked or through scoring mechanisms, etc).

### **Transactional Considerations**

- 11.1 For a registered title, the date from which the Land Registry search should be made is the date of issue of the Official Copies supplied or obtained at the outset of the transaction and the search should be made in the registered name of the Lender (and not its trading name) to avoid any conflict of priorities.
- 11.2 For unregistered land, searches must be made against all names and any variations on those names on the title documentation and, where an address has changed, a search should be made against any former address and/or counties.



- 11.3 For unregistered land, an Index Map Search must always be undertaken to ensure that the extent of the land to be conveyed is consistent with the title documentation and the Borrower's understanding.
12. In unregistered title property transactions, it is good practice both when acting for a Seller or a Buyer to make a Land Charges Search at the outset of the transaction to ascertain any entries details of which have not been supplied by the *clients* or are not revealed in the Abstract or Epitome of Title.

### **Mortgage Fraud *Guidance***

1. Mortgage fraud may be perpetrated by one or more participants in a mortgage loan transaction, including the Borrower, or by multiple parties (a mortgage fraud ring) working dishonestly together (and often in a professional capacity).
2. Mortgage fraud is a criminal offence which can often result in imprisonment on conviction. Some conveyancers have been caught up unwittingly in a mortgage fraud, not because of any wilfully fraudulent acts on their part but because they have failed to act in accordance with this Code, neglecting to check all details of the transaction and failing where appropriate to report to the Lender for whom they are also acting. They have not appreciated that the circumstances of the transaction might lead to or give rise to fraud.
3. Proceeds of mortgage fraud are criminal property. A conveyancer who assists in such a fraud will facilitate the acquisition, retention, use or control of criminal property contrary to s.328 of the Proceeds of Crime Act 2002. He may also aid and abet a fraud or be complicit in a conspiracy to defraud.
4. Mortgage fraud is likely to require a report to be made to the ***Serious Organised Crime Agency***.
5. Any attempt to deceive a Lender may expose you to civil action (e.g. breach of contract, breach of trust or negligence) and/or to disciplinary proceedings.

### **Linked Parties**

6. You should always exercise caution if:-
  - 6.1 there appear to be links between a Buyer and Seller; or
  - 6.2 you are acting for both parties; or
  - 6.3 the Seller is a private ***company*** or the Seller has recently purchased from a private ***company*** and the names and addresses of the officers and shareholders of the ***company*** appear to be connected with the transaction, the Seller or Buyer.

### Concerns of variations

7. It is in your interests to check whether:-
  - 7.1 the contract papers have incomplete or missing dates, incorrect descriptions or any sections (particularly the price) which have been left blank;
  - 7.2 the price shown in the Contract and Transfer documentation differs from the amount actually being paid for the property;
  - 7.3 any fixtures and fittings included in the purchase price materially reduce the value of the property;
  - 7.4 the Seller is offering the Buyer any incentive(s) to buy the property unless these clearly fall within a Part 2 CML Handbook dispensation given by the Lender concerned;
  - 7.5 any allowances are made or any other sum is being set-off against the money payable by the Buyer to the Seller (e.g. for repairs to the property):
  - 7.6 the Buyer proposes to pay or has apparently paid a deposit direct to the Seller (except for a nominal reservation fee); or
  - 7.7 there is anything else that affects the price of the property or the amount actually being paid for the property, however small.
8. It is not advisable for you to determine whether any change is material. With your **client's** consent, you should make a report to the Lender. It is good practice to advise **clients** at an early stage that
  - (i) it would be regarded as fraud to misrepresent the purchase price or the existence of any incentives and inducements; and
  - (ii) you have a duty to inform a Lender of the true or underlying price actually being paid for a property.
9. It is good practice to include a term in the **Terms of Engagement** permitting the disclosure to Lenders of material facts relating to the property and the Borrower **client**.

### Acting in the best interests of the Lender **client**

10. In the event of the circumstances detailed in paragraph 7 your safest course of action may be to cease to act for both the Lender and the Borrower **client**.
11. Where you cease to act for the Lender in such circumstances, you should return the mortgage instructions to the Lender merely stating that they are returned because of a conflict of interests (without giving any further explanation).

## Valuations

12. It is good practice to check any valuation supplied by the Lender to check it is not:
- 12.1 higher than the actual price being paid for the property or higher than might be expected for a property of that type in the location in which it is situated; or
- 12.2 considerably higher than the price paid for the property on any earlier sale or disposal within the last 12 months, taking into account any subsequent inflation or deflation in property prices since the date of that sale or disposal.
13. You are not a valuation expert and cannot be expected to advise on the accuracy of a valuation. Nevertheless, a valuation which is patently out of line with the apparent value of a property may be a ground for a suspicion of fraud, particularly where there is a possibility or risk of complicity between prospective Borrowers and Valuers.

## Verifications of Signatures

14. This can be done by examination and comparison with signatures on any other available documentation.

## Summary of Warning Signs

15. The list of circumstances outlined is not exhaustive but is provided as a guideline.

Remote <b>Client</b>	<p>Where a <b>client</b> is introduced by a third party (e.g. a mortgage broker or an estate agent) who is not well known to the <b>Licensed Conveyancer</b> or the Recognised or <b>Licensed Body</b>.</p> <p>Where a potential <b>client</b> wishing to instruct the body for the first time does not live locally to it and has not been introduced by someone known to it and there is no obvious reason why they should place their instructions with it.</p> <p>Where a <b>client</b> will be using the services of the body for the first time and persuades it to accept instructions from the other party, or the other party instructs the body.</p>
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<p>Secretive <b>Client</b></p>	<p><b>Client</b> declines to be met or come to the office and/or uses an intermediary to communicate with the body and/or asks the body to contact him at his business or another address rather than at his home address.</p> <p><b>Client</b> shares an address with one or more other parties to the transaction.</p> <p>You suspect that a <b>client</b> is not being completely honest or transparent about any element of a proposed mortgage transaction.</p>
<p>Nominee Buyers</p>	<p>Instructions to purchase in or transfer a property into the name or names of nominees.</p>
<p>Fictitious conveyancer</p>	<p>A person claiming to be an <b>Authorised Person</b> is not registered with the relevant <b>Approved Regulator</b></p>
<p>Unusual instructions</p>	<p>Instructions from a Seller to remit the net proceeds of a transaction to someone other than the Seller.</p> <p>Any instructions from a Buyer or Seller which do not correspond with the normal type of instructions you would expect to receive during the course of a standard residential or commercial conveyancing transaction.</p>
<p>Transactions which do not follow their normal course or a usual pattern of events</p>	<p>Any transaction which is unusual insofar as it does not follow the normal course or pattern of a standard residential or commercial property transaction.</p>
<p>Misrepresentation of the</p>	<p>The actual and true cash price to be paid is not the stated</p>

purchase price	consideration in the contract and transfer and/or the price shown in the mortgage instructions and in the Certificate of Title submitted to the Lender.
Change to the purchase price	Adjustments to the purchase price, particularly in high percentage mortgage cases, or allowances off the purchase price, for example, for alleged works to be carried out.
A deposit or any part of a purchase price paid direct	A deposit or the difference between the mortgage advance and the price is paid direct or said to have been paid direct, to the Seller.
Incomplete Contract Documentation	Contract documents are not fully completed by the Seller's representative, i.e. dates missing or the identity of the parties are not fully described or financial details are not fully stated.
Linked Parties Sale at an inflated price Roll-Over Fraud & Sub-sales	<p>Sale at an inflated price to an individual by a <b>company</b> or other entity controlled or owned by him which may be a device designed to raise additional finance for the <b>company</b> or other entity and be linked to larger-scale frauds involving tax, improvement grants, etc.</p> <p>Sale by a Borrower to an associate] at an inflated price (known as roll-over fraud) to enable the associate to obtain a higher mortgage.</p> <p>No repayments are made under the mortgage and before the Lender is able to repossess the property, it is sold to another associate for a higher price, and so on.</p> <p>A Buyer at one price instructs his conveyancer that he will</p>

	<p>be selling on to a third party at a higher price where the Sub-Buyer is either one and the same person as the Buyer or an associated person where the Seller may or may not also be a party to the fraud.</p> <p>The Sub-Buyer third party obtains a mortgage based on the sub-sale price and secures an immediate profit. The balance between the original sale price and the higher sub-sale price is never paid or is said to be paid by the Buyer to the Sub-buyer or is allegedly set-off by the Buyer against money owed to him by the Sub-Buyer.</p> <p>These transactions often feature a simultaneous exchange of contracts followed by a quick completion, leaving the Lender left with a property worth the original sale-price as security for a much higher loan.</p> <p>A derivative of this fraud occurs where a Seller grants a lease to a Buyer at a ground rent and the Buyer then assigns the lease to a Sub-Buyer at a premium to provide the Sub-Buyer with a legal interest over which he can then obtain a mortgage.</p>
Unusual transactions	<p><b>Client</b> has a current mortgage on two or more properties.</p> <p><b>Client</b> is using an alias.</p> <p><b>Client</b> is buying several properties from the same person or two or more persons using same conveyancer.</p> <p><b>Client</b> is reselling property at a substantial profit for which no adequate explanation has been provided.</p> <p><b>Client</b> does not intend to occupy property (unless Buy-to-</p>

	Let mortgage offer issued).
Fraudulent Mortgage Application	Size of mortgage sought by a <b>client</b> does not correspond with his apparent economic position and lifestyle.  Unemployed <b>Client</b> and/or gift letter produced.  Substantial arrears on an existing mortgage account



Council for  
**Licensed  
Conveyancers**

***Licensed Body Code***

***Outcomes-focused***

Only those bodies able and willing to deliver the ***Code of Conduct's Outcomes*** are licensed as ***CLC Licensed Bodies***.

Delivering these ***Outcomes*** requires all Licensed Bodies and their stakeholders to act in a principled manner in accordance with the ***6 Overriding Principles***:

1. **Act with independence and integrity;**
2. **Maintain high standards of work;**
3. **Act in the best interests of your *Clients*;**
4. **Comply with your duty to the court;**
5. **Deal with regulators and ombudsmen in an open and co-operative way;**
6. **Promote equality of access and service.**

This Code is in place to help ensure Licensed Bodies meet these responsibilities.

***Licensed Body Code***

In this Code 'you' refers to Licensed Bodies regulated by the ***CLC***, except where 'you' is provided under the heading of a designated role in which case the 'you' refers to that role. Any stakeholders in the ***Licensed Body*** must not act or fail to act, nor permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

**Governance and operational arrangements**

**Principles**

1. You ensure all persons with a ***material interest, managers*** and employees understand and comply with their regulatory responsibilities and do not compromise the body's duty to the Court or ***Client***.



2. You enable the **Head of Legal Practice (HoLP)** and **Head of Finance and Administration (HoFA)** to discharge their regulatory responsibilities.
3. You enable **Authorised Persons** to comply with their own regulatory responsibilities.
4. You ensure persons with a **material interest** are unable to exert **improper influence** on the body.
5. You **systematically** prevent, identify and address **improper influence**, allowing independence to be maintained and the rule of law to be upheld.
6. You provide a mechanism by which staff can identify regulatory concerns to the **Head of Legal Practice**, and any finance-related concerns to the Head of Finance and Administration also.
7. You operate **complaints**-handling procedures which consider **complaints** about both lawyers and non-lawyers.

#### **Specific Requirements**

8. You have a designated **HoLP** and **HoFA** and have applied for/obtained **CLC** approval of these individuals.
9. Your **HoLP** and **HoFA** have experience and qualifications appropriate to the body's profile.
10. Your **HoLP** and **HoFA** are members of the senior management team or Board, or report to the senior management team or Board.
11. You provide the **HoLP** and **HoFA** with access to the **Licensed Body's managers** and staff and the **CLC** whenever necessary and their views are taken into account and the recommendations taken forward wherever possible.
12. You specifically authorise the **HoLP** and **HoFA** to dissent from collective responsibility when reporting to the **CLC**.
13. You ensure non-**Authorised Persons** who propose to hold a **material interest** of 10% or more, or a **material interest** holder proposes to acquire an additional kind of interest, notify both the body and the **CLC**.
14. You ensure the **HoLP** is notified of any 'fit and proper' issue concerning the owner(s), the **HoLP**, **HoFA**, other **Managers** or **Authorised Persons**.

### **Specific Requirements – Non-Authorised Persons with Material interest**

15. You are a 'fit and proper' person and declare to the **HoLP** any factors affecting this.
16. You do not attempt to exert **improper influence** over the body or individuals within it.
17. If you intend to acquire an additional kind of **material interest** you inform both the **Licensed Body** and the **CLC**.

### **Business arrangements**

#### **Specific requirements**

18. You have at least one **Authorised Person**, authorised to provide each reserved legal activity the body delivers.
19. You do not employ any person disqualified from being employed by a **Licensed Body** or any person not fit and proper.
20. You do not share **Client** information with other parts of the business without the **Client's** permission.

### **Head of Legal Practice**

#### **Principles**

21. You understand the regulatory responsibilities of the body.
22. You act upon regulatory responsibility concerns raised by staff.
23. You keep up- to-date with legislative and regulatory requirements through targeted Continuous Professional Development.
24. You ensure **Authorised Persons** employed by the body are fit and proper.
25. You report to the **CLC** any governance concerns including **improper influence**.

#### **Specific Requirements - of the Individual**

26. You are an **Authorised Person** in relation to one or more of the **reserved legal activities**.
27. You are a 'fit and proper' person and declare to the **Licensed Body** and the **CLC** any factors affecting this.

#### **Specific Requirements – of responsibility**

28. You ensure the **Licensed Body** complies with **CLC regulatory arrangements** and any **licence authorisations, permissions** and **conditions, promptly** reporting any breach to the **CLC**.

29. You ensure **Authorised Persons** are able to comply with their regulatory responsibilities, **promptly** reporting to the **CLC** any breach of this.
30. You ensure all non-**Authorised Person** employees, **managers** or **material interest** holders do not cause or substantially contribute to the **Licensed Body** or any of its employees, managers or **Authorised Persons**, breaching its/their regulatory responsibilities, **promptly** reporting to the **CLC** any failures to comply.
31. You ensure persons proposing to acquire a **material interest** in the body, or who have already done so are aware of their duty to notify.
32. You ensure you are informed **promptly** of any circumstance identified under the **CLC** Notification Code.

### **Head of Finance & Administration**

#### **Principles**

33. You protect **client money** and assets at all times.
34. You understand the regulatory responsibilities of the body.
35. You keep up- to-date with legislative and regulatory requirements through targeted Continuous Professional Development.

#### **Specific Requirements – of the individual**

36. You are a **'fit and proper' person** and declare to the **HoLP** any factors affecting this.

#### **Specific Requirements – of responsibility**

37. You ensure the body complies with the **CLC's** treatment of money requirements, **promptly** reporting any breach of these.
38. You **promptly** report to the **CLC** when the body is in financial distress or is at significant risk of becoming financially distressed.
39. You provide administrative **arrangements** to support the maintenance of high standards of work.
40. You ensure that proper records are maintained to evidence the body's management and supervision **arrangements** and how they are applied.



Council for

## Licensed Conveyancers

### *Litigation & Advocacy* Supplementary Code

**Note: this Code will only apply if the CLC's application to extend its regulatory scope is successful.**

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 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 follow **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. <sup>1</sup>
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.

<sup>1</sup> Except reasonable expenses and reasonable compensation for loss of time attending court



Council for  
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***Recognised Body Code***

***Outcomes-focused***

Only those bodies able and willing to deliver the ***Code of Conduct's Outcomes*** are recognised as ***CLC Recognised Bodies***.

Delivering these ***Outcomes*** requires all ***Recognised Bodies*** and their stakeholders to act in a principled manner in accordance with the ***6 Overriding Principles***:

1. **Act with independence and integrity;**
2. **Maintain high standards of work;**
3. **Act in the best interests of your *Clients*;**
4. **Comply with your duty to the court;**
5. **Deal with regulators and ombudsmen in an open and co-operative way;**
6. **Promote equality of access and service.**

This Code is in place to help ensure ***Recognised Bodies*** meet these responsibilities.

***Recognised Body Code***

In this Code 'you' refers to ***Recognised Bodies*** regulated by the ***CLC***, except where 'you' is provided under the heading of a designated role in which case the 'you' refers to that role. Any stakeholder in the ***Recognised Body*** must not act or fail to act, nor permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

**Governance and operational arrangements**

**Principles**

1. You ensure all ***managers*** and employees understand and comply with their regulatory responsibilities and do not compromise the body's duty to the Court or Client.

2. You enable the **Managers** to discharge their regulatory responsibilities.
3. You enable **Authorised Persons** to comply with their own regulatory responsibilities.
4. You **systematically** prevent, identify and address **improper influence**, allowing independence to be maintained and the rule of law to be upheld.
5. You provide a mechanism by which staff can identify regulatory concerns, and any finance-related concerns to any **Manager**.
6. You operate **complaints**-handling procedures which consider **complaints** about the **Recognised Body** and any of its **Managers** or employees.

#### **Specific Requirements**

7. You have at least one **Manager** and have applied for/obtained CLC approval of any such individual.
8. At least one **Manager** has experience and qualifications appropriate to the body's profile.
9. At least one **Manager** is a member of the senior management team.
10. You provide at least one **Manager** with access to the **Recognised Body's managers** and staff and the CLC whenever necessary and their views are taken into account and the recommendations taken forward wherever possible.
11. You specifically authorise at least one **Manager** to dissent from collective responsibility when reporting to the CLC.
12. You ensure the at least one **Manager** is notified of any 'fit and proper' issue concerning any owner, or Authorised Person.

#### **Business arrangements**

##### **Specific requirements**

13. You have at least one Authorised Person, authorised to provide each reserved legal activity the **Recognised Body** delivers.
14. You do not employ any person disqualified from being employed by a CLC Body or any person who is not fit and proper.

#### **Manager**

##### **Principles**

15. You understand the regulatory responsibilities of the **Recognised Body**.

16. You act upon regulatory responsibility concerns raised by staff.
17. You keep up- to-date with legislative and regulatory requirements through targeted Continuous Professional Development.
18. You ensure Authorised Persons employed by the body are fit and proper.
19. You report to the CLC any governance concerns including *improper influence*.

**Specific Requirements - of the Individual**

20. You are an Authorised Person in relation to one or more reserved legal activity.
21. You are a 'fit and proper' person and declare to the **Recognised Body** and the CLC any factors affecting this.

**Specific Requirements – of responsibility**

22. You ensure the **Recognised Body** complies with CLC **regulatory arrangements** and any **authorisations, permissions** and **conditions** on its Certificate of Recognition, **promptly** reporting any breach to the CLC.
23. You ensure Authorised Persons are able to comply with their regulatory responsibilities, **promptly** reporting to the CLC any breach of this.
24. You ensure that no non-Authorised Person employee causes or substantially contributes to the **Recognised Body** or any of its employees, breaching any regulatory responsibility, **promptly** reporting to the CLC any failures to comply.
25. You ensure you are informed **promptly** of any circumstance identified under the CLC Notification Code.
26. You protect client money and assets at all times.
27. You provide administrative arrangements to support the maintenance of high standard of work
28. You ensure the **Recognised Body** complies with the CLC's treatment of money requirements, **promptly** reporting any breach of these.
29. You ensure that proper records are maintained to evidence the **Recognised Body's** management and supervision arrangements and how they are applied
30. You **promptly** report to the CLC when the body is in financial distress or is at significant risk of becoming financially distressed.





Council for  
**Licensed  
Conveyancers**

**Transaction Files Code  
& Guidance**

**Transaction Files Code**

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies 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.

**Outcomes-Focused**

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

- **Each *Client's* best interests are served; (Outcome 3.1)**
- ***Clients'* affairs are treated confidentially (except as required or permitted by law or with the *Client's* consent). (Outcome 3.6)**

Appropriate standards of document provision help you deliver these **Outcomes** and require you to act in a principled manner:

1. **Act in the best interests of your *Clients*. (Overriding Principle 3)**
2. You disclose ***client*** information only as the ***Client*** has instructed (or as required by the ***CLC's regulatory arrangements*** or by law), keeping effective records of any disclosure you make. (CoC OP3e)

You must also comply with the following ***specific requirements***:

**File**

3. When a request for a transaction file, or part of it, is made on behalf of a ***Client***, lender or third party you must determine the ownership of the various papers in the file and

provide the person making the request only with the documents they own or are entitled to, or entitled to only with the **Client's** permission.

4. Where the **Client's** permission is required you must not provide the papers to the person making the request until you have obtained the **Client's** consent or been served with a court order in appropriate terms.

#### **Joint retainers – joint Clients**

5. Originals are handed to one **Client** only with the consent of the other **Client**.
6. You provide each **Client** with a copy without charge.
7. You release copies to third parties only with the consent of all **Clients**.

#### **Joint retainers –Client and lender**

8. You may charge a lender for a copy of a document if you require the borrower **Client's** consent to provide the lender with a copy.

#### **Retention of file contents**

9. You retain the contents of files relating to all matters for a minimum of six years, except those relating to:
  - other conveyancing matters (other than the sale of property) for a minimum of fifteen years
  - wills for a minimum of six years after the testator has died, and
  - probate matters for a minimum of six years from the end of the executor's year.
10. Consideration should be given on a case by case basis as to the appropriate date of destructions for the contents of files relating to:
  - deeds of gift
  - gifts of land
  - transfers at an undervalue
  - right to buy where funds came from someone other than the purchasing tenant(s)
  - lifetime gifts.

## Transaction Files *Guidance*

1. Transaction files generally contain a mixture of papers and documents some of which belong to the **Client** and some to the body. In addition there may be other papers and documents which belong to another **Client**, for example a lender.
2. Documents that belong to the **Client**:
  - a) Those documents you have prepared for the benefit of the **Client** and which have been paid for by the **Client** either directly or indirectly, including:-
    - most attendance notes;
    - drafts;
    - copies made for the **Client**'s benefit of letters received by the **Licensed Conveyancer or body**;
    - copies of letters you've written to third parties contained in the **Client**'s file and used for the **Client**'s business, for example letters to banks, lenders, witnesses or potential witnesses.  
This does not include copies of letters written to the **Client** which you may keep.
  - b) Those documents prepared by a third party during the course of a matter and sent to you (other than those sent to you at the body's expense). Examples are receipts and vouchers for **disbursements** made by or on behalf of the **Client** and letters received by the body from third parties.
  - c) In the case of joint **Clients** these documents belong to the **Clients** jointly.
  - d) In most cases it is not necessary to deliver up original documents. However:
    - some documents (such as Wills and Deeds) only have effect on production of the original; and
    - questions about the authenticity of a document may in some instances only be determined on production of the original.
3. Documents that belong to you:
  - a) Those documents prepared by the body for its own benefit or protection, the preparation and production of which is not charged to the **Client**. They include:
    - copies of Communications written to the **Client**;
    - copies of Communications received by the body;
    - office journals;
    - computerised records;
    - copies of Communications to third parties but only if they are contained in a filing system of all Communications written in the office;
    - tape recordings of conversations;
    - entries in diaries;

- time sheets;
  - books of account;
  - inter office Communications;
- b) Those documents sent to the body by the **Client**, the property of which was intended at the date of despatch to pass from the **Client** to you, including letters, authorities, and instructions written or given to you by the **Client**.
4. Where you acted for two or more clients and a request for the file or part of it is made by one of the clients (eg a lender), you should determine the ownership of the various papers in accordance with paragraphs 2 and 3 above. For example, in a conveyancing transaction there may be documents which:-
- Belong to the lender alone including the lender's instructions to the body, certificate of title and correspondence between you and the lender. The original may be released but a copy should be retained.
  - Belong to the borrower **Client**, but which the lender is nevertheless entitled to see, as they relate to that part of the work where the lender and borrower can be said to have a common interest, such as deducing title. Examples are the contract, transfer and search certificates.
  - Belong to the borrower **Client** that the lender is not entitled to see without the consent of the borrower **Client** (and for which a copying charge may be made).

### **Example Approach**

You are not obliged to adopt the approach below. The following are provided only as good practice considerations:

1. To make a copy (without charge) for your own benefit of any documents released.
2. Where documents are requested with a view to a **claim** being made against you (in addition to your regulatory responsibility to notify insurers of the circumstances) you should :
  - not make any admission of liability;
  - deal with the matter in accordance with instructions issued by or on behalf of the insurers.
3. Where a file or information from a **Client** file is requested by a third party (such as the Police, HM Revenue and Customs or Trustee in Bankruptcy) to satisfy yourself (by the production of legal authority, preferably a court order) that the party making the request is legally entitled to the documents and information requested.

4. Where you intend to charge for copying documents (other than where any copying is made for your own benefit) you make a reasonable charge.
5. It is in your interests to ensure that the relevant **Terms of Engagement** authorise you:
  - to retain or destroy the contents of a **Client's** file or transfer the data onto another **Durable Medium**, since you may be liable for any loss incurred if the contents of a file are destroyed without the **Client's** consent; and
  - to provide copies (rather than originals) of documents requested unless the production of the document (such as a Will) is required for the document to have legal effect.

#### **Destruction of file contents**

6. After the relevant minimum retention period (identified at 9 & 10), and provided you have the **Client's** authority, you review the file to decide whether it may be safely destroyed. You might consider retaining separately and for a longer period the authority from the **Client**.
7. If the matter involved a mortgage, then it is likely you will want to take into account any **specific requirements** of the particular lender.

## Other



Council for  
**Licensed  
Conveyancers**  
**CLC Regulatory Policy**

**Introduction** - as both an **Approved Regulator** and **Licensing Authority** the **CLC** must, so far as is reasonably practicable, act in a way which is compatible with the **regulatory objectives**:

- a) protect and promote the public interest;
- b) support the constitutional principle of the rule of law;
- c) improve **access to justice**;
- d) protect and promote the interests of consumers;
- e) promote competition in the provision of legal services;
- f) encourage an independent, strong, diverse and effective legal profession;
- g) increase public understanding of the citizen's legal rights and duties;
- h) promote and maintain adherence to the **professional principles**.

The key elements of the **CLC's** promotion of these objectives are:

- An **Outcomes**-focused and evidence and **risk-based** approach to our work;
- Working with the regulated community to maintain and improve high standards of professional behaviour;
- Helping the regulated community to help themselves – helping to change behaviours through provision of advice, support and **guidance**;
- Applying our resources where they are needed most and resolving issues informally wherever possible/appropriate;
- Enabling those we regulate to innovate and compete;
- Anticipating potential regulatory problems and addressing or preventing them wherever possible.

This Regulatory Policy explains what we are seeking to achieve as a regulator of legal services

and how we seek to put the above into practice.

## 1. Regulatory Aims

1.1 The **CLC** has three key regulatory aims:

- those we regulate deliver high standards of service to consumers and to the wider public;
- there are high standards of conduct among those we regulate; and
- there is an effective and proportionate regulatory framework in operation.

1.2 To achieve these aims we must:

- promote a wide, shared understanding amongst the regulated community of the **Outcomes** we require them to deliver;
- operate **regulatory arrangements** which deliver the intended **Outcomes**;
- ensure each member of the regulated community has the right people, systems, skills and knowledge to meet their regulatory responsibilities;
- operate a regulatory approach which is accountable, consistent, proportionate targeted, and transparent.

## 2. The Principles of our Regulatory Philosophy

2.1 Accountable - we are accountable to a range of stakeholders, not least clients and the regulated community itself, and so we try our best to ensure our regulatory activities demonstrate accountability to all those with a vested interest. To this end, our **Code of Conduct** sets out the **Outcomes** our **regulatory arrangements** seek to deliver to clients.

2.2 Consistent - all regulatory decisions are based upon the 'balance of probabilities' of the evidence, except where a criminal act or fraud or dishonesty is alleged in which case the standard applied will be 'beyond reasonable doubt' (with the exception of intervention). We review our compliance monitoring approach and the responses it generates to ensure they are consistently applied.

- 2.3 Proportionate - an issue which gives rise to, or is likely to give rise to, a risk to the delivery of the **Outcomes** will be discussed with the individual/body. Their capacity and/or willingness to address the issue will help inform our response. Our response will be proportionate to the seriousness, circumstance and impact – actual or potential – of the risk to an individual client, clients in general and the legal profession.
- 2.3.1 We support those who alert us to their own regulatory failings. We provide support and **guidance** where needed. As long as clients are not at risk and the body/individual is addressing the failure(s) in a reasonable way we are less likely to take formal **enforcement** action. Regulatory action will be considered for those who commit relatively minor regulatory breaches on a regular basis and who fail to respond to more informal resolution approaches.
- 2.3.2 Whenever possible/appropriate we work informally with regulated entities to address any risks, but where serious issues are apparent or suspected, we will take formal **enforcement** action to safeguard the interests of the public and clients.
- 2.4 Targeted - our **risk-based** approach identifies those bodies/activities that pose the greatest risk to the delivery of the **Outcomes**. This enables us to focus our attention and resources on those most likely to harm the interests of the public and legal services consumers.
- 2.4.1 We believe in a right-touch, not light-touch, approach to regulation. We maintain contact with all members of the regulated community, but seek to focus our resources on those demonstrating higher risks. Those who comply with the **CLC's Overriding Principles**, who deliver the required **Outcomes** and engage positively with us will be left to get on with their business with minimum supervision.
- 2.5 Transparent - we make every effort to ensure that the regulated community and other stakeholders are kept informed about our regulatory philosophy; the aims and the requirements of the **regulatory arrangements**; and any threats to their effective operation.
- 2.5.1 We are continuously increasing the emphasis placed upon education and awareness-raising to help the regulated community to help themselves.
- 2.5.2 The respondent will have the opportunity to make representations to the determining committee prior to a determination being made. Where the need for **enforcement** action has been determined we will provide the relevant body and/or individual with clear reasons for the decision at the time the action is determined.
- 3. Regulation in practice - how our regulatory philosophy is reflected in our work**
- 3.1 Licence determination - we require all **applicants** to provide us with a range of information so we are able to determine any risk presented to the delivery of the **CLC Code of Conduct's Outcomes** should we license the individual/body. The information provided will be verified to ensure the risk can be reliably calculated. This process will also include a formal interview for the new **applicant**.



- 3.1.2 The information enables us to determine whether a **licence** should be granted, granted with **conditions**, or declined. **Licence conditions** will be imposed where additional safeguards are needed to address a potential risk. Where the severity of the risk posed could not be countered through **conditions**, the **licence** will be declined.
- 3.1.3 We inspect all entities new to **CLC** regulation. An inspection may be carried out remotely or through a site visit, depending upon the nature of the entity and any risks identified in the initial analysis. All new entities are required to attend an Induction Day which provides an introduction to the **CLC's** regulatory requirements alongside examples of good practice.
- 3.2 **Risk Assessment** - our regulatory relationship with a member of the regulated community is informed by an assessment of the risks they or their activities pose to the **Code of Conduct's Outcomes**. To be confident of our resource allocations we must identify and measure the capacity for, or, actual harm, and of the likelihood of an occurrence of actual harm, to these. This includes consideration of factors such as:

- reliability of the evidence provided;
- the body's regulatory responsibility **arrangements**;
- seriousness of the act or omission and the likely impact on consumers, **CLC's** regulated community and public confidence;
- if the breach is/was deliberate or vexatious;
- seriousness of the information provided and the likely impact on a client, clients in general, the **CLC's** regulated community and public confidence;
- the body's activities and/or **client** type;
- Information about the entity's finances;
- foreign ownership (our scope for data verification may be limited in some instances);
- past compliance performance;
- risk-management systems, including anti-money laundering **arrangements**;
- management competence and inclination to address issues;
- qualifications and experience of the **Head of Legal Practice** and the **Head of Finance and Administration**;
- **conflicts of interests arrangements**;
- **improper influence arrangements**;
- **complaints-handling arrangements**;
- recognised external accreditation.

- 3.2.1 The **CLC** regulatory risk register contains a range of information including **CLC** inspection findings; **complaints**; Accounting Reports information; negligence **claims**; and information from other stakeholders, such as lenders, police or clients. Members of the regulated community are allocated an overall regulatory **risk profile** according to the information held. Those with a higher rating will have a more intensive regulatory relationship with the **CLC** than lower-risk entities.

- 3.3 Monitoring - we collect information to help us monitor how effectively our **regulatory arrangements** are operating. Much of this is obtained from regulated community returns. We analyse the information received and carry out a risk assessment of the data provided.
- 3.3.1 We aim to keep information requirements to a pertinent but meaningful minimum e.g. we do not ask those we regulate to supply us with unnecessary information, or the same information twice. We are continuously determining the proportionality of the frequency/size of our information submission requests. Returns are simpler and quicker to complete through online submissions; as well as more timely, so we are able to respond more quickly to identified risks.
- 3.3.2 When a potential risk is identified we will investigate. This may include an inspection, which may be carried out remotely or through a site visit. Our monthly monitoring reports check that an inspection has been justified and conducted impartially. We conduct an interview with the entity at the end of the inspection and provide a full written report identifying our findings and any improvements we recommend. Wherever possible, we provide support and **guidance** to address the risks identified.
- 3.4 Guidance, support and advice - we try our best to ensure that our **guidance**, support and advice provision is authoritative, appropriate and helpful as well as easy to access and understand. We provide advice and toolkits on specific issues, as well as general **guidance**. Wherever possible/appropriate we will approach an identified compliance issue with advice provision rather than regulatory or formal **enforcement** action.
- 3.4.1 We obtain information from a range of sources, including the regulated community and economic and market-specific information. Where a thematic risk is identified we will tailor our **guidance**, advice, events and publication provision to help explain - and where possible, mitigate - any inherent or emerging risks which may affect or threaten the regulated community as a whole.
- 3.4.2 Our ongoing commitment to education means we will provide more awareness-raising materials such as case studies, expected standards and best practice examples.
- 4. Enforcement tools**
- 4.1 Informal resolution is desirable to the regulated community, its clients and the **CLC** and its appropriateness to an issue will always be considered. We will usually seek to take this route before considering more formal **enforcement**. Where this is not appropriate – due to the immediate, serious and/or widespread nature of the issue - or it has not achieved the desired outcome we will determine what further action is needed. This is likely to take the form of formal **enforcement** action, though we will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy.

- 4.2 We will apply the ‘balance of probabilities’ standard – ‘beyond reasonable doubt’ will be applied where a criminal act is alleged – and in determining our response we will take account of the impact on a **client, clients** in general and on the **respondent**. The **respondent** will be afforded the opportunity to make representations.
- 4.3 We have a range of **enforcement** tools at our disposal should an informal response not be appropriate. We will only exercise our formal **enforcement** power if the act or omission of a regulated body or individual was a serious breach. The seriousness of an act or omission will be judged on the impact, actual or potential, of the risk to delivery to the **Code of Conduct’s Outcomes**.
- 4.4 Each of the following **enforcement** tools may be used in isolation, simultaneously, or consecutively where the usage of one tool has not generated compliance (e.g. if **licence conditions** are not complied with, other **enforcement** action may be used):
- 4.4.1 Refer to an appropriate regulator - we are likely to refer the conduct of a **manager** or employee to the appropriate regulator where we have reason to believe that the individual’s behaviour is in breach of their regulatory responsibilities.
- 4.4.2 Reprimand - we are likely to issue a reprimand when an act or omission needs particular attention drawn to it, with the intention that the behaviour of the individual/body is changed.
- 4.4.3 Licence Conditions - we are likely to require the entity to take a specific actions where an act, omission or an arrangement needs to be rectified. Where this requires expenditure we will take into account the operational costs of that body. We will make every effort to ensure the condition/direction is understood by the body.
- 4.4.4a Financial penalties - we are likely to direct the payment of a fine (by the body and/or an individual concerned with it i.e. an employee or owner) exceeding £50,000 only in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others). The level of the penalty will take into account the size/resources of the body so it is proportionate whilst also at a level likely to give **clients** and the public confidence that issues which cause them detriment are dealt with appropriately. Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.
- 4.4.4b We will not create a perverse incentive by providing details of the exact criteria/procedure which will be applied in setting the level of the fine. It will be determined on a case by case basis but we will always seek to ensure it is fair and proportionate and does not exceed the maximum levels (specified in our **Enforcement** Policy).

- 4.4.4c We do not benefit financially from any penalties imposed. Fines received from **licensed conveyancers** or Recognised Bodies are paid into Her Majesty's Treasury; those received from Licensed Bodies go into the Government's Consolidated Fund.
- 4.4.5 **Material interest conditions/objections/divestiture** - where there are concerns that a material interest holder in **Licensed Body** may be demonstrating **improper influence** – i.e. an owner is influencing, or attempting to influence the decisions of the **Licensed Body** or the conduct of **Authorised Persons** in a way which would constitute a breach of their regulatory duties - we will take action. Where there are mild concerns this is likely to take the form of **conditions**; where the concerns are more serious we are likely to object to the interest and this may ultimately result in divestiture.
- 4.4.6 **Withdrawal of approval** - we are likely to withdraw our approval of a **Licensed Body's Head of Legal Practice** or **Head of Finance and Administration** where the individual has become demonstrably inappropriate for the role e.g. an event has occurred which impacts upon their fit and proper status or they repeatedly fail to meet their regulatory responsibilities.
- 4.4.7 **Disqualification** - we are likely to disqualify an individual from a role within a **Licensed Body** or a **licensed conveyancer** from holding a **licence** only in exceptional circumstances and where the seriousness of the act or omission means that no other **enforcement** action is judged adequate to address it.
- 4.4.8a **Licence suspension or revocation** - the decision to suspend or revoke a **licence** will not be taken lightly. We will only use this measure where, due to the seriousness and/or persistence of the act or omission – or the body has changed its structure/provision arrangements so it is no longer licensable - no other **enforcement** action is judged adequate to address the identified issue.
- 4.4.8b We will need to be satisfied that clients' interests are protected and this may include a/all **Client's** case being transferred to another firm. (Suspension is likely to lead to the enforced closure of the CLC Body unless the reason for the suspension is cured very quickly, in which case intervention and its case management processes will take place).
- 4.4.8c **Licence** suspension does not automatically mean **licence** revocation. A **licence** may be suspended because a significant threat to **clients** has been identified. Where this is found not to be the case or where we (or the First Tier Tribunal) are satisfied that a risk is no longer presented the **licence** is unlikely to be revoked. Where this is the case, the body may be subject to a more intensive regulatory relationship in order that we are confident that the risks to **clients** is minimised.
- 4.4.9a **Intervention - intervention** is an extreme measure and will only be used where no other **enforcement** action is judged adequate to address the identified issue due to the seriousness and persistence of the act or omission or if the body's viability is threatened

or it becomes insolvent. As with all **enforcement** actions, we will carefully assess the proportionality of the proposed response. We can revoke an intervention direction following the body's request (but only where all relevant information corroborates that to do so would not cause a risk to the **Code of Conduct's Outcomes**).

4.4.9b Where **intervention** has been necessary the body's **licence/certificate** is automatically suspended.

## 5. Equalities Considerations

5.1 It is our intention that the application of this policy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation. Members of the regulated community subject to **CLC** regulatory action are asked to advise the **CLC** of any **specific requirements** they have which need to be taken into consideration. These will be accommodated as far as is reasonably practicable and on a case-by-case basis.

5.2 The **CLC** will monitor its regulatory action to ensure there is no disproportionate impact on any sections of the regulated community.

## 6. Policy Consultation, Review & Evaluation

6.1 The **CLC** will carry out an investigation in accordance with its **complaints** policy into any **complaint** received from an individual or body about the way in which the **CLC** has exercised its functions in relation to that individual or body (except where a referral is or has been made to the **Adjudication Panel** or to the **Discipline and Appeals Committee** due to the options of review/appeal applicable).

6.2 This policy was agreed by the Council and came into effect [date TBA]. We shall consult with stakeholders to evaluate its effectiveness within 2 years of its initial application. Where the policy is failing to generate the relevant **outcomes** - identified in the **Code of Conduct** it will be amended as appropriate. In the meantime, we welcome any feedback on the policy's content, implementation and effectiveness.

6.3 This policy is available for reference and downloading from the **CLC** website. A copy of the policy will be available to all those involved in disciplinary enquiries and proceedings.



Council for  
**Licensed  
Conveyancers**

***Enforcement Policy***

**Introduction**

This policy explains how the **CLC** identifies and responds to non-compliance with its regulatory requirements - as identified in the **Code of Conduct** and other **regulatory arrangements**. It seeks to provide the regulated community and other stakeholders with **guidance** on examples of regulatory breaches, how the **CLC** identifies these non-compliance issues and the framework within which it will respond to these. Its aim is to encourage appropriate conduct and deter inappropriate behaviour so that **clients** receive the standard of legal services that they should reasonably expect to receive.

The **CLC's Code of Conduct** requires those we regulate to comply with its **Overriding Principles** to:

- act with independence and integrity;
- maintain high standards of work;
- act in the best interests of their **clients**;
- comply with your duty to the court;
- deal with regulators and ombudsmen in an open and co-operative way;
- promote equality of access and services;

in order that positive **Outcomes** are delivered, particularly for **Clients**.

The vast majority of the **CLC's** regulated community act in a way which is consistent with these principles. However, where this is not the case, we will take **enforcement** measures.

We aim to deliver effective, fair and consistent **risk-based** regulation. Our approach to **enforcement** will be targeted particularly on those areas we judge to most threaten the **regulatory objectives** through the risk they pose to the delivery of positive **outcomes**, particularly for **clients**.

Depending upon the nature of the matter our approach may be to seek informal resolution or may involve regulatory action. The **CLC** will, wherever possible, try to achieve an informal resolution, to provide a more timely and satisfactory outcome for **clients** and saving both the resources of the licensee and the **CLC**. We will engage in dialogue with the **respondent**,

encouraging good practice through **guidance** and support.

Where an informal approach has been unsuccessful or is not judged appropriate because of the actual (or perceived risk of) detriment to **clients**, the **CLC** will initiate the disciplinary powers available.

All **enforcement** processes will be exercised in a way which is transparent, accountable, consistent, proportionate and targeted in keeping with the Regulator's Compliance Code and the **Legal Services Act 2007**.

## 1. What is meant by **Enforcement**?

- 1.1 We must ensure the regulated community meets the needs of **clients** by complying with both the law and our regulatory requirements. Where they fail in these responsibilities we will hold them to account. Actions taken to encourage compliant behaviour or to punish non-compliance are known as **enforcement**. **Enforcement** action will be based upon reliable evidence, clear standards and the ability to appeal **enforcement** decisions. It is our aim that our **enforcement** approach is helpful, open, accountable and transparent. Our **enforcement** activities will be proportionate, consistent and targeted at cases where action is needed. This does not mean that less serious breaches will go unchecked, it means they will receive a proportionate response so that less serious breaches do not receive the same penalties as more serious or repeated breaches.
- 1.2 The **enforcement** tool applied in a matter will be proportionate to the risks identified to the **regulatory objectives** in the form of a threat to the delivery of the positive **outcomes** identified in our **Code of Conduct**, due to non-compliance with our **regulatory arrangements**.
- 1.3 Regulation and **enforcement** will be proportionate and flexible enough to encourage economic progress within the regulated community. We will not seek to cause unnecessary expense to an individual; any penalty imposed will be fair.
- 1.4 We will check to see that any agreed course of action is implemented. Where it is not, we will take formal **enforcement** action.

## 2. Scope of the **CLC's Enforcement Powers**

- 2.1 We may take **enforcement** action against:
  - **CLC** Bodies;
  - **licensed conveyancers**; and
  - Owners, **Managers** and employees of **CLC** Bodies.
- 2.2 In this Policy we use the term "**respondent**" to refer to any of those listed at 2.1 and "the regulated community" to refer to all of those listed at 2.1.

2.3 Information sources - information on possible breaches of regulatory responsibilities is obtained from a number of sources, including:

- A body proactively admitting non-compliance by act or omission – all bodies we regulate must advise us if they are failing to comply with the **CLC's regulatory arrangements**. We will support those who alert us to their failings. We are unlikely to take formal disciplinary action as long as **clients** are not at risk and the entity is addressing the failures identified in a reasonable way;
- Information from stakeholders, including **complaints** from **clients** or information from lenders, police and findings of other regulatory or professional bodies etc;
- Overall regulatory **risk profile** according to the **CLC's** risk register. The register holds a range of regulatory information including **CLC** inspection findings, **complaints**, Accounting Reports information and negligence **claims**.

2.4 Regulatory breaches – The following are examples of allegations of breaches which may lead to **enforcement** proceedings (this list is not exhaustive and is not ranked):

- Persons no longer '**fit and proper**';
- Failures in governance **arrangements**;
- Fraud and dishonesty;
- **Improper influence**;
- Failure to comply with the **CLC's regulatory arrangements**;
- Ineffective **complaints**-handling procedures;
- Failure to provide the **CLC** with information, or provision of false, incomplete or misleading information;
- Failure to pay any **CLC** annual fee or contribution.

2.5 Risk - We take a **risk-based** approach to regulation. That means that in determining what (if any) action to take when non-compliance is brought to our attention we will determine the impact that risk is likely to have on the **Overriding Principles** and the **Outcomes** they seek. We will take into account some or all of the following:

- the seriousness of the act or omission and the likely or actual impact on an individual **client, clients** in general and the regulated community;
- the intended outcome for **clients** in taking action compared with the impact of not taking action;
- the effect the particular breach is likely to have on:
  - the reputation of the rest of the profession; and



- public confidence in those services and on the **CLC's Regulatory Arrangements**;
  - the extent to which the act or omission is a one-off occurrence or is part of a series of similar matters or appears to be deliberate or vexatious;
  - the period of time over which the act or omission has occurred;
  - management competence and willingness to comply;
  - the existence of good systems for managing risks;
  - evidence of recognised external accreditation;
  - whether the resource requirements needed are proportionate to achieving the desired results; and
  - any other matters that it appears appropriate to take into account.
- 2.6 Decision-making – enforcement decisions taken by the **CLC** will be informed by all available, relevant and reliable evidence, and will be based upon criteria published on our website. Decisions will be taken on the evidence applying the 'balance of probabilities' standard, except where a criminal act (including fraud or dishonesty) is alleged in which case the standard applied will be 'beyond reasonable doubt'. Account will be taken of the impact on **clients**, the impact on the **respondent** and the reliability of the available evidence. The **respondent** will be afforded the opportunity to reply; we will be open to the individual/body providing fresh evidence not previously available, or to them proposing a compliance remedy. **Enforcement** decisions made will be regularly and **systematically** scrutinised to ensure that criteria are being consistently applied.
- 2.7 Review/appeal of decisions - the **respondent** may ask for any decision to be reviewed by the **Adjudication Panel**. The **respondent** will also be entitled to appeal. Depending on the nature of the decision made, and who makes it, the appeal may be heard by the **Discipline and Appeals Committee**, the High Court, the First Tier Tribunal or the Upper Chamber (see Table at 3.3.1). In the case of informal, regulatory or disciplinary action taken by **CLC** staff the matter will be referred to their line **manager** or another Director (with no prior involvement in the matter) who will review the decision. All requests for review or appeal must be made within 28 days of the determination.
- 2.8 Decision-makers – all staff with delegated powers and all members of the **Adjudication Panel** and the **Discipline & Appeals Committee** receive training to ensure that decisions are made consistently and to assist in the determination of appropriate sanctions. The Committees are made up of lay members and members of the regulated community.
- 2.9 Matters which may be excluded – Other than in exceptional circumstances, we do not generally investigate these issues:
- Conduct which does not relate to the provision of legal services regulated by the **CLC**;

- Disputes between an employer and employee;
  - Partnership disputes, unless the interests of **clients** are adversely affected or there is a finding of a court or tribunal;
  - Non-payment of fees incurred in the course of providing services regulated by the **CLC**, unless there is a judgment against the regulated person for non-payment relating to their legal practice;
  - Allegations from lending institutions of a failure to hand over deeds or papers to which the lender is entitled, unless the lender has already made a successful application to the court;
  - An isolated report of misconduct from a regulated person about a **licensed conveyancer** or **CLC** body, unless there is an allegation of serious misconduct, or it is made on the instructions of a **client**, or is made to protect the interests of an identifiable **client** who has an interest in the outcome;
  - Allegations of misconduct made more than six months after the alleged misconduct could reasonably have come to light;
  - Where there is a clear alternative legal remedy available which has not yet been pursued.
- Allegations of discrimination or dishonesty are not excluded.

### 3. **Enforcement Tools**

3.1 **Enforcement** can take many forms. The framework for responding to issues of non-compliance varies, depending on the identified risk, from the informal to the application of the **CLC**'s statutory powers.

3.2 Informal/Regulatory Action Approach – delegated powers of **CLC** staff:

<b>Enforcement tool</b>	Authority	Review of Decision
An <b>Undertaking</b> on terms agreed with the <b>CLC</b> to take or cease taking a particular action	<b>CLC</b> staff: Legal Practice Inspector, CLC Authorised Officer  or other <b>CLC</b> employee of equivalent or senior position	<ul style="list-style-type: none"> <li>• Director of Operations</li> <li>• Director of Policy &amp; Standards,</li> </ul> or other <b>CLC</b> employee of equivalent or senior position (provided any review is not determined by an employee who made the determination which is the subject of the review)
Inspection or re-inspection		
Reminder of responsibilities		
Provision of information and advice		

### 3.3 Approach using statutory powers in AJA and LSA

3.3.1 The **CLC** may take a wide range of formal **enforcement** proceedings and (depending on the nature of those proceedings) this may result in one or more of the following for the individual or body (this list is not exhaustive):

<b>Enforcement</b> tool	Statutory Authority	Authority	First Tier Review	Review of decision
<b>Licence</b> terminated	AJA s.18(3)	Lacks mental capacity		No statutory provision
<b>Licence/certificate</b> Revoked	AJA s.26(2)(a)	DAC		High Court
	AJA s.28 fraud or Error	DAC		No statutory provision
	LSA s101	<b>CLC Adjudication Panel</b>	<b>Review Panel</b>	First Tier Tribunal
Intervention	Sch 5 AJA	<b>CLC</b> after consultation with <b>Adjudication Panel</b>		High Court
	Para 10-12 AJA			High Court
	Sch 14 LSA			First Tier Tribunal
Disqualified from holding a <b>licence/</b>	s.26(2)(b) AJA	DAC		High Court

role				
	s.99 LSA	<b>CLC Adjudication Panel</b>	<b>Review Panel</b>	First Tier Tribunal
Divestiture of owner	LSA s.102, Sch. 13	<b>CLC Adjudication Panel</b>	<b>Review Panel</b>	First Tier Tribunal
<b>Licence/Certificate</b> suspended	AJA s.18	immediate on bankruptcy or intervention		No statutory provision
	AJA s.24(5)	IC/Adjudication Panel	DAC	High Court
	AJA s.26(2)(c)	DAC		
	LSA s101	<b>Adjudication Panel</b>	<b>Review Panel</b>	First Tier Tribunal
Withdrawal of approval of <b>HoLP</b> or <b>HoFA</b>	Para 11-12 sch 11 LSA	<b>Adjudication Panel</b>	<b>Review Panel</b>	First Tier Tribunal
<b>Licence/Certificate</b> made subject to <b>conditions</b>	AJA s.15(1) s.16(2) s.17(1)	<b>CLC Staff: CLC Authorised Officer</b>		DAC
	AJA s.26(2)(d)	DAC		High Court
	LSA Sch. 11 (6)	<b>Adjudication Panel</b>	<b>Review Panel</b>	First Tier Tribunal

			<i>Panel</i>	
Payment of a penalty	AJA s.24A(1) and Adjudication Panel Rules 2011	<b>Adjudication Panel</b>	DAC	High Court
	AJA s.26(2)(e) and DAC Rules 2009	DAC		
	LSA s. 95	<b>CLC Authorised Officer/ Adjudication Panel</b>	First Tier Tribunal	Upper Chamber
Reprimand	AJA s.26(2)(f)	DAC		High Court
Payment of the costs of preliminary investigation (to include the costs of any inspection) incurred by the <b>CLC</b>	AJA s.24A(2)	<b>Adjudication Panel</b>	DAC	High Court
	AJA s.26(2A)	DAC		

#### Abbreviations

**AJA – Administration of Justice Act 1985**

**DAC – Discipline and Appeals Committee**

**HoLP – Head of Legal Practice**

**HoFA - Head of Finance & Administration**

**LSA – Legal Services Act 2007**

IC – Investigating Committee

#### **4. Enforcement Process**

- 4.1 Informal approach – in the event of the **CLC** becoming aware that a member of its regulated community may have failed to comply with our standards, we shall carry out an informal inquiry to enable us to decide whether there is a case which requires further investigation. If we are satisfied there is not an issue no action will be taken. If there is judged to be an issue but it is less serious, we will take informal action and offer advice, support and **guidance** to help address the issue.
- 4.2 Regulatory action - If we are satisfied further investigation is required, the support offered has not been accepted, or the individual/body commits relatively minor breaches on a regular basis and fails to respond to our informal resolution approaches, we shall consider whether it is likely that the case can be resolved by regulatory action. We may direct the **licensed conveyancer** or body to provide information to assure us that their regulatory requirements are being complied with. This may be in a written report or may require the **respondent** to attend the **CLC's** offices to explain how the issues identified will be resolved and the steps needed to ensure they do not recur.
- 4.3 Dependent on the circumstances of the individual case, we may take the view that the **Outcomes** can best be delivered by agreeing with the regulated person the terms of an **undertaking** to provide information, to take specific action or to cease taking a specific action. Failure to comply with the **undertaking** will in itself be a breach of the **CLC's regulatory arrangements** which will lead to an investigation, and possibly disciplinary proceedings.
- 4.4 Disciplinary action - disciplinary proceedings may be initiated where steps taken under paragraphs 4.1-4.3 have failed to achieve the intended outcome, or it is not appropriate because of the actual or likely impact on a **client**, or **clients**, or because of the serious nature of the issue. Decisions will be informed by all available, relevant and reliable evidence. Decisions will be based on the application of published guidelines or criteria set out in the Enforcement Policy. The **respondent** will be afforded the opportunity to make oral and/or written representations to the Committee.
- 4.5 The **CLC** may:
- require a regulated entity to provide specific information;
  - authorise an inspection of a body;
  - refer the matter to the CLC Authorised Officer.
- 4.6 Having carried out a preliminary assessment the CLC Authorised Officer may:

- (a) certify that where the **complaint** referred to them is appropriate for summary determination, and in either case giving reasons in writing:
- i) direct that the **respondent** pay a penalty not exceeding £1,000 in respect of each allegation made; or
  - ii) dismiss the **complaint**; or
- (b) refer the case to the **Adjudication Panel**, alternatively to the **Discipline and Appeals Committee** for hearing and determination.

4.7 The **Adjudication Panel** will decide which of the following options is appropriate to the case:

- a) to dismiss the allegation;
- b) to hear and determine the allegation;
- c) for the allegation to be heard by the **Discipline and Appeals Committee** because it is satisfied that the nature of the allegation, if proved, is likely to justify either the imposition of a penalty in excess of £50,000 or some other sanction which the **Adjudication Panel** does not have power to impose.

4.8 If the **Adjudication Panel** decides to determine the case itself it will do so in accordance with its Procedure Rules [\[link\]](#) and will make a determination consistent with its **Guidance** [\[link\]](#). If it is satisfied the allegations have been proved the **Adjudication Panel** may direct:

- the payment of a fine of up to £50,000; and
- costs (which may include costs incurred in the preliminary investigation of the allegation).

4.9 A **respondent** may appeal against a determination of the **Adjudication Panel** to the **Discipline and Appeals Committee**; or where a matter has been referred to it and an allegation has been proved to its satisfaction, the **Discipline and Appeals Committee** may make one or more of the following orders against:

**In the case of an individual Licensed Conveyancer or a Recognised Body,**

4.9.1

- a **licensed conveyancer**:
  - Revoke the **licence** of a **licensed conveyancer**;
  - Disqualify a **licensed conveyancer** from holding a **licence** (either permanently or for a specified period);
  - Suspend a **licence**;

- Direct the issue of a **licence** subject to **conditions** it may specify;
  - Direct the payment of a fine which is fair and proportionate, and does not exceed £1 million;
  - Reprimand the **licensed conveyancer**;
- a **Recognised Body** or sole **practitioner** practice regulated by the **CLC**
    - Revoke the recognition of the entity;
    - Direct the payment of a fine which is fair and proportionate, and does not exceed £1 million;
    - Reprimand the entity;
    - Direct the issue of a **certificate of recognition** subject to **conditions** it may specify;
- a **Manager** or employee who is not a **licensed conveyancer**
    - Direct the payment of fine which is fair and proportionate, not exceeding £1 million;
    - Require the **CLC** to take such steps as it may specify in relation to the **Manager** or employee;
    - Require the **CLC** to refer to an appropriate regulator any matter relating to the conduct of the **Manager** or employee;

4.9.2 The **Discipline and Appeals Committee** may direct the payment of costs by any party to proceedings including the **CLC**. Such costs may include the costs incurred in a preliminary investigation.

4.9.3 A **respondent** may appeal to the High Court against a decision of the **Discipline and Appeals Committee** which may make such order as it thinks fit.

**In the case of Licensed ABS Body, or an employee or manager within, or owner, of the Licensed ABS Body:**

4.9.4 A **CLC Authorised Officer** may in respect of:

- a **Licensed Body** owner:
  - Place **conditions** on the owner's **material interest**;
  - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;



- a **Licensed Body**:
  - Reprimand the body;
  - Direct the issue of a **licence** subject to **conditions** it may specify;
  - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
  
- a **Head of Legal Practice (HoLP)** or **Head of Finance & Administration (HoFA)**:
  - Require the **CLC** to take such steps as it may specify in relation to the **HoLP** or **HoFA**;
  - Withdraw approval of the individual for the role;
  - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
  
- a **manager** or employee:
  - Require the **CLC** to take such steps as it may specify in relation to the **manager** or employee;
  - Require the **CLC** to refer to an appropriate regulator any matter relating to the conduct of the **manager** or employee;
  - Direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
  - Disqualify the individual from a role in a **Licensed Body** .

4.9.5 The **CLC** Adjudication Panel (with a quorum of 3) may in respect of:

- a **Licensed Body** owner:
  - Place **conditions** on the owner's **material interest**;
  - Object to the owner's **material interest**, and initiate the application to the High Court to divest the owner of their **material interest**;
  - Direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
  
- a **Licensed Body**:

- Reprimand the body;
  - Direct the issue of a **licence** subject to **conditions** it may specify;
  - Direct the payment of a fine which is fair and proportionate, not exceeding £150 million;
  - Suspend the **licence** of the body;
  - Revoke the **licence** of the body;
  - Intervene;
- a **Head of Legal Practice (HoLP)** or **Head of Finance & Administration (HoFA)**:
    - Require the **CLC** to take such steps as it may specify in relation to the **HoLP** or **HoFA**;
    - Direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
    - Withdraw approval of the individual for the role;
    - Disqualify the individual from a role within a **Licensed Body**;
- a **manager** or employee:
    - Direct the payment of a fine which is fair and proportionate fine, not exceeding £50 million;
    - Require the **CLC** to take such steps as it may specify in relation to the **manager** or employee;
    - Require the **CLC** to refer to an appropriate regulator any matter relating to the conduct of the **manager** or employee;
    - Disqualify the individual from a role in the **Licensed Body**.

4.9.6 Any determination made by the CLC Authorised Officer may be reviewed by the Adjudication Panel and then appealed to the First Tier Tribunal. Any determination made by the Adjudication Panel may be reviewed by the Review Panel and then appealed to the First Tier Tribunal. The CLC or the **respondent** may appeal against a determination of the First Tier Tribunal to the Upper Chamber on a point of law.

## 5. Publication

5.1 Publication of investigation **outcomes** – the **CLC** will publish the statistics mapping the outcome of investigations so that the levels of compliance in the regulated community can be understood.

- 5.2 Publication of determinations - publishing the **enforcement** action we have taken acts as an incentive for the regulated community to apply the **professional principles** outlined in the **Code of Conduct**. It also provides the public with confidence that the regulatory activities of the **CLC** are responsive and proportionate.
- 5.3 We will publish details of the final determinations of both the **Adjudication Panel** (or the **Review Panel**) and the **Discipline and Appeals Committee** where there has been found a case to answer and an appeal has not been made within the 28 days or has not been successful. The **respondent** will be named where a penalty exceeds £5000 or an individual has been disqualified or our approval of them withdrawn, or a **licence** has been suspended or revoked. We will not publish determinations concluding no case to answer, unless the individual/body has asked for it to be published. In exceptional circumstances we may publish details of the progress of an investigation which has given rise to significant public concern.
- 5.4 The **CLC** is registered as a data controller under the Data Protection Act 1998 and must comply with the rules of good information handling.

## 6. Equalities Considerations

- 6.1 It is our intention that the application of this policy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation. Members of the regulated community subject to **CLC enforcement** action are asked to advise the **CLC** of any **specific requirements** they have which need to be taken into consideration. These will be accommodated as far as is reasonably practicable and on a case-by-case basis.
- 6.2 The **CLC** will monitor its **enforcement** action to ensure there is no disproportionate impact on any sections of the regulated community.

## 7. Policy Consultation, Review & Evaluation

- 7.1 The **CLC** will carry out an investigation in accordance with its **complaints** policy into any **complaint** received from an individual or body about the way in which the **CLC** has exercised its functions in relation to that individual or body (except where a referral is or has been made to the **Adjudication Panel**, the **Review Panel** or to the **Discipline and Appeals Committee** due to the options of review/appeal applicable).
- 7.2 This policy was agreed by the Council and came into effect [date TBA]. We shall consult with stakeholders to evaluate its effectiveness within 2 years of its initial

application. Where the policy is failing to generate the relevant **outcomes** - identified in the **Code of Conduct** it will be amended as appropriate. In the meantime, we welcome any feedback on the policy's content, implementation and effectiveness.

- 7.3 This policy is available for reference and downloading from the **CLC** website. A copy of the policy will be available to all those involved in disciplinary enquiries and proceedings.



Council for  
**Licensed  
Conveyancers**

***Compensation Fund***  
**Operating Framework**

**Contributions**

1. As a condition of being authorised by the **CLC**, a body must make a contribution to the **CLC Compensation Fund** at such time and of such an amount as determined by the **CLC**. The **CLC** may require a body to make a further contribution towards the Fund at any time.
2. In its absolute discretion the **CLC** may agree that a contribution to the Fund is paid by instalments which become immediately payable on the date specified by the **CLC**. If any instalment is not paid by the due date the balance of contributions the body owes will be recoverable as a debt owed to the **CLC**.

**Purpose of the Fund**

3. The **CLC** shall place the money constituting the Fund in a **separate designated account** entitled "Council for **Licensed Conveyancers' Compensation Fund**".
4. As trustee the **CLC** may:-
  - (a) invest the money constituting the Fund in such a manner as it thinks fit;
  - (b) borrow for the purposes of the Fund, and may charge any investments of the Fund by way of security for such a loan;
  - (c) take out insurance with **Authorised Insurers** for such purposes and on such terms as it deems appropriate to the Fund.
5. The Fund will be credited with:-
  - (a) all contributions paid to the **CLC**;
  - (b) all interest, dividends and other income and accretions of capital arising;
  - (c) the proceeds of any realisation of the investments of the Fund;

- (d) all money borrowed for the purposes of the Fund;
  - (e) all money recovered by the **CLC** either directly or following the assignment to the **CLC** of the rights of any **Claimant**;
  - (f) all recoveries under any insurance policy effected by the **CLC**;
  - (g) any other money which may belong to or accrue to the Fund or be received by the **CLC** in respect of the Fund.
6. All of the Fund's money and investments are applicable for:-
- (a) payment of costs of establishing, maintaining, administering, protecting and applying the Fund;
  - (b) payment of any **CLC** insurance premiums or any premium relating to run off cover following the closure of a body;
  - (c) the purpose of settling any **claim** in respect of **CLC** insurance or any other **claim** relating to run off cover following the closure of a body;
  - (d) repayment of any money borrowed by the **CLC** for the purposes of the Fund, for payment of interest on any money so borrowed, and for reimbursing the **CLC** for any costs incurred in that respect;
  - (e) making grants or other payments the **CLC** determines should be paid out of the Fund;
  - (f) the refund of contributions to a body which ceases to be regulated by the **CLC** (the **CLC** may at its discretion refund a proportion of a contribution made in respect of any unexpired period).
7. Where it has passed a resolution under paragraph 6 schedule 5 to the **1985 Act** the **CLC** may credit to the Fund any sum vested in it as a result of the passing of such a resolution.
8. Where it has passed a resolution under paragraph 6A schedule 5 to the **1985 Act** the **CLC** may credit to the Fund any sum vested in it under paragraph 6A(3) of schedule 5 to the **1985 Act**.
9. If the **Rightful Recipient** contacts the **CLC** after a credit has been made to the Fund under a resolution the **CLC** will treat the **Rightful Recipient** as a **Claimant** and invite them to make a **claim** under this Code out of the Fund.

### **Making a Compensation Claim**

10. The **CLC** may in its absolute discretion make a grant or other payment out of the Fund for the purpose of relieving or mitigating loss which the CLC is satisfied any person has suffered or is likely to suffer in consequence of:
  - a) negligence or fraud or other dishonesty on the part of a **licensed conveyancer**, or their employees or **associates** in connection with their practices (or purported practices) as **licensed conveyancers**; or
  - b) failure on the part of a **licensed conveyancer** to account for money received by them in connection with their practices (or purported practices) as **licensed conveyancers**;
  - c) the negligence, fraud or other dishonesty on the part of a body or  
of any employee, **associate** (within the meaning of section 39(1) of the **1985 Act**) of it in connection with its practice (or purported practice) as a **CLC** body;
  - d) the failure on the part of a body to account for money received by it in connection with its practice (or purported practice) as a **CLC** body.
11. Where making a **claim** for a grant the **Claimant** must complete, sign and deliver to the **CLC** a notice of **claim** in the form required by the **CLC**. Such notice shall provide for:-
  - a) the assignment to the **CLC** of all rights of action the **Claimant** has against the **Respondent Body** or any other person liable for the loss;
  - b) retention by the Fund of all money recovered by the **CLC** whether or not in excess of any grant made by the **CLC** to the **Claimant** after deduction of the Costs incurred by the **CLC** in making such recoveries;
  - c) the **Claimant** to covenant to do all such further things and produce such documents as may be required by the **CLC** for the purpose of pursuing any **claim** against the **Respondent Body** or any other person liable for the loss;
12. The **Claimant** must deliver the **claim** to the **CLC** within 6 months (or such longer period as the **CLC** may allow in a particular case) after the loss or likelihood of loss first came or should reasonably have come to their attention.
13. The **Claimant** must deliver any subsequent **claim** to the **CLC** within 56 days of the making of the grant (or the date of receipt of notification by the **CLC** that no further grant is to be made beyond that made by way of interim grant or grants).
14. On receipt of a **claim** the **CLC** may require the **Claimant** to:-
  - a) support their **claim** with a statutory declaration;

- (b) produce any relevant documents; and
  - (c) assist with any enquiries the **CLC** thinks fit to pursue.
15. Where a grant has been made and they wish to seek an additional grant in respect of interest or costs, the **Claimant** must submit a notice of **claim**. A **claim** for both interest and Costs may be made in a single application.
16. The **CLC** may in its absolute discretion waive any requirement under requirements 9, 14 and 15.

#### **Determining Claims**

17. Without limiting its absolute discretion the **CLC** may take into account when deciding whether a **claim** for a grant should be paid in full, reduced or rejected:-
- (a) whether the **Claimant** has complied with 12-13, and if appropriate, 14;
  - (b) whether sufficient information has been provided in a reasonable timescale in support of the **claim**;
  - (c) whether the **Claimant**: -
    - (i) has any responsibility for the loss, or
    - (ii) directly or indirectly hoped to profit or did profit, whether wholly or otherwise, from the circumstances giving rise to the loss;
  - (d) whether the **Claimant** is protected in respect of their loss by any other scheme or any contract of insurance or indemnity or guarantee;
  - (e) whether the **Claimant** has recovered damages or compensation in respect of the loss which had been suffered including any interest recovered as a result of any available civil remedy or in criminal proceedings or is likely to make such recovery in the future;
  - (f) the assets available to the Fund;
  - (g) any representations made to the **CLC** by the **Respondent Body**, their personal representative, trustee in bankruptcy or the liquidator of the body;
  - (h) whether any statutory limitation period has expired;
  - (i) whether the **Claimant** has taken all reasonable steps to mitigate loss;
  - (j) whether the **claim** has been exaggerated by the **Claimant**;



- (k) whether the **CLC** has reason to suspect fraud or other dishonesty on the part of the **Claimant** in respect of the loss or in respect of the **claim**.
- 18. The **CLC** may make interim or final payments by way of a grant or grants at any time before, during or after an investigation of a **claim** against a **Respondent Body**. It will only do so when it is satisfied that the payment falls within the circumstances for which a grant may be made under this Code.
- 19. The **CLC** will consider such a **claim** in its absolute discretion may make an additional grant or grants out of the Fund under this provision as follows:
  - (a) in lieu of interest on the amount of a grant for such a period and at such rate as determined at the **CLC**'s discretion;
  - (b) a sum in respect of the amount of reasonable costs incurred by making a **claim** wholly and exclusively in connection with the preparation, submission and proof of a **claim**.
- 20. The **CLC** may before deciding whether or not to make a grant require a **Claimant** to pursue any civil remedy which may be available in respect of the loss.
- 21. Where the **CLC** refuses to make a grant of either the whole or part of the amount claimed the **CLC** shall inform the **Claimant** in writing of the reason for its decision within 28 days of that decision.

#### **Recovery of monies paid out of the Fund**

- 22. The **CLC** shall not make a grant unless it has caused a letter giving notification of the **claim** or additional **claim** to be sent to the **Respondent Body** at the last known correspondence address or to any solicitor or other representative instructed by the **Respondent Body** or appointed on its behalf or in its stead and in any case not less than 8 days have elapsed since the date of such letter.
- 23. The **CLC** may take proceedings against the **Respondent Body** to recover the amount of any grant or other payment made in consequence of the act or omission of that **Respondent Body** in accordance with this Code:
  - (a) provided no other civil proceedings for recovery in respect of the same cause of action have already been issued;
  - (b) even if it is not possible to obtain an assignment of the cause of action from or on behalf of the **Claimant**.
- 24. The **CLC** may in its absolute discretion take proceedings against a **Manager** or former **Manager** of a **Respondent Body** to recover the amount of any grant or other payment made in accordance with this Code.

25. Any sum payable as a result of proceedings taken against a body, **Manager** or former **Manager** is recoverable as a debt owed to the **CLC**.



## ***Continuing Professional Development Framework***

### **CLC General CPD Provisions**

Set out below is the framework the **CLC** complies with in ***Continuing Professional Development (CPD)*** provisions. These are provided to inform the regulated community of the parameters the **CLC** operates within to ensure providers of legal services continue year on year to develop their professional knowledge and competency.

1. The **CLC** may issue a ***licence*** subject to ***conditions*** where the ***applicant*** fails to comply with requirements 8 to 11 of the ***Continuing Professional Development Code***.
2. The minimum requirements of continuing education and training in recognised courses are:
  - for a licensed conveyancer ***manager*** in each year in which a ***licence*** is held:
    - 12 hours if they hold only a ***conveyancing licence***
    - 16 hours if they hold a ***probate, litigation and/or advocacy licence*** in addition to a ***conveyancing licence*** ;
  - for a licensed conveyancer, other than a ***manager***, in each year in which a ***licence*** is held:
    - 6 hours if they hold only a ***conveyancing licence***
    - 8 hours if they hold a ***probate, litigation and/or advocacy licence*** in addition to a ***conveyancing licence*** ;
3. On application the **CLC** may, where satisfied that the licensed conveyancer concerned has undertaken sufficient ***continuing professional development*** in the current year, vary the operation of the ***CPD Code*** in such ways as it thinks fit.
4. The CLC has power to approve courses of study provided by educational institutions and other bodies.

5. The **CLC** may provide its own courses of study for the purposes of the **CPD** framework and Code and may prescribe and charge a fee where a person is directed to attend or applies to attend or undertake such a course.
6. The **CLC** may direct an individual to attend (and pay for) a specific course as an alternative to disciplinary action if it is satisfied they have failed to a material extent to comply with the **CLC's Code of Conduct**, even if they have at that time satisfied the provisions of paragraph 2 for the current year.
7. **Continuing Professional Development** requirements will be allocated to each **licence** in order that the **CLC** is confident that training relevant to the licence is acquired.
8. The **CLC** will undertake monitoring of the quality of **CPD** provision through a randomised annual audit of a statistically significant number of course suppliers.
9. Licence holders are required to annually submit a self-certification **CPD** form. These will be monitored with a view to ensuring compliance. This monitoring will help inform our risk assessment of the individual/body. The **CLC** will operate an escalating system of sanctions; persistent flouting of the **CPD** requirements may result in conditions being imposed upon the **licence** or even *licence* revocation.



Council for  
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***CLC Professional Indemnity Insurance  
Operating Framework***

1. The **CLC**'s requirement for all **CLC** regulated bodies to have **professional indemnity insurance** cover in place at all times - whether through the **CLC**'s **Master Policy** or through another policy it has approved - provides protection to both **CLC** bodies and their **Clients**.
2. The **CLC** is authorised to take out and maintain with **Authorised Insurers** a **Master Policy** and to approve schemes of **professional indemnity insurance** offered by other **Authorised Insurers**. It requires **Authorised Insurers** to issue of **Evidence of Insurance** to the bodies who have **professional indemnity insurance** cover in place with them.
3. The **CLC** is entitled in respect of each **CLC** regulated body to:
  - a) exchange information concerning **claims** with the **Authorised Insurers**, their representatives or the **Brokers**;
  - b) require **Authorised Insurers**, their representatives or the **Brokers** to deliver to the **CLC** details of the turnover declared;
  - c) receive any notification from the **Authorised Insurers** or the **Brokers** in accordance with requirement 10.5 of the Professional Indemnity Code.



### CLC Regulatory Arrangements - Glossary of Terms

<b>1985 Act (AJA)</b>	the Administration of Justice Act 1985 which created the <b>CLC</b> and provided it with its powers to regulate <b>licensed conveyancers</b>
<b>1990 Act (CLSA)</b>	the Courts & Legal Services Act 1990 which amended parts of the 1985 Act and entitles the <b>CLC</b> to apply to regulate <b>probate, litigation</b> and <b>advocacy</b> services in addition to <b>conveyancing services</b>
<b>2007 Act (LSA)</b>	the Legal Services Act 2007 which created the <b>Legal Services Board</b> , the Office for Legal Complaints (Legal Ombudsman), authorised <b>Approved Regulators</b> to regulate Authorised Persons and enabled the development of new forms of legal practice known as <b>Alternative Business Structures</b> and the licensing of these bodies by <b>Licensing Authorities</b>
<b>Access to Justice</b>	the recognition of, and response to, potential and actual, consumer needs. This may take the form of provision of a greater range of services and methods of accessing these services, lower prices, extended opening hours, accessibility, online provision, or other factors
<b>Accounting Records</b>	includes all documents or records on a <b>Durable Medium</b> necessary for the operation of any system of book-keeping
<b>Accounting Period</b>	the period for which the accounts of the <b>CLC Body</b> are ordinarily made up, provided however that it must begin at the end of the previous Accounting Period and cover twelve months (except with the prior written consent of the <b>CLC</b> )
<b>Accountant's Report</b>	a report signed by the <b>Reporting Accountant</b> in such form as determined by the <b>CLC</b> relating to <b>Client Money</b> held or

	received by each body in respect of each <b>Accounting Period</b>
<b>Adjudication Panel</b>	<p>established</p> <ul style="list-style-type: none"> <li>• in relation to make determinations relating to <b>Licensed Bodies</b> and relating to owners, <b>Managers</b> and employees of <b>Licensed Bodies</b>;</li> <li>• to determine applications for review in relation to regulatory and enforcement decisions made by a <b>CLC Authorised Officer</b> save for those appeals which are reserved to the <b>Discipline and Appeals Committee</b>;</li> <li>• to determine allegations of misconduct referred to it.</li> </ul>
<b>Advocacy</b>	referred to at schedule 2 of <b>the 2007 Act</b> as rights of audience and includes the right to appear before and address a court, including the right to call and examine witnesses
<b>Advocacy Licence</b>	a <b>licence</b> issued by the <b>CLC</b> to provide <b>advocacy services</b>
<b>Aged Balance</b>	<p>(a) a sum outstanding to the credit of an individual ledger account;</p> <p>(b) where there has been completion of a legal transaction or it has become abortive; and</p> <p>(c) there has been no movement on the account for a period in excess of 12 months except for monies held in accordance with the terms of an <b>undertaking</b> (in which case the 12 month period will begin from the date on which such monies are released)</p>
<b>Alternative Business Structure (ABS)</b>	a body which provides legal services to the public and in which a non-lawyer is a <b>manager</b> and/or owner as provided at s.72 of the <b>2007 Act</b> ; for licensing purposes these bodies are referred to as <b>Licensed (ABS) Bodies</b> .
<b>Alternative Business Structures (Procedure) Rules</b>	
<b>Anti Money Laundering Legislation and Combating the Financing of Terrorism</b>	<p>legislation directed to the prevention of Money Laundering and Combating the Financing of Terrorism , and in particular, the:</p> <ul style="list-style-type: none"> <li>• Proceeds of Crime Act 2002 (as amended);</li> <li>• Terrorism Act 2000 (as amended); and</li> <li>• Money Laundering Regulations 2007 - SI 2007/2157</li> </ul>

<b>Legislation</b>	(the ML Regulations)
<b>Applicant</b>	<p>as determined by the particular context:</p> <ul style="list-style-type: none"> <li>• any person who intends to apply, or is currently applying, for registration as a <b>CLC</b> student or for a <b>CLC Licence</b>;</li> <li>• a body which intends to apply, or is currently applying, for registration as a <b>CLC Recognised Body</b>;</li> <li>• a body which intends to apply, or is currently applying, for a <b>Licensed Body (ABS) licence</b></li> </ul>
<b>Approved Person</b>	<p>under the Accounts Code this means a:</p> <ul style="list-style-type: none"> <li>• <b>an Authorised Person</b>; or</li> <li>• provided the <b>CLC Body</b> is in compliance with 9.1.4 of the Accounts Code, any other appropriately skilled, trained and competent person of integrity who has been authorized on <b>Durable Medium</b> by the <b>CLC Body</b>.</li> </ul>
<b>Approved Regulator</b>	<p>as defined at s.20 of the <b>2007 Act</b>: the <b>CLC</b>, the Law Society, the General Council of the Bar, the Master of Faculties, the Institute of Legal Executives, the Chartered Institute of Patent Attorneys, the Institute of Trade Mark Attorneys, the Association of Law Costs Draftsmen, the Institute of Chartered Accountants in Scotland, the Association of Chartered Certified Accountants and any such other bodies as are authorised to regulate providers of <b>Reserved Legal Activities</b></p>
<b>Arrangements</b>	<p>methods of organisation including systems, procedures, controls, functions, roles, and processes</p>
<b>Articles</b>	<p>prescribes a <b>company's</b> regulations: setting out the relationships between shareholders and directors of the <b>company</b> as required by s.18 of the Companies Act 2006</p>
<b>Associate</b>	<p>under the Licensed (<b>ABS</b>) Body Framework 'associate' in relation to a Non-<b>Authorised Person</b> with a <b>material interest</b> with: –</p> <ul style="list-style-type: none"> <li>• a shareholding in a body; or</li> <li>• an entitlement to exercise or control the exercise of voting power in a body, means: <ul style="list-style-type: none"> <li>a) their spouse or civil partner;</li> <li>b) their child or step-child (if under 18 years of age);</li> <li>c) the trustee of a settlement* under which they have a life interest in possession;</li> </ul> </li> </ul>



	<p>d) an undertaking of which they are a Director;</p> <p>e) an employee;</p> <p>f) a partner (except where the shareholding or entitlement is a partnership in which the non-<b>Authorised Person</b> is a partner, another partner);</p> <p>g) if ‘the person’ means an undertaking – a director, a subsidiary undertaking (or a director or employee of it);</p> <p>h) a person they have agreement or arrangement with respects to the acquisition, holding or disposal of shares or other interests;</p> <p>i) a person they have agreement or arrangement with under which they undertake to act together in exercising their voting power (in relation to a body which does not have general meetings at which matters are decided by the exercise of voting rights this refers to the right under the body’s constitution to direct overall policy/alter its constitution);</p> <p>with 3% or more <b>material interest</b>.</p> <p>By ‘settlement’* we mean any disposition or arrangement under which property is held on trust (or a comparable obligation).</p>
<b>Authorisations (licence)</b>	specify the <b>reserved legal activities</b> which a body is authorised by the <b>CLC</b> to provide
<b>Authorised Insurers</b>	<p>has the meaning given by s. 21(5) of the <b>1985 Act</b> or s. 64(5) of the <b>2007 Act</b>:-</p> <p>a) a person who has permission under Part 4 of the <b>Financial Services and Markets Act 2000</b> (c.8) to effect or carry out contracts of insurance of a relevant class;</p> <p>b) a European Economic Area (EEA) firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or</p> <p>c) a person who does not fall within paragraph (a) or (b) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member State other than the United Kingdom</p>
<b>(CLC) Authorised Officer</b>	the Licensing and Casework Manager employed by the <b>CLC</b> , or

	another officer of the <b>CLC</b> of equivalent or senior status
<b>Authorised Person(s) /Parties</b>	a person authorised by an <b>Approved Regulator</b> to <b>carry on reserved legal activities</b> e.g: <ul style="list-style-type: none"> <li>○ a <b>licensed conveyancer</b>;</li> <li>○ a solicitor;</li> <li>○ a Fellow of the Institute of Legal Executives</li> </ul>
<b>FSMA Authorised Person</b>	arrangers or sellers of insurance products regulated by the Financial Services Authority
<b>Bank</b>	an institution, body, financial intermediary, or financial institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits
<b>Beneficial Owner</b>	the individual or <b>company</b> which has all the benefits and entitlements of a legal owner, even if not named or registered as the legal owner
<b>Brokers</b>	under the <b>Professional Indemnity Insurance</b> Code and Operating Frameworks this refers to the agent who sources the contract of insurance for the <b>CLC's Master Policy</b>
<b>Building Society</b>	a branch situated in England and Wales of a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986
<b>Candidate</b>	<ul style="list-style-type: none"> <li>• under the Student Training Framework this refers to a student registered with the <b>CLC</b> who sits or intends to sit a <b>CLC</b> Qualifying Examination.</li> <li>• under the <b>Licensed Body</b> Code and Licensing Framework this refers to persons nominated by the licensable <b>ABS</b> body to assume the role of the <b>Head of Legal Practice</b> or <b>Head of Finance and Administration</b>.</li> </ul>
<b>Carrying on (a Reserved Legal Activity)</b>	under the <b>Code of Conduct</b> this means that <b>Authorised Persons</b> must personally carry out or supervise the <b>Reserved Legal Activity</b> provided
<b>Certificate of Recognition</b>	a certificate issued by the <b>CLC</b> to a body corporate recognising it as a <b>Recognised Body</b> - under s.32 of the <b>1985 Act</b> - suitable to undertake the provision of <b>Regulated Services</b> authorised by the <b>CLC</b>
<b>Claim</b>	under the <b>Professional Indemnity Insurance</b> Code and Operating Framework and <b>Compensation Fund</b> , unless otherwise stated, this means a request of payment due under the terms of a <b>professional indemnity insurance</b> policy

	(including the <b>CLC's Master Policy</b> ) or the <b>CLC's Compensation Fund</b>
<b>Claimant</b>	under the <b>Compensation Fund</b> Operating Framework this means any person making a <b>claim</b> for payment of a grant from the <b>CLC's Compensation Fund</b> and includes <ul style="list-style-type: none"> <li>• the personal representative where the person entitled to make a <b>claim</b> Claimant has died, or</li> <li>• the trustee in bankruptcy where the person entitled to make a <b>claim</b> has been made bankrupt</li> </ul>
<b>(the) CLC</b>	the Council for <b>Licensed Conveyancers</b> established under s.12 of the <b>1985 Act</b>
<b>Client</b>	any person or persons for whom a <b>Licensed Conveyancer</b> or <b>Body</b> acts in the provision of <b>Regulated Services</b> , this may also include a person or persons who/which may seek the provisions of <b>Regulated Services</b>
<b>Client Account</b>	a current or deposit account (but not a share account) at a branch (or the head office) located in England or Wales of a <b>Building Society</b> or <b>Bank</b> in each case in the name of the <b>CLC</b> regulated body and in the title of which account the word ' <b>Client</b> ' appears
<b>Client Money/Monies</b>	any money held or received for a <b>Client</b> by a <b>CLC</b> regulated person or body incidental to the provision of legal services regulated by the <b>CLC</b>
<b>Code of Conduct/CoC</b>	the parent document of our <b>regulatory arrangements</b> , outlining the <b>Overriding Principles</b> which the regulated community must comply with and the <b>Outcomes</b> which they must deliver
<b>Communications</b>	unless otherwise specified, communications sent by or on behalf of a <b>CLC</b> regulated individual or body by post, a telecommunication system or by other means whilst in an electronic form
<b>Complaint</b>	an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or detriment
<b>Company</b>	has the meaning given by s.735(1) of the Companies Act 1985

<b>Compensation Fund</b>	as set out at s.21(2) of the <b>1985 Act</b> , the fund out of which grants and other payments are made by the <b>CLC</b> for the purposes of relieving or mitigating losses incurred by persons in consequence of the negligence, fraud or other dishonesty, or failure to account, on the part of a <b>CLC Body</b>
<b>Composite licence</b>	authorisations on a licensed conveyancer's licence which give authority to the regulated individual to carry on additional reserved legal activities
<b>Condition (licence)</b>	where a risk is identified to the regulatory <b>outcomes</b> a <b>condition</b> is imposed on a <b>licence</b> to eliminate that risk or reduce it to an acceptable level
<b>Conflict(s) of Interest</b>	situation in which an individual or body has an interest, or a party they are representing has such an interest, sufficient to appear to influence the objective exercise of their regulatory responsibilities, in particular the separate duties to act in the best interests of two or more <b>clients</b> in relation to the same or related matters
<b>Continuing Professional Development</b>	the means by which members of the regulated community maintain, improve and broaden their knowledge and skills, keeping themselves up to date with the latest development in the profession and its markets and so enabling them to meet their full potential and provide <b>Clients</b> with high levels of service
<b>Control (of an entity)</b>	the strategic management, risk management, accounting and financial controls (including supervisory and audit functions) and from which services which consist of or include the <b>carrying on of reserved legal activities</b> are provided
<b>Controls</b>	strategic management, risk management, accounting and financial arrangements (including supervisory and audit functions) which eliminate or reduce to acceptable levels risks to positive <b>Outcomes</b>
<b>Conveyancing Licence</b>	a <b>licence</b> issued by the <b>CLC</b> to provide <b>conveyancing services</b>
<b>Conveyancing (Services)</b>	as defined at s.11(3) of the <b>1985 Act</b> , includes 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
<b>Costs</b>	<p>in relation to costs to <b>Clients</b> this includes fees, charges, expenses and remuneration charged to the <b>Client</b> by the <b>CLC</b> regulated person or body and any Value Added Tax element</p> <p>includes fees as defined by s.39(1) of the <b>1985 Act</b> - “fees” includes charges, <b>disbursements</b>, expenses and remuneration</p>
<b>Customer Due Diligence (CDD)</b>	<p>includes all of:</p> <ul style="list-style-type: none"> <li>o “<b>Customer Due Diligence</b> measures” (as defined by regulation 5 ML Regulations);</li> <li>o “Ongoing Monitoring” (as defined by Regulation 8(2) ML Regulations);</li> <li>o “Enhanced <b>Customer Due Diligence</b> measures” (as described in regulation 14 ML Regulations);</li> <li>o “Enhanced Ongoing Monitoring” (as referred to in regulation 14 ML Regulations)</li> </ul>
<b>Disbursements</b>	any payment made, or for which a liability to pay has been incurred, by a <b>CLC</b> regulated individual or body to a third party on behalf of a <b>Client</b> ; <b>disbursements</b> are deemed to include: stamp duty land tax; Land Registry fees; <b>Local Authority</b> and any other applicable search fees
<b>Discipline and Appeals Committee (DAC)</b>	committee established under s.25 of the <b>1985 Act</b> to hear and determine appeals and cases referred to it by the <b>Adjudication Panel</b>
<b>Divestiture</b>	the procedure set out at Part 5 schedule 13 of the <b>2007 Act</b> by which the <b>CLC</b> may apply to the High Court for an order for sale of all or some of the shares held by the holder of a <b>material interest</b> in a <b>CLC Licensed Body</b> who is not an <b>authorised person</b>
<b>Durable Medium</b>	the method by which information is stored in a way accessible for future reference (for no less than the period prescribed by the <b>CLC</b> ) and which allows the unchanged reproduction of the information stored

<b>Employee</b>	(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
<b>Enforcement</b>	action taken by the <b>CLC</b> in response to a <b>CLC</b> regulated individual or body acting in breach of its regulatory responsibilities
<b>Equalities Legislation</b>	the Equality Act 2010 and any other relevant legislation such as the Human Rights Act 1998
<b>European Lawyer</b>	a <b>European Lawyer</b> as defined in the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000 No 1119) who is not an <b>Authorised Person</b>
<b>EU Home Professional Rules</b>	The professional rules which authorise the <b>European Lawyer</b> and the <b>EU body</b> of which the <b>European Lawyer</b> is a <b>Manager</b> to practise in a state within the European Union (but not England and Wales)
<b>EU Body</b>	an entity providing <b>reserved legal activities</b> in respect of which <b>Control</b> is maintained from a permanent fixed address within the European Union (but outside England and Wales)
<b>EU Professional Cover</b>	professional indemnity cover provided to the <b>EU Body</b> in accordance with its <b>EU Home Professional Rules</b> which the <b>CLC</b> is satisfied is in all respects equivalent in its conditions and extent to that which would be provided under the <b>CLC Master Policy</b>
<b>EU Professional Cover – Partial</b>	professional indemnity cover provided to the <b>EU Body</b> in accordance with its <b>EU Home Professional Rules</b> which the <b>CLC</b> is satisfied is only partially equivalent in its conditions and extent to that which would be provided under the <b>CLC Master Policy</b> (and is likely to require a <b>Supplemental Policy</b> to accompany it)
<b>Evidence of Insurance</b>	evidence that the insured individual or body has appropriate <b>PII</b> cover
<b>Example Approach/Policy/Procedure</b>	<b>guidance</b> documents sometimes provide a possible route to the positive <b>outcomes</b> sought, but importantly are not the only route; if a member of the regulated community is able to generate the same or better <b>outcomes</b> another way they are

	encouraged to do so
<b>Exempt Person – FSMA</b>	as defined in s.417(1) <b>FSMA</b> , in relation to a Regulated Activity, a person who is exempt from the <b>General Prohibition</b> in respect of that activity
<b>Exempt Person – LSA</b>	as defined in Schedule 3 and paragraph 13 and 18 of Schedule 5 of the LSA, a person who is exempt from being an <b>Authorised Person</b> in relation to a reserved legal activity
<b>Fit &amp; Proper Person</b>	the <b>CLC</b> requires that all: <ul style="list-style-type: none"> <li>• <b>applicants;</b></li> <li>• <b>authorised persons;</b></li> <li>• owners or <b>managers</b> of an <b>Alternative Business Structure;</b></li> </ul> are able to demonstrate that they are suitable for the role for which they are applying, this includes a fit and proper test to determine their probity and financial history.
<b>Financial Services and Markets Act 2000 (FSMA)</b>	the statute which provides the framework within which the regulator for the financial services industry, the Financial Services Authority, operates
<b>General Prohibition</b>	the prohibition imposed by s.19 of the FSMA which states that no person may <b>carry on a Regulated Activity</b> in the United Kingdom, or purport to do so, unless he is (a) an <b>Authorised Person</b> ; or (b) an <b>Exempt Person</b>
<b>Guidance</b>	many of our regulatory Codes are underpinned by <b>guidance</b> which identify considerations to be borne in mind when seeking to deliver the identified <b>outcomes</b> ; the <b>guidance</b> provided is not mandatory
<b>Head of Finance &amp; Administration (HoFA)</b>	the <b>manager</b> in a <b>Licensed Body (ABS)</b> designated responsible for the body complying with their accounts responsibilities as set out in our <b>regulatory arrangements</b> ; the individual does not have to be an <b>Authorised Person</b>
<b>Head of Legal Practice (HoLP)</b>	the <b>manager</b> in a <b>Licensed Body (ABS)</b> designated responsible for the body complying with its responsibilities as set out in our <b>regulatory arrangements</b> ; the individual must be an <b>Authorised Person</b>

<b>Improper influence</b>	when a person – usually the owner - attempts to influence the decisions of the Licensed ( <b>ABS</b> ) Body or the conduct of <b>Authorised Persons</b> in a way which would constitute a breach of licensing requirements and of regulatory duties
<b>Insolvency (event)</b>	<ul style="list-style-type: none"> <li>(a) resolution for a voluntary winding up of the body is passed without a solvency declaration (under s.89 of the Insolvency Act 1986);</li> <li>(b) the body enters administration under the meaning of Schedule B1, para 1(2)(6) of that Act;</li> <li>(c) an administrative receiver within s.251 of that Act is appointed;</li> <li>(d) a meeting of creditors – which has the effect of converting a members’ voluntary winding up into a creditor’s voluntary winding up – is held in relation to the body under s.95 of that Act;</li> <li>(e) an order winding up the body is made.</li> </ul>
<b>Insurance Intermediaries Register</b>	the record maintained by the Financial Services Authority under s.347 FSMA
<b>Insurance Mediation Activities</b>	the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim
<b>Insurance Mediation Directive (IMD)</b>	Directive No 2002/92/EU
<b>Intended licence</b>	under the Student Training Framework this means the licence that an applicant is intending to train to acquire: <ul style="list-style-type: none"> <li>a. a <b>conveyancing licence</b>; and/or</li> <li>b. a <b>probate licence</b>; and/or</li> <li>c. a <b>litigation licence</b>; and/or</li> <li>d. an <b>advocacy licence</b></li> </ul>
<b>Intervention</b>	a legal process whereby an agent is appointed to organise the formal closure of the business
<b>Legal Activity/Activities</b>	as defined at s.12 of the <b>2007 Act</b> summarised as follows: <ul style="list-style-type: none"> <li>(a) a reserved legal activity, and</li> <li>(b) any other activity which consists of one or both of the</li> </ul>



	<p>following—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes</li> </ul>
<b>Legal Ombudsman</b>	the independent <b>complaints</b> -handling body to which <b>clients</b> must be signposted; the Ombudsman will deal with service-related <b>complaints</b> , referring conduct-related <b>complaints</b> it receives regarding our regulated community to the <b>CLC</b>
<b>Legal Services Board/LSB</b>	the oversight body which supervises <b>Approved Regulators'</b> and Licensing Authorities' regulation of <b>legal activities</b>
<b>Licence</b>	a <b>licence</b> to practise as a <b>Licensed Conveyancer</b> issued by the <b>CLC</b> under Part II of the <b>1985 Act</b> (and includes where the context permits a <b>conveyancing licence</b> , a <b>probate licence</b> , a <b>litigation licence</b> and an <b>advocacy licence</b> )
<b>Licence Authorisations, Conditions, Permissions and Terms</b>	please see <b>authorisation, conditions, permissions</b> and <b>terms</b>
<b>Licensable Body</b>	a body which could apply, or has applied, to the <b>CLC</b> to become a Licensed ( <b>ABS</b> ) Body
<b>Licensed Body/Bodies</b>	An <b>Alternative Business Structure</b> licensed by the <b>CLC</b>
<b>Licensed Conveyancer</b>	a person who holds a <b>Licence</b> issued by the <b>CLC</b> to provide conveyancing and other legal services regulated by the <b>CLC</b>
<b>Licensing Authority</b>	as defined at s.73 of the <b>2007 Act</b> , an <b>approved regulator</b> which is designated as a licensing authority under Part 1 of Schedule 10 and whose licensing rules are approved to license and regulate <b>Alternative Business Structures</b>
<b>Limited Liability Partnership/LLP</b>	a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000, recognised by the <b>CLC</b> under s.32 of the <b>1985 Act</b> to provider <b>Reserved legal activities</b>
<b>Litigation</b>	referred at Schedule 2 of the <b>2007 Act</b> , as the "conduct of litigation" and includes:

	<p>(a) the issuing of proceedings before any court in England and Wales,</p> <p>(b) the commencement, prosecution and defence of such proceedings, and</p> <p>(c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).</p>
<b>Litigation Licence</b>	a <b>licence</b> issued by the <b>CLC</b> to provide <b>litigation services</b>
<b>LLP member</b>	a member of a Limited Liability Partnership
<b>Local Authority</b>	a body listed in s.23 of the Local Government Act 2003
<b>LSB</b>	Legal Services Board
<b>Manager</b>	<p>means a person who is:</p> <p>(a) if the body is a <b>company</b> and its affairs are managed by members, a member;</p> <p>(b) if the body is a <b>company</b> and (a) does not apply, a director of the body;</p> <p>(c) if the body is a partnership, a partner;</p> <p>(d) if the body is a <b>Limited Liability Partnership</b>, an LLP member;</p> <p>(e) if the body is an unincorporated body (other than a partnership), a member of its governing body; and</p> <p>(f) a <b>licensed conveyancer</b> if sub-paragraphs (a)-(e) do not apply and the affairs of the body are not managed by another <b>licensed conveyancer</b>.</p>
<b>Master Policy</b>	the <b>CLC's professional indemnity insurance</b> policy authorised by the CLC under s.21 of the <b>1985 Act</b>
<b>Material Interest</b>	<p>a person holds a material interest in a Licensed (<b>ABS</b>) Body if the person*:</p> <ul style="list-style-type: none"> <li>• holds at least 10% or more shares in the body (or in a</li> </ul>

	<p><b>parent undertaking</b>);</p> <ul style="list-style-type: none"> <li>• is someone able to exercise significant influence over the management of the body (or a <b>parent undertaking</b>) due to their entitlement to exercise, or control the exercise of voting rights;</li> <li>• is entitled to exercise or control the exercise, of voting powers in the body (or a <b>parent undertaking</b>), which, if it consists of voting rights, constitutes at least 10% or more of the voting rights;</li> <li>• as a partner having at least 10% interest in the capital or profits of the partnership;</li> </ul> <p>and includes any ultimately <b>beneficial owner</b> of more than 10%.</p> <p>*'The person' means:</p> <ul style="list-style-type: none"> <li>(a) the person;</li> <li>(b) any of the person's <b>associates</b>; or</li> <li>(c) the person and any of the person's <b>associates</b> taken together.</li> </ul>
<b>Memorandum of Association</b>	<p>the meaning given by s.8 of the Companies Act 2006 i.e. a memorandum stating that the subscribers -</p> <ul style="list-style-type: none"> <li>a) wish to form a <b>company</b> under the 2006 Act; and</li> <li>b) agree to become members of the <b>company</b> and in the case of a <b>company</b> that it is to take at least one share each</li> </ul>
<b>Memorandum of Understanding</b>	<p>under the <b>Licensed Body</b> Framework, this defines the relationship between, and the objectives of, the Licensing Authorities (LAs) and other regulators in the regulation of <b>Alternative Business Structures</b></p>
<b>ML Regulations</b>	<p>Money Laundering Regulations 2007 (SI 2007/2157)</p>
<b>Money Laundering Reporting Officer (MLRO)</b>	<p>the title often given to a <b>Nominated Officer</b>, but may include wider responsibilities than those usually given to a <b>Nominated Officer</b></p>
<b>Nominated Officer</b>	<p>a person in a <b>CLC body</b> to receive internal reports (disclosures) of known or suspected money laundering and with responsibility to assess whether a Suspicious Activity Report should be made</p>
<b>Office Account</b>	<p>an account in the name of a <b>CLC</b> regulated individual or body</p>

	for holding <b>Office Money</b>
<b>Office Money</b>	<p>money which belongs to a <b>CLC</b> regulated individual or body and any other money which is not <b>Client Money</b> and includes:</p> <p>(a) money held or received in connection with running the body e.g. PAYE, or VAT on the firm's fees;</p> <p>(b) interest on <b>Client Accounts</b> (other than on <b>Separate Designated Accounts</b>);</p> <p>(c) payments received in respect of fees for which a bill has been delivered and the bill is recorded in the office columns of the appropriate <b>client</b> ledger <b>account</b>;</p> <p>(d) payments received in respect of <b>disbursements</b> already paid or for which a liability to pay has been incurred and the payment or liability is recorded in the office columns of the appropriate <b>client</b> ledger <b>account</b>;</p> <p>(e) money received from a <b>Client</b> as a debt owed which is recorded in the office columns of the appropriate <b>client</b> ledger <b>account</b></p>
<b>Outcomes</b>	<p>delivery of a positive result for <b>clients</b>; it is the end result of the application of a <b>principle</b> or specific requirement</p> <p>the <b>CLC's regulatory arrangements</b> are focused upon these <b>Outcomes</b> which all whom we regulate must deliver</p>
<b>Overriding Principles</b>	<p>the <b>principles</b> that all individuals and bodies regulated by the <b>CLC</b> must comply with at all times in their delivery of legal services:</p> <ol style="list-style-type: none"> <li>1. Act with independence and integrity;</li> <li>2. Maintain high standards of work;</li> <li>3. Act in the best interests of your <b>Clients</b>;</li> <li>4. Comply with your duty to the court;</li> <li>5. Deal with regulators and ombudsmen in an open and co-operative way;</li> <li>6. Promote equality of access and service.</li> </ol>

<p><b>Parent Undertaking</b></p>	<p>as defined in s.1162 of the Companies Act 2006,</p> <p>(2) An undertaking is a <b>parent undertaking</b> in relation to another undertaking, a subsidiary undertaking, if—</p> <p>(a) it holds a majority of the voting rights in the undertaking, or</p> <p>(b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or</p> <p>(c) it has the right to exercise a dominant influence over the undertaking—</p> <p>(i) by virtue of provisions contained in the undertaking’s <b>articles</b>, or</p> <p>(ii) by virtue of a control contract, or</p> <p>(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.</p> <p>(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—</p> <p>(a) if any of its subsidiary undertakings is a member of that undertaking, or</p> <p>(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.</p> <p>(4) An undertaking is also a <b>parent undertaking</b> in relation to another undertaking, a subsidiary undertaking, if—</p> <p>(a) it has the power to exercise, or actually exercises, dominant influence or control over it, or</p> <p>(b) it and the subsidiary undertaking are managed on a unified basis.</p> <p>(5) A <b>parent undertaking</b> shall be treated as the <b>parent undertaking</b> of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, <b>parent undertakings</b>; and references to its subsidiary undertakings shall be construed accordingly.</p> <p>(6) Schedule 7 [of the Companies Act 2006] contains provisions explaining expressions used in this section and otherwise supplementing this section.</p>
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	(7) In this section and that Schedule references to shares, in relation to an undertaking, are to allotted shares.
<b>Permissions (licence)</b>	specify the non- <b>reserved legal activities</b> a body is permitted to provide
<b>Practical Training</b>	you are engaged in the provision of <b>Legal Activities</b> associated with your Intended Licence(s) which must: <ul style="list-style-type: none"> <li>• be for the equivalent of 1,200 chargeable hours which must be documented;</li> <li>• at all times be subject to the supervision of a Qualified Person; and</li> <li>• in the opinion of the CLC, be current, relevant and of an adequate standard.</li> </ul>
<b>Principles</b>	an essential quality; a characteristic, behaviour or ethic, which must be demonstrated so that positive <b>outcomes</b> are generated for <b>clients</b>
<b>Private Loan</b>	a loan other than one provided by an institution which provides loans in the normal course of its activities
<b>Probate (Services)</b>	as defined at s.119 of the <b>1990 Act</b> , 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
<b>Probate Licence</b>	a <b>licence</b> issued by the <b>CLC</b> to provide <b>probate services</b>
<b>Professional Indemnity Insurance (PII)</b>	the insurance cover all bodies are required to have in place indemnify them for civil liability incurred arising out of <b>regulated services</b> provided
<b>Professional Principles</b>	the professional principles are set out in Part 1 of the <b>Legal Services Act 2007</b> : <ul style="list-style-type: none"> <li>(a) that <b>authorised persons</b> should act with independence and integrity;</li> <li>(b) that <b>authorised persons</b> should maintain proper standards of work;</li> <li>(c) that <b>authorised persons</b> should act in the best interests of their <b>clients</b>;</li> <li>(d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being <b>authorised persons</b> should comply with their duty to the court to act with independence in the interests of justice; and</li> <li>(e) that the affairs of <b>clients</b> should be kept confidential.</li> </ul>

<b>Professional Services</b>	under the Acting as Insurance Intermediaries Code, services which do not constitute <b>carrying on a regulated activity</b> , and the provision of which is supervised and regulated by the <b>CLC</b>
<b>Promptly</b>	within 2 working days
<b>Qualified Person</b>	under the Student Training Framework this means 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 <b>approved regulator</b> to carry on the <b>reserved legal activity</b> the subject of your <b>Intended Licence</b> and has carried on that reserved legal activity as his or her principal form of practice during that five year period
<b>Qualifying Examinations</b>	the methods of assessment and examination in accordance with the <b>CLC's</b> syllabus from time to time in force
<b>Recognised Body</b>	a body corporate or incorporate recognised by the <b>CLC</b> under s.32 of the <b>1985 Act</b> to provide <b>regulated services</b> to the public
<b>Recognised Course</b>	a course, lecture, seminar or other programme or activity approved or run by the <b>CLC</b>
<b>Registered Student</b>	a person who has registered as a student with the <b>CLC</b> in accordance with its Student Training Framework
<b>Regulated Activities</b>	under the Acting as Insurance Intermediaries Code, any of the activities specified under Part II (Specified Activities) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) as amended which is carried on by way of business in relation to an investment of a kind specified in Part III (Specified Investments) of the same Order
<b>Regulated Services</b>	all of the legal activities – both <b>Reserved Legal Activities</b> and non-reserved - which the <b>CLC</b> authorises/permits the Licensed Conveyancer or body within the terms of the <b>licence</b> to provide and which are therefore be regulated by the <b>CLC</b>

<b>Regulatory Arrangements</b>	the sum of Codes, <b>Guidance</b> , Frameworks and Policies which set out the responsibilities of the regulated community and our approach to regulation
<b>Regulatory Objectives</b>	<p>the <b>regulatory objectives</b> are set out in Part 1 of <b>the Legal Services Act 2007</b>:</p> <ul style="list-style-type: none"> <li>(a) protecting and promoting the public interest;</li> <li>(b) supporting the constitutional principle of the rule of law;</li> <li>(c) improving <b>access to justice</b>;</li> <li>(d) protecting and promoting the interests of consumers;</li> <li>(e) promoting competition in the provision of services*;</li> <li>(f) encouraging an independent, strong, diverse and effective legal profession;</li> <li>(g) increasing public understanding of the citizen’s legal rights and duties;</li> <li>(h) promoting and maintaining adherence to the <b>professional principles</b>.</li> </ul> <p>* services provided by <b>Authorised Persons</b>.</p>
<b>Reporting Accountant</b>	an accountant qualified in accordance with requirements 16.5-16.7 of the Accounts Code, instructed by the <b>CLC</b> regulated individual or body to prepare and sign an <b>Accountant’s Report</b>
<b>Reserved Legal Activities (RLA)</b>	As defined by s.12 and Schedule 2 of the <b>2007 Act</b> . Currently, there are six reserved legal activities: the exercise of a right of audience ( <b>advocacy</b> ), the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.
<b>Respondent - Enf</b>	under the <b>Enforcement</b> Policy this means a <b>CLC</b> regulated individual or body in respect of which a misconduct allegation has been made, or a potential compliance breach identified
<b>Respondent Body – CF</b>	under the <b>Compensation Fund</b> Operating Framework this means a <b>CLC</b> regulated individual or body in respect of which a compensation <b>claim</b> is made
<b>Review Panel</b>	as provided in the <b>Alternative Business Structures (Procedure) Rules</b> to review determinations made by the <b>Adjudication Panel</b> where the <b>Adjudication Panel</b> has made a determination in respect of a matter which has not previously been determined by <b>Authorised Officer</b> (ie <b>Adjudication Panel</b> has made a first instance determination)



<b>Rightful Recipient</b>	the person beneficially entitled to receive monies held by the <b>CLC</b> regulated individual or body or any sum vested in the <b>CLC</b> under paragraph 6 or 6A(3) of schedule 5 to the <b>1985 Act</b>
<b>Risk-based/risk profile</b>	<p>our regulatory approach is based on the assessment of the <b>risk</b> to delivery of positive <b>outcomes</b> which an <b>applicant</b> or <b>CLC</b> regulated individual or body presents; this will inform the risk profile we hold on them which in turn informs our regulatory relationship with them</p> <p>risk is measured in terms of a combination of the probability of a perceived threat or opportunity occurring and the extent of its impact in determining what (if any) action we will take</p>
<b>Separate Designated Account</b>	an interest bearing account (but not a share account) at the branch (or the head office) located in England or Wales of a <b>Building Society</b> or <b>Bank</b> in each case in the name of the <b>CLC</b> regulated individual or body, and in the title of which account the word ' <b>Client</b> ' and a reference to the identity of the <b>Client</b> or the matter concerned must appear
<b>Serious Organised Crime Agency (SOCA)</b>	the law enforcement agency which has harm reduction responsibilities and which targets criminal activities such as fraud, money laundering and identity theft
<b>Sole Practitioner</b>	the sole <b>manager</b> of a <b>CLC Recognised Body</b>
<b>Special Bodies</b>	<p>the definition provided in s.106 of the <b>2007 Act</b>:</p> <ul style="list-style-type: none"> <li>• An independent trade union;</li> <li>• A not-for-profit body;</li> <li>• A community interest <b>company</b>;</li> <li>• A low-risk body; and</li> <li>• A body of such other description as may be prescribed by an order made by the Lord Chancellor</li> </ul>
<b>Specific Requirement</b>	a strict direction for conduct which must be complied with
<b>Supplemental Policy</b>	a contract of <b>professional indemnity insurance</b> , made between the <b>Authorised Insurers</b> and a <b>body</b> or an <b>EU Body</b> , which provides cover as modified in accordance with the <b>Professional Indemnity Insurance</b> Code and Operating Framework, or as otherwise determined by the <b>CLC</b>
<b>Systematically</b>	arrangements are in place to ensure processes are carried out

	in an orderly fashion
<b>Terms (licence)</b>	specifies by way of endorsements, the <b>authorisations</b> , <b>permissions</b> and <b>conditions</b> of a CLC licence
<b>Terms of Engagement</b>	a statement on a <b>Durable Medium</b> of all terms upon which instructions are accepted
<b>Training Record</b>	a written record of <b>recognised courses</b> attended or undertaken for the purposes of the <b>Continuing Professional Development Code</b> in such form as the <b>CLC</b> may from time to time prescribe
<b>Undertaking</b>	an unequivocal declaration of intention addressed to someone who reasonably places reliance upon it  It need not be in writing nor contain the word “undertake” to be enforceable
<b>Without Delay</b>	in normal circumstances, either on the same day or on the next Working Day
<b>Working Day</b>	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday
other expressions shall, except where otherwise stated, have the meanings given to them by the <b>1985 Act</b> , the <b>1990 Act</b> and the <b>2007 Act</b>	
unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular	

## Annex B. Licensed Bodies (ABS) Licensing Framework



# *LICENSED BODY (ABS)* LICENSING FRAMEWORK

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Council for  
**Licensed  
Conveyancers**

**Licensing Alternative Business Structures -  
The Licensed Body (ABS) Licensing Framework**

**1. Introduction**

**Purpose of Framework**

The purpose of this framework is to ensure that consumers have confidence in the way bodies owned or managed by non-**Authorised Persons** – i.e. someone who is not a lawyer and so is not authorised by an **Approved Regulator** to provide a reserved legal activity such as **conveyancing, probate, litigation** or **advocacy** - deliver services regulated by the **CLC**. To achieve this, the **CLC** will only license bodies able and willing to act in a principled manner and deliver the **CLC Code of Conduct's Outcomes** by complying with its **Overriding Principles**:-

- Act with independence and integrity;
- Maintain high standards of work;
- Act in the best interests of **Clients**;
- Comply with your duty to the court;
- Deal with regulators and ombudsmen in an open and co-operative way; and
- Promote equality of access and service.

**Overview of Framework**

This document sets out:

- what is meant by a **Licensed Body** (also called an **Alternative Business Structure**);
- how the **CLC** expects **Licensed Body** applications to be made;
- the information upon which it bases its application determinations;
- the circumstances in which an application may be approved, made subject to **conditions** or refused;
- how **licence** determinations can be appealed; and
- the regulatory responsibilities of successful **applicants** must comply; and the range of regulatory/**enforcement** responses available to us if these are not met.

**Terms used**

Words presented in bold italicised font – such as ***Authorised Persons, Approved Regulator*** and ***Overriding Principles*** above - are defined in the Glossary of Terms provided at the rear of the **CLC** Handbook. Please refer to these definitions where you need clarification.

**CLC Handbook**

References are made to the **CLC's Code of Conduct, Licensed Body, and Conflicts of Interest Code**; these are found in the **CLC** Handbook (available on the **CLC** website) and should be read in conjunction with this Framework.

## **2. Forms of Alternative Business Structures (ABS)**

2.1 The **2007 Act** removed restrictions on the management and ownership structures of traditional legal services firms. Non-**Authorised Persons** (non-lawyers) are now able to be owners of legal services providers and such firms are now able to provide other services alongside legal activities. For instance:

- a sole **Licensed Conveyancer** and an independent financial adviser might set up a business providing **conveyancing services** and mortgage advice;
- **conveyancing services** are provided alongside estate agency or surveying services;
- **probate** activity is made available alongside funeral services.

2.2 Combining businesses in such a way might allow overhead savings to be made, enhance career progression opportunities for non-**Authorised Persons** – providing skills such as strategic leadership, management, human resources, finance and IT, essential to a well-run business - and offer **Clients** the opportunity to source a range of different services from one provider (a one-stop shop).

2.3 We use the term licensable body to mean a business which is applying to become a **CLC Licensed Body**. '**Alternative Business Structure**' is a widely recognised term but it is not used in the main body of the **2007 Act** text. Therefore we use the term '**Licensed Body**' when referring to the licensing of such structures.

2.4 A **Licensed Body** may take the form of:

- |   |
|---|
| <ul style="list-style-type: none"><li>• A legal body part-owned by a Non-<b>Authorised Person</b>;</li><li>• A legal body owned by <b>Authorised Persons</b> but managed by at least one Non-<b>Authorised Person</b>;</li><li>• A business wholly owned by a Non-<b>Authorised Person(s)</b> providing both legal and other services; or</li><li>• A range of models in between.</li></ul> |
|---|

2.5 It may be constituted as a partnership, a **Limited Liability Partnership**, or Limited **Company**. The structure and business model is of the body's choosing.

2.6 A licensable body can be partly or wholly owned by a non-**Authorised Person(s)** and it can provide both legal and non-legal services. Provided that one **manager**, the **Head of Legal Practice (HoLP)**, is an **Authorised Person** it can otherwise be managed by non-**Authorised Persons**. NB. If the **HoLP** is not authorised to deliver the particular legal service the body provides there must be another **Authorised Person** who is so authorised.

2.7 As a **Licensing Authority** regulated by the **Legal Services Board** the **CLC** is able to license and regulate **ABS** providing **conveyancing, probate, litigation** and **advocacy\*** services with a range of other services.

\*Applicable should our application to regulate **litigation** and **advocacy** prove successful.

### **3. Who can apply?**

3.1 The licensable body must have:

- A practising address in England and Wales (or Wales);
- A designated **Head of Legal Practice** who is an **Authorised Person** in relation to **Reserved Legal Activities**;
- A **Head of Finance and Administration (HoFA)**.

3.2 Legal services must be provided or supervised by **Authorised Persons** licensed by an **Approved Regulator**, such as the **CLC** or Solicitors Regulation Authority. Any non-**reserved legal activities** must be provided or supervised by appropriately experienced and/or qualified persons.

3.3 A *Licensed Body* must have **professional indemnity insurance** in place. The **CLC** operates a **Master Policy** to provide **professional indemnity insurance** cover to its regulated community. Licensable bodies can obtain cover through this or may arrange other cover. Should you choose to opt out of the **CLC Master Policy** you are required to obtain this cover from an **authorised insurer**.

3.4 If the **CLC** is not satisfied by the **conditions** and cover provided by the **authorised insurer**, the body will be required to take out a supplemental policy so that the professional indemnity cover it has in place is equivalent in all respects to the cover which would be provided by the **CLC's Master Policy**.

3.5 No body may provide legal services regulated by the **CLC** unless and until it has Professional Indemnity Insurance which complies with these requirements and has produced evidence of insurance to us. NB. A body may increase the level of indemnity cover above the minimum required under the **Master Policy**.

3.6 The **CLC** maintains a **Compensation Fund** for the purpose of making discretionary payments to persons who have suffered loss as a result of negligence, fraud or dishonesty or a failure to account, by a **CLC**-regulated body. Each body licensed by the **CLC** is required to make a contribution to the **Compensation Fund**. The fee payable is a percentage (as determined by the **CLC** and approved by the LSB) of the turnover (or estimated turnover) of that body. The income received is applied solely for the purpose of maintaining, managing and administering the Fund.

3.7 The **CLC** requires each body to pay an annual regulatory fee. The fee payable is a percentage (as determined by the **CLC** and approved by the LSB) of the turnover (or estimated turnover) of that body. The income received funds the regulatory activities of the **CLC**, but not any costs attributed to the **Compensation Fund**.



- 3.8 A body which is able and willing to meet all of these requirements can apply to become a **CLC Licensed Body**.
- 3.9 Currently we cannot accept applications from **Special Bodies**, although we anticipate shortly making an application to be able to do so.

#### **4. Licensed Body (ABS) Applications**

4.1 Applications must include:

- |  |
|--|
| <ul style="list-style-type: none"><li>(a) a correctly completed <b>CLC ABS Licensed Body</b> application form (including identification of the <b>Regulated Services</b> the body wishes to provide);</li><li>(b) declaration, and proof of identity, of the <b>HoLP</b> and <b>HoFA</b> and consent for data verification to be carried out;</li><li>(c) declaration, and proof of identity, of each <b>Authorised Person Manager</b>;</li><li>(d) declaration, and proof of identify, of each <b>Non-Authorised Person Manager</b>, and consent for data verification to be carried out;</li><li>(e) declaration, and proof of identity, of each <b>Authorised Person</b> with a <b>material interest*</b>;</li><li>(f) declaration, and proof of identity, of each <b>Non-Authorised Person</b> with a <b>material interest*</b>, and consent for data verification to be carried out (the declaration must identify any <b>associates</b>);</li><li>(g) if it is a <b>Company</b> or <b>LLP</b> its certificate of incorporation;</li><li>(h) evidence (or an offer) of appropriate professional indemnity insurance; and</li><li>(i) the application fee payable.</li></ul> |
|--|

There are many ways a person can hold a **material interest\*** – please ensure you reference the **CLC Handbook Glossary of Terms**.

4.2 We would prefer to receive applications electronically (in Microsoft Word format), but hard copy applications by post are also welcome.

#### **Licence Application Data**

4.3 Full and frank information disclosure is needed to help us determine if:

- owners are fit to own;
- **managers** are fit to manage; and
- the body is fit to provide legal services to the public.

4.4 We require the following information:

<b>Persons</b>	<ul style="list-style-type: none"><li>• Declaration of Persons with a <b>material interest</b> (together with <b>associates</b> of 3% or more <b>material interest</b>) of 10% or more interest in the body;</li><li>• Declaration of <b>Head of Legal Practice</b> accompanied by details of relevant experience, qualifications, training and professional history information;</li><li>• Declaration of <b>Head of Finance and Administration</b> accompanied by details of relevant experience, qualifications, training and professional history information;</li><li>• Declarations of all <b>Managers</b>;</li><li>• Declarations of <b>Authorised Persons</b> (specifying which activities they are authorised to provide and by which</li></ul>
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	<ul style="list-style-type: none"> <li>• <b>Approved Regulator);</b> Staff structure, including numbers of <b>Authorised Persons</b> and non-<b>Authorised Persons</b>.</li> </ul>
<b>Financial</b>	<ul style="list-style-type: none"> <li>• Proof of funding source;</li> <li>• Business Plan &amp; Financial Forecasts;</li> <li>• Bank details;</li> <li>• Where applicable, the organisation's last 3 years of accounts.</li> </ul>
<b>Statements</b>	<ul style="list-style-type: none"> <li>• An outline of the services proposed and how you will ensure they are delivered to a high standard;</li> <li>• Statement outlining compatibility with delivery of the <b>Code of Conduct Outcomes</b> and the <b>Licensed Body Code</b> (and where there are issues, details of how these have been, or will be resolved);</li> <li>• Who will carry out <b>Reserved Legal Activities</b>;</li> <li>• Diversity profile of body;</li> <li>• How the body aims to improve <b>access to justice</b>.</li> </ul>
<b>Arrangements for:</b>	<ul style="list-style-type: none"> <li>• Compliance with <b>CLC regulatory arrangements</b>;</li> <li>• Notifying us of a breach of regulatory responsibilities;</li> <li>• Notifying us of a proposed change of <b>material interest</b>;</li> <li>• Provision of any non-<b>reserved legal activities</b>;</li> <li>• Governance and management;</li> <li>• <b>HoLP</b> and <b>HoFA</b> to have management level status and entitlement to dissent from decisions made by the management;</li> <li>• Preventing and dealing with <b>conflicts of interests</b> and <b>improper influence</b>;</li> <li>• <b>Complaints</b>-handling;</li> <li>• Ensuring the body employs only fit and proper persons (and no-one disqualified by a <b>Licensing Authority</b>).</li> </ul>
<b>Fit and Proper Declaration – Persons with material interest, HoLP, HoFA &amp; Managers</b>	<ul style="list-style-type: none"> <li>• Any criminal charge or conviction (including spent convictions and cautions) or cases pending in the UK or elsewhere;</li> <li>• Any previous disciplinary proceedings commenced by a professional or regulatory body in the UK or elsewhere (whether concluded or not);</li> <li>• Any adverse order or finding of a civil court or employment tribunal;</li> <li>• Any disqualification as a director;</li> <li>• Any declaration of bankruptcy (and whether or not this has been discharged) or Individual Voluntary Arrangement;</li> <li>• Disqualification from acting in any capacity for a legal services, financial or other provider (including a <b>Licensed Body</b>);</li> <li>• Any other information that could reasonably be expected to have a bearing on the individual being fit and proper to</li> </ul>

	own or manage a <b>Licensed Body</b> .
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NB. The requirement for accounts for the 3 years immediately preceding an application applies to companies which own (10% or more) of the licensable body.

### **Governance and Management Arrangements**

- 4.5 The **CLC Code of Conduct** and the underpinning **Conflicts of Interest** Code make clear our requirements regarding the prevention, identification and mitigation of such conflicts. All bodies regulated by the **CLC** must comply with these requirements in order that **Clients** receive high standards, and independent, service.
- 4.6 The **CLC Licensed Body** Code explicitly requires that Non-**Authorised Persons** with a **material interest** must not be allowed to exert **improper influence**. **Licensed Bodies** and the **Authorised Persons** within them must always support the constitutional principle of the rule of law and act in the best interests of their **Clients**. Licensable bodies must be able to demonstrate that they have in place **arrangements** enabling this.
- 4.7 To be licensed a licensable body must employ at least one **Authorised Person** who is authorised to provide each of the **Reserved Legal Activities** the body proposes to deliver. If these persons are not **managers** we will need to be satisfied that the body's **arrangements** take this into account.
- 4.8 Given the importance of the roles of the **HoLP** and **HoFA** we will be looking for skilled individuals suited to the business needs of the body. We set no specific requirements in this area other than the **HoLP** should be an **Authorised Person** and a recommendation that the **HoFA** should have accountancy experience and/or an accountancy qualification.
- 4.9 The suitability of the proposed candidates will be judged according to the body's size and **risk profile**. For example, it may be acceptable for the **HoFA** of a small firm not to have an accountancy qualification. In such instances, accountancy experience would be acceptable.
- 4.10 Only those bodies with appropriate **arrangements** will be licensed. Examples of high-level good practice of risk management and business **arrangements** are provided in the **CLC Handbook, Management and Supervision Guidance**.

### **Employment Arrangements**

- 4.11 Our licensing terms are clear in their requirement that the interests of the public and of **Clients** must be protected. It is therefore very important that a **Licensed Body** employs only those persons it is confident will act in a manner compatible with these interests.
- 4.12 It is for the body to determine the most appropriate **arrangements** for it to be confident of the fitness and probity of its employees. This may take the form of an employment contract clause which requires employees to declare an issue to the body, a self-

declaration form (which is completed when an offer of employment is made and on an annual basis thereafter), a Criminal Record Bureau check, or other system. The body may target particular roles which it considers more important in this regard than others e.g. those handling **Client monies** may be subject to a Criminal Record Bureau check whilst other employees are required to declare any fit and proper issues.

- 4.13 The **Legal Services Board (LSB)** maintains a list of all persons disqualified from roles in Licensed Bodies. The list is available to view on the **LSB's** website for you to check against your employees, or proposed employees. The list is available to view on the **LSB's** website: <http://www.legalservicesboard.org.uk/>
- 4.14 You must not employ any listed person in the role in respect of which they are disqualified. To do so is a significant breach of your regulatory responsibilities and is likely to result in the body's **licence** being suspended and/or revoked.
- 4.15 We consider the qualifications and experience of the **Licensed Body's** employees to be a matter for the body itself to decide. It is the licensable body's duty to ensure it has the appropriate individuals in place to ensure the regulatory requirements are met and that the rule of law is supported.

#### **Business Plan and financial projections**

- 4.16 The Business Plan must cover the 3 years from when the body could reasonably expect to be licensed (90 days after the **CLC** has received a complete application). An **applicant** will need to demonstrate they have critically examined their:
- financial forecasts;
  - employees numbers, skills and knowledge;
  - anticipated turnover;
  - running expenses;
  - capital investment;
  - capital expenditure and liquidity;
  - how the body will be initially funded (and how prepared for a given initial period where it is likely to receive little comparative income);
  - proposed premises;
  - the body's marketing strategy;
  - its accounting systems and procedures;
  - any expansion plans; and
  - any other information deemed relevant by the **applicant** or the **CLC**.

#### **Access to Justice**

- 4.17 An **applicant** must be able to demonstrate that licensing the body would improve **access to justice** i.e. recognition of, and response to potential and actual, consumer needs. This may take the form of provision of a greater range of services and methods of accessing

these services, lower prices, extended opening hours, accessibility, online provision, or other factors. It is up to the individual **applicant** as to how they define **access to justice** and how they demonstrate they will improve it.

- 4.18 We anticipate that an application will be refused because of **access to justice** considerations only in exceptional circumstances.

#### **Supplementary Information**

- 4.19 You may wish to provide examples of how you actively promote the **CLC Outcomes**, e.g.:-
- Certification or assessment of activities by independent or accredited bodies; or
  - Drawing up your own quality charter or participation in quality charters or labels drawn up by professional bodies (particularly consumer association assessments).
- 4.20 Provision of supplementary information will be welcomed and judged favourably by the **CLC** as long as it is pertinent to your application. Please do not provide irrelevant material as this is likely to unnecessarily prolong the application determination period time.

#### **Any other info**

- 4.21 We require the declaration of 'any other information that could reasonably be expected to have a bearing on their being fit and proper' with regard to Non-**Authorised Persons** with 10% or more **material interest**, **HoLPs** and **HoFAs**. This could include:
- by a reason of character, conduct or association and in particular has been in breach of statutory requirements regarding payment of tax or for a **licence**;
  - they lack capacity within the meaning of the Mental Capacity Act 2005 and powers under sections 15 to 20 or section 48 have been exercised.

#### **Material Interest Details**

- 4.22 The holding by a non-**Authorised Person** (i.e. non-lawyer) of a 10% **material interest** in a **Licensed Body** is subject to the **CLC's** approval. A **licence** will not be granted until we have approved all non-**Authorised Persons** with a **material interest**. A **licence** application must identify all non-**Authorised Persons** who own or are expected to own such a **material interest** in the body when the **licence** is issued. All Non-**Authorised Persons** with a **material interest** will be subject to the fit and proper test and must consent to the **CLC** sharing the information with other bodies for verification purposes.
- 4.23 The **material interest** declaration refers both to the actual or proposed **material interest** (10% or more) and/or any of that person's **associates** with a **material interest**

of 3% or more. The type of interest concerned must be identified. Failure to fully and truthfully to declare this information when aware of the facts is a criminal offence making the declarer liable on summary conviction to a fine. There are a number of different ways in which a non-**Authorised Person** can have a **material interest**.

- 4.24 It is very important that a body providing legal services is able to meet its regulatory responsibilities. Having an accurate picture of those who control Licensed Bodies is an important part of the **CLC** recognising any risks to this. Therefore all non-**Authorised Persons' material interest** must be declared as they are subject to our approval.
- 4.25 If any of these details look likely to change – e.g. the identity of an owner, or the nature or value of their interest - whilst we are determining the **licence** application, the **applicant** must notify us of this within 7 days of the proposal. If the **applicant** had no knowledge of a change which has taken place they must notify us within 7 days after they are made aware. It is a criminal offence not to identify a non-**Authorised Person** who has, or expects to have, an interest in the event a **Licensed Body licence** is issued to the **applicant**. If such a breach were to occur, the breach and the fine would be likely to be taken into account as part of the determination of the **licence** application. However, it is a defence for a person charged with such an offence if they are able to show that they had no knowledge of the duty to notify.
- 4.26 You must inform all Non-**Authorised Person** with a **material interest** that the **Licensed Body** application process requires them to be identified and that they will need to undergo a fit and proper test, which includes a Criminal Record Bureau Check. You must obtain from them a completed and signed fit and proper declaration form. You must advise them that they may need to provide us with information/documents to inform our **licence** application assessment (or during the duration of the **licence** if we become concerned by their **material interest**). You should also explain that provision of false or misleading information is a criminal offence liable on summary conviction to a fine and on conviction on indictment to a term of imprisonment.
- 4.27 The fit and proper test helps inform our assessment of **improper influence** i.e. whether the Non-**Authorised Person's material interest** would compromise the delivery of the **CLC Code of Conduct's Outcomes** or could cause **Authorised Persons** to be unable to meet their regulatory duties.

## **5. Transitional arrangements for CLC Recognised Bodies**

- 5.1 These arrangements apply to bodies licensed by the **CLC** as a **Recognised Body** on the date it is authorised as a **Licensing Authority** but which, because they are owned or managed by persons who are not **Authorised Persons**, need to become a **Licensed Body** by Autumn 2012.
- 5.2 We will provide these bodies with the information we currently hold on them, requiring them to verify or amend it as appropriate. Relevant data to fill any information gaps must be provided. These bodies must appoint their Heads of Legal Practice and Heads of Finance and Admin; and declare **Authorised Persons** with **material interest** and their **associates**.
- 5.3 These applications will be fast-tracked as they have a track record with us. We are familiar with the structures, systems and **controls** of these bodies; and have carried out monitoring inspections on them (often over a number of years). A current **CLC Recognised Body** which applies to become a **CLC Licensed Body** will receive notification of the **CLC's** determination within 42 days of receipt of their completed **Licensed Body** application. The application will be assessed and determined using the same criteria as new **applicants**.

## **6. Licensed Bodies regulated by other Licensing Authorities**

- 6.1 An **ABS** already licensed by another **Licensing Authority** which is seeking instead to be licensed by the **CLC** will need to complete the **licence** application as required by all **applicants**. An **applicant** which has had its **Licensed Body licence** revoked by another **Licensing Authority** will not automatically be excluded from applying for a **CLC Licence**. However, the **licence** revocation will be a relevant factor in our determination of the application. Where we have revoked a body's **licence** we will not accept an application if it is made within 12 months of the **licence** revocation, unless there are exceptional circumstances. We will need to be fully satisfied that the issue which triggered the revocation has been addressed and the remainder of the application would need to evidence that all **CLC** licensing requirements are met in full.



## **7. Fees**

- 7.1 The standard **licence** application fee is broadly reflective of a range of key factors including cost, size and risk profile of Licensed Bodies.
- 7.2 The **applicant** will be charged the cost to the **CLC** of processing a standard application. On the basis that the standard application will take 2 days to process the fee for a first time **Licensed Body** application is £1200.
- 7.3 We reserve the right to require further information and/or statements should we see reasonable grounds to do so. We also reserve the right to charge additional amounts above the standard fee for applications which take more than the expected determination period of 2 days e.g. bodies with unusual or complex ownership, structures, particularly where there is a foreign – i.e. not in England or Wales - ownership element (which may require more extensive data verification endeavours), or where incomplete information has been provided. These will be charged at £80 per hour.
- 7.4 The **CLC** will use external advisers where it feels that it is necessary, more appropriate or more efficient to consider parts of the application (e.g. to deal with technically complex, unusually data intense, poorly prepared or urgent applications). It will ask the **applicant** to pay for the work performed.
- 7.5 We anticipate there will be less resource required to process an application from an existing **CLC Recognised Body** than from a brand new **applicant**. We have therefore prescribed a lower fee of £600 for such applications.
- 7.6 We reserve the right to review the fee schedule and to vary the fee methodology as appropriate.
- 7.7 The **applicant** will be required to pay for the data verification (including Criminal Record Checks) which needs to accompany the application. This will be carried out by a provider accredited by the **CLC** and charged at £61.50-£74.00 per relevant person who needs to be checked.
- 7.8 We anticipate that **licence** modifications/removal of **conditions** requests will take no more than 4 hours to determine. The standard application fee for such requests will be £320. We reserve the right to charge additional amounts for particularly complex applications which take longer than this to determine. These will be charged at £80 per hour.
- 7.9 Should a **Licensed Body** apply to change the individual person occupying the role of **HoLP** or **HoFA** the standard application fee will be £240. This is based on the assumption that such requests will take no more than 3 hours to determine. We reserve the right to charge additional amounts for particularly complex applications which take longer than

this to determine. The **applicant** will be required to pay for the data verification which needs to accompany the application.

- 7.10 The annual Regulatory Fee will be determined each year. The current rates are set out in the Fees Rules 2010 at [www.clc-uk.org](http://www.clc-uk.org).
- 7.11 **Compensation Fund** contribution to be determined each year. For the period 1 November 2010 to 31 October 2011, there is a nil contribution.

## **8. Licence Application Assessment**

### **Acknowledgement of receipt of application**

- 8.1 We will aim to acknowledge receipt of your application within 3 working days. If your application is incomplete we will return it to you identifying those elements which are missing or have not been properly completed.
- 8.2 Provision of any false, misleading or incomplete information is likely to delay consideration of your application and if material will result in the application being rejected. If the **CLC** becomes aware after granting a **licence** that a body, a person with **material interest** or a **manager** of that body, has provided false or misleading information the **licence** may be suspended or revoked.

