

<b>Title:</b> <b>Alternative Business Structures:  Appellate body order</b> <b>Lead department or agency:</b> Legal Services Board (LSB) <b>Other departments or agencies:</b> Ministry of Justice	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b> 20/08/2010
	<b>Stage:</b> Development/Options
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
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## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

A mechanism is required to hear appeals against certain decisