

Rule Approval Process

Lessons Learned

June 2010

Approach

- Commitment to complete lessons learned exercise after first raft of applications (published our intention in the early Decision Notices)
- Focused on the process – Pre submission, Submission, Consideration and Decision
- Meetings with ARs – Bar Standards Board, ILEX Professional Standards and Solicitors Regulation Authority
- Feedback from LSB colleagues and Board members
- Published report to include recommendations and actions
- Further guidance and checklists to be developed
- Try to avoid changes to our rules at this early stage, issues mainly relate to quality of applications/compliance with our rules as opposed to the rules themselves.

Pre-submission stage

What we said

Pre meetings or early discussions useful opportunity to clarify detail or ask questions regarding areas of potential concern.

Early sight of applications useful in developing our understanding and ensuring that applicants have provided all required information and analysis for us to approve the applications as quickly as possible.

Changes on key policy areas should be submitted in a block and packaged appropriately. All linkages should be clearly explained.

Need to know when applications are coming in for approval and when so that we can plan resources accordingly. Forward Plan process will help both sides.

Consultation needs to take place before applications are submitted to us – this includes consulting other ARs and targeted consultation, including consumer engagement.

What ARs said

Pre-meetings useful where these took place as provided opportunity to set context of application and give background information. Also an opportunity for applicant to ask questions about the process.

Checklists would have been helpful in preparing documentation.

Role of the OFT in the rule approval process is not clear.

Unclear on requirement to consult with other ARs. Is consulting on policy and/or rule changes enough? Is it necessary to share the application with other ARs before submission to the LSB?

Consultation – some difficulties getting responses, particularly from consumer groups and reaching 'end users' of services.

Submission of application

What we said

All amendments relating to one change to be submitted together – i.e. subsequent changes to guidance to be submitted alongside the rule changes (as all 'Regulatory Arrangements' require LSB approval). Any related applications need to take account of one another – e.g. referring to restrictions that another application removes.

Applications not always published quickly enough after receipt. LSB has now set itself a Key Performance Indicator to publish all complete applications on its website within 2 days of receipt. To ensure full transparency we will not make any decisions in the first 14 days and where any further material is submitted by applicants, we will publish it on our website.

What ARs said

Need to understand whether application will require full LSB board approval of whether it can be approved by LSB Chief Executive. Decision making process is not clear and there was some concern about what level of approval meant.

Need to understand LSB timetable and internal process for considering applications, particularly the potential 'crunch points' in the timetable when further information may be required (e.g. Board meetings, SMT meetings) as this was not always clear.

Some feedback from stakeholders that applications are difficult to find on the LSB website.

Opportunity to 'present' application to the LSB in person would be a valuable addition to the process.

Consideration of application (1)

What we said

Applications need to organise information so that it is easy to understand, explain the chronology and highlight the most pertinent points (including any areas where consensus has not been reached).

More focus needed on demonstrating how the proposed changes promote the Regulatory Objectives, meet Better Regulation principles and do not fulfil any of the refusal criteria. This applies to both ARs in developing their applications and the LSB in recording and relaying information regarding assessment of applications.

Applications should make a clear policy justification for the changes and explain why they cannot be facilitated by existing regulatory arrangements. In some cases we did not understand why the changes were being made. Applications should also provide the rationale for why we should approve the text – i.e. proposed technical changes to rules, guidance etc.

What ARs said

Confusion around the extension notice process – particularly the difference between agreement and direction. LSB need to explain what an extension means and why required, i.e. It does not necessarily signify issues with an application.

Iterative process was helpful in enabling minor amendments to be made as a result of discussions between the applicant and the LSB. Working relationships throughout the process were very important so that necessary discussions could take place.

Some surprises around the level of scrutiny by the LSB. For example, applicants had not realised that information on monitoring and evaluation would be required or that detail of code or guidance amendments would be considered by the LSB.

Consideration of application (2)

What we said

All risks should be identified and information provided as to how these risks will be monitored and mitigated. Where reviews are planned, dates should be provided together with an indication of the criteria on which the review will be based. This allows the LSB to take an oversight role, with the frontline regulator taking responsibility for managing risk.

Clear evidence to support proposals must be provided. Where Impact Assessments are submitted, these should be focused on the changes we are being asked to approve. The analysis should be open and balanced as opposed to making an argument purely in support of the changes.

LSB process emphasises the role of the AR to reach a rational conclusion based on its consideration of all the evidence. It is not our role to revisit the research and make our own assessment of the evidence provided but we must be satisfied that what can be considered a reasonably rational conclusion has been reached.