### **Data Verification**

- 8.3 The **HoLP**, **HoFA**, persons with **material interest** and all **Managers** must sign their declarations to confirm the information they have provided is correct. Information provided will be kept secure and used only for these purposes.
- 8.4 We shall carry out such checks as we consider necessary to verify the information you have provided. For the Non-**Authorised Persons** with **material interest**, Non-**Authorised Person Managers**, the **HoLP** and **HoFA**, this will include checks of the fit and proper declarations e.g. credit, **insolvency**, insurance, and criminal records. We have information-sharing agreements with other regulatory, professional and data verification bodies to aid this. The information will be shared in accordance with data protection legislation.
- 8.5 As the extent of verification of fit and proper data varies according to the role, so does the fee.
- £67.50 **HoLP** and **Managers** not involved in handling of **Client monies**
  - £74.00 **HoFA** and **Managers** involved in handling of **Client monies**
  - £61.50 Non-**Authorised Person** with **material interest**

We reserve the right to allow for additional checks should a standard one identify the need for such and to charge the **applicant** the increased cost.

- 8.6 We will check the disciplinary records of **Authorised Persons** with their relevant **Approved Regulator**. Where this identifies issues we may verify the fit and proper declaration data and charge the **applicant** accordingly.
- 8.7 Verification of information on all **associates** is unlikely to be either practical or proportionate. Only where there are concerns about an **associate**, particularly

significant influence or control concerns, will we seek additional, information or require information to be verified.

### Licensing Approach

- 8.8 All **Approved Regulators** of legal services providers must act in a way which is compatible with the **regulatory objectives**. Therefore the **Overriding Principles** and **Outcomes** of our **regulatory arrangements** are devised to support them and a body's **licence** application will be assessed in light of these; on receipt of the application and validation of relevant data we will carry out an assessment of the risks posed to delivery of the **Outcomes** and compliance with the **Licensed Body** Code if we approve the application for a **licence**.
- 8.9 All interested parties will be signposted to the electronic version, or provided with a hard copy of, the **CLC Handbook** so they are aware of the regulatory responsibilities of a **Licensed Body** and those involved with it.
- 8.10 We will assess the application to determine the body's capability and capacity to deliver the **CLC's Code of Conduct's Outcomes** and to meet the **CLC's Licensed Body** Code. Please see the **CLC Handbook**.
- 8.11 This will be determined by an assessment of the following factors:

- The body's activities and **Client** type (including whether the non-**reserved legal activities** the body is proposing to provide are closely related to the **reserved legal activities** proposed);
- The quality of the governance/management **arrangements** (including regulatory compliance **arrangements** such as ensuring non-**Authorised Persons** do not cause or substantially contribute to a regulatory breach by the **licensed body**, or **Authorised Persons** within it) and risk management strategies;
- The quality of the **arrangements** to prevent and deal with **Improper Influence** and **Conflicts of Interest**, ensuring **Authorised Persons** maintain the **Overriding Principles** and comply with their own individual regulatory responsibilities;
- Probity of funding source;
- Financial viability of the body and the integrity of the Business Plan/financial projections in light of the body's proposals;
- **Client money** handling **arrangements**;
- The quality of operating procedures including **complaints**-handling;
- Resources allocated to, and **arrangements** for **reserved legal activities** (in particular who will be providing them or supervising their provision), this will include an assessment of the ratio of **Authorised Persons** to non-**Authorised Persons**;
- Competence to deliver non-reserved activities, including the resources, **arrangements**, sophistication or vulnerability of their **Clients**, its

relatedness to the **reserved legal activities** the applicant proposes to provide and **access to justice** implications if the activities were not permitted;

- Suitability of proposed Non-**Authorised Persons** with **material interests** and how they may impact upon the body's independence and integrity (they must not prejudice a) delivery of the **Code of Conduct's outcomes** or b) the ability of **Authorised Persons** to meet their regulatory duties);
- Suitability of proposed **Head of Legal Practice (HoLP)** and **Head of Finance & Administration (HoFA)**;
- The **arrangements** in place which permit the **HoLP** and **HoFA** to report on matters direct to the **CLC** without prior consultation or approval from the licensable body, its **Managers**, owners or **associates**;
- Where the **applicant** is proposing that the designated **HoLP** and the **HoFA** are the same person whether this is appropriate taking account of the size and **risk profile** of the licensable body;
- Suitability of proposed **Managers** and **Authorised Persons**;
- Where the body has chosen to opt out of the **CLC Master Policy** whether their own **arrangements** provide their **Clients** with cover equal to that which would be provided by the **Master Policy**;
- Quality of employment **arrangements**, particularly procedures for ensuring **managers** and employees are fit and proper persons;
- Any significantly prejudicial **access to justice** barriers;
- Any other factors which the **CLC** believes may pose a risk to delivery of the **Code of Conduct's Outcomes**.

8.12 We will consider the following factors in determining the suitability of declared Non-**Authorised Persons** with **material interest**:

- f) Whether there is a risk of **improper influence** i.e. that the person's **material interest** is likely to compromise delivery of the **Code of Conduct Outcomes** and the regulatory duties of both the **Licensed Body** and its **Authorised Persons** (e.g. they are subject to other duties which may conflict/compromise the regulatory duties);
- g) Any concerns identified by the fit and proper tests;
- h) Their financial position;
- d) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or employee of a **Licensed Body**;
- e) The person's **associates**.

8.13 We will consider the following factors in determining the suitability of the proposed **HoLP**:

- a) Any concerns identified by the fit and proper test;
- b) If they are an **Authorised Person**;
- c) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or employee of a **Licensed Body**;
- d) Whether they have been subject to disciplinary proceedings or disciplinary investigation;
- e) Their competence and credibility to fulfil the role effectively;
- f) Their level of seniority and whether this is appropriate to the size and structure of the **Licensed Body**.

8.14 We will consider the following factors in determining the suitability of the proposed **HoFA**:

- a) Any concerns identified by the fit and proper test;
- b) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or employee of a **Licensed Body**;
- c) Their competence and credibility to fulfil the role, including their accountancy experience, competence and/or whether they have a recognised accounting qualification;
- d) Their level of seniority and whether this is appropriate to the size and structure of the **Licensed Body**.

8.15 We will consider the following factors in determining the suitability of the proposed **Managers**:

- a) Any concerns identified by the fit and proper test;
- b) Whether they have been disqualified by a **Licensing Authority** from acting as an **HoLP, HoFA, manager** or employee of a **Licensed Body**;
- c) Their competence and credibility to fulfil the role;
- d) Their level of seniority and area of management.

- 8.16 Where the **beneficial owner** is a corporate body the fit and proper test will broadly reflect the approach taken in respect of **Licensed Body** applications. This may include governance **arrangements**, financial **arrangements** and application of the fit and proper test to its Directors. This test may also be applied to the owner(s) of a corporate body.
- 8.17 We will approve a person's **material interest** where we are satisfied that it would not present a risk to the **Code of Conduct Outcomes** or **Authorised Persons'** duties and the person is otherwise considered a fit and proper person to own that interest. Should we approve a non-**Authorised Person's material interest** this will be taken to mean that we have also approved any lesser **material interest** they have in the body.
- 8.18 Where we consider a non-**Authorised Person's material interest** presents a risk we will seek to impose **conditions** on that interest. Where we consider a risk too significant to be mitigated by **conditions** we will object to the interest. In both cases we will issue a warning notice to both the **applicant** body and the investor specifying the reasons for our intended measure. The notice will state the reasons for our determination and, if we propose to issue a **licence** subject to **conditions**, their nature.

#### **Licence Application Determination**

- 8.19 All of our **regulatory arrangements** seek to promote the **regulatory objectives**. Our **Code of Conduct** identifies positive **Outcomes** which all licensees must deliver through compliance with a number of **Overriding Principles** of behaviour. All applications will be assessed against the body's capability and capacity to deliver on these responsibilities.
- 8.20 If we are not completely satisfied that the body will deliver the **Outcomes**, we may issue a **licence** subject to **conditions** or may refuse the **licence** application.
- 8.21 Provision of adverse information concerning an individual does not necessarily preclude our approval of them. We will assess the information provided against the individual's proposed role and against the circumstances e.g. the individual may be able to satisfy the **CLC** they have learnt from the identified event. Our determination will depend upon the nature of the information provided and whether this puts at risk compliance with the body's regulatory responsibilities. For instance, we are likely to disregard spent convictions for less serious offences, provided they are not dishonesty or fraud related. We consider that dishonesty or fraud related convictions are likely to present too great a risk to delivery of positive **Outcomes** for **Clients**. In such instances, we are unlikely to be confident that the body will meet **Overriding Principle 1 Act with Independence and Integrity**; and **Overriding Principle 5 to Deal with regulators and ombudsmen in an open and cooperative way**. Where an individual has been declared bankrupt or been subject to an Individual Voluntary Arrangement (particularly if it is recent), it is likely that an application for that individual to be approved as a **HoFA** will be refused as the role requires both financial capability as well as probity.

8.22 We are likely to defer our decision until after any pending cases or proceedings have been determined, unless the subject matter of the case or proceeding is less serious and is not dishonesty related.

8.23 The determination of the risks presented by individual persons will be based upon an assessment of the following:

(a) **Is there full confidence that the *HoLP/HoFA* has integrity and is trustworthy and honest?**

(i) Unless there are exceptional circumstances the **CLC** will not be satisfied that the individual is a fit and proper person and will refuse the candidate if they have:

- convictions for offences involving dishonesty; or
- deceived or sought to deceive others, e.g. academic authorities, employers or members of the public.

(ii) The following might satisfy the Committee of the individual's present integrity, honesty and trustworthiness:

- if in view of the time since the behaviour occurred the individual has demonstrated a subsequent pattern of exemplary behaviour; or
- the incident was of a minor nature, as indicated by the sentence or sanction applied.

(iii) The type of evidence considered should normally include each of the following:

- at least one independent account of the event(s), including sentencing remarks where a criminal conviction is being considered;
- references from at least two independent people who know the individual well and are familiar with the matters being considered. Ideally one of the references should be provided by an **Authorised Person** of good standing;
- evidence of rehabilitation independently corroborated e.g. independent reports,
- references from employers, or from a professional or regulatory body; and
- the individual's account of the events and attitude towards them.

(iv) Where a conviction or disciplinary hearing is being considered the **CLC** will not question or look behind the finding other than in exceptional circumstances, although material such as sentencing remarks and any explanatory statement will be considered. For example, a decision may be demonstrably wrong where later events, such as after acquired evidence or a change in the law, call the original decision into question.



(v) Where the matter being considered concerns academic misconduct (e.g. plagiarism) the **CLC** will take into account the range of academic misconduct that occurs.

(vi) For the purposes of the assessment whether an individual is a fit and proper person to become an **HoLP/HoFA**, there will be particular concern where in the commission of academic misconduct the individual has committed deliberate and dishonest acts in order to achieve personal gain or advantage.

(vii) The following factors would therefore be of particular interest to the **CLC**:

- the extent to which the individual was aware of the rules and procedures governing the referencing of material, or the use of group work or collaborative material;
- the extent to which the individual could reasonably have been expected to realise that the offence did not constitute legitimate academic body;
- the extent to which the individual acted with intent to deceive; and
- the degree of benefit or advantage gained as a result of the offence.

(viii) As in the approach to consideration of criminal convictions, the assessment will not seek to re-open the investigation undertaken by the training organisation, nor will it cast doubt on the validity and appropriateness of the decision taken, providing appropriate investigation and disciplinary procedures were followed, but statements intended to explain or mitigate the conduct in issue will be considered.

**(b) Is there full confidence that the HoLP/HoFA are willing now to comply with legal and regulatory requirements?**

(i) Unless there are exceptional circumstances there will not be full confidence and will refuse the candidate if they:

- have been convicted of a criminal offence;
- have failed to disclose information to a regulatory body when required to do so or has provided false or misleading information;
- have been formally disciplined, sanctioned, or barred by a regulatory body; or
- have failed to comply with the reasonable requests of a regulatory body.

(ii) It may be possible for full confidence to be established in the individual's willingness to comply with legal and regulatory requirements if:

- in view of the time since the incident the individual is able to demonstrate that there has been a subsequent pattern of exemplary behaviour;
- a matter that was not disclosed was trivial or in view of the time when it occurred is no longer material or the breach was minor, as indicated by any sanction imposed; or

- the incident can be shown to have been the result of a genuine mistake or oversight.

(iii) The evidence considered should normally include each of the following:

- certificates of standing or statements from the relevant regulatory body or disciplinary tribunal and any limitations on the individual's rights to practise or freedom to act;
- the individual's explanation for failure to comply; and
- evidence of rehabilitation independently corroborated e.g. independent reports, references from employers, or from a professional or regulatory body.

**(c) Is there full confidence that the *HoFA* is able responsibly to manage financial affairs?**

(i) Unless there are exceptional circumstances there will not be full confidence that the individual can responsibly manage financial affairs and the candidate refused if:

- the individual has been made bankrupt, has entered into an individual voluntary arrangement or has unmanageable debts arising from the individual's recklessness,
- incompetence or dishonesty;
- the individual has deliberately sought to avoid responsibility for debts; or
- there is evidence of dishonesty in relation to the management of finances.

(ii) The following might help to establish confidence in the individual's ability to manage financial affairs:

- if in view of the time since the bankruptcy or occurrence of the debts there is evidence of subsequent sound financial management and conduct and that creditors have been paid;
- the individual is able to establish that he was affected by exceptional circumstances beyond his control or which he could not have reasonably foreseen.

(iii) The type of evidence considered should normally include each of the following:

- credit check information;
- the individual's explanation of the circumstances, corroborated where possible;
- actions taken to clear any debts.

(iv) The Business Plan and Financial Forecasts will be reviewed to determine:

- if it has adequate resources, including financial, skills and knowledge, for the body to be viable and to be effectively run;

- how critically they have examined the business' aims and the market for it;
- how realistic the financial projections are;
- if the financial forecasts take into account a realistic anticipated turnover, fixed costs and calculated variable costs.

Where there are concerns about the viability or suitability of a licensable body the **CLC** may refuse to issue a **licence** or issue a **licence** subject to **conditions**.

**(d) Is there a risk that the issue of a licence to the body will diminish public confidence in the legal services profession?**

(i) Unless there are exceptional circumstances there is a risk that public confidence in the profession will be diminished if a **licence** is issued to a body in which the *HoLP/HoFA*:

- has served a prison sentence, has remained on **licence** or is listed on the Sexual Offenders Register;
  - has misused his position to obtain pecuniary advantage, particularly if associated with the provision of legal services;
  - has been responsible for dishonest or violent behaviour;
  - has been convicted of offences associated with obstructing the course of justice;
  - has been convicted of a racially motivated offence; or
  - has knowingly worked when his competence was impaired by alcohol or drugs;
- in which case, unless the risk can be addressed to the satisfaction of the **CLC**, the application will be refused or will be issued subject to **conditions**.

(ii) The risk might be addressed satisfactorily if:

- in view of the time since the misbehaviour occurred the individual concerned is able to demonstrate that there has been a subsequent pattern of exemplary behaviour; or
- the misbehaviour was not of a serious nature, as indicated by the sentence or sanction applied.

(iii) The evidence provided should normally include each of the following:

- independent accounts of the convictions and behaviours that have given rise to the concerns, e.g. sentencing remarks;
- evidence of rehabilitation independently corroborated e.g. independent reports,
- references from employers, or from a professional or regulatory body.

(iv) Proposed governance and management **arrangements** are not sufficiently adequate to ensure the **Licensed Body** meets the licensing requirements and all members of staff are aware of their licensing responsibilities.

v) Proposed owner **arrangements** demonstrate there is a significant risk of undue or **improper influence** risk

vi) Proposed operating procedures and quality assurance systems are not sufficiently adequate to instil public confidence in the quality of services provision.

vii) The **HoLP** & **HoFA** are not readily provided with access to the **Licensed Body's** management and staff and the **CLC** whenever necessary and are not of an appropriate management level)

**(e) Is there a risk that the issue of a licence to the body could result in harm to members of the public, the profession or the body?**

(i) The **CLC** will consider there is a risk of harm to members of the public, the profession or the individual if there is evidence in respect of a **HoLP/HoFA** that:

- they are or have been dependent on drugs or alcohol;
  - their mental health or their exposure to stressful situations can seriously impair their judgement, their ability to manage their work or their professional relationships;
  - they have been violent with colleagues or **Clients**; or
  - they have experienced recurrent episodes of behaviour/dependency/illness;
- which have given cause for concern in which case, unless the risk can be addressed to the satisfaction of the **CLC**, the application will be refused.

(ii) The evidence considered will normally include:

- recent and full medical reports, including psychiatric reports where relevant;
- accounts from employers and other parties; and
- a statement from the individual concerned.

8.24 Unless a **HoLP** or **HoFA** is demonstrably inappropriate for the role – for instance, the **HoLP** is not an **Authorised Person** - we are unlikely to decline an application for either of these posts. If however, a candidate is in our view insufficiently skilled given the body's size or profile this will inform our risk assessment of the body and may result in **conditions** such as targeted **Continuous Professional Development (CPD)** requirements of the individual and/or increased supervision. It is the licensable body's duty to ensure it has the appropriate individuals in place to ensure the regulatory requirements are met and that the rule of law is supported.

8.25 Should we decide not to approve a proposed **HoLP** or **HoFA** because the candidate is wholly unsuited for the role we will not use this decision to refuse the application itself if we are satisfied with all other elements of the application and the body subsequently nominates a more satisfactory individual for the role.

### **Non-Authorised Person with Material Interest**

8.26 The approach taken will be similar to that identified at 8.23 (a)-(e) and will be assessed against the quality of the body's **arrangements** for regulatory compliance (including the calibre and management level of the **HoLP/HoFA** candidates). All other things being equal we are likely to be less stringent about adverse information provided on these individuals rather than the roles of the **HoLP/HoFA**. As identified at 8.23 (a)-(e) we will assess the risks posed by the information presented. This approach will also be adopted where we seek information on an **associate** who causes us concern. Where an **associate** is an employee of the body this will inform our assessment of the likelihood of **improper influence**.

### **Managers**

8.27 The approach taken will be similar to that identified at 8.23 (a)-(e) – 8.25.

### **Outcomes-focused**

8.28 To protect the public, **Clients** and the reputation of the legal sector the grant of a **licence** must not compromise the **Code of Conduct outcomes**. The **CLC** determines all correctly completed **licence** applications it receives. We will only grant a **Licensed Body licence** where the assessment set out at 8.11-8.27 has satisfied us that our **regulatory arrangements** are/will be complied with.

8.29 The **CLC Authorised Officer** and their team will determine **licence** applications based upon an assessment of risk to the **Outcomes**. Where clarification of the information provided in an application is required the licensable body will be contacted. We will interview the **HoLP** and/or the **HoFA** as part of their designation, to discuss details of the application and the applicant's proposals and to achieve clarification (or reassurance where needed). We may also require other stakeholders to attend an interview to address particular concerns.

### **Complex applications**

8.30 In the case of a particularly complex application or where adverse information is provided the **licence** application will be determined by the **CLC Authorised Officer** in consultation with a Legal Practice Inspector (or an employee of equivalent or senior status).

8.31 Adverse information does not necessarily mean **licence conditions** will be imposed or the application will be refused. If adverse information is provided it will be discussed with the **applicant** to determine the risk posed to the **Code of Conduct's** outcomes, any resource implications for the **CLC** and the **applicant's** willingness or capacity to address the issue. We will not grant the **Licensed Body licence** unless we approve, either unconditionally or conditionally, each non-**Authorised Person's material interest**. Please

see section 10 for information on the options available to us on provision of adverse information which could threaten delivery of the **Code of Conduct's Outcomes**.

- 8.32 Where we are not fully satisfied with information provided but would require the body to make only minor adjustments – e.g. a slight amendment of an arrangement – we will require confirmation, which we shall verify, that the adjustment has been made before the **licence** is issued, rather than impose a **condition** upon the **licence**. **Conditions** will only be imposed where they are needed to safeguard **Client** interests and where the issue is such that it must be formally recognised within the **licence** terms.

#### **Notification**

- 8.33 We aim to notify all **applicants** of our **licence** determination within 90 days of receiving a complete application. If, because of the complex nature of the application or because we require additional information, additional time is needed to make the determination we will notify you of this before the end of the original 90 day determination period. We will inform you of the reasons for the extension and its additional period, which will not exceed a further 90 days.
- 8.34 The **CLC** will determine one of the following:
- a) To grant a **licence** free of **conditions**; or
  - b) To grant a **licence** subject to **conditions** (to mitigate risks posed to the **Code of Conduct Outcomes**);
  - c) To refuse the application (because of the seriousness of the risk(s) posed to the **Code of Conduct Outcomes**).

#### **Granting of a Licence**

- 8.35 Where a **licence** is granted it will be issued as soon as is reasonably practicable. If we are satisfied that all Non-**Authorised Persons material interest** holders meet our approval requirements the interest will be approved without **conditions** and we will advise both the **Licensed Body** and the investor of this as soon as is reasonably practicable.
- 8.36 The **Licence** will specify its terms by way of endorsement:
- All **authorisations** that the **CLC** grants the body to carry on **reserved legal activities**;
  - All **permissions** that the **CLC** grants the body to provide non-**reserved legal activities**;
  - Any **conditions** applicable to the exercise of the **authorisations** and **permissions**.
- 8.37 The **Licensed Body** can only carry on its **authorisations** and **permissions** in its capacity as the holder of its **Licence**.

- 8.38 The **Licensed Body** must not carry on a reserved legal activity which is not within its authorisations.
- 8.39 When carrying on its **authorisations**, a **Licensed Body** must comply at all times with its **conditions**.
- 8.40 Where non-reserved services are permitted we will adopt a co-regulatory approach with the relevant **Approved Regulator** as per our ABS Multidisciplinary Memorandum of Understanding. Where this is not appropriate it is likely we will require the applicant to ring-fence the services for which it has **authorisations** and **permissions**.
- 8.41 If the application is approved, as a new licensee, we will provide you with any reasonable support or guidance you require in the initial setting-up stages and for a short time.
- 8.42 **Licences** are issued for an indefinite period – other than temporary **licences** issued because of a change in the membership of a body - and are valid from the date of issue. **Licensed Bodies** will be required each year to pay the Regulatory Fee and a contribution to the **CLC Compensation Fund**. Should a body not provide this fee/contribution they will have invalidated the **licence**. **Licences** continue to have effect after a **Licensed Body** has ceased to practise.

## **9. Licensed Body (ABS) Register**

9.1 Our register of **Licensed Bodies** will be available on our website. This should aid public confidence in legal services providers, enabling interested parties such as the public to be able to identify licensed bodies and their owners, **managers** and statutory officers. The following information is held on this register:

- Name of **Licensed Body**
- Whether the **licence** is suspended or revoked and the date on which suspension or revocation took place
- Any **enforcement** action or sanction on the **Licensed Body**, its owner or any employee
- Trading name of the **Licensed Body**
- Previous names of the **Licensed Body**
- The **company** registration number
- The **licence** number of the body
- Previous **licences** held by the body
- The date the **licence** was issued
- Registered address of the **Licensed Body**
- Practising address(es) of the **Licensed Body**
- The names of the **Head of Legal Practice** and the **Head of Finance and Administration**
- The authorising body of the **Head of Legal Practice**
- The **reserved legal activities** that the body is authorised to undertake
- The ultimate **beneficial owner**
- **Managers** of the **Licensed Body**
- The names of those with a **material interest** in the **Licensed Body**
- The names of **Authorised Persons** who are employees of the **Licensed Body**
- Any endorsements placed on the **Licensed Body**

9.2 We will keep the register as up to date as reasonably practicable. It will reflect any change made within 28 days.

9.3 In very exceptional circumstances the **CLC** may agree it is appropriate not to publish details of the beneficial owner; it is up to the individual applicant to make such a case to us. The **CLC** will only consider this in exceptional circumstances e.g. where a real risk of physical harm has been demonstrated.



## **10. Adverse Information**

### ***Licence Conditions***

- 10.1 We will assess the risk posed by an **applicant** body. Where risks differ, so do our requirements. If we are not satisfied that an **applicant's arrangements** meet our approval requirements, but could be met through the implementation of additional safeguards, the **licence** will be issued with **conditions**. Any **conditions** will be noted on the **licence** and on the **CLC's** register, in addition to any endorsements (see 8.34).
- 10.2 We will simultaneously issue you with a notice explaining the requirements of the **condition(s)**, the reasons for its imposition and its duration (if time-bound). Any **conditions** imposed will take effect at the time the **CLC** directs e.g. a **condition** may take immediate effect or at a future date, or may not have effect until after any appeal in relation to it. **Conditions** will only be imposed where we consider that compliance with them would mean the **Code of Conduct Outcomes** would no longer be threatened e.g. if we are satisfied that our notified **material interest** approval requirements are likely not to be met by the imposition of **conditions** we would object to the notified interest. In contrast, the purpose of endorsements is to make it clear which legal activities a **Licensed Body** is authorised to undertake.
- 10.3 **Conditions** placed upon the **Licensed Body** may result in it incurring expenditure and can include:

(i) a limitation of the types of non-reserved services it may provide

- This **condition** will be imposed where the **CLC** is not satisfied that there are adequate **arrangements** in place to ensure the non-reserved activities are provided or supervised by suitably experienced or qualified staff;

(ii) a requirement that the body as a whole or a person within, or connected to it, takes a specific step, such as:

- Where we consider a non-**Authorised Person's material interest** poses a risk to **Authorised Persons' duties** we may approve the notified interest subject to **conditions** e.g. prohibited from engaging in the day-to-day activities of the business or exerting influence on any of the **managers** or employees to act, or refuse to act, for a particular person;
- Improvements to be made to the body's **arrangements**;
- Targeted **Continuous Professional Development** for persons within the body (this may be the **HoLP** and/or the **HoFA**, as well as **managers** and/or other relevant staff).

- 10.4 Where **arrangements** need to be improved, the **licence** will only be fully endorsed when these improvements have been made and where they are to the satisfaction of the **CLC**.

- 10.5 In cases where **conditions** would not be appropriate due to the significance of the risk posed and/or where the body lacks the capacity or inclination to comply with the proposed **conditions** the **licence** application will be refused.

**Licence Refusal**

- 10.6 When refusing an application, the **CLC** shall notify the **applicant** of the grounds on which the refusal was made.

- 10.7 The **CLC** may refuse to grant a **Licensed Body licence** where it is not satisfied that the business is able to comply with the **CLC Licensed Body Code** and presents a significant risk to the delivery of positive **Client Outcomes**. Factors which could determine such a decision include:

- A **material interest** causes significant concern which cannot be mitigated through **conditions**;
- Inadequate funds and/or resources;
- Inappropriate governance/management **arrangements**;
- Legal services would/are not delivered and/or managed by appropriately qualified **Authorised Persons**;
- The **conditions** imposed by the **CLC** upon which a **licence** would be issued have not been met;
- The body's **arrangements** make it vulnerable to **improper influence**;
- The body has not provided the application information requested, or has provided incomplete, or false or misleading information;
- Concerns that the proposed **HoLP/HoFA**/owner(s) is not fit and proper for their proposed role have not been resolved by mitigating measures and there is no suitable substitute;
- Indemnity insurance provisions do not provide suitable protection for **Clients** (particularly where the **applicant** has elected to opt out of the **CLC Master Policy**);
- The **Compensation Fund** contribution required has not been made;
- Fees owed to the **CLC** have not been paid.

- 10.8 The **CLC** shall notify the **applicant** of the grounds on which the application has been refused and their right for this to be reviewed.

## **11. Regulatory Responsibilities of a Licensed Body (ABS)**

- 11.1 All entities regulated by the **CLC** must comply with the **Code of Conduct**. The aim of the Code is to help promote the **regulatory objectives**. All applications will be assessed against the body's capability and capacity to deliver the Code's **Outcomes** and to comply with its **Overriding Principles**.
- 11.2 All the other **CLC** Codes are designed to ensure those we regulate deliver the **Code of Conduct's Outcomes**. We require **applicant** bodies to provide us with a Compatibility Statement concerning the **Code of Conduct Outcomes** and **Licensed Body** Code and any steps taken to address any identified issues e.g. a Non-**Authorised Person** with a **material interest** is subject to other duties which could potentially conflict with the **Code of Conduct's Overriding Principles**. Wherever appropriate or possible we will work with an **applicant** to address an issue which has been reported to us.
- 11.3 No licensable body will be licensed as a **CLC Licensed Body** until we are satisfied that their application demonstrates that the body will meet these regulatory responsibilities and deliver the **Code of Conduct's Outcomes**.
- 11.4 All of our **regulatory arrangements** are set out in the **CLC** Handbook, an electronic copy of which is available on the **CLC** website: <http://www.clc-org.uk/>

A hard copy of this document will be available to those unable to access an electronic copy.

### ***Improper Influence***

- 11.5 We will always investigate allegations of **improper influence** and where we are satisfied there is evidence of this we will follow our **Enforcement** Policy (please see the **CLC** Handbook).
- 11.6 Should a **HoLP** need to report **improper influence** they should do so to the CLC Authorised Officer

### ***Material interests***

- 11.7 As identified in the **Licensed Body** Code persons proposing to take a step which would result in them acquiring a **material interest** in a **Licensed Body** must notify both the **Licensed Body** and the **CLC** of this. A person with an existing **material interest** acquiring an additional kind of **material interest** must do the same.
- 11.8 Any proposed new **Authorised Person** with a **material interest** (of 10% or more) of a **CLC Licensed Body** will be given temporary pre-approval of their notifiable interest for an initial period of 90 days (which on notice to them and the body the **CLC** may extend by up to a further 90 days) during which time the status of the body's **licence** will become

- temporary. The approval will become permanent only when the **CLC** has judged them fit to own. The 90 day determination of whether to approve, place **conditions** (or further **conditions**) on, or object to, an interest gives us sufficient time to analyse the information provided and to properly consider all relevant issues to determine what the appropriate approach should be. Failure to respond promptly to requests for information may result in a delay in determining the application, or in exceptional circumstances in the application being refused.
- 11.9 If a person had no knowledge of the facts that led to this (such as on inheritance of shares) they must inform both us and the body within 7 calendar days upon possessing such knowledge.
- 11.10 Failure to notify a proposed step, or an actual acquisition, is a criminal offence which upon conviction could result in a fine. If we are notified of a proposed step and the person subsequently takes the step without our approval they are liable on summary conviction to a fine and a conviction on indictment to a term of imprisonment or a fine (or both).
- 11.11 We will consider representations made regarding our stated intention to impose **conditions** or object. These will be considered within 28 days of issue of the notice. Should we then approve the **material interest** subject to **conditions** we will issue both the **applicant** body and the investor with a notice specifying the reasons for the **conditions**, their nature, and explaining that we could ultimately divest the person of their **material interest** if it is judged necessary in the interests of the public and **Clients** to do so.
- 11.12 In a partnership a non-**Authorised Person's material interest** which is not approved by us does not make it unlawful for the partnership's business to be carried on or for the partners to carry it on in partnership.

## **12. Monitoring**

- 12.1 The factors which determine our regulatory relationship with the bodies and persons we regulate are set out in the **CLC** Regulatory Policy. We systematically collect information to help us monitor how effectively our **regulatory arrangements** are operating. All **CLC** regulated entities are required to submit data into our secure online Management Information System. The information held on this system is analysed and helps inform our regulatory profiling. We may require you to provide us with information (such as reconciliation statements) on a periodic basis to satisfy us that your declared systems are in place and are operating satisfactorily.
- 12.2 All entities regulated by the **CLC** are required to submit an annual information form. The data the Licensed Bodies are required to provide includes:
- **HoLP** and **HoFA**, **Managers**, owners and **Authorised Persons** (including any changes in their circumstance);
  - **HoLP/HoFA Continuing Professional Development** Records;
  - Who is involved in dealing with and managing **Client Money**;
  - Breakdown of work;
  - Volume of transactions;
  - Profile of work by complexity;
  - Referral **arrangements**;
  - Significant new sources of work;
  - The type of services provided;
  - Turnover and profit;
  - How **Clients** access services;
  - **Complaints** data;
  - Any additional information you may wish to provide e.g. evidence of recognised external accreditation, customer satisfaction feedback results or findings from internal compliance activity.
- 12.3 According to the risk posed by the body we may require information more frequently (and more varied). This will only be requested when justified by risk assessment. Our investigation may include an inspection which may be carried out remotely or through a site visit.

### **13. CLC Enforcement Powers**

- 13.1 All Licensed Bodies and their stakeholders must comply with our **regulatory arrangements** at all times. Where a non-compliance issue is identified we will always seek to resolve it informally in the first instance. Where this has failed or where the severity of the risk renders this inappropriate, we will take formal enforcement action. We always seek to ensure our enforcement response is proportionate to the risk identified. We have a number of statutory powers available to us to protect the interests of the public and **Clients**. These powers can be exercised against the **Licensed Body** itself or an owner, manager or employee of it (or all of these individuals) and can be used in isolation or in conjunction.
- 13.2 Where an issue has been identified the **CLC** will provide you with a warning notice\* to inform you of the action we intend to take as a result, why it is considered necessary and when the Notice will come into effect. You will be able to make representations to us concerning our intentions.
- 13.3 The **CLC** Regulatory Policy explains what we as a regulator of legal services are seeking to achieve and how our regulatory philosophy is put into practice. The **CLC Enforcement** Policy explains how we identify and respond to non-compliance with our regulatory requirements and the factors which determine the form our response takes.
- 13.4 \*The exception to this is where **intervention** is deemed necessary.

### ***Licence Conditions***

- 13.5 In addition to any endorsement (see 8.34), we will impose **conditions** upon a **licence** where we consider additional safeguards are needed to protect **Clients**. **Conditions** include:
- Requiring the body as a whole or a person within, or connected to it, must take a specific step e.g. where the **CLC** is not satisfied that the **HoLP** or **HoFA** remains 'fit and proper' for the role, we may withdraw our approval of that individual (requiring another individual be designated for the role);
  - Limiting the duration of the **licence** (applied only in exceptional circumstances and in conjunction with other **conditions** e.g. in the event of the running down of a practice).
- 13.6 **Conditions** may be imposed in the granting of a **licence** or at any stage in a **licence's** duration. We may impose further **conditions** or adopt other enforcement measures if **conditions** are not complied with.
- 13.7 **Conditions** are likely to be time-bound. The period within which they must be complied with will be stated on the re-issued **licence**.

## Financial Penalties

- 13.8 We may impose a financial penalty upon a **Licensed Body**, and/or one or more of its **Managers** or employees. We are likely to issue a financial penalty when behaviour is inappropriate and needs changing to deter future non-compliance. We will determine if the act or omission was deliberate, the impact (potential or actual) of the behaviour on a **Client**, or **Clients** in general, the reputation of the legal services sector, whether the breach was a one-off or a repeated issue and the attitude of the individual or body, to determine if a financial penalty could be considered an appropriate action and if so, the appropriate level. The penalty will be proportionate to the breach and take account of the resources of the **Licensed Body**.
- 13.9 The **Legal Services Board** (LSB) has set the maximum penalty thresholds for a **Licensed Body** and an individual within it at £150 million and £50 million respectively.
- 13.10 We do not profit from a financial penalty; the payment is made into the Government's Consolidated Fund.

## Disqualification

- 13.11 Disqualification is a serious sanction. If a **HoLP**, **HoFA**, manager or employee is found to have intentionally, or through neglect, significantly breached their duties, or caused, or substantially contributed to a significant breach of the **licence** terms or its **conditions** they may be disqualified from holding that post, or any role, in any **Licensed Body**. A disqualified individual may apply for the disqualification to be terminated only when 12 months have passed since they were disqualified.
- 13.12 The **LSB** will maintain a list of those individuals who have been disqualified to ensure that people who are disqualified from involvement in the provision of legal services are kept from further harming the public. We will notify the **LSB** – within 7 days of these events - of a determination to disqualify, the results of any review, if one is requested, and any decision that the disqualification should cease to be in force.
- 13.13 The list of disqualified persons will include the following information:
- Full name
  - Other names known by
  - Date of birth
  - Type of disqualification (as a manager, employee, **HoLP**, or **HoFA**)
  - Date of disqualification decision
  - Review date
  - Result of review
  - Cessation of disqualification
  - Name of the **Licensed Body** they were previously employed by, or manager of
  - Number of **licence**

- **Licensing Authority**
- Type of authorisation (if an **Authorised Person** e.g. solicitor, **licensed conveyancer** etc.)
- Practising certificate number (if any)
- Details of misconduct i.e. reason for disqualification.

The list is available to view on the **LSB's** website: <http://www.legalservicesboard.org.uk/>

- 13.14 The LSB maintains a similar list of the persons **Licensing Authorities** have objected to owning a **material interest**, who have had **conditions** placed on it, or for whom a **divestiture** application has been made.

### **Divestiture**

- 13.15 Where there are **improper influence** concerns regarding a **material interest** holding we will act. Our **enforcement** response may take the form of **conditions** or an objection, or could result in a Restriction Notice and ultimately **divestiture**. We will issue a Restriction Notice where a person has a **material interest** shareholding in a body corporate with a share capital and:

- they are a non-**Authorised Person** who has acquired that interest without having secured our approval of that holding; or
- the **conditions** imposed (Conditional Approval of Notified Interest) upon that interest have been breached; or
- our objection to the interest has been disregarded.

- 13.16 The Notice will advise you of our intention to apply to the High Court for the holding to be divested if at the end of the period prescribed in the Notice the **divestiture** conditions (identified above) still apply. The Notice will direct that the relevant shares are until further notice - i.e. until the High Court makes an Order; we decide not to apply for an Order; or the body ceases to be licensed by the **CLC** - made subject to one or more of the following restrictions:-

- |   |
|---|
| <ul style="list-style-type: none"> <li>• a transfer (or agreement) of shares or the right to be issued with them is void;</li> <li>• voting rights are not exercisable in respect of the shares;</li> <li>• no further shares are to be issued to or in pursuance of any offer made to their holder; and</li> <li>• no payment is to be made of any sum due from the <b>company</b> on the shares (except in a liquidation).</li> </ul> |
|---|

- 13.17 The **material interest** holder will be given the opportunity to make representations for the action not to be taken.



- 13.18 We will notify the LSB of any objections/**conditions** imposed, varied or cancelled, any Restriction Notice issued, as well as the outcome of any subsequent review or appeal. We will also notify them if we approve the holding of a person included in this list and provide reasons for that decision. The Notice will state the reasons for the action taken. We will issue a copy of the Notice to both the individual investor and the **Licensed Body**.
- 13.19 If the High Court is satisfied that the **divestiture condition** is met it may order the sale of the shares so the Non-**Authorised Person** will no longer have a **material interest** (if they hold more than one type of interest, the interest to which the **divestiture condition** applies is satisfied). No such Order will be made as a result of breach of **conditions** or of an objection until the end of the period within which an appeal could be made, or if such an appeal is made, it has been determined or withdrawn. Where an Order is made, the proceeds of the sale (less the sale costs) must be paid into court for the benefit of the persons beneficially interested to them.
- 13.20 Alternatively, in the case of notified interest **conditions** being breached the High Court may order compliance with the **conditions**.

#### **Suspension and/or Revocation of a body's Licence**

- 13.21 The decision to suspend or revoke a **licence** will not be taken lightly. We will only use this measure where, due to the seriousness and/or persistence of the act or omission no other **enforcement** action is judged adequate to address the identified issue.
- 13.22 A **licence** may be suspended or revoked if:

- a) The body changes its structure and/or **arrangements** so it is no longer a **Licensed Body**;
- b) A **Reserved Legal Activity** is not carried out by an **Authorised Person** entitled to carry out that activity;
- c) An employee/manager/non-**Authorised Person** with **material interest** causes or substantially contributes to the **Licensed Body** breaching our **regulatory arrangements**, or one of its **Authorised Person managers** or employees to breach their regulatory duties;
- d) The **Licensed Body**, or one of its **Authorised Person managers**/employees, breach its/their regulatory responsibilities;
- e) The body employs a person disqualified from being a manager/employee of a **Licensed Body** as a manager/employee and that person was disqualified for breaching their duties (as set out at c) & d));
- f) The **Licensed Body** does not have a designated **Head of Legal Practice** or **Head of Finance & Administration** approved by the **CLC**;
- g) A non-**Authorised Person** with **material interest** has not notified us of their interest;
- h) A non-**Authorised Person** with **material interest** is in breach of the

**conditions** (or further **conditions**) we have placed upon the (notifiable or existing) interest;

- i) We have objected to the (notifiable or existing) holding of a non-**Authorised Person's material interest**;
- j) The **Licensed Body** is in breach of the terms or **conditions** applicable to its **licence** if the breach is incapable of being remedied or has not been remedied within a reasonable period;
- k) The **Licensed Body** is the subject of an allegation or **complaint** which, if substantiated, is likely to have serious implications for that body.

13.23 **Licence** suspension will not automatically result in **licence** revocation. We may end the suspension where we (or the FTT) are satisfied that to do so would not present a risk to **Clients**. Where this is the case, the body may be subject to a more intensive regulatory relationship to ensure the risks are kept to a minimum.

13.24 A **CLC Licensed Body licence** will also cease to have effect if the body is issued with a **Licensed Body licence** by another **Licensing Authority**.

#### **Intervention**

13.25 Where a body's **licence** has suspended or revoked or the **CLC** is satisfied that one or more of the following **conditions** applies:-

- The **licence** terms are not being complied with;
- Persons have been appointed receiver or manager of the **Licensed Body's** property;
- A relevant **insolvency event** has occurred;
- We have reason to suspect a Manager's or employee's dishonesty in connection with the **Licensed Body's** business, any related Trust or the business of another body in which a Manager or employee is or was employed;
- Undue delay\* by the **Licensed Body** in any matter in which it is/was acting for a **Client** or with any related trust;
- Undue delay\* by a Manager or employee in connection with any trust of which that persons is/was a trustee (in their capacity as such a Manager or employee)
- It is necessary to protect the interests of **Clients** or the beneficiaries of a related Trust;

we may exercise our powers to intervene in the business. As set out in our Regulatory Policy (please see the **CLC Handbook**) we would only take this action where the interests of **Clients** have been seriously compromised or are at grave risk of being seriously compromised, and where no other **enforcement** action is judged adequate to address a serious and or persistent issue, or if the body's viability is threatened or it becomes insolvent. This power can be invoked even after the **Licensed Body Licence** has ceased/been revoked.

- 13.26 \*The undue delay **conditions** apply only where we have given you a notice inviting you to explain the reason for the undue delay and you have not provided an explanation we are satisfied with within the period specified in the notice. In such cases you will be given notice of the failure and advised that **intervention** will take place.

#### **Intervention - Applications & Orders**

- 13.27 Where it is judged that **intervention** is the appropriate measure we can apply to the High Court for the following Orders to be made:

- Prohibiting the payment of money by a person or financial institution holding money on behalf of the **Licensed Body**;
- Recovery or receipt of money held by or on behalf of the **Licensed Body** (in connection with its **Licensed Body** activities or a trust);\*\*
- Information about and identification of money and accounts held;
- Production/delivery of documents (this may ultimately result in an appointed person being authorised to enter any premises to search/take possession);
- Communication redirection (this may ultimately result in steps being taken in relation to a website of the **Licensed Body**);
- Possession/disposal/destruction/take copies (or extracts from) of documents;
- Appointment of a new or substitute trustee (where the **Licensed Body** or any of its employees or **managers** is a trustee of a trust);
- Liable party to payment costs incurred due to **CLC intervention** activities.

- 13.28 We must inform you of our intention to do so via a Notice. If an application is agreed the High Court will make an Order to that affect. The Order will take effect once we have provided you with a copy of it.

- 13.29 \*\* The sums of money and the right to recover or receive them will vest in us and are held by us on trust and for the persons beneficially entitled to them.

13.30 Where we intervene in a body we will suspend or revoke a **licence** (though we will not intervene in all cases where a **licence** has been suspended or revoked)

## **14. Licence Modification**

- 14.1 We will not issue any automatic waivers of **regulatory arrangements** due to a body's structure; a body wishing to have a responsibility waived will need to make a specific application. A **Licensed Body** is entitled at any time to apply for a modification of its **licence** terms or **conditions**. If the modification concerns removal of **licence** conditions it is unlikely that an application will be successful if it is made within 12 months after the terms or **conditions** have been imposed, unless there are exceptional circumstances. (The 12 month exemption period does not apply to **conditions** which are time-bound). It is a matter for the **Licensed Body** to satisfy the **CLC** that the **condition** should be removed.
- 14.2 A body wishing to modify its **licence terms**, endorsements or **conditions** must complete the appropriate **CLC** form and provide us with evidence to justify the modification. The standard modification fee will be £320. This is cost-reflective of the 4 hours we judge will be required to assess the modification application. We reserve the right to charge additional amounts above the standard fee for particularly complex applications which take more than the expected time. These will be charged at £80 per hour. The request will be determined by the **CLC Authorised Officer**. The determination will be made within 28 days of receipt of the complete modification application.
- 14.3 The **CLC** will only modify **licence terms**, endorsements or a **condition** without obtaining consent from the affected body or individual where there is an evidenced need to do so, for example:
- There has been a change in legislation or in our **regulatory arrangements** which impacts upon the terms of the **licence**;
  - Where a **licence condition** is only to have effect for a period of time, that period has expired – we may decide to remove the **condition** if we are satisfied it is no longer applicable, or where we believe there are good reasons to do so we may extend the period the **condition** is to have effect;
  - The **CLC** is satisfied any **condition** or endorsement in force is no longer applicable – we may decide to remove the **condition** or endorsement or to substitute it with a further **condition** or endorsement which in the circumstances of the case is more likely to address the regulatory concerns we have identified;
  - We have identified a significant and/or immediate risk to **Clients** which justifies the imposition of a **condition(s)** or endorsement(s) for the protection of **Clients** or it is consistent with the **regulatory objectives** for a **condition(s)** or endorsement(s) to be imposed as a matter of emergency pending a more detailed investigation, particularly if the alternative would be to require the body to cease trading.
- 14.4 We will modify the terms, **conditions** or endorsements of the **licence** by giving the **Licensed Body** written notice. The modifications will have effect from the time we give the notice, or such later time as the notice may specify.

## **15. Review/appeal of CLC determination/enforcement**

15.1 An individual or **Licensed Body** who is dissatisfied with any **CLC** licensing or **enforcement** determination e.g.:

- Refusal of application for a **licence**;
- Any endorsement or **condition** imposed on a **licence**;
- Modification of a **licence**;
- Refusal to designate as **Head of Legal Practice**, or withdrawal of approval;
- Refusal to designate as **Head of Finance and Administration**, or withdrawal of approval;
- Disqualification from some or all of the roles within a **Licensed Body**;
- Suspension and Revocation of **licence**;
- A financial penalty i.e. its imposition, the amount and/or the payment timescales;
- Imposition of **conditions** on or objections to a holding.

may ask for a review of the decision. The **respondent** must make the request of review within 28 days of being notified of the determination.

15.2 A **CLC** Authorised Officer will determine licence applications – such as refusal of **licence** application, the modification of a **licence** or the imposition of a penalty up to but not exceeding £1,000. The **Adjudication Panel** (with a quorum of 3) will determine when it is appropriate to impose sanctions – such as disqualification of the Body or a **Manager**, licence revocation or imposition of a penalty. Determinations by a **CLC Authorised Officer** or the **Adjudication Panel** will be subject to review by the **Review Panel**. The **Review Panel** will comprise members of the **Adjudication Panel** who did not comprise part of the panel which determined the matter which is the subject of the review.

15.3 No member of the **Adjudication Panel** (or the **Review Panel**) is a member of the **CLC** Council or an employee of the **CLC**. The **applicant** for a review is entitled to make written representations to the panel, and to attend or be represented at the review hearing.

15.4 Wherever possible the **applicant** will be provided with their decision within 42 days of the determination review request. We reserve the right to extend this to 90 days where needed.

### **First-Tier Tribunal**

15.5 Having been notified of the determination made on review, the **applicant** may appeal to the First-Tier Tribunal (FTT). The FTT provides a general right of appeal wherever an individual or **ABS** does not accept our decision. It will hear appeals only from those who have exhausted their resolution options within the **CLC**, or where the **CLC Adjudication Panel** or the **Review Panel** has not met its published timescales. The appeal request must be made within 28 days of the review determination being issued.

- 15.6 The FTT is an independent public body, established under the Tribunals, Court and Enforcement Act 2007. The General Regulatory Chamber of the FTT will hear the appeal. This will constitute a substantive re-hearing of the issue and its determination. Appeals will be heard by a Committee of a legally qualified chairperson and a lay member.
- 15.7 The FTT can reach any decision which the **CLC** could have made and can:
- Affirm the **CLC** decision wholly or in part;
  - Quash the **CLC** decision wholly or in part;
  - Substitute the whole or part of a **CLC** decision with a new decision of a kind the **CLC** could have made;
  - Remit the matter to the **CLC** (generally, or for determination in accordance with a finding made or direction given by the Tribunal).
- 15.8 [Awarding costs provision to be determined by LSB/Tribunals Service].
- 15.9 There is a right of onward appeal to the Upper Tribunal on any point of law arising from a decision made by the First-Tier Tribunal.

#### **Consistency of determinations**

- 15.10 After operating as a **Licensing Authority** for six months we will assess the consistency of our licensing determinations – including the circumstances in which **conditions** are made and how often – to ensure we are employing a consistent approach. This quality control exercise will be carried out every year after to ensure our licensing approach is consistently applied. With the approval of the **LSB** we shall make such changes as we consider necessary in the light of these assessments.

## **16. Transfer and Continuity of Licences**

16.1 In a **Limited Liability Partnership** of two Members, if one of them:

(a)	is committed to prison in civil or criminal proceedings; or
(b)	is unable, because of incapacity caused by illness, accident or age, to attend to the body for a period of more than 14 days (or such other period as the <b>CLC</b> may determine); or
(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; or
(d)	abandons the body; or
(e)	has a <b>licence</b> issued by the <b>CLC</b> subject to a <b>condition</b> which would be breached by continuing as a <b>LLP</b> Member; or
(f)	is not a <b>Licensed Conveyancer</b> ; or
(g)	dies,

the **licence** will continue in full force and effect provided the remaining **LLP** Member is an **Authorised Person**, and within 28 days of the occurrence an additional person has become an **LLP** Member. We may extend the 28 day period upon the **Licensed Body's** request.

16.2 Where the **Head of Legal Practice** or the **Head of Finance and Administration**:

(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 body for a period of more than 14 days (or such other period as the <b>CLC</b> 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)	leaves the <b>Licensed Body</b> ;
(e)	has a <b>licence</b> issued by an <b>Approved Regulator</b> subject to a <b>condition</b> which would be breached by continuing as a <b>Head of Legal Practice</b> or <b>Head of Finance and Administration</b> ; or



(f)	dies;
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the **licence** will only continue in full force and effect provided an appropriately qualified and suitable replacement is in place within 28 days of the occurrence. We may extend the 28 day period upon the **Licensed Body's** request.

- 16.3 We must be **promptly** informed of all such vacancies or changes and we must be provided with the details of the new relevant person so that we can determine approve their appointment.
- 16.4 If the above requirements are not met the **licence** will be suspended, cease to have effect or be revoked.

**17. Other**

- 17.1 Any **CLC** document served on a licensable or **Licensed Body (ABS)** under our **regulatory arrangements** will be posted to its principal office in the United Kingdom.

## Annex C. Client Charter



### Client Charter

When you obtain services from an individual or a business regulated by the CLC, you are entitled to the following outcomes:

#### Service

- You receive an honest and lawful service.
- You are provided with a high standard of legal services.
- Your matters are dealt with using care, skill and diligence.
- You receive a high standard of service due to your lawyer's arrangements, resources, procedures, skills and commitment.
- The service is accessible and responsive to your individual needs.
- You do not feel discriminated against, victimised or harassed.
- Where the service you receive is below the standard you could expect your lawyer accepts responsibility for this and provides you with any appropriate redress.
- Should you make a complaint the way it is handled takes account of your individual needs.
- Should you make a complaint it is dealt with swiftly, impartially and comprehensively.

#### Advice

- You receive good quality and independent information, representation and advice.
- You receive advice appropriate to your circumstance.
- You have the information you need to make informed decisions

#### Money and Fees

- Your money is held separately from other monies and is kept safely.
- You are aware of any referral of work arrangements the lawyer may have with other parties.
- You are aware of any relationship with another party that limits the steps your lawyer can take on your behalf.

#### Professional Conduct

- Your affairs are treated confidentially (except as required or permitted by law, or with your consent).
- Your best interests are served.

- Your lawyer acts in the interests of justice. \*
- Your lawyer acts in good faith towards you. \*
- Your lawyer acts in accordance with their regulatory responsibilities.

\* Applicable to CLC Litigators and Advocates

### **Principled Behaviour**

All lawyers - be they an individual CLC Licensed Conveyancer, CLC Litigator or Advocate, or a company - regulated by the CLC are required to deliver these Outcomes by acting in a principled manner:

- To act with independence and integrity;
- To maintain high standards of work;
- To act in the best interests of Clients;
- To deal with regulators and ombudsmen in an open and co-operative way; and
- To promote equality of access and service.

If they are a CLC Litigator or Advocate we also require them:

- To comply with their duty to the court.

We monitor the bodies/individuals we regulate to ensure these principles are complied with.

We use a range of information to identify when a lawyer has not demonstrated the professional and principled behaviour we require of them. This includes the findings of our inspections and information from other stakeholders, such as lenders, police or clients, including complaints.

### **Complaints**

If you have not received the standard of service you could reasonably expect, you should complain to your lawyer. If you are not satisfied with how they deal with your complaint - or they haven't responded within 8 weeks of you submitting the complaint - you can complain to the independent:

[Legal Ombudsman](#)

PO Box 15870

Birmingham

B30 9EB

Telephone number: 0300 555 0333

Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Your complaint should be submitted to the Legal Ombudsman within 6 months of you receiving from your lawyer a full written response to your initial complaint to them (and within 12 months of you discovering a problem).

If your complaint is service-related the Legal Ombudsman will deal with it and may ultimately award you compensation which your lawyer must pay to you. If your complaint is conduct-related the Legal Ombudsman will pass it to us to deal with. If we determine the complaint in your favour we may take regulatory action against the person or body which delivered your legal service.

### **Enforcement**

Our regulatory arrangements aim to ensure that all whom we regulate deliver high standards of service to their clients. Where a legal services provider regulated by us fails to meet their responsibilities to you we will hold them to account. Actions taken to encourage compliant behaviour or to penalise non-compliance are known as enforcement.

We will always seek to deal with an issue informally wherever possible so that it can be resolved in a timely manner for you. If however an issue is immediate, serious and/or widespread, or where an informal approach has not been successful, we will take enforcement action. The form this takes will be proportionate to the impact the issue had, or has, on the Outcomes identified on page 1 of this leaflet.

We may fine them; place conditions on their licence (which, if not complied with, will result in further enforcement steps being taken); reprimand them; withdraw our approval of, or disqualify, an individual (meaning they can no longer be employed in that capacity); suspend, or even revoke their licence (so they are no longer able to practise).

We may use one of these enforcement options, we may use several. Where a body is failing, we have reason to suspect dishonesty or need to protect your interests as clients (or beneficiaries of a related Trust) we will intervene. This means we will manage the closure of the business (and the transfer of your matter to another person/body).

### **Compensation**

Should a body we regulate have failed to account for monies received or you have suffered due to its negligence, fraud or other dishonesty, you may be eligible for a grant from our Compensation Fund.

### **How to contact us**

For more information on how the CLC regulates the lawyers it licenses or to check whether an individual or body is regulated by us please visit our website: <http://www.clc-uk.org/>, email us on [mail@clc-uk.org](mailto:mail@clc-uk.org) or by phone: 01245 349599.

## **Annex D. ABS MDP Memorandum of Understanding**

### **Framework Memorandum of Understanding**

#### **Licensed Bodies as Multi-Disciplinary Practices Constituted as Alternative Business Structures**

##### **Introduction**

1. The Legal Services Act 2007 (LSA 2007) provides a licensing framework that permits licensed bodies (LBs) to provide reserved legal services alongside non-reserved and non-legal services. This facilitates the creation of alternative business structures (ABS) which can provide a potentially wide range of services. This may lead to the establishment of firms (including individuals within them) that are subject to the oversight of one or more regulators or professional bodies. This memorandum of understanding seeks to clarify so far as is practicable the roles of the regulators and professional bodies. One of the purposes of this memorandum of understanding is to contribute to the requirements of section 54 LSA 2007 (set out in full in Annex 2) to “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 which arise; and
  - (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body”.
  
2. This memorandum of understanding also takes into account the Guidance (relevant extracts of which are set out in Annex 3) issued by the Legal Services Board requiring a single framework memorandum of understanding to be implemented by all relevant bodies and provide a mechanism to resolve overlaps in ways which:
  - (a) provide the best form of consumer protection and redress;
  - (b) minimise confusion for market participants; and
  - (c) reduce/remove conflict in the future.
  
3. This memorandum of understanding recognises that regulators and professional bodies have duties to exercise various functions (sometimes deriving from statute) autonomously and in the public interest or with the public interest in mind. Co-operation and appropriate information sharing should provide clarity for consumers and regulated businesses and should also reduce regulatory cost by minimising duplication of effort by all concerned.

4. The parties to this memorandum of understanding (“the Regulators”) are:
  - 4.1 approved regulators as defined in the LSA 2007 (and which, for the avoidance of doubt, means entities which exercise the regulatory functions of bodies specified as approved regulators in the LSA 2007);
  - 4.2 licensing authorities as defined in the LSA 2007; and
  - 4.3 other regulators or professional bodies which do not come within 4.1 or 4.2 but which oversee the conduct of their members or of other persons within their jurisdiction and who, for the purposes of this memorandum of understanding, are involved in LBs.
5. This memorandum of understanding records non-binding arrangements between the Regulators, which are bodies that regulate, inspect, or oversee the carrying on of various activities by individuals and LBs. This memorandum also records a mutual understanding of the public interest in proper co-operation and co-ordination, particularly in the light of the obligation on approved regulators and licensing authorities to act in a way which is compatible with the regulatory objectives set out in section 1 of the LSA 2007 (see Annex 1). It provides a framework for co-operation, co-ordination and exchange of information in order to facilitate effective public protection and working relationships. It does not create legal rights or liabilities, but is a statement of intent, comprising principles to which the signatories will adhere so far as they practicably and lawfully can.
6. Approved regulators are required to act compatibly with the regulatory objectives set out in section 1 of the LSA 2007. Approved regulators acknowledge that other regulators have their own statutory or non-statutory objectives.

### **Principles**

7. The regulatory objectives in the LSA 2007 establish the key guiding principles of this memorandum of understanding. Further agreed principles are set out below to assist in a fuller understanding of how the Regulators will communicate and cooperate to facilitate the proper exercise of their functions, avoid duplication, avoid conflict between differing regulatory arrangements, and seek to ensure that consumers and others do not suffer detriment as a result of failure to co-operate or co-ordinate.

### *Sharing of information*

8. Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a signatory to this memorandum of understanding as provided in Annex 4.

*Co-ordinated oversight: minimising duplication so far as is reasonably practicable*

9. The Regulators will co-operate where appropriate in co-ordinating oversight and investigation (and related matters such as consequential action) so that:
  - 9.1 action is effective in protecting the public;
  - 9.2 investigations are not prejudiced; and
  - 9.3 regulatory cost is proportionate.
10. Investigations will usually be undertaken or led by the regulator of the entity rather than any particular individual within it.
11. When one of the Regulators identifies that an investigation of an LB or a person within it is desirable, it will endeavour to identify whether any other of the Regulators has a proper interest in the issues or persons to be investigated and, if so, discuss the proposed investigation with a view to agreeing whether one of the Regulators or both should pursue an investigation.
12. It is desirable to minimise the risk of duplicative and potentially inconsistent acts and decisions on the same facts by the Regulators and tribunals or committees before which they bring cases. The risks include:
  - 12.1 the same or similar issues of fact are subject to dispute in more than one forum;
  - 12.2 witnesses and respondents are engaged in parallel or sequential proceedings on the same facts;
  - 12.3 cost is unnecessarily imposed on respondents and the Regulators; and
  - 12.4 decisions are inconsistent.
13. While acknowledging that there are legal and practical difficulties (such as differences between the rules of independent tribunals), the following working principles are agreed as outcomes which the Regulators would wish to achieve (acknowledging also the differing structures of Regulators' investigation and disciplinary processes):
  - 13.1 the evidence obtained by one of the Regulators should be admissible in action by others:
    - 13.1.1 the Regulators' rules should permit the admission of such evidence;
    - 13.1.2 the Regulators should make submissions at an appropriate time to any independent tribunal or committee to the effect that its rules should permit the admission of such evidence; and

- 13.1.3 the Regulators should make submissions and applications in individual cases, so far as is appropriate and lawful, to support the principle that such evidence be admitted.
- 13.2 The formal findings of other Regulators or of any court or tribunal in matters conducted by another of the Regulators should be admissible in the proceedings of, or conducted by, recipient Regulators as evidence of the facts found.
14. Any of the Regulators who provide evidence or findings to another of the Regulators will co-operate so far as is reasonably practicable in making that evidence formally available for the purposes of proceedings by or involving the recipient Regulator, such as by the provision of live witnesses and/or written evidence.
15. Regulators will notify other Regulators of findings against the latter's members or those they regulate.

*Protecting the financial interests of consumers*

16. It is agreed that:
  - 16.1 client money held by an LB should be held separately from other money it holds, and client money held in relation to the provision of legal services should be held in accordance with the requirements of the licensing authority governing the LB; and
  - 16.2 the overarching principle is that clients' money must be protected at all times.
17. The Regulators will work together to reduce differences in respect of the treatment of clients' money by those they regulate. Standards and definitions should be as similar as possible and guidance should be agreed so far as possible to assist LBs to deal with complex situations.
18. The Regulators will work together to assist consumers to understand what activities of an LB are, and are not, subject to regulatory protections and in particular indemnity insurance and compensation arrangements.
19. Where there is loss to clients or others that may be covered by indemnity insurance or other compensation arrangements (such as a compensation fund or scheme), the Regulators will so far as reasonably practicable endeavour:
  - 19.1 to signpost consumers to the appropriate insurance or compensation scheme systematically and in response to individual queries;
  - 19.2 to minimise complexity and delay for consumers and others involved in any claim or application for compensation;
  - 19.3 to promptly resolve any uncertainty as to liability, jurisdiction or coverage of insurance or compensation schemes and provide clear guidance to the consumer as to how to pursue recovery, and (if such uncertainty cannot be promptly and conclusively resolved), to seek to ensure that consumers' claims or applications are dealt with by one



- insurer or compensation scheme, on the basis that ultimate responsibility for such claims or applications is subsequently resolved between the insurer or compensation scheme and such other applicable insurer or compensation scheme; and
- 19.4 to work towards insurance and compensation schemes that formalise the approach described above, perhaps by powers vested in the Regulator to direct particular insurers or schemes initially to deal with claims or applications on the basis that responsibility will be resolved subsequently.

#### *Resolution of regulatory conflicts*

20. The Regulators will work together to seek to establish appropriate arrangements to prevent and where necessary to resolve regulatory conflicts. This may include:
- 20.1 further memoranda of understanding dealing with particular subjects in more detail;
- 20.2 the establishment or continuation of working groups to reduce inconsistency or uncertainty in regulatory obligations where appropriate;
- 20.3 informal resolution mechanisms for procedural issues such as prompt resolution of disagreement about how investigations should be sequenced or co-ordinated; and
- 20.4 formal resolution mechanisms for issues that create risk to consumers such as those that might otherwise cause delay in the processing or payment of compensation.

#### *Transparency*

21. The Regulators will work together to agree common standards as to:
- 21.1 information to be provided to consumers about the status of the person acting for them, who regulates them and how to complain;
- 21.2 signposting of consumers to the correct complaints or redress scheme;
- 21.3 transparency in the publication of regulatory decisions; and
- 21.4 clarity and transparency for regulated businesses in understanding how they are regulated.

#### *General*

22. The Regulators will provide each other with points of contact to ensure prompt co-operation and communication on practical and other issues arising.

23. This memorandum of understanding may be reviewed at any time at the request of one of the Regulators but will in any event be reviewed within 3 years of its date.

24. This memorandum is a public document and may be published by any Regulator.

**The date of this memorandum of understanding is .....**

Signatories:

A. Approved regulators:

	Signed on behalf of the Regulator:
Solicitors Regulation Authority	..... Name: Position:
Bar Standards Board, part of the Bar Council	..... Name: Position:
Council for Licensed Conveyancers	..... Name: Position:
ILEX Professional Standards Limited, part of the Institute of Legal Executives group	..... Name: Position:

<p>The Patent Regulation Board (established by The Chartered Institute of Patent Attorneys) and the Trade Mark Regulation Board (established by The Institute of Trade Mark Attorneys) (together The Intellectual Property Regulation Board) each signing pursuant to Clause 5 of the Delegation Agreement dated [2nd] December 2009</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>
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B. External regulatory/professional bodies:

	Signed on behalf of the Regulator:
<p>Financial Services Authority</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>
<p>The Law Society of Scotland</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>
<p>Royal Institution of Chartered Surveyors</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>
<p>National Federation of Property Professionals</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>

<p>Institute of Chartered Accountants of Scotland</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>
<p>Institute of Chartered Accountants of England and Wales</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>
<p>Ministry of Justice acting as Claims Management Regulator</p>	<p>.....</p> <p>Name:</p> <p>Position:</p>

## **Annex 1 [MoU]**

### **1 The regulatory objectives**

- (1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of—
  - (a) protecting and promoting the public interest;
  - (b) supporting the constitutional principle of the rule of law;
  - (c) improving access to justice;
  - (d) protecting and promoting the interests of consumers;
  - (e) promoting competition in the provision of services within subsection (2);
  - (f) encouraging an independent, strong, diverse and effective legal profession;
  - (g) increasing public understanding of the citizen’s legal rights and duties; and
  - (h) promoting and maintaining adherence to the professional principles.
- (2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).
- (3) The “professional principles” are—
  - (a) that authorised persons should act with independence and integrity;
  - (b) that authorised persons should maintain proper standards of work;
  - (c) that authorised persons should act in the best interests of their clients,
  - (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
  - (e) that the affairs of clients should be kept confidential.
- (4) In this section “authorised persons” means authorised persons in relation to activities which are reserved legal activities.

## **Annex 2 [Mou]**

### **54 Regulatory conflict with other regulatory regimes**

- (1) The regulatory arrangements of an approved regulator 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 which arise; and
  - (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body.
- (2) For the purposes of this section, an external regulatory conflict is a conflict between—
  - (a) a requirement of the regulatory arrangements of the approved regulator; and
  - (b) a requirement of any regulatory provision made by an external regulatory body.
- (3) For this purpose “external regulatory body” means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons.
- (4) Regulatory arrangements made for the purposes of subsection (1)(b) may, with the consent of the Board, provide for the Board to exercise functions in connection with the resolution of conflicts.

### **Annex 3 [MoU]**

#### **Extract from “Alternative business structures: approaches to licensing**

#### **Guidance to licensing authorities on the content of licensing rules”**

**(Legal Services Board, [date])**

#### ***Regulatory overlaps***

29. A single framework Memorandum of Understanding (“MoU”) is implemented by all relevant bodies and provides a mechanism to resolve overlaps in ways which:

provide the best form of consumer protection and redress;

minimise confusion for market participants; and

reduce/remove conflict in future.

#### ***Requirement:***

*Licensing rules of a Licensing Authority must contain the provision required by Sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by Section 103) (section 83(5)(f))*

#### ***Guidance:***

58. LAs must set out the details of how they comply with this requirement. This includes how they will interact with other regulators (including any Memoranda of Understanding). We also expect LAs to identify any conflicts with other regulators’ arrangements and the steps they have taken to try to resolve them.

