

Alternative business structures: appeal arrangements

Consultation paper on arrangements for appeals against decisions of the Solicitors Regulation Authority (part of the Law Society) in its capacity as a licensing authority (including a draft order to be made under section 80 of the Legal Services Act 2007)

This consultation will close on **Thursday 2 June 2011**.

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Executive Summary

1. The Legal Services Act 2007 (“the 2007 Act”) gives the LSB a power to recommend to the Lord Chancellor the designation of “licensing authorities” (“LAs”). An appeals mechanism is required under the 2007 Act to enable a specified body to hear appeals against some decisions made by LAs. Section 80 of the 2007 Act gives the Lord Chancellor an order making power (to be exercised on the recommendation of the LSB) to make provision about the body that will hear these appeals.
2. We previously consulted on our proposal that there should be a single mechanism for hearing appeals against licensing authority decisions, provided by the First-tier Tribunal. We have received an application from the Council for Licensed Conveyancers (“CLC”) to be designated as a LA and CLC has consented to our proposal regarding the appeal mechanism. However, the Solicitors Regulation Authority (which performs regulatory functions on behalf of the Law Society) (“the SRA”) has decided not to consent¹ to this approach because it considers that the First-tier Tribunal’s power to award costs is not sufficiently broad. The SRA has submitted an application to us for designation as a licensing authority naming the Solicitors Disciplinary Tribunal (“the SDT”) as the relevant appellate body in respect of its decisions as an LA.
3. To give effect to this proposal, it would be necessary for the Lord Chancellor to make an order under s.80 of the 2007 Act altering the functions of the SDT to enable it to hear ABS appeals. This consultation paper seeks views² on a draft recommendation by the LSB to the Lord Chancellor that he should make an order under s.80 of the Act providing for the SDT to hear and determine appeals against decisions of the SRA as a licensing authority.
4. We are seeking comments on a number of documents, and views on several detailed issues about how the appeals mechanism will work, including:
 - proposals about the membership and composition of the panels that will hear the appeals
 - the approach to developing rules governing the procedure the SDT will follow in relation to the appeals (including rules about the SDT’s power to award costs against a party)

¹ As required by section 81(1)(a) of the 2007 Act

² As required by section 82(2) and (3) of the 2007 Act

- the onward appeal routes from SDT decisions on the appeals
 - the estimated cost of the appeal arrangements and how they will be funded
5. A summary of all the questions we are asking is at Annex A. We look forward to receiving your consultation response.

How to Respond

Our consultation period ends at 5 p.m. on **Thursday 2 June 2011**. The consultation period is four weeks.

In accordance with section 81(3) of the Legal Services Act 2007, you are given notice that any representation about the proposals in relation to the appellate body must be made to the Board by the end of this period. In accordance with section 205(3) of the Legal Services Act 2007, you are also given notice that any representation about the rules (at Annex F) must be received by the end of this period.

In framing this consultation paper, we have posed specific questions to help inform our final decision. These questions can be found in the body of this consultation paper, and also as a consolidated list at Annex A. We would be grateful if you would reply to these questions, as well as commenting more generally on the issues raised (where relevant). Where possible please can you link your comments to specific questions or parts of the paper rather than making general statements.

We would prefer to receive responses electronically (in Microsoft Word or pdf format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Email: consultations@legalservicesboard.org.uk

Post: Michael Mackay,
Legal Services Board,
7th Floor, Victoria House,
Southampton Row,
London WC1B 4AD

Fax: 020 7271 0051

We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.

We are also keen to engage in other ways and we would welcome contact with stakeholders during the consultation period.

If you have any questions about this consultation, please contact Michael Stacey, Regulatory Project Manager by telephone (020 7271 0089), e-mail (michael.stacey@legalservicesboard.org.uk) or by post at the address above.

Background

6. The Legal Services Act 2007 (“the 2007 Act”) sets out, among other things, a new regulatory framework for the operation of regulators and the ownership of legal service providers. It gives the LSB a power to recommend to the Lord Chancellor the designation of “licensing authorities” (LAs). These are approved regulators with the power to license a particular type of legal service provider, conventionally known as “alternative business structures” (ABS), which may have owners and managers who are not “authorised persons” for the purpose of carrying on reserved legal activities.
7. An appeals mechanism is required to hear appeals against some decisions made by LAs. The Board must not recommend to the Lord Chancellor that an approved regulator is designated as a licensing authority unless it is satisfied that there would be a body with the power to hear and determine appeals.³
8. Section 80 of the 2007 Act gives the Lord Chancellor an order making power (to be exercised on the recommendation of the LSB) to either: establish a new body to hear appeals against decisions appealable under part 5 of the 2007 Act or licensing rules, or make provision in relation to an existing body for the purpose of enabling it to hear such appeals.
9. We consulted on our proposal for a single appellate body to hear all ABS-related appeals in our *Approaches to Licensing* consultation⁴ in November 2009. We suggested that the appeals should be heard by the General Regulatory Chamber of the First-tier Tribunal (“the GRC”). The paper set out the rationale for this approach, and an analysis of the options. In August 2010, we published a consultation document *Alternative business structures: appeal arrangements*.⁵ This set out our detailed proposals for the GRC to act as the single mechanism for hearing appeals against some decisions made by licensing authorities (LAs). The responses that we received to the consultation paper have been published.⁶ We have subsequently submitted a draft recommendation and draft order to the Ministry of Justice, and intend to make a formal recommendation to the Lord Chancellor in the near future. The recommendation and order provide

³ Schedule 10, para 11(2)(b) of the 2007 Act

⁴ Available at <http://www.legalservicesboard.org.uk> > What we do > Closed consultations

⁵ Available at <http://www.legalservicesboard.org.uk> > What we do > Closed consultations

⁶ Available on the LSB website:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_ab_structure.htm

that appeals against decisions of the Council for Licensed Conveyancers (CLC) are to the First-tier Tribunal.

10. We have been consistent in proposing that there should be a single mechanism for ABS appeals, and why we think the GRC is an appropriate body to carry out that role. That remains our policy. However, we recognise that we cannot insist upon a recommendation for a particular appellate body to be used, since the potential appellate body and/or the potential licensing authority could refuse to consent (as required by s.81(1) of the 2007 Act).
11. The SRA consented in principle to a section 80 order designating the GRC as the appellate body to hear ABS appeals, subject to changes its rules to allow a general power to award costs. On 1 March 2011, the Tribunals Procedure Committee (TPC) considered whether it should change the GRC rules as proposed by the SRA & CLC. It came to the preliminary view that the GRC Rules in their current form⁷ are adequate to determine whether one party is to pay the costs of another and do not require any particular additions in order to accommodate ABS appeals. The TPC indicated that it will revisit the issue at its meeting in May, but that a final decision will not be made until the report (by Mr Justice Warren) reviewing the awarding of costs within the two tier tribunals structure has been completed.
12. The SRA Board therefore decided that it would include within its licensing authority application the Solicitors Disciplinary Tribunal (SDT) as its appellate body. This decision was reflected in the SRA's licensing authority application received by the LSB on 25 March.⁸ An order under section 80 of the 2007 Act would be required to give effect to this proposal, if the LSB considers that it should make a recommendation to the Lord Chancellor that the SRA should be designated as a licensing authority.
13. This paper sets out proposals from the SRA and SDT about how the appeal mechanism would work in practice, and includes the following documents:
 - a draft recommendation to the Lord Chancellor
 - a draft order to be made under s.80 of the 2007 Act

⁷ Which allow costs to be awarded for wasted costs, or if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings

⁸ Available on the LSB website:

http://www.legalservicesboard.org.uk/what_we_do/regulation/sra_licensing_authority_application.htm

- draft rules to be made by the Board for the purposes of Schedule 13 to the 2007 Act (about the prescribed period for bringing appeals under that Schedule)
- a draft Impact Assessment.

14. This consultation is required to fulfil the statutory consultation requirements for the new proposed recommendation and order, set out in s.81 of the 2007 Act. However, the LSB's underlying policy position remains the same – the Board considers it is desirable for there to be a single mechanism for all ABS appeals. The proposed recommendation set out in this paper results from SRA's decision not to consent to our original recommendation for all ABS appeals to be heard by the GRC. In view of the previous consultation we and SRA have undertaken on substantive policy issues related to ABS appeals (outlined above), we consider that a four week consultation period is appropriate and proportionate.

15. It also remains our view that there are a number of compelling reasons why it is a desirable policy objective for all legal services appeals (about ABS, 'traditional' firms, and all authorised persons⁹) to be dealt with through a single, consistent mechanism. Establishing a single mechanism has not been feasible in the timescales for introducing ABS. Approved regulators currently have a range of separate discipline and appeals arrangements in place, and we intend to review whether it is appropriate to rationalise these in due course.

16. Both the Law Society and the SRA support the principle of a single mechanism for all legal services appeals in the future. The concerns they have raised about consistency between ABS appeals and appeals under the existing arrangements suggest we should explore the feasibility of rationalising existing mechanisms sooner rather than later. There is scope for comparative and collaborative work to identify best practice in this area. We will explore this during 2011/12 and expect to build on this work as we move towards 2012/13 by extending the review to consider wider disciplinary and enforcement processes across the approved regulators.

17. The proposals set out in this paper should therefore be considered in the context of this planned review, and it should be borne in mind that changes may be necessary in the future depending on the outcome of the review.

⁹ As defined by s.18 of the 2007 Act

The SRA's proposal

The operation of the appeal mechanism

18. The SRA and SDT have made the following proposals about how the appeal mechanism will operate.

The Solicitors Disciplinary Tribunal

19. The SDT is constituted as a statutory Tribunal under Section 46 of The Solicitors Act 1974 ("the 1974 Act"). The SDT's principal function is to hear and determine applications and complaints in respect of solicitors relating to allegations of professional misconduct or breaches of the Rules and/or Code relating to professional practice. The SDT has power, among other things, to strike off a solicitor from the Roll, suspend from practice, fine or reprimand.

20. The SDT also adjudicates upon the alleged misconduct of registered foreign lawyers and people employed by solicitors, and hears applications for restoration to the Roll. In addition, it has jurisdiction over recognised bodies under Schedule 2 to the Administration of Justice Act 1985.

21. The SDT was given additional powers by the Legal Services Act¹⁰ to hear appeals against decisions by the SRA to:

- Rebuke a person (including a recognised body) and publish details of the rebuke;
- Impose a penalty (currently a maximum of £2,000) or the amount of a penalty;
- Publish details of any action taken against a person.

22. To date, the SDT has not heard any such appeals. The SDT's own decisions can be the subject of appeal to the High Court.

23. The SDT is independent of the Law Society and SRA, with its own premises and staff managed by a not-for-profit independent company limited by guarantee. It operates out of custom-designed premises in central London, including three court rooms with designated retiring and discussion rooms. It employs clerks (who are all either solicitors or barristers of not less than 10 years standing) to support hearings.

¹⁰ Schedule 16 paragraph 46, commenced on 31/3/09 by SI 2009/503 (and Schedule 16 paragraph 103 in relation to recognised bodies)

24. The SDT currently comprises 34 solicitor members (who must be practising solicitors of not less than 10 years' standing in accordance with the 1974 Act) and 19 lay members (who must be neither solicitors nor barristers). Members are appointed by the Master of the Rolls following a transparent selection process for a three year term which can be renewed. An additional 11 solicitor and 6 lay members were appointed in 2009.
25. The SDT's procedures are governed by the Solicitors (Disciplinary Proceedings) Rules 2007.¹¹ Rules made or modified by the SDT only have effect if they have been approved by the LSB.¹² The process for approval is set out in the LSB's *Rules for Rule Change Applications*.¹³

Appealable decisions & grounds for appeal

26. The 2007 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. A list of such decisions is attached at Annex B.
27. The grounds of appeal in relation to the imposition of a financial penalty are set out in the Act (s.96) and rely on alleged unreasonableness. In relation to the Schedule 13 rights of appeal, no specific grounds of appeal are specified so appellants will have a general right to appeal against the relevant appealable decision.
28. The Act also allows for a right of appeal against other decisions to be included in the licensing rules made by LAs. We have issued supplementary guidance¹⁴ specifying which decisions we consider should, as a minimum, be appealable under licensing rules. Additional rights of appeal proposed by prospective LAs will be assessed by LSB as part of its consideration of the applicant's application for designation as a LA.
29. The SRA's draft licensing rules form part of its application for designation as a LA.¹⁵ Appeals are dealt with specifically at rule 12 of the SRA (Disciplinary Procedure) Rules [2011] and rule 31 of the SRA Authorisation

¹¹ SI 2007/3588

¹² LSA sections 178(1) and 178(6)

¹³ Available on the LSB website:

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_for_rule_change_applications_v2_November2010.pdf

¹⁴ Available at <http://www.legalservicesboard.org.uk> > What we do > Closed consultations

¹⁵ Available on the LSB website:

http://www.legalservicesboard.org.uk/what_we_do/regulation/sra_licensing_authority_application.htm

Rules for Legal Services Bodies and Licensable Bodies [2011], which form part of the new SRA Handbook annexed to the application.

30. For matters appealable under the licensing rules, where the grounds of appeal are not explicit in the Act, the SRA does not propose to include specific, limited grounds of appeal (for example a ground that the decision is unreasonable) in either the s.80 order or licensing rules. Rather, the proposal is that licensing rules make clear that the right of appeal should be available to the person¹⁶ who is the subject of the decision that is appealable under the licensing rules. This is consistent with the approach taken in our recommendation to the Lord Chancellor in relation to appeals against decisions of the CLC.
31. Decisions of LAs may affect a person's civil rights. Article 6(1) of the European Convention on Human Rights requires that "in the determination of his civil rights and obligations . . . , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law", and case law has held that "civil rights" in this context includes the right to practise one's profession. In order to protect this right, the appeal mechanism will involve a substantive rehearing (as opposed to a procedural review of the original decision).

Powers of the SDT

32. The powers of the appellate body (which it is proposed will be the SDT in respect of decisions of the SRA) in relation to explicit rights of appeal are specified in the Act. In relation to financial penalties, the powers in s.96 are to:
- quash the penalty
 - substitute a penalty of a lesser amount
 - adjust the timescales for payment.
33. In relation to the decisions appealable under Schedule 13 to the Act, the appellate body has specific powers in relation to each appealable decision – including, for example, the power to:
- order the licensing authority to approve an investor's holding of a notified or notifiable interest (with or without conditions)
 - remit the matter to the licensing authority
 - quash or modify conditions (where the appealable decision is the imposition of a condition).

¹⁶ Including a body of persons corporate or unincorporate

34. However, the powers of the Tribunal in relation to matters appealable under the licensing rules are not specified in the Act and will need to be specified in the Order. The proposal is that the SDT's powers in relation to such matters should be to:

- affirm the licensing authority's decision in whole or part
- quash the licensing authority's decision in whole or part
- substitute the whole or part of a licensing authority's decision with a new decision of a kind the licensing authority could have made
- remit the matter to the licensing authority (generally, or for determination in accordance with a finding made or direction given by the Tribunal).

35. This is consistent with the approach taken in our recommendation to the Lord Chancellor in relation to appeals against decisions of the CLC.

Membership & composition of panels

36. The SDT considers that its existing members have appropriate expertise and experience to enable them to deal effectively with appeals against decisions of SRA as a LA. The SDT's existing legally qualified members have a wide range of experience in differing types of legal practice, ranging from smaller firms to large City practices, with several sitting as Deputy District Judges. For example, one newer member of the Tribunal appointed in 2009 is a partner in a major international law firm, specialising in transactional private equity work and mergers and acquisitions. The lay members equally have diverse backgrounds and experience, including from industry, the medical profession and accountancy; for example, the Lay Vice President has 35 years' experience in Personnel work in industry, including Group Personnel Director of a FTSE 100 Company and is currently a member of Employment Tribunals, the Central Arbitration Committee and the Disciplinary Committees of CIPFA, The Royal Pharmaceutical Society and the Institute of Legal Executives and has been a member of the Regulatory Decisions Committee of the Financial Services Authority.¹⁷

37. It is proposed that all existing SDT members will be trained to hear appeals against decisions of the SRA as a LA. The SDT has invited both

¹⁷ Full biographies of all the SDT's current membership are contained in the SDT's 2010 annual report at www.solicitortribunal.org.uk

the LSB and the SRA to assist in providing initial training and instruction on the ABS regime, procedures and processes. Following this session, it will be agreed what further training, if any, is required. Training from organisations other than the LSB and the SRA will be arranged by the SDT as necessary.

38. The SDT considers that there are already sufficient members available to absorb ABS appeals without delaying the hearing of either core business cases or appeals. However, the specific needs of ABS appeals will be factored in to future recruitment of SDT members and staff as necessary.

39. The proposal is that appeals will be heard by three members – two solicitors and one lay member. The chair of the hearing will be a solicitor member. This is the approach taken by the SDT in relation to its existing jurisdiction, and the SRA considers this appropriate in relation to appeals against its LA decisions.

Question 1

Do you have any comments about whether the SDT has the expertise and experience required to hear ABS appeals available within its existing membership? Do you agree with the proposed composition of panels?