Issues raised in consultation should be clearly referenced and explained. In particular, applicants should be up front about any areas of controversy and outstanding issues. It is not the role of the LSB to go through detail of consultation responses and identify issues. Where agreement has not been reached, the reasons and rationale should be provided.

Lack of consultation with consumer groups and end users of services. The Consumer Panel are running a workshop in July on consumer engagement which will cover how to engage with users of services as well as expert consumers.

Decisions

What we said

LSB has processed all six applications within 12 weeks. Of these, two within 28 days and a further two within 8 weeks. Advised that 28 days will be only for the most simple of applications.

In some circumstances, decisions will be based upon the commitments made in applications being followed through e.g. a planned review by a certain date. This expectation should be made clear in Decision Notices and fed into the Regulatory Review process.

Decision Notice template to include a signature block, date for approval and LSB branding.

What ARs said

Processing time – some felt that 28 days should be possible where the LSB has had advanced sight of the changes. Many felt that the 28 days set out in the Act is too ambitious.

Key findings overall

- ARs found the rules process relatively straightforward and an improvement from the previous arrangements
- The main concern from ARs was understanding the LSB's internal timelines and approval process
- The Project Team considers the current rules to be sufficient, but will need ARs to submit only high quality applications that fully meet the requirement of our rules and guidance

Recommendations and Actions (1)

Stage	Action/Recommendation
Pre-submission	<p>LSB to encourage pre meetings with applicants and ARs to provide early warning of prospective applications.</p>
	<p>LSB to develop checklists and guidance to assist ARs in preparing applications which meet our rules rather than taking a fully prescriptive approach and amending the rules. Guidance will include what we are looking for in terms of analysis against ROs and BRE principles, packaging, organisation and structure of applications e.g. annotating amendments with comments boxes, consultation requirements and a statement which sets out the policy rationale. We will set out the things that will help us to process applications quickly.</p>
	<p>LSB to develop Frequently Asked Questions to be published on the website and regularly updated.</p>
	<p>ARs to ensure that changes are packaged appropriately so that LSB can consider related changes together.</p>
	<p>Renewed focus on the development of Forward Plans to set out timescales for applications requiring LSB approval which will assist both the LSB and ARs in planning resources and agreeing exemptions.</p>
	<p>ARs to ensure that other ARs are consulted appropriately prior to submitting applications. Consultation should be targeted and involve consumers where appropriate.</p>

Recommendations and Actions (2)

Stage	Action/Recommendation
Submission	LSB to notify all ARs by email once an application has been published on the website.
	LSB to publish all complete applications within two days of receipt.
	LSB to inform applicant at an early stage of its provisional view of the level the application will be approved, that is whether it will require Chief Executive or full Board approval. This decision is based on an evaluation of Significance, Impact and Risk but may be subject to change if any potential issues emerge during the assessment process.
	LSB to set out its timetable for considering the application to the applicant at an early stage.
	Where it is appropriate to the processing of an application, LSB to offer meeting within first 5 days of receiving application so that applicant can present the proposals.

Recommendations and Actions (3)

Stage	Action/Recommendation
Consideration of application	<p>LSB to inform applicant that an Extension Notice will be needed as soon as it becomes clear and provide an advance copy prior to publication where possible.</p>
	<p>LSB to ground the recording and relaying of analysis of the application in terms of the Regulatory Objectives, BRE principles and the refusal criteria. Onus is on LSB to approve the application unless they are not satisfied that the application promotes the ROs/BRE and does not meet any of the refusal criteria.</p>
Decisions	<p>Decision Notice to include a signature block, date for approval and be LSB branded.</p>
	<p>LSB to follow up AR commitments and actions (those made in the application and those where we have secured agreement as part of discussions) by timetabling them into the Business as Usual calendar (being developed) and feeding into Regulatory Review.</p>

Summing up

- Process has gone well but the quality of applications has been mixed
- We are reliant on good quality applications in order to keep processing quickly
- The more complex the documentation, the more complicated the process and discussions with ARs
- We need to be robust in our feedback to ARs at an early stage, ideally before applications are formally submitted for approval
- Where applications are poor in quality and do not meet the requirements of the rules, we need to be prepared to ask ARs to resubmit
- Although, we will try to avoid this through some kind of pre-submission discussion where appropriate
- Commitments and actions which arise through rule approval need to be scheduled in calendars and followed up through Regulatory Review process

Next steps

- Develop and publish guidance and checklists in accordance with recommendations
- Develop Frequently Asked Questions for the website
- Another process review in 12 months time