## **Annex 4 [MoU]**

### **Information Sharing**

1. Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a signatory to this memorandum of understanding:
  - 1.1 to enable the assessment of risk to the public such as to:
    - 1.1.2 minimise the risk of financial default;
    - 1.1.3 minimise the risk of fraud;
    - 1.1.4 identify the risk of financial failure; and
    - 1.1.5 identify increasing complaints or other concerns about the LB or persons within it.
  - 1.2 so that alleged misconduct or other failures are properly investigated and decided upon;
  - 1.3 to enable the proper processing of claims or applications for redress or compensation of any description; and
  - 1.4 for the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not;
  - 1.5 provided that the recipient is reasonably considered able to take regulatory action upon the information.
2. Any Regulator that receives or holds information received from another of the Regulators must:
  - 2.1 comply at all times with the Data Protection Act 1998 and any related or analogous legislation;
  - 2.2 keep the information secure;
  - 2.3 use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and
  - 2.4 not unreasonably take action that prejudices or may prejudice an investigation by another party or person.
3. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police, HM Revenue and Customs, the Serious Organised Crime Agency (or any body that in future carries out the functions of such bodies).
4. So far as they can lawfully do so, Regulators will require those they regulate or oversee to consent to the sharing of information with others who have a proper interest in



receiving it (such as the parties to this memorandum of understanding) by the use of licence conditions or analogous mechanisms.

## **Annex E. ABS Appeals Memorandum of Understanding**

### **ABS APPEALS: MEMORANDUM OF UNDERSTANDING WITH THE TRIBUNALS SERVICE**

1. This Memorandum of Understanding summarises the agreement reached in relation to the operation of the mechanism for appeals against the decisions of licensing authorities designated under Part 5 of the Legal Services Act 2007 (“the Act”). This document is not intended to be legally binding.

2. The agreement is made between:

the Legal Services Board (LSB)

the Tribunals Service

the Solicitors Regulation Authority (SRA)

the Council for Licensed Conveyancers (CLC)

3. The SRA and CLC make this agreement and agree to contribute funding contingent on their designation as licensing authorities.

#### Background

4. The Act sets out a new regulatory framework for the operation of regulators and the ownership of legal service providers. It gives the LSB a new power to recommend to the Lord Chancellor the designation of “licensing authorities” (LAs). These are approved regulators who have also been approved by the LSB to license a particular type of legal service provider, conventionally known as “alternative business structures” (ABS). In some circumstances the LSB itself can act as a licensing authority<sup>1</sup>. Approved regulators are able to apply to the LSB for designation as an LA, and it is anticipated that LAs will be operational and able to make licensing decisions from 6 October 2011.

1 Schedule 12, paragraph 1, Legal Services Act 2007

2 Schedule 10, para 11(2)(b), Legal Services Act 2007

5. Each LA will be required to have a set of rules to regulate ABS, which will be approved by the LSB initially as part of their application for designation. The LSB cannot approve ABS licensing rules unless it is satisfied that there is a body able to hear appeals against decisions of the licensing authority<sup>2</sup>.

6. Following consultation, the LSB’s policy is that there should be a single appeal mechanism for all ABS-related appeals (these are appeals against decisions of licensing authorities that are appealable either under the Legal Services Act 2007 or under licensing rules, and may be decisions affecting regulated entities and individuals working in such entities). A single mechanism will ensure consistency in decision-making about ABS licensing matters, and will enable a body of expertise to develop. We consider that the most effective and efficient way to deal with these appeals is to add them to the jurisdiction of the First-tier Tribunal, General Regulatory Chamber (GRC). This enables the existing expertise of the GRC in relation to regulatory matters to be utilised, and is also cost efficient as there is already well developed infrastructure and administrative support.

## Scope

7. In accordance with its rules, a licensing authority will be empowered to make a number of decisions in relation to licensable bodies. For example, it will determine an application for a licence, it may grant a licence subject to conditions, impose a financial penalty on a licensed body, disqualify individuals from holding certain posts within the licensed body and revoke the licensed body's licence.

8. The appeals will all be against decisions of licensing authorities. Appellants may be licensed bodies, licensable bodies applying for a licence, investors in such bodies, or individuals working in an ABS.

9. The Act provides an explicit right of appeal in relation to some decisions of licensing authorities – for example in relation to the imposition of a financial penalty (s.96) and in relation to decisions about ownership under Schedule 13. The Act also allows for a right of appeal against other decisions to be included in the licensing rules made by licensing authorities. There are some decisions where the LSB considers it is desirable to provide an appeal in the licensing authority's rules to ensure a fair and proper determination of a licensed body's rights – for example a decision to disqualify a person from working in an ABS<sup>3</sup> or a decision to refuse an application for a licence<sup>4</sup>. The Board has issued guidance about the matters which it considers should be appealable under licensing rules, to provide clarity for LAs when drafting their rules.

<sup>3</sup> S.99, Legal Services Act 2007

<sup>4</sup> S.84, Legal Services Act 2007

## Legislation

10. An order under s.80 of the Legal Services Act 2007 will be required to direct these appeals to the First-tier Tribunal. The order will also amend the Legal Services Act 2007 to direct onward appeals from decisions of the First-tier Tribunal to the Upper Tribunal rather than the High Court (as the Act currently specifies). The order will also specify the grounds of appeal and powers of the Tribunal in relation to matters appealable under the licensing rules.

## Membership

11. The composition of panels is a matter for the discretion of the GRC President. The pool of members from which a panel is selected to hear a case can be drawn from the membership of the First-tier Tribunal as a whole. First-tier Tribunal members who are already members of jurisdictions which are part of the GRC will need to be ticketed by the GRC President. Members of jurisdictions which are part of other chambers of the First-tier Tribunal need to be assigned by the Senior President of Tribunals.

12. The SRA, CLC & LSB will make suggestions to the GRC President about the knowledge and experience required of panel members hearing ABS appeals, and the numbers of legal and lay members that should make up a panel. The GRC President

will consider how these requirements can be met from within the membership of the First-tier Tribunal, through either ticketing or assignment.

13. For planning purposes in relation to costs, it is assumed that the panels hearing appeals will consist of two legal members and one lay member.

14. The Tribunals Service will also consider with the Tribunals judiciary an appropriate name for the new jurisdiction to reflect the expanded role of the existing panel.

#### Rules

15. The existing procedural rules of the GRC appear to be suitable for the purposes of hearing ABS appeals. The Tribunals Service will confirm with the Tribunals Procedure Committee (TPC) whether it considers any amendments are required. A question about the suitability of the existing GRC rules was included in the LSB's consultation on the draft s.80 order.

16. The LSB, SRA and CLC have recommended to the TPC that the Tribunal should have a general power to award costs against the parties, which is broader than the current limited power already provided for in the GRC rules. The TPC will consider this recommendation and decide whether to change the rules.

#### Costs

17. The number of appeals against the decisions of licensing authorities is anticipated to be low. The LSB has forecast the following likely range of appeals: 5 (low), 20 (medium), 40 (high).

18. The costs charged by the Tribunals Services for hearing these appeals will be an initial fixed set-up cost and then an annual operating cost consisting of some fixed costs and some variable costs related to the number of appeals.

19. Set-up costs are estimated at £12,122. This is based on:

A full day's training for 4 legal members and 6 lay members

Communication and project costs (including admin time for setting up the process, amending website, producing guidance etc)

An assumption that no IT changes will be required.

20. The LSB's working assumption is for 20 appeals in the first year of operation (06/10/2011 – 05/10/2012). Operating costs will consist of fixed costs and variable costs. The fixed costs are estimated at £5,100 per annum. The variable costs will be charged based on the actual costs of hearing the appeals based on the elements set out in Annex A.

21. The variable costs are estimated at approximately £85,000 per annum (assuming between 10 and 30 appeals). This is based on the following assumptions:

Each appeal will require, on average, a two day hearing

Judge/member fees are based on a panel consisting of two legal members and one lay member  
Admin costs to support 20 appeals will be £5,000 (based on a % of a section manager's salary and % of admin time)

Administration will be based in London

Existing Tribunals Service buildings will be utilised for hearings (in London and potentially elsewhere, based on the location of the appellant)

No IT changes will be made in the first year

These costs include any preliminary hearings required (including those required to hear any preliminary applications from the parties, make case management directions or strike out of all or part of the claim).

#### Funding

22. The costs will be recovered by the Tribunals Service from the licensing authorities, who in turn will incorporate the costs as an element of the licence fee charged to ABS. If the LSB acts as a licensing authority directly it will need to pay a contribution in common with other licensing authorities.

23. Payment of the set-up costs and first year operating costs will be made to the Tribunals Service by 31 March 2012.

24. The licensing authorities will pay contributions as follows:

Set-up costs and fixed annual running costs will be paid in proportion to the number of licensed bodies each holding a current licence as at 31 January 2012.

Variable annual running costs relating to each appeal will be paid by the licensing authority whose decision is appealed.

25. The Tribunals Service will issue invoices to each of the licensing authorities for the amount of their contribution.

26. In advance of go-live it is envisaged that licensing authorities will enter into a Memorandum of Understanding with the Tribunals Service setting out the funding and payment arrangements and service-level agreements if appropriate.

Implementation timetable	Milestone
<b>Deliverables</b>	
s.80 order made and approved by parliament	? July 2011
ABS Appeals structure in place	17 September 2011

## Annex F. CLC Corporate Strategy



# Corporate Strategy

2011 – 2013

Driving innovation through regulation

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## Foreword

This new Corporate Plan replaces the existing Corporate Plan 2009 to 2014 that was published in 2009. The CLC has undergone significant changes since the publication of that plan. A new Council comprising a Chair and six members was appointed as from 1 May 2010. The appointment of the new Council was a significant milestone for the CLC, bringing with it an emphasis on strategic leadership. The new Council commenced its work on 1 May 2010 and has reviewed the challenges facing the organisation and our ability to respond to them. The strategic priorities outlined for the next three years have been developed taking into account the evolving market conditions, relevant major developments, our progress against our Corporate Plan 2009 – 2014 and 2010 Business Plan, and the feedback from consultations with our stakeholders.

In developing our strategy, we have assumed that we will be successful in our applications to become a licensing authority and a regulator of litigation and advocacy services later in 2011. Our plans include preparing for and discharging those new responsibilities.

This Plan is being published at a time of profound change in both the wider economy and in the legal services market. The housing market and wider economic situation continue to present significant challenges for licensed conveyancers, particularly smaller high street players primarily because of the reduction in conveyancing transactions coupled with increasing restrictive access to lenders panels. At the same time, changes in legal services regulation, present both challenges and new opportunities; the challenges arise from the sheer weight of regulatory change for both the regulated and regulators, the opportunities arise particularly from the introduction of Alternative Business Structures (ABS) (see new Regulatory Context on page 8).

The new ABS regime is a great opportunity for the CLC. It builds on an existing strength; as the CLC has been regulating entities, in addition to individuals since 2000. The new regime creates the possibility that regulated entities will be able to swap legal regulators, presenting both an opportunity and a threat to the CLC. Finally, the aim of the new ABS regime is to create new management structures, which allow for innovation in the delivery of legal services. This too has resonance for the CLC, which was originally created with the aim of introducing innovation in the conveyancing field. Something we are very proud of having achieved.



The Legal Services Act is designed to create more choice and better access for consumers in legal services and allows regulators to expand their scope into other areas of legal practice. The CLC's expertise lies in consumer-focused retail legal services and we have created a regulatory regime that can respond to consumer need for better value for money and multi-channel delivery in the conveyancing market. Our consumer-focused regulatory framework encouraged new, innovative providers to enter the market. Having created a vibrant and successful regulatory framework in conveyancing, we have established a firm foundation to move into other areas of legal practice. By extending our scope and moving into the regulation of other legal activities, we will seek to do for other legal services, what we have done for conveyancing: allow legal service providers to be innovative and deliver more choice and greater access to legal services for retail consumers.

In the first instance, we will provide the opportunity for licensed conveyancers to extend their scope and deliver new services in new ways. In the future, we will create regulatory regimes, which allow potential for new entrants to operate in other areas of legal practice. Our particular approach to education and training will be extended to build on our existing modular educational framework to develop a similar structure for litigation and advocacy services. This will allow us to open our doors to a wider population of providers and so contribute toward achieving the regulatory objective in the LSA of encouraging an independent, strong, diverse and effective legal profession

These changes will create new sources of income for those licensees who are unnecessarily exposed in an economic downturn due to the current restrictive regulatory scope. Furthermore, they will allow the potential for the CLC to license new businesses and professionals wanting to be regulated for specific areas of practice beyond conveyancing and probate. Increasing the scale of the CLC's operation will be an advantage for all our licensees because it will spread our overhead costs over a larger community.

The successful delivery of our strategy over the next three years will rely on increased involvement and participation of our stakeholders. We will be therefore be exploring a range of new approaches to involve and consult effectively with our diverse stakeholders using their views and expertise to enable us to deliver excellent regulatory services.

A key implication of the CLC becoming a licensing authority and a regulator of litigation and advocacy services is addressing the question of our name and the title of those we regulate. We recognise that as licensed conveyancers will soon be able to deliver other legal services that clarity about the scope of services that they are authorised to provide

through their title is critical for consumers. We are currently exploring a range of possible options for a new name for the CLC and those we regulate in the future and we will be making decisions on this issue later in the year.

In summary, we aim to deliver on our vision, purpose and strategic objectives by applying and building on our considerable experience of bringing about change in the legal services market. We will build on our strengths, further develop our capabilities and take advantage of the new opportunities to maximise the contribution we can make to the emerging legal services market.



Anna Bradley

Victor Olwe

Chair

Chief Executive

## Who We Are

The Council for Licensed Conveyancers (CLC) was established by the Administration of Justice Act (AJA) 1985 to regulate licensed conveyancers in the provision of legal services (currently conveyancing and probate). We are bound by the statutory regulatory objectives laid down in the Legal Services Act (LSA) 2007, which describe what we must aspire to achieve for the public, consumers and the regulated community.

The Act says that the CLC must, so far as is reasonably practicable, act in a way:

1. Which is compatible with the following regulatory objectives:
  - a) protect and promote the public interest;
  - b) support the constitutional principle of the rule of law;
  - c) improve access to justice;
  - d) protect and promote the interests of consumers;
  - e) promote competition in the provision of legal services;
  - f) encourage an independent, strong, diverse and effective legal profession;
  - g) increase public understanding of the citizen's legal rights and duties;
  - h) promote and maintain adherence to the professional principles
  
2. And which it considers most appropriate for the purpose of meeting those objectives.

Further, the CLC must have regard to-

3. General principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  
4. Any other principle appearing to the CLC to represent the best regulatory practice.

## What We Do

Our role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services. The CLC fulfils its responsibilities by undertaking the following range of activities:

- Set educational and training standards for entry to the profession;
- Issue licences to practise to those qualified to provide conveyancing and probate services to consumers;
- Maintain a register of all Licensed Conveyancers and approved Regulated Entities;
- Set standards to regulate the professional practice, conduct and discipline of Licensed Conveyancers and Regulated Entities;
- Set standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers;
- Monitor the work and conduct of Regulated Entities and to determine whether they are meeting the required standards;
- Provide guidance and advice to Regulated Entities to maintain compliance with the standards and those regulations relevant to our duty of consumer protection;
- Investigate allegations of misconduct against a Licensed Conveyancer, Manager and/or Regulated Entity and where appropriate take disciplinary proceedings before the Discipline and Appeals Committee;
- Collaborate with key stakeholders in the legal services market to monitor and shape the impact of proposed regulations on the conduct of Licensed Conveyancers and Regulated Entities in order to maintain adequate consumer protection.

## **The Way We Do It**

The following operating principles guide the way we perform our regulatory activities.

We will:

- Use the least intrusive methods of achieving our regulatory objectives;
- Ensure that our regulatory interventions are based on reliable evidence and are targeted, proportionate, consistent, accountable and transparent;
- Ensure that our work reflects consumer priorities;
- Consult effectively with key stakeholders;
- Use our resources effectively and efficiently to deliver our strategic priorities.

## The New Regulatory Context

The LSA established a new framework of regulation with the Legal Services Board (LSB) as the oversight regulator. The LSB currently oversees the delivery of consumer protection in the legal services market through eleven approved regulators, including the CLC. Approved regulators are responsible for setting and maintaining standards but not for the complaints about the service provided by legal services providers. This role is performed by the Legal Ombudsman.

It is unnecessary here to repeat at length the reasons for reform and the stages this reform went through culminating in the LSA and creation of the LSB. Nevertheless, it is helpful to go back briefly to what was at the heart of the thinking in July 2003 when Sir David Clementi was appointed to carry out an independent review of the regulatory framework for legal services in England and Wales. The terms of reference set then were:

- To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector; and
- To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified

These objectives are most obviously reflected in the steps taken to allow Alternative Business Structures (ABS). ABS firms will be able to adopt much more flexible management and ownership structures than traditional law firms. The aim is to allow for more innovation and better outcomes for consumers. It is anticipated that when the LSB starts awarding Licensing Authority status later in 2011, several of the legal regulators will be granted authority to license ABS in due course. This will create the possibility of a plurality of regulatory approaches. As a result, legal services firms will be able to choose which legal regulator to be licensed by. It should be said that the individual lawyers in a firm, will still be authorised by their respective arm of the legal profession and the LSB will oversee common standards of protection in the public interest across all the ABS regimes.

## Our Vision

Our vision is to be seen as:

*The innovative legal regulator*

## Our Values

The following values are an intrinsic part of how we work, underpinning all our decisions and actions in delivering our purpose and strategic priorities;

### INTEGRITY

- Acting professionally and being accountable in all that we do

### EFFECTIVENESS

- Providing reliable and recognised qualifications and maintaining the standards of competence and professional conduct of Licensed Conveyancers and Regulated Entities in the interest of consumers and the public

### EXPERTISE

- Defining and promoting better practice in partnership with licence holders, regulated entities and key stakeholders (including other professional bodies and partners)

### INNOVATION

- Continuously looking for new and better ways to protect consumers and the public and to support students, licence holders, regulated entities, employers, partners and other stakeholders

### COMMUNICATION

- Encouraging open, clear, productive and valuable communication between ourselves and everyone we come into contact with

## Strategic Priorities

In order to fulfill our statutory objectives and move toward our vision, we have agreed the following strategic priorities for 2011-2013:

- 1 Developing and delivering innovative and excellent regulatory services
- 2 Deepening our understanding of the markets that we regulate
- 3 Strengthening and growing our regulated community
- 4 Building our capability and capacity



## **Strategic Objective 1 – Developing and delivering innovative and excellent regulatory services**

### Introduction

**1.1** The CLC is itself a product of innovation, so it should be no surprise that we are always looking for innovative approaches to the delivery of excellent regulatory services. Innovation means both doing new things and doing old things differently, this is why over the next three years we will be both developing our existing regulatory services, and regulating new areas of legal service.

### Why this is necessary?

**1.2** It is vital for the protection of the public interest that we consistently deliver excellent regulatory services so that the regulated community can innovate and deliver legal services that meet the diverse needs of consumers in England and Wales, efficiently and effectively.

**1.3** The quality of our regulatory services has a direct impact on the behaviour of licensees, which in turn, invariably affects the outcomes experienced by consumers. By delivering excellent regulatory services, including providing advice and guidance to our licensees, we maximise the possibility that they will understand the professional principles and associated rules and so deliver positive outcomes for consumers.

**1.4** Excellent regulatory services also ensure that the minority of the licensees, that is unwilling to abide by the professional principles, is held to account swiftly through fair and effective enforcement action, that protects consumers.

**1.5** Although the recent increase in mortgage fraud in the property sector is not directly related to CLC licensees, we recognise that the confidence of lenders in the conveyancing market has been shaken. We therefore need to continue our efforts to maintain and enhance trust in our licensees by identifying and responding to new and emerging risk with innovative approaches to regulation.

**1.6** During the period of this plan, we will become a Licensing Authority and start regulating litigation and advocacy. In particular, as a licensing authority, we will need to be a risk-based and outcome focused regulator, this calls for revised and updated processes that are currently being developed. As we take on these new

functions, we will place increased emphasis on the periodic review of our performance and the outcomes that result.

How will this be achieved?

1.7 We will develop and deliver innovative and excellent regulatory services by focusing on our business as usual activities and the following key activities:

- Maintaining and developing the regulatory framework to enable us to regulate existing Recognised Bodies and new ABS effectively and encouraging a culture of compliance with professional principles thereby ensuring the achievement of positive outcomes for consumers;
- Maintaining robust licensing and relicensing processes for licensees and enhancing those processes to handle a wider range (including greater complexity) and greater volume of applications whilst ensuring that only appropriate entities and/or individuals are licensed to operate within our regulatory framework;
- Developing and implementing an effective and dynamic risk assessment methodology to identify quickly those members of the regulated community unwilling to abide by the professional principles and taking swift appropriate action;
- Developing a package of the right incentives and sanctions (including review of the deterrent effect of all our enforcement activities) that ensure regulated entities behave in an appropriate way towards consumers;
- Developing and implementing a more attractive, flexible, modular qualifications framework that supports the effective regulation of licensees wishing to deliver litigation and advocacy services and meets the current and future needs of students and consumers of legal services.

## **Strategic Objective 2 - Deepening our understanding of the markets that we regulate**

### Introduction

- 2.1** In order to remain an effective and modern regulator in the fast changing and increasing complex landscape of legal services, it is important that regulatory intervention is underpinned by a deep understanding of the providers we regulate and the markets in which they operate. The experience of other sectors particularly those that interface with the legal services market such as the financial services market highlights that this is a worthy and necessary priority for any regulator committed to securing greater consumer confidence.
- 2.2** Deepening our understanding of the markets we regulate includes greater reliance on research based evidence to inform regulatory decision making as well as enhanced sharing of intelligence and ideas with relevant partners and developing a better understanding of the systemic risks inherent in markets where we regulate.

### Why this is necessary?

- 2.3** The implementation of the LSA places an obligation on the CLC as an Approved Regulator to operate in a way, which is compatible with the regulatory objectives in the Act. In particular, one of those objectives places a positive obligation on the CLC to promote the interests of consumers. In meeting this objective, we think it critical that our regulatory activity is focused on addressing the issues in the public interest that really matter to consumers, particularly those currently marginalised by the existing legal services provision. This understanding will ensure that the outcomes of our regulatory framework are aligned to the changing needs and expectations of consumers.
- 2.4** This statutory objective to promote the interests of consumers is shared with the LSB, the other Approved Regulators, and those bodies that may be designated as Licensing Authorities in the future. This means that we need to work collaboratively with a range of stakeholders in order to deliver better outcomes for consumers. Such collaboration is likely to become even more critical as the sub-markets within legal services are changed and reconfigured. Such changes could occur either because of adjustments resulting from the current economic conditions or because of intensified competition among legal services providers, particularly through the creation of new ABS.

2.5 Understanding market dynamics also helps the regulator to develop an appreciation of the pressures on licensees and the likely implications for their business, whether this is about rethinking how they deliver services or altering their business model through diversification, mergers or even closure.

2.6 For all these reasons, it will be a priority to enhance our understanding of the markets that we regulate.

How will this be achieved?

2.7 We will deepen our understanding of the markets we regulate by focusing on our business as usual activities and the following key activities:

- Systematic monitoring, including horizon scanning of the markets that we regulate to identify current and emerging risks to the public interest;
- Engaging with employers and consumers of legal services to identify gaps in the competencies and skills of regulated lawyers and entities and enhance the qualifications strategy to address any identified gaps;
- Developing a comprehensive programme of research to increase our understanding about attitudes of consumers (including the changing dynamics around the ways in which the public interest is conceived) and the regulated community in order to underpin and enhance our evidence based approach to policy making;
- Collaborating effectively with key stakeholders to achieve better outcomes for consumers particularly with other licensing authorities to identify and understand any emerging risks relating to ABS and finding ways to minimise such risks.

## **Strategic Objective 3 – Strengthening and growing our regulated community**

### Introduction

- 3.1** The CLC is a small, specialist regulator and this makes us vulnerable to shocks among our licensees, particularly in uncertain and challenging market conditions.
- 3.2** In order to ensure a stable regulatory environment we must retain our current licensees and help them to strengthen their position. Expanding our regulatory services will allow existing licensees to secure their position by providing new and enhanced services to consumers.
- 3.3** Delivering a wider range of regulatory services will also allow the CLC to expand the number of licensees it regulates, so spreading the cost of regulation across a wider community.

### Why this is necessary?

- 3.4** The CLC needs a robust financial position to ensure a stable regulatory framework. CLC income is correlated with the turnover of the firms that it regulates. Current forecasts indicate that the contraction in the housing market is likely to continue over the next few years. This impacts on the volume of transactions undertaken by the regulated community and in turn reduces turnover. This could inhibit the CLC's ability to invest in developing better regulatory services including enhancing its compensation fund arrangements.
- 3.5** We are committed to minimising regulatory burdens on our licensees, particularly the cost of regulation. Delivering smart regulation that is genuinely targeted, risk based, proportionate and effective, reduces costs to licensees and improves standards for consumers. Minimising regulatory burdens facilitates entry and diversity in the legal services market; if licensees are overburdened by regulation the costs are likely to be passed onto consumers in the form of higher prices, lower quality and reduced choice. This is not consistent with the positive outcomes we are aspiring to achieve for consumers.

3.6 The successful expansion of the CLC's remit into other legal areas will offer the opportunity for the CLC to grow and allow licensed conveyancers to increase their turnover by offering consumers a more diverse portfolio of services, which in turn enables the CLC to deliver better regulation in the public interest. The growth of our licensee base also enables us to achieve a reduced unit cost of regulation per licensee.

3.7 This is why over the next three years the CLC will continue to focus on improving the management of costs and generating new income, primarily through the growth of its regulated community.

How will this be achieved?

3.8 We will strengthen and grow our regulated community by focusing on our business as usual activities and the following key activities:

- Enabling our licensees to deliver a wider range of regulated services including litigation, advocacy and non reserved legal activities;
- Growing the number of licensees by promoting our regulatory approach to those potential licensees seeking smart regulation that delivers maximum value to the sector and consumers at a reasonable cost;
- Managing costs effectively and maximising all streams of income to ensure that the CLC has sufficient income to meet the costs of ongoing regulatory activity and the costs and obligations of the compensation fund;
- Developing and implementing a communications and marketing strategy that facilitates the growth of the regulated community and students undertaking CLC qualifications;
- Developing CPD to enable licensees to acquire specialist skills across the spectrum of the legal activities regulated by the CLC.

## **Strategic Objective 4 – Building our capability and capacity**

### Introduction

- 4.1** Over the next the three years, we will be providing different services in innovative ways to a wider range and number of regulated entities. This means that we must increase our capability and capacity to meet the new and exciting challenges ahead of us. We are confident that we can meet these challenges partly because of our resource plans for the future but also based on our experience of successfully addressing similar capacity and capability challenges in the past.
- 4.2** Building capability means ensuring we have access to the skills and experience we need to implement the new regulatory approach. In particular, through development and training of our people and our suppliers, in such things as the new risk-based approach and marketing of our services to deliver effective outcome focused regulation.
- 4.3** Building capacity means ensuring we can deploy the necessary resources to provide a wider range of services to an increasing number of regulated entities through a combination of organic growth, supplier management and joint initiatives with relevant partners.

### Why this is necessary?

- 4.4** Ensuring that we enhance our capacity and capability is critical as we take on new responsibilities, such as becoming a Licensing Authority and becoming a regulator of litigation and rights of audience.
- 4.5** The CLC wants to ensure that there is no diminution of standards and/or protection for consumers of legal services when regulated entities are able to choose their regulator, from October 2011. We intend to maintain the existing reputation and high standards of regulation across an expanded licensee group. This will require us to have excellent skills and experience available to us.
- 4.6** The CLC is also committed to delivering excellent services including faster processing times for a range of regulatory activities and this will necessitate enhancing our capability in some areas.
- 4.7** We will also need to develop our regulatory expertise in new areas and we need the right systems and information to help us to make better decisions.

4.8 We value knowledge and learning as key organisational and industry resources. We will therefore continue to invest in our staff, improve our skills and enhance our ability to regulate and raise our level of performance. We will develop key relationships with specialist partners to help us deliver our strategic objectives.

How will this be achieved?

4.9 We will build our capacity and capability by focusing on our business as usual activities and the following key activities:

- Developing our capability and capacity across the organisation to deliver effective outcomes focused regulation;
- Developing our capability and capacity to commission and manage a range of research projects to support and inform the effective delivery of the organisational priorities;
- Developing our operational capability and capacity to handle the scale and complexity of activities and new types of regulated entities brought about by achieving designation as a licensing authority and as a regulator of litigation and advocacy services;
- Implementing a comprehensive management information and knowledge management system to underpin the delivery of outcome focused and principles based regulation and to ensure that understanding of the information we hold is shared and used to best effect;
- Developing an internal review process to ensure that our regulatory activities are in line with the principles of good regulation as well as learning from best regulatory practice across a range of sectors/activities.



## Annex 1

### How our strategic objectives link to our statutory objectives

STATUTORY OBJECTIVES	STRATEGIC THEMES			
	Delivering Excellent Regulatory Services	Deepening our Understanding	Strengthening our Regulated Community	Building our capability and capacity
Protect and promote the public interest	■	■	■	■
Supporting the constitutional principle of the rule of law	■			■
Improve access to justice			■	■
Protect and promote the interests of consumers	■	■	■	■
Promote competition in the provision of services			■	■
Encourage an independent, strong, diverse and effective profession			■	■
Increase understanding of citizen's rights and duties	■	■		■
Promote and maintain adherence to professional principles	■			■

■ Represents contribution to the statutory objectives

## Feedback

We welcome feedback on our corporate strategy. Please email us at [clc@clc-uk.org](mailto:clc@clc-uk.org)



16 Glebe Road Chelmsford Essex CM1 1QG

DX121925 Chelmsford 6

t 01245 349599 f 01245 341300

e [clc@clc-uk.org](mailto:clc@clc-uk.org) [www.clc-uk.org](http://www.clc-uk.org)

## Annex G. CLC Business Plan



## Business Plan 2011

Driving innovation through regulation

This plan covers the period from 1 January 2011 to 31 December 2011

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## Foreword

We are delighted to present this year's business plan which is the first year of the implementation of our new corporate strategy for 2011 to 2013. This year promises to be a significant milestone in the history of the CLC as we aim to be successful in both applications to Legal Services Board to become a licensing authority and a regulator of litigation and advocacy services.

We have developed an ambitious program of work this year to deliver our new strategic priorities and we are confident the work programme is both realistic and achievable.

A key work stream for us this year is implementing a new approach to licensing Alternative Business Structures (ABS). Our approach is focused on ensuring that those we regulate deliver positive outcomes to consumers. We will ensure that our new licensing requirements, to be introduced later this year, will be sufficient to give consumers an appropriate level of protection, but not so burdensome as to create a disproportionate barrier for prospective competent new entrants.

We aim to achieve the delicate balance between adequate consumer protection and allowing consumer focused providers to have the necessary freedom and flexibility to deliver services innovatively. We will be focusing this year on further developing our risk assessment approach to ensure the appropriateness of our regulatory response to the risk profile of the entities that we regulate. Development has already commenced and the new approach to risk based regulation will be implemented later this year, to underpin the implementation of principles based regulation.

A new and exciting work stream for us this year is focused on enhancing and broadening our market intelligence. We will be exploring a range of options to determine our approach to obtaining a better and current understanding of the markets where our regulated entities operate and to use this intelligence to inform policy thinking in future years.

This year, we will also complete the development of an integrated qualification and credit framework for the CLC professional training programmes in probate and conveyancing. We expect the new framework to provide additional benefits to students including a progressive qualification structure that builds on existing knowledge at each level, credit-accumulation system allowing progress at different speeds, recognition of prior learning and formal recognition on completion of the academic qualification.

We are committed to ensuring that we have sufficient resources to deliver our ambitious plans this year and for the future. We are therefore planning an initial

increase in staff resource of 20%, complimented by working with a wider range of specialist providers to support the discharge of our regulatory functions.

We are also committing additional resource to the development of existing staff, to ensure that they are ready and able to carry the responsibilities of a licensing authority and regulator of litigation and advocacy services.

We recognise that the environment in which we operate is moving rapidly and we are committed not only to adapting effectively to changes, but also continuing to work with our key stakeholders to shape the future.



Anna Bradley

Chair



Victor Olowe

Chief Executive

## Who We Are

The Council for Licensed Conveyancers (CLC) was established by the Administration of Justice Act (AJA) 1985 to regulate licensed conveyancers in the provision of legal services (currently conveyancing and probate). We are bound by the statutory regulatory objectives laid down in the Legal Services Act (LSA) 2007, which describe what we must aspire to achieve for the public, consumers and the regulated community.

The Act says that the CLC must, so far as is reasonably practicable, act in a way:

1. Which is compatible with the following regulatory objectives:
  - a) protect and promote the public interest;
  - b) support the constitutional principle of the rule of law;
  - c) improve access to justice;
  - d) protect and promote the interests of consumers;
  - e) promote competition in the provision of legal services;
  - f) encourage an independent, strong, diverse and effective legal profession;
  - g) increase public understanding of the citizen's legal rights and duties;
  - h) promote and maintain adherence to the professional principles
  
2. And which it considers most appropriate for the purpose of meeting those objectives.

Further, the CLC must have regard to-

3. General principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  
4. Any other principle appearing to the CLC to represent the best regulatory practice.



## What We Do

Our role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services. The CLC fulfils its responsibilities by undertaking the following range of activities:

- Set educational and training standards for entry to the profession;
- Issue licences to practise to those qualified to provide conveyancing and probate services to consumers;
- Maintain a register of all Licensed Conveyancers and approved Regulated Entities;
- Set standards to regulate the professional practice, conduct and discipline of Licensed Conveyancers and Regulated Entities;
- Set standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers;
- Monitor the work and conduct of Regulated Entities and to determine whether they are meeting the required standards;
- Provide guidance and advice to Regulated Entities to maintain compliance with the standards and those regulations relevant to our duty of consumer protection;
- Investigate allegations of misconduct against a Licensed Conveyancer, Manager and/or Regulated Entity and where appropriate take disciplinary proceedings before the Discipline and Appeals Committee;
- Collaborate with key stakeholders in the legal services market to monitor and shape the impact of proposed regulations on the conduct of Licensed Conveyancers and Regulated Entities in order to maintain adequate consumer protection.

## **The Way We Do It**

The following operating principles guide the way we perform our regulatory activities.