Rules of procedure

40. The draft order (attached at Annex C) provides that the SDT's power under the 1974 Act to make rules applies in relation to appeals against decisions of the SRA as a LA. The SDT will need to make new rules of procedure in relation to this new appellate function. It is currently preparing draft rules for consultation, and a final draft will be provided to the LSB before it decides whether to make the recommendation under s.80 of the 2007 Act and whether to recommend that the SRA is designated as an LA. This paper sets out the key points about how the appeals mechanism is expected to operate. The LSB has made clear its expectation that the rules will need to include (but not be limited to) provision about the following:

- Case management and administration (including timing/deadlines, directions and striking out)
- Procedure for applications and hearings
- Orders for costs
- Disclosure and evidence
- Decisions
- Mechanism for onward appeals (although the right to onward appeal will derive from either the 2007 Act or the s80 order)

41. The SDT has produced a draft outline of the proposed new SDT appellate rules (attached at Annex D).

Question 2

Do you have any comments about what the rules should cover, or on what the detailed content of the rules should be?

Award of costs incurred by parties

42. The 1974 Act¹⁸ and the SDT's existing rules give it a wide discretion to make orders for the payment of costs. The SRA proposes that the SDT should have an equivalent general power to award costs in relation to its new appellate jurisdiction.

43. This is provided for in the draft order (attached at Annex C). It is also envisaged that the new rules to be made by the SDT will draw on the provision about costs in its existing rules, which is as follows:

18.—(1) The Tribunal may make such order as to costs as the Tribunal shall think fit including an order—

(a) disallowing costs incurred unnecessarily; or

(b) that costs be paid by any party judged to be responsible for wasted or unnecessary costs, whether arising through non compliance with time limits or otherwise.

(2) The Tribunal may order that any party bear the whole or a part or a proportion of the costs.

(3) The amount of costs to be paid may either be fixed by the Tribunal or be subject to detailed assessment by a Costs Judge.

Question 3

What are your views on the SDT having a general power to award costs in proceedings relating to ABS appeals?

¹⁸ Section 47(2)(i)

Onward appeal routes

44. Where the Legal Services Act 2007 provides an explicit right of appeal to the relevant appellate body against a decision of the licensing authority (see Annex B), there is also a right of onward appeal on a point of law to the High Court.
45. The s.80 order makes provision for an onward appeal on a point of law to the High Court in relation to a decision that the SDT makes on an appeal about an SRA decision that is appealable under the SRA's licensing rules. This will ensure consistency with the onward appeal rights specified in s.96 and Schedule 13 of the 2007 Act. It is not proposed to limit this right of appeal such that the High Court's decision is final (as is the case for some appeals from the SDT's decisions under the 1974 Act). This would be inconsistent with the onward appeal rights in s.96 and Schedule 13, and we consider it is desirable to allow scope for case law to develop and be tested in relation to ABS licensing matters. High Court decisions on points of law will therefore be appealable to the Court of Appeal in the usual way.

Question 4

What are your views on the proposal that onward appeals from decisions of the SDT in relation to appeals about a decision under the SRA's licensing rules should be to the High Court?

Proposed draft order to be made under section 80 of the Act

46. In order to implement the proposal outlined above, an order needs to be made to modify the functions of the SDT so that it can act as the appellate body for the purposes of Part 5 of the Act, and make connected provision.
47. A draft order is attached at Annex C. In summary, the order makes provision:
- That the SDT may hear appeals against decisions (that are appealable under the Act or under licensing rules) of the SRA as a LA
 - That the powers of the SDT under the Solicitors Act 1974 to make rules shall apply in relation to appeals to which the order relates
 - About the powers of the Tribunal in relation to matters appealable under licensing rules.

48. The Order is expressed as conditional on the designation of the SRA as a licensing authority.

49. A draft recommendation to the Lord Chancellor under section 80 of the Act is attached at Annex E. This recommends that the Lord Chancellor makes the order providing that appeals against decisions of the SRA in its capacity as a licensing authorities are to the SDT.

Question 5

Do you have any comments on the draft order at Annex C to be made under s.80 of the Act, or on the draft recommendation to the Lord Chancellor at Annex E?

Time periods for bringing appeals

50. The LSB has already made rules under s.96 of the 2007 Act prescribing the period for appeals to the appellate body against the imposition of a financial penalty.¹⁹ The rules provide that a person who has had a financial penalty imposed on them by a licensing authority may appeal within a period of 28 days from the date on which the notice of the decision to impose the said penalty is given.

51. Attached at Annex F are draft rules to be made concerning the prescribed period for appeals for the purposes of Schedule 13 to the 2007 Act.²⁰ These provide that in relation to the initial appeal to the “relevant appellate body” (the SDT in relation to decisions of the SRA as a LA), the prescribed period for bringing an appeal is 28 days from the date on which notice of the decision is given to the affected person (consistent with the rules made by the Board under s.96). In relation to onward appeals on a point of law to the High Court, the proposed prescribed period is also 28 days, for consistency with part 52 of the Civil Procedure Rules.²¹

¹⁹ Available on the LSB website:

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Rules_under_s96.pdf

²⁰ Note that similar rules are not required in the context of appeals to the First-tier Tribunal about decisions of the CLC and LSB as LAs. This is because the Schedule to the s.80 order concerning appeals against decisions of these licensing authorities modifies Schedule 13 to amend the right of onward appeal provisions and remove references to the prescribed period. The provisions of the Tribunals, Courts and Enforcement Act 2007 and the GRC rules will therefore apply, with a time period of 28 days for both initial appeals and onward appeals to the Upper Tribunal.

²¹ Civil Procedure Rules, Part 52 and Part 52 Practice Direction 17.3 and 17.4

Question 6

What are your views on the draft rules at Annex F setting out proposed prescribed periods for bringing an appeal?

Operational issues

52. It is very difficult to forecast with any degree of accuracy the number of appeals that will be made against the SRA's decisions as a licensing authority. For planning purposes the SRA and SDT are using a working assumption of 20 appeals per year.
53. The SDT considers that the additional sitting days can easily be accommodated, particularly once additional full time clerks are appointed (due in July 2011). The SDT currently determines about 300 cases a year, the majority of which last one day or less. If all three courtrooms were utilised 5 days a week, 48 weeks a year, there is theoretical capacity for 720 sitting days.

Operating costs of the Tribunal

54. The costs of establishing and operating the appeals mechanism in the SDT (for example training costs and members' sitting fees) are anticipated to be £102,000 in the first year for 20 appeals each lasting two days; this includes set up costs. Thereafter, the annual operating costs are estimated to be around £86,000.
55. The additional costs to the SDT of operating the new appellate jurisdiction will need to be recovered from the SRA. SRA therefore proposes to incorporate the costs as an element of the fees charged to licensed bodies. Payment of the set-up costs will need to be made to the SDT by the end of the 2011/12 financial year. The SRA will make assumptions about the number of licensed bodies and the likely number of appeals and allow for the costs of these when setting its initial licence fee. Adjustments will be made to the fees in future years if the actual costs do not align with its forecasts.

Question 7

What are your views on the proposed approach to funding the set-up and operating costs of the appeals mechanism? Are there any other operational issues that the LSB should consider?

Draft Impact Assessment

56. A draft impact assessment has been prepared to support this proposal, and is attached at Annex G. The final impact assessment will accompany any recommendation we make to the Lord Chancellor.

Question 8

Do you have any comments on the draft impact assessment?

Annex A: A list of questions raised in this document

Question 1

Do you have any comments about whether the SDT has the expertise and experience required to hear ABS appeals available within its existing membership? Do you agree with the proposed composition of panels?

Question 2

Do you have any comments about what the rules should cover, or on what the detailed content of the rules should be?

Question 3

What are your views on the SDT having a general power to award costs in proceedings relating to ABS appeals?

Question 4

What are your views on the proposal that onward appeals from decisions of the SDT in relation to appeals about a decision under the SRA's licensing rules should be to the High Court?

Question 5

Do you have any comments on the draft order at Annex C to be made under s.80 of the Act, or on the draft recommendation to the Lord Chancellor at Annex E?

Question 6

What are your views on the draft rules at Annex F setting out proposed prescribed periods for bringing an appeal?

Question 7

What are your views on the proposed timescale for hearing appeals? Are there any other operational issues that the LSB should consider?

Question 8

Do you have any comments on the draft impact assessment?

Annex B: List of licensing authority decisions appealable under the Legal Services Act 2007

Financial penalties

1. Section 96 – appeals against financial penalties imposed on an individual or an entity.

Ownership of licensable/licensed bodies

2. Schedule 13 - appeals against decisions on ownership of licensed bodies:
 - Paragraph 18(1): conditional approval of notified interest
 - Paragraph 20(1): objection to notified interest
 - Paragraph 29(1): conditional approval of notifiable interest
 - Paragraph 32(1): acquisition of notifiable interest
 - Paragraph 34(1): imposition of conditions (or further conditions) on existing restricted interest
 - Paragraph 37(1): objection to existing restricted interest
 - Paragraph 50(1): power to notify the LSB where share or voting limit breached

Annex C: Draft statutory instrument

Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 (c. 29), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (No.2) Order 2011

Made [date]

Coming into force [date]

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 80 and 204 of the Legal Services Act 2007.^(a)

In accordance with section 80(3) of that Act, the Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order which was in a form not materially different from this Order.

