

SRA response

"Designating Approved Regulators as Licensing Authorities", Legal Services Board consultation

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1. Introduction

1.1

The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales. We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors' firms and their staff.

1.2

We welcome the opportunity to take part in this Legal Services Board (LSB) consultation, and have set out some comments below.

2. SRA comments

Q1. What are the competencies that you would expect a Licensing Authority to demonstrate?

2.1

The LSB suggests at paragraph 12 of the consultation paper that it expects each Licensing Authority (LA) to be *"...a solid, stable, well structured, adequately financed and professionally operated body."* We agree with this statement and believe it follows that the competencies a would-be LA should be capable of demonstrating ought to include:

knowledge of the legal services market and legal services providers relevant to their application;

a clear and demonstrable commitment to protecting and supporting consumers using a risk-based, outcomes focused approach;

the ability to manage its own performance, effectiveness, and efficiency; and

capacity to be compliant with the section 30 governance rules.



Q2. What are your views on the continuity / transfer of licences and the alternative approaches suggested?

2.2

We believe it essential for the LSB to develop a robust approach within the rules regarding continuity of licensed activity where a change or transfer of business occurs, in order to ensure consumers and their interests are not placed at risk during this time.

2.3

Of the two options proposed on page 9 of the consultation paper, we are more in favour of following the second – that is "*... provision for the expedited grant of a temporary licence in such circumstances, subject to a full application being received as soon as reasonably practicable after the change has taken place*".

Q3. Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board's approach to its requirements for the content of Applications?

2.4

We agree that the information set out by the LSB in the Schedule (page 32 onwards of the consultation paper) is consistent with the Legal Services Act's Regulatory Objectives and the Better Regulation Principles.

Q4. If you do not agree with the Board's approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

2.5

We have no further comments.

Q5. What additions or alterations to the Application process would you suggest?

2.6

In our response [<https://www.sra.org.uk/sra/consultations/consultation-responses/designating-new-approved-regulators-and-approving-rule-changes/>] to the LSB's 2009 consultation '*Designating new approved regulators and approving rule changes*', we set out our view that the LSB may find itself in the position of



being inclined to neither grant nor decline an application for LA status outright, but being minded instead to grant the application providing further conditions were fulfilled by the applicant. We still hold this view and believe that, while it is important for the application requirements to be clear and consistent for all applicants, they should also as far as possible be flexible enough to allow such engagement to take place between the LSB and applicants at different stages of the application process.

Q6. What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

2.7

We agree with the LSB's approach in setting a common fee that differentiates between applications made by existing LAs and Approved Regulators (AR), and those made by non-existing LAs. While we have no particular comment on the levels proposed by the LSB on page 23 of the consultation paper, we agree with the flexibility of approach that underpins the overall fee policy; namely that the LSB may charge additional costs to allow for additional consideration on its part, or to cover the appointment of external advisers, providing that any such additional costs likely to be levied by the LSB on an applicant are communicated clearly to that applicant.

2.8

We note that no reference is made in the consultation paper to refunding elements of the prescribed fee to applicants if the LSB's consideration process takes less than 28.5 business days (for applications made by an existing LA) or 39 business days (for an application made by a non-existing LA). If it is the case that the application fee would be non-refundable in its entirety, even if the stated number of business days were not used by the LSB in considering an application, then this should be made clear to applicants from the outset.

Q7. Do you think we should reduce the Prescribed Fee for Applications from (i) existing Licensing Authorities to take on additional Reserved Legal Activities; and (ii) AR Applicants?

2.9

Yes. In practice applications from existing LAs and ARs will be made against an existing stock of knowledge already held by the LSB on the competency of those bodies in exercising their functions toward other reserved legal activities. As this information will already be in place, and the



LSB will have previously formed a view on the regulatory effectiveness of the existing LA or AR, it follows that less effort is likely to be expended by the LSB in determining such applications (as the LSB itself acknowledges at paragraph 3 on page 56 of the consultation paper). We believe the prescribed fee should be capable of being reduced accordingly.

Q8. Do you agree that the Board should be able to use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

2.10

As we set out in our response [<https://www.sra.org.uk/sra/consultations/consultation-responses/designating-new-approved-regulators-and-approving-rule-changes/>] to the LSB's 2009 consultation '*Designating new approved regulators and approving rule changes*', we believe the prescribed fee must be capable of accurately reflecting the resources used by the LSB in assessing different types of application from different bodies. These resources may well include additional expertise and knowledge requirements of the LSB. We should add however that, in practice, early pre-application dialogue between an applicant and the LSB will help to minimise the frequency with which the LSB might require input from external advisers, as potential problems or LSB concerns could be more easily addressed before the formal application consideration had begun.

Q9. Do you agree with the approach taken to oral representations?

2.11

Yes.

Q10. Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, are there any changes you wish to suggest to the proposed process.

2.12

We have no suggested changes.

Q11. Do you consider that these are the appropriate criteria?

2.13

We agree that the criteria set out on page 30 of the consultation paper seem appropriate.