We will:

- Use the least intrusive methods of achieving our regulatory objectives;
- Ensure that our regulatory interventions are based on reliable evidence and are targeted, proportionate, consistent, accountable and transparent;
- Ensure that our work reflects consumer priorities;
- Consult effectively with key stakeholders;
- Use our resources effectively and efficiently to deliver our strategic priorities.

## Our Vision

Our vision is to be seen as:

*The innovative legal regulator*

## Our Values

The following values are an intrinsic part of how we work, underpinning all our decisions and actions in delivering our purpose and strategic priorities;

### INTEGRITY

- Acting professionally and being accountable in all that we do

### EFFECTIVENESS

- Providing reliable and recognised qualifications and maintaining the standards of competence and professional conduct of Licensed Conveyancers and Regulated Entities in the interest of consumers and the public

### EXPERTISE

- Defining and promoting better practice in partnership with licence holders, regulated entities and key stakeholders (including other professional bodies and partners)

### INNOVATION

- Continuously looking for new and better ways to protect consumers and the public and to support students, licence holders, regulated entities, employers, partners and other stakeholders

### COMMUNICATION

- Encouraging open, clear, productive and valuable communication between ourselves and everyone we come into contact with

## Strategic Properties

In order to fulfill our statutory objectives and move toward our vision, we have agreed the following strategic priorities for 2011-2013:

- 1 Developing and delivering innovative and excellent regulatory services
- 2 Deepening our understanding of the markets that we regulate
- 3 Strengthening and growing our regulated community
- 4 Building our capability and capacity

## **Our Programme of Work for 2011**

Our programme of work for 2011 is both challenging and exciting as we take steps this year to expand our regulatory remit and acquire additional responsibilities. The priorities for this year are framed by our new three year corporate strategy and the activities in 2011 are designed to support delivery of the strategic objectives.

The key activities under each strategic objective map out the main areas of work for the CLC during 2011. As in previous years, our programme of work includes a continuation of many activities outlined in the 2010 business plan. Furthermore, the plan assumes that the activities outlined in the plan are in addition to our business as usual activities as a regulator.

## **Strategic Objective 1 – Developing and delivering innovative and excellent regulatory services**

### Introduction

- 1.1** We are committed to delivering excellent regulatory services and we will constantly seek out ways to improve the way we operate for the benefit of all our stakeholders.
- 1.2** We will therefore be focusing on making necessary improvements to our regulatory framework to support the shift to outcomes focused regulation later this year.

### What we will do?

- 1.3** We will develop and deliver innovative and excellent regulatory services by focusing on business as usual and the following key activities:

<b>Key Activities</b>	<b>Key Milestones</b>
Develop updated standards in a new CLC Handbook to ensure that the regulated community maintains standards of competence and professional conduct that meets the needs of consumers of legal services and other key stakeholders	Q3
Provide proactive advice and clear, comprehensive and helpful guidance to the regulated community to enable them to deliver positive outcomes to consumers as outlined in the new CLC Handbook including enhancing the programme of seminars and workshops to support new licensed bodies	Q3
Collect reliable, relevant, accurate and timely information from the regulated community and prospective licensed bodies to inform our ongoing risk based regulatory approach particularly with regard to licensing determinations	Q4
Develop an effective and dynamic risk assessment methodology to identify quickly those members of the regulated community unwilling to abide by the professional principles and taking swift appropriate action	Q4

Develop and implement a proactive approach to monitoring of the performance of regulated entities to secure compliance with the professional principles in a timely and proportionate way	Q4
Develop and implement new licensing processes as a licensing authority, including the transitional arrangements for existing recognised bodies and the approach to be adopted for special bodies	Q3
Develop and publish our policy for the publication of regulatory decisions, including the licensing determinations	Q4
Develop and implement a new qualifications framework	Q3

## **Strategic Objective 2 - Deepening our understanding of the markets that we regulate**

### Introduction

- 2.1** Deepening our understanding of the markets we regulate involves greater reliance on research based evidence as well as enhanced sharing of intelligence and ideas with relevant partners. We will also develop a better understanding of the systemic risks inherent in markets where we regulate.
  
- 2.2** Our main strand of work under this objective is developing stronger stakeholder relationships to facilitate intelligence sharing.

### What we will do?

- 2.3** We will deepen our understanding of the markets we regulate by focusing on business as usual and the following key activities:

<b>Key Activities</b>	<b>Key Milestones</b>
Develop appropriate methodologies to obtain reliable evidence on potential gaps in our regulatory framework and knowledge about our licensees including information on diversity and access to justice	Q4
Identify, collate, analyse and utilise secondary data sources to increase our market intelligence	Q4
Develop a stakeholder strategy including adopting more user friendly and innovative methods to engage with our diverse range of stakeholders	Q3
Obtain feedback from our licensees and students to improve the delivery of regulatory services	Q4



## **Strategic Objective 3 – Strengthening and growing our regulated community**

### Introduction

- 3.1** The main focus of our work this year to support the strengthening of our regulated community is the submitting of successful applications in order that the CLC will become a licensing authority and regulator of litigation and advocacy services later this year.

### What we will do?

- 3.2** We will strengthen our regulatory community by focusing on business as usual and the following key activities:

<b>Key Activities</b>	<b>Key Milestones</b>
Submit a successful application and secure LSB approval as a licensing authority for ABS	Q3
Submit a successful application and secure LSB approval to extend regulatory scope to regulate litigation and advocacy services	Q3
Develop a communications and marketing strategy that facilitates the growth of the regulated community and students undertaking CLC qualifications	Q4
Develop and implement an effective communications plan to make prospective licensed bodies aware of the CLC's imminent status as a licensing authority	Q2
Develop a detailed educational programme for litigation and advocacy with approved providers	Q4

## Strategic Objective 4 – Building our capability and capacity

### Introduction

- 4.1 Our primary focus of activity this year is putting in place the additional necessary resources to enable us to effectively handle the new responsibilities that we will assume later this year as a licensing authority and a regulator of litigation and advocacy services.

### What we will do?

- 4.2 We will build our capacity and capability by focusing on business as usual and the following key activities.

Key Activities	Key Milestones
Develop and implement training across the organisation to ensure that staff are competent to licence and monitor ABS and support effective outcomes focused regulation	Q2
Invest in our staff to enhance expertise, particularly to effectively manage those external suppliers that support us in the direct delivery of our regulatory function	Q3
Implement a new management information system to support the delivery of outcome focused and principles based regulation, particularly to enable the processing of online applications from prospective licensed bodies	Q2
Develop an internal review process to ensure that our regulatory activities are in line with the principles of good regulation as well as learning from best regulatory practice across a range of sectors/activities, particularly ensuring that licence determinations are consistent	Q3
Recruit new staff and external advisers to compliment existing capacity to support the CLC to discharge its additional responsibilities as a licensing authority and regulator of litigation and advocacy services	Q2
Further review our requirements to determine whether additional resources are required to support our new regulatory responsibilities	Q4
Develop customer service standards on key aspects of service delivery	Q4

## Operating Assumptions

Our operating assumptions for the next three years are based on the premise that the CLC will become a licensing authority and regulate litigation and advocacy services later this year. Based on that assumption, we estimate that our workload across the regulatory value chain will increase about 10% year on year for the next three years.

Our current assumption is that the key influence on workload over the next three years is the number of applications we receive as a licensing authority from prospective licensed bodies. The following table shows the estimated increase in workload which forms the basis of our resource requirements and budgets for the next three years.

	2011	2012	2013
<b>No ABS Applications</b>	100	110	120

In addition, we have planned for a 15% increase in expenditure to support the resource requirements to regulate litigation and advocacy over the next three years. However, in real terms we expect the impact on overall expenditure to be less because we are planning for a 5% efficiency saving, arising from the implementation of new systems and processes.

Our operating assumptions have taken into account the scenarios where we receive higher than anticipated volumes of licensing applications. As part of our contingency arrangements, we would reallocate our multi- skilled staff to focus on supporting the licensing process and a bank of temporary staff has been identified to provide backfill support. Where necessary we will also rely on our external providers to ensure that operational targets are met irrespective of the level of workloads. We will fund the cost of any such additional support initially through existing reserves. The reserves will be brought back to current levels through subsequent rounds of fees collection. This ensures that there is no funding constraint on operational performance.

## **Budget Assumptions**

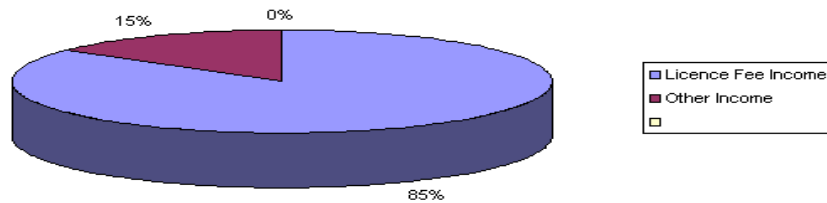
In this section, we outline our estimated resource requirements for the next three years. Our proposed budget reflects the strategic objectives in our corporate strategy. Regulatory fees collected from licensees annually fund the CLC's budget. The outline budgets are based on our key operating assumptions and the likely impact of economic conditions on the turnover of the licensees that we regulate.

The forthcoming changes to our responsibilities and the projected economic climate over the next three years have created a higher than usual degree of uncertainty with regard to our estimated budgets. We will therefore continue to review the budgets regularly to ensure that we have sufficient resources to discharge our regulatory responsibilities.

## Budget Summary for 2011

### Operations

<u>Income</u>	<u>£000's</u>	
Licence Fee Income	2,003	85.2%
Other Income	348	14.8%
<b>Total Income</b>	<b>2,351</b>	<b>100.0%</b>



### Expenditure

Admin Costs	257	10.4%
Staff Costs	1,175	47.5%
Committee Costs	100	4.0%
Office Running Costs	56	2.3%
Insurance Costs	90	3.6%

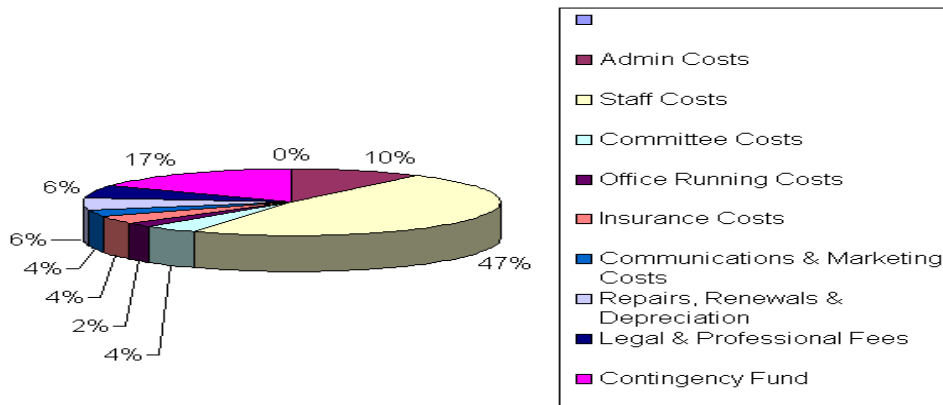
Communications & Marketing Costs	87	3.5%
Repairs, Renewals & Depreciation	141	5.7%
Legal & Professional Fees	154	6.2%
Contingency Fund	415	16.8%
<b>Sub Total</b>	<b>2,475</b>	<b>100.0%</b>

Less

Recoveries from the Comp Fund -124

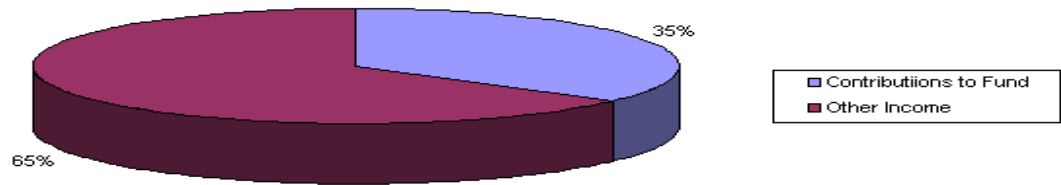
**Total Expenditure 2,351**

Purchase of Assets 169



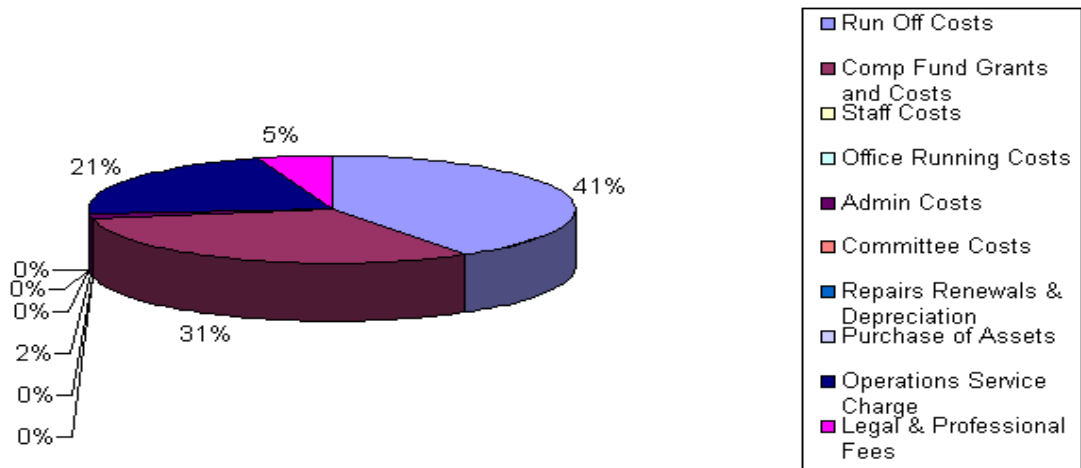
## Compensation Fund

<u>Income</u>	<u>£000's</u>	
Contributions to Fund	61	35.3%
Other Income	113	64.7%
<b>Total</b>	<b>174</b>	<b>100.0%</b>



<u>Expenditure</u>		
Run Off Costs	240	40.7%
Comp Fund Grants and Costs	185	31.4%
Staff Costs		0.0%
Office Running Costs		0.0%

Admin Costs	10	1.7%
Committee Costs		0.0%
Repairs Renewals & Depreciation		0.0%
Purchase of Assets		0.0%
Operations Service Charge	124	21.0%
Legal & Professional Fees	30	5.1%
<b>Total</b>	<b>589</b>	<b>100.0%</b>



The CLC announced a compensation fund holiday to existing licensed entities as part of the transition to the new fees and charges structure. This has resulted in a planned shortfall of £415K which will be funded from reserves.



## Outline Budget for 2011 - 2013

### Operations Budget 2011 - 2013 Comparison

<u>Income</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
	<u>£000's</u>	<u>£000's</u>	<u>£000's</u>
Licence Fee Income	2,003	2,142	2,285
Other Income	348	374	412
	<b>2,351</b>	<b>2,516</b>	<b>2,697</b>

### Expenditure

Admin Costs	257	266	279
Staff Costs	1,175	1,225	1,283
Committee Costs	100	104	105
Office Running Costs	56	58	60
Insurance Costs	90	95	100

Communications & Marketing Costs	87	90	90
Repairs, Renewals & Depreciation	141	151	152
Legal & Professional Fees	154	204	230
Contingency Fund	415	456	540
	<b>2,475</b>	<b>2,649</b>	<b>2,839</b>
Less:			
Recoveries from the Comp Fund	-124	-133	-142
	<b>2,351</b>	<b>2,516</b>	<b>2,697</b>
<b>Net Income / (Expenditure)</b>	<b>0</b>	<b>0</b>	<b>0</b>
Purchase of Assets	169	100	100

### Compensation Fund Budget 2011 - 2013 Comparison

<u>Income</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
	<u>£000's</u>	<u>£000's</u>	<u>£000's</u>
Contributions to Fund	61	474	540
Other Income	113	123	133
<b>Total</b>	<b>174</b>	<b>597</b>	<b>673</b>

### Expenditure

Run Off Costs	240	193	193
Comp Fund Grants and Costs	185	210	250
Staff Costs			
Office Running Costs			

Admin Costs	10	11	13
Committee Costs			
Repairs, Renewals & Depreciation			
Operations Service Charge	124	133	142
Legal & Professional Fees	30	50	75
<b>Total</b>	<b>589</b>	<b>597</b>	<b>673</b>
<b>Net Income / (Expenditure)</b>	<b>-415</b>	<b>0</b>	<b>0</b>



16 Glebe Road Chelmsford Essex CM1 1QG

DX121925 Chelmsford 6

t 01245 349599 f 01245 341300

e [clc@clc-uk.org](mailto:clc@clc-uk.org) [www.clc-uk.org](http://www.clc-uk.org)

**EXTERNAL AUDIT SERVICE**

**REPORT ON RESOURCES**

**COUNCIL FOR LICENSED CONVEYANCERS**

31 JANUARY 2011

PREPARED BY:

HEAD OF EXTERNAL AUDIT:           ANDREW STRICKLAND

EXTERNAL AUDIT MANAGER:           MARK SMITH

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2. Audit Planned Coverage and Output	1
3. Operational Assurance	1
4. Overall Assurance	2
5. Future Operations	2
6. Opinion	3

**1. INTRODUCTION**

- 1.1 Our audit work for the period from 1 January 2010 to 31 December 2010 was carried out in accordance with the Audit Plan approved by the Council. The Plan was constructed in such a way as to allow us to make a statement on the adequacy and effectiveness of the Council's financial and other resources, and various control processes. This Report is one element of evidence required to support the Statement of Resources that is to be made by the Council to the Legal Services Board.

**2. AUDIT PLANNED COVERAGE AND OUTPUT**

- 2.1 The Governing Body agreed to an original fee in respect of our audit coverage in the year. We have also carried out such additional work as we considered necessary in order to make the various statements in this report and this additional work was set out in our engagement letter and agreed by the Council.

**3. OPERATIONAL ASSURANCE**

- 3.1 The External Audit Service reviewed and evaluated the work undertaken by the Internal Audit Service to the Council, and also undertook other work relating to the Council's processes in a number of business areas.

- 3.2 From this work we have concluded that the policies, procedures and operations in place to:

- establish and monitor the achievement of the Council's objectives are adequate;
- identify, assess and manage the risks to achieving the Council's objectives are adequate;
- ensure compliance with the Council's policies, procedures, laws and regulations are adequate;
- ensure the integrity and reliability of information, accounts and data, including internal and external reporting and accountability processes, are adequate.



#### 4. OVERALL ASSURANCE

4.1 In giving our opinion it should be noted that assurance can never be absolute. The most that the external audit service can provide to the Governing Body is reasonable assurance that there are no major weaknesses in the processes and an opinion as to adequacy of the financial resources available to the Council. In assessing the level of assurance to be given, we have taken into account:

- all audits undertaken by the Internal Audit Service during 2009/10;
- the results of our external audit work;
- discussions with management;
- any follow-up action taken in respect of audits from previous periods;
- the additional work that we have undertaken in respect of the audit of the December 2010 financial statements in respect of financial standing and reviews of forecasts;
- the additional work that we have undertaken in respect of HR policies;
- the procedures and the arrangements for the control of litigation matters which reach the Council;
- the additional work that we have undertaken in respect of the controls over qualifications and continuing professional development.

#### 5. FUTURE OPERATIONS

##### 5.1 Governance

In readiness for the Legal Services Act 2007, the CLC recently conducted a governance review, resulting in an all appointed Council of seven members with Anna Bradley as Chair. Anna also chairs the General Optical Council and the Communications Consumer Panel. In addition to Anna, there are two other lay members and four licensed conveyancer members. The committee structure was streamlined to reduce administration burden whilst improving effectiveness.

The Audit Committee consisting of three Council members and one associate, supported by internal auditors, oversee a comprehensive rolling programme of reviews and receive regular finance reports.

##### 5.2 Executive staff

A major structure review in 2009 with further changes in 2010 has ensured that the CLC is well positioned to achieve its objectives. There is an experienced senior management team consisting of Chief Executive and two directors and we understand that a recruitment campaign has been launched to identify a third director with the abilities to join this team.

We also understand that staff changes, revised roles and the successful recruitment of key staff have resulted in increased focus, efficiency gains and high potential for future growth.

A further recruitment programme is underway to attract further Legal Practice Inspectors and a Technical Adviser.

The development of a structured training programme should ensure that all staff have a broad understanding about the extension of the CLC's role. In addition we believe that specific and intensive training in ABS, litigation and advocacy will be completed by staff in specialist roles.

Any remaining capacity or skills gaps will be filled by appointing 'bought-in' providers. This gives the opportunity to flex resources to meet any envisaged market demand and also to provide additional expertise if needed. A number of such 'bought-in' contracts are already in place.

The CLC will review progress with the recruitment/'bought-in' strategy periodically and adjust to meet market demand.

A performance review process should ensure that all staff have objectives aligned to the CLC's strategic direction. Training needs can be met by personal development objectives and staff can be given a range of opportunities to meet all necessary continuous professional development requirements.

### 5.3 Accommodation

Glebe Road Chelmsford offices and the Buckingham Court archive facility are wholly owned and fit for purpose., We have been informed that there is sufficient scope with existing buildings for significant expansion.

### 5.4 Facilities

We have not conducted an audit of estates management, but we understand that both CLC buildings are compliant in terms of health & safety, fire risk assessment and asbestos.

### 5.5 Finance

The recent review of fees and charges has resulted in transparency and more accurate reflection of costs and income. The CLC is in a healthy financial position, with a strong balance sheet.

## 6 OPINION

- 6.1 Following consideration of the above, we are satisfied that sufficient internal and external audit work has been undertaken to allow us to draw a reasonable conclusion as to the adequacy and effectiveness of the Council's financial resources and also its control and governance processes.

6.2 In our opinion the CLC:-

- has sufficient financial resources to conduct its existing and future operations;
- has adequate and effective control processes in respect of human resources, including recruitment, training and retention;
- has adequate and effective control processes in respect of qualifications of Licensed Conveyancers and the requirements for their continuing professional development; and
- has adequate and effective processes in respect of the control of litigation matters which are reported to the Council
- has in place the structure, resources, systems, policies and flexibility to meet the demands of market changes from October 2011 onwards
- is well placed to achieve its strategic objectives.

Scrutton BMA  
1 February 2011

## **Annex I. CLC Appointments Regulations**



### **COUNCIL for LICENSED CONVEYANCERS**

**Regulations for the Appointment and  
Service of Council Members 2009**

**THE COUNCIL FOR LICENSED CONVEYANCERS’  
REGULATIONS FOR THE APPOINTMENT AND  
SERVICE OF COUNCIL MEMBERS 2009**

Made 6 May 2009 by the Council for Licensed Conveyancers with the approval of the Legal Services Board under paragraph 4 of Schedule 3 to the Administration of Justice Act 1985.

**CONTENTS**

1. Citation, Commencement and Interpretation
2. Composition of the Council
3. Appointment
4. Tenure of office
5. Vacancies
6. Remuneration
7. Suspension
8. Removal
9. Standing Orders

**1. Citation, Commencement and Interpretation**

- 1.1 These Regulations may be cited as the Regulations for the Appointment and Service of Council Members 2009.
- 1.2 These Regulations shall come into force on 25 September 2009 on which date the Regulations for Election, Nomination and Service of Council Members 2004 shall cease to have effect.
- 1.3 In these Regulations:
  - 1.3.1 unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;
  - 1.3.2 “the 1985 Act”                      the Administration of Justice Act 1985;  
“the 2007 Act”                      the Legal Services Act 2007;  
“Chairman”                              the Chairman of the Council;  
“Company” has the meaning given by section 735(1) of the Companies Act 1985;

“the Council”	the Council for Licensed Conveyancers established under section 12 of the 1985 Act;
“Chief Executive Officer”	the Chief Executive Officer of the Council;
“Disciplinary Order”	in the case of a Licensed Conveyancer, an order made against him pursuant to section 24A or 26 of the 1985 Act (other than an order which provides only for the payment of costs by him) or a direction made pursuant to paragraph 17(2) of Schedule 8 to the Courts and Legal Services Act 1990;
“Lay Member”	a person who is not a Licensed Conveyancer and who is neither a Manager nor an employee of a Recognised Body;
“Licensed Conveyancer”	any person holding a licence in force granted by the Council under Part II of the 1985 Act.
“Limited Liability Partnerships Act 2000”	the Limited Liability Partnerships Act 2000, the Limited Liability Partnerships Regulations 2001 and any other regulations made under that Act;
“LLP Member”	a member of a Limited Liability Partnership;
“Manager”	in relation to a Recognised Body, means a person who is: <ul style="list-style-type: none"> <li>(a) a member of the Recognised Body, if the Recognised Body is a Company and its affairs are managed by its members;</li> <li>(b) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply;</li> <li>(c) a partner, if the Recognised Body is a partnership;</li> <li>(d) a LLP member, if the Recognised Body is a Limited Liability Partnership;</li> </ul>

(e) a member of its governing body, if the Recognised Body is an unincorporated body (other than a partnership); and

(f) a Licensed Conveyancer, if sub-paragraphs (a)-(e) do not apply and the affairs of the Recognised Body are not managed by another Licensed Conveyancer;

“Recognised Body” a body recognised by the Council under section 32 of the 1985 Act to provide Regulated Services to the public;

1.3.3 Other expressions in these Rules shall, except where otherwise stated, have the meanings given to them by the 1985 Act and the 2007 Act.

## 2.

### ***Composition of the Council***

2.1 The Council (including the Chairman) shall consist of up to nine members appointed in accordance with regulation 3 provided:

- (a) the total number of Licensed Conveyancers appointed exceeds by one the total number of Lay Members appointed; and
- (b) the Lay Members appointed include at least two persons who represent the interests of consumers.

## 3. **Appointment**

3.1 The Chairman and members of the Council shall be appointed in accordance with regulations 3.2 to 3.6.

3.2 Where a vacancy occurs by virtue of the operation of regulation 5.1 (but not regulation 5.1(c)) in any year the vacancy shall be filled as soon as may be convenient.

3.3 The posts of Chairman and members of the Council shall be appointed following

an open recruitment process conducted by the Council taking into account good practice guidance for public appointments.

3.4 The appointment of Chairman and members of the Council shall be made by a selection panel and ratified by the Council.

3.5 The selection panel shall comprise up to five individuals, chosen by the Council after considering the advice of the Chief Executive Officer.

3.6 In making appointments under rule 3.4 the selection panel shall take into account the desirability that (between them) the Chairman and members of the Council have experience in or knowledge of:

- (a) the provision of conveyancing services, probate services and other legal services regulated by the Council;
- (b) legal education and legal training;
- (c) consumer affairs;
- (d) competition matters;
- (e) market sectors related to services regulated by the Council;
- (f) the maintenance of the professional standards of persons who provide legal services;
- (g) the maintenance of standards in professions other than the legal profession;
- (h) the handling of complaints;
- (i) commercial affairs;
- (j) non-commercial legal services;
- (k) the differing needs of consumers.

3.7 A person shall not be eligible for appointment to the Council if:

- (a) he has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974;
- (b) he is or has been an undischarged bankrupt or has made a



composition or arrangement with his creditors unless:

- (1) the bankruptcy is annulled either on the ground that he ought not to have been adjudged bankrupt or, where he is not subject to a Bankruptcy Restrictions Order or interim order, on the ground that his debts have been paid in full, on the date of the annulment; or
  - (2) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled.
- (c) he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him;
  - (d) a Disciplinary Order is made against him;
  - (e) the Council's power of intervention have been exercised against him or his practice in accordance with part 1 of schedule 5, or against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act;
  - (f) the Council is satisfied that as a member of another profession an order has been made against him by his professional body (other than an order which provides only for the payment of costs by him);
  - (g) he is an employee, self-employed officer or general consultant of any organisation having as its main object the protection or promotion of the interests, or of the defence, of Licensed Conveyancers or any other approved persons.

#### **4. Tenure of Office**

- 4.1 Subject to regulation 4.2 and 4.3, the term of office of the Chairman and any Council member takes effect on the date specified in the letter of appointment for a period not exceeding four years.
- 4.2 Subject to regulation 4.3, the retiring Chairman and members of the Council may offer themselves subject to review for re-appointment once only, for a further period not exceeding four years.

- 4.3 A person elected or nominated as a member of the Council in accordance with the Regulations for Election, Nomination and Service of Council Members 2004 shall be eligible for appointment in accordance with these Regulations once only, for a period not exceeding four years even if he has already served more than one term of office under the Regulations for Election, Nomination and Service of Council Members 2004.

## 5.

### **Vacancies**

- 5.1 A vacancy in the office of Chairman or of a Council member shall automatically occur and his right to hold office shall cease immediately:
- (a) on his death;
  - (b) on the receipt by the Council of his written resignation;
  - (c) on the expiration of his term of office;
  - (d) if, without consent, he fails in any Council year to attend in aggregate more than 60% of the meetings of the Council and of any Committee of which he is a member;
  - (e) if he is convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence;
  - (f) if he is adjudged bankrupt, is the subject of a Bankruptcy Restrictions Order or interim order, or makes a composition or arrangement with his creditors;
  - (g) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him;
  - (h) if, being a Licensed Conveyancer,
    - a) he ceases to hold a licence;
    - b) a Disciplinary Order Act is made against him;
    - c) his licence is suspended pursuant to section 24 of the 1985 Act; or
    - d) the Council's powers of intervention are exercised against him or his practice in accordance with part I of schedule 5 to the 1985 Act or against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act;
  - (i) if the Council is satisfied that as a member of another profession an adverse determination has been made against him by a disciplinary

tribunal or committee established to regulate the activities and the conduct of members of his profession (other than an order which provides only for the payment of costs by him);

- (j) if he is or becomes an employee, self-employed officer or general consultant of any organisation having as its main object the protection or promotion of the interests, or the defence, of Licensed Conveyancers or any other approved persons;
- (k) if he has failed to disclose to the Council any matter referred to in regulation 3.7 subparagraphs (a), (b), (c), (d), (e), (f) or (g);
- (l) if he is removed from office under regulation 8.1.

5.2 In the event that a vacancy occurs by reason of the operation of Regulation 5.1, the Chief Executive Officer shall inform the Council of that fact at the next meeting of the Council.

## **6. Remuneration**

6.1 The Council will pay to the Chairman, other members of the Council and members of the selection panel fees and reasonable expenses, such fees to be determined by the Council and to be reviewed periodically.

## **7.**

### **Suspension**

7.1 The Chairman or a Council member is suspended with immediate effect in the event that:-

- (a) he is charged with an offence which is the subject of sub-paragraph (e) of Regulation 5.1;
- (b) he is served with a bankruptcy petition, is the subject of a Bankruptcy Restrictions Order or issues a bankruptcy petition on his own behalf; or
- (c) he receives notice of any application against him for an Order under sub-paragraph (h)(2) or (i) of Regulation 5.1.

7.2 Any suspension taking effect under Regulation 7.1 shall automatically be revoked in the following circumstances: -

- (a) under sub-paragraph 7.1(a) if no conviction ensues;
- (b) under sub-paragraph 7.1(b) if the bankruptcy petition issued is disposed of without a declaration of bankruptcy being made against him; or
- (c) under sub-paragraph 7.1(c) in the event that the application against the Council member is withdrawn or dismissed or the only order made is for the payment of costs.

**8. Removal**

- 8.1 The Council may declare a vacancy in the office of Chairman or of a Council member who has breached the Standing Orders of the Council, the Standing Orders for Committees or the Code of Conduct applicable to members of the Council, if at least three-quarters of the Council members are present at the relevant meeting and at least three-quarters of the members present agree in which event the Chairman or Council member's right to hold office shall cease immediately.

**9. Standing Orders**

- 9.1 Proceedings of the Council shall be governed by the Standing Orders made for the Council by the Council in accordance with paragraph 9(2) of schedule 3 to the 1985 Act.

## **Annex J. Consultation Themes**

We have sought input from the regulated community, other Approved Regulators, and the LSB Consumer Panel. We have developed the Framework in response to consultation feedback and issued a summary of the responses received, explaining how our approach has been informed by them. The consultation period was 12 weeks as recommended by the Regulators Compliance Code.

### *Access to Justice*

It was suggested that the CLC's approach to declarations of Access to Justice was not sufficiently clear. We have revised the framework so we are clear that we will monitor broadly the impact of ABS on this area. The same respondent suggested that Access to Justice should be defined. We are satisfied that the definition already provided was sufficiently broad and should not be narrowed; to do so presents a danger that it will be too prescriptive, when applicants should be able to define their individual contribution to this important area.

### *Code of Conduct*

It was suggested that the Code of Conduct Compatibility statement required of applicants should also include details of how the applicant intends to resolve them. This has been made more explicit.

### *Conditions*

The conditions which would be applied to all licensed bodies were queried. We will not impose conditions on all licences. Conditions will only be applied – either as a prerequisite of licensing or imposed during the currency of the licence – where they are needed to provide additional safeguards. To provide conditions across all licences belittles the strength of conditions as enforcement tools. We will impose homogenous licence 'terms' across Licensed Bodies which are comprised of:

- All authorisations that the CLC grants the body to carry on reserved legal activities;
- All permissions that the CLC grants the body to provide non-reserved legal activities;
- Any conditions applicable to the exercise of the authorisations and permissions.

### *Data verification*

It was commented that verification of all owner and associate information will require a substantial resource commitment and is unlikely to be practical. We believe verification of all information on non-Authorised Persons with an interest to be essential to the protection of consumers. We agree however that to verify all associate information may present a disproportionate approach and will therefore only verify this information where we have concerns.

### *Employment procedures*

It was commented that it was unclear what was meant by good quality employment procedures and arrangements. We have made this more explicit, with particular emphasis upon the body only employing those deemed fit and proper.

### *Multi-Disciplinary Bodies*

It was suggested that the CLC may wish to delay regulating these structures. Our programme of risk work concluded that the CLC is in principle competent to regulate these body types.

### *Ring-fencing*

The imposition of a ring-fence – so that services which the respondent considered Approved Regulators/Licensing Authorities are not competent to regulate are not included in the regulatory scope - was proposed. Where there is a regulator of the non-legal services an applicant wishes to provide we may adopt a co-regulatory approach or ring-fence the ABS. We will always ensure that the consumer is made aware of what is and what isn't covered by our regulatory scope.