The Legal Services Board made its recommendation under section 80 of that Act with the consent required by section 81(1) of that Act and having complied with the requirements of section 81(2) to (4) of that Act.

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 206(4) and (5) of the Legal Services Act 2007.

Citation, commencement and interpretation

1. (1) This Order may be cited as the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (No.2) Order 2011.
- (2) This Order comes into force on the day after the day on which it is made.

(a) 2007 c.29.

- (3) In this Order—
- “the 1974 Act” means the Solicitors Act 1974;^(b)
- “the 2007 Act” means the Legal Services Act 2007;
- “the Society” means the Law Society;
- “the Tribunal” means the Solicitors Disciplinary Tribunal.

Application of this Order

2. (1) Articles 3 and 4 of this Order take effect only upon satisfaction of the condition in paragraph (2).
- (2) The condition is that the Society is designated as a licensing authority under Part 1 of Schedule 10 to the 2007 Act in relation to one or more reserved legal activities.

Appeals from licensing decisions of the Society to be made to the Tribunal

3. (1) The Tribunal may hear and determine appeals from decisions made by the Society which are appealable under any provision of—
- (a) Part 5 of the 2007 Act; or
- (b) the Society’s licensing rules.
- (2) On determining such appeals, the Tribunal may make such order as it thinks fit as to the payment by any party of costs.
- (3) Subsections (9)(b), (10)(a) and (b), (11) and (12) of section 46 of the 1974 Act (Tribunal rules about procedure for hearings etc.) apply in relation to appeals to which this Order relates as they apply in relation to applications or complaints, except that subsection (11) of that section has effect as if for “the applicant” to “application” there were substituted “any party to the appeal”.

Additional provisions about decisions appealable under licensing rules

4. (1) This article applies to an appeal from a decision which is appealable under a provision of the Society’s licensing rules.
- (2) On an appeal to which this article applies, the Tribunal may—
- (a) affirm the Society’s decision in whole or in part;
- (b) quash the Society’s decision in whole or in part;
- (c) substitute for all or part of the Society’s decision another decision of a kind that the Society could have taken;
- (d) remit a matter to the Society (generally, or for determination in accordance with a finding made or direction given by the Tribunal).
- (3) A party to the appeal may appeal to the High Court on a point of law arising from the decision of the Tribunal, but only with the permission of the High Court.

(b) 1974 c.47.

(4) On an appeal under paragraph (3) the High Court may make such order as it thinks fit.

Signed by authority of the Lord Chancellor

[Name]

Parliamentary Under Secretary of State
Ministry of Justice

[Date]

Annex D: Outline of proposed SDT appellate rules

Schedule - Proposed Draft Headings

Part I – Introduction

1. Citation and Commencement
2. Interpretation.

Part 2 – Constitution

3. Composition of the Tribunal
4. Appointment of chairman
5. Power to delegate functions (e.g. delegation of case management powers, namely those set out at points 10 to 18 below) to the Clerk, the Deputy Clerks and or any legally qualified member of the SDT
6. Power to strike out appeals (this would not be an automatic power; it would be exercised at the SDT's discretion)

Part 3 – Appeals

7. Notice of Appeal
8. Response to Notice of Appeal
9. Appellant's reply
10. Service of documents and time limits for Appeal, Response and Reply
11. Directions
12. Addition etc. of Parties
13. Representation
14. Calculation of Time
15. Disclosure
16. Witnesses
17. Withdrawal
18. Lead Cases
19. Application for a stay

20. Listing
21. Evidence
22. Hearings (and Notice of Hearing)
23. Public or private hearings
24. Judgements and Orders (including consent orders)
25. Costs
26. Re-hearing where Appellant neither appears nor is represented
27. Miscellaneous (including the power of the STD to regulate its own procedure for the conduct of Appeals including the power to make Practice Directions)
28. Schedules of Forms (e.g. forms for Notice of Appeal, Response to Notice of Appeal etc.)

Annex E: Proposed recommendation

RECOMMENDATION TO THE LORD CHANCELLOR UNDER SECTION 80 OF THE LEGAL SERVICES ACT 2007

1. At its meeting on [date] the Legal Services Board resolved to recommend to the Lord Chancellor that he should make an order under s.80 of the Legal Services Act 2007 (“the Act”). The Board recommends that the order provides for appeals against the decisions of the Law Society (in its capacity as a licensing authority) to be to the Solicitors Disciplinary Tribunal. A draft order is annexed to this recommendation.
2. In accordance with s.81 of the Act, the Board has published a draft of the proposed recommendation and the proposed draft order on 5 May 2011 and invited representations about the proposals to be made to the Board by 2 June 2011. The Board has had regard to the representations duly made.
3. This recommendation is made with the consent of the Law Society, from whose decisions the appeals are to be made. This recommendation is also made with the consent of the Solicitors Disciplinary Tribunal, the body to which appeals are to be made.
4. The Board is satisfied that this recommendation is consistent with the regulatory objectives under the Act – and in particular the objectives to protect and promote the public interest, and support the constitutional principle of the rule of law. It must also support the Better Regulation principles that regulatory activity should be transparent, accountable, proportionate, consistent and targeted.
5. In reaching its decision, the Board has had regard to the views of a wide range of interested parties, expressed through responses to the formal consultations and in separate discussions. It has also taken account of the existing expertise of the Solicitors Disciplinary Tribunal, its capacity to handle the additional workload and the costs of delivering the appeal arrangements through this and alternative mechanisms.

David Edmonds
Chairman, Legal Services Board

Annex F: Draft rules prescribing the period for bringing appeals

Rules on the prescribed period for the making of appeals against decisions of a licensing authority regarding ownership of licensed bodies

A. PREAMBLE

1. Further to paragraph 8 of Schedule 13 to the Act (as defined below), these Rules are made by the Board (as defined below) for the purposes of paragraphs 18(1), 18(3), 20(1), 20(3), 29(1), 29(3), 32(1), 32(3), 34(1), 34(3), 37(1), 37(4), 50(1) and 50(3) of Schedule 13 to the Act.

B. DEFINITIONS

2. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Applicant	has the meaning given in paragraph 15(1) of Schedule 13 to the Act
Board	the Legal Services Board
Investor	has the meaning given in paragraph 15(2) of Schedule 13 to the Act
Licensing authority	has the meaning given in section 73(1)
Relevant appellate body	has the meaning given in section 111(1) of the Act

C. WHO DO THESE RULES APPLY TO?

3. These Rules are the rules that the Board has made to prescribe the periods within which –

- (a) any applicant, investor or other person subject to a decision of a licensing authority under paragraphs 17(1), 19(1), 28(1), 31(1), 33(1), 36(1) or 49(2) of Schedule 13 to the Act may appeal to the relevant appellate body under paragraphs 18(1), 20(1), 29(1), 32(1), 34(1), 37(1) and 50(1) of Schedule 13 to the Act respectively; and
- (b) any party to an appeal set out in paragraph 3(a) above may make an appeal against the decision of the relevant appellate body to the High Court on a point of law arising from the decision of the relevant appellate body, but only with permission of the High Court, under paragraphs 18(3), 20(3), 29(3), 32(3), 34(3), 37(4) and 50(3) of Schedule 13 to the Act respectively.

4. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amended Rules and will invite consultations in accordance with section 205 of the Act.

D. THE PERIOD FOR MAKING AN APPEAL

5. For the purposes of the making of an appeal to the relevant appellant body pursuant to paragraphs 17(1), 19(1), 28(1), 31(1), 33(1), 36(1) or 49(2) of Schedule 13 to the Act, the prescribed period is 28 days from the date on which the notice of the decision of the licensing authority is given to the applicant, investor or other person subject to the licensing authority's decision.

6. For the purposes of the making of an appeal against the decision of the relevant appellate body to the High Court on a point of law arising from the decision of the relevant appellate body, but only with permission of the High Court, under paragraphs 18(3), 20(3), 29(3), 32(3), 34(3), 37(4) and 50(3) of Schedule 13 to the Act, the prescribed period is 28 days from the date on which a party to an appeal, referred to in paragraph 5 above, is given notice of the decision of the relevant appellant body.

E. FURTHER INFORMATION

7. If you have any questions regarding the content of these rules, you should contact the Board at:

Legal Services Board
7th Floor
Victoria House
Southampton Row
London
WC1B 4AD

Email: contactus@legalservicesboard.org.uk

Telephone: 020 7271 0050

Annex G: Draft Impact Assessment

[See separate document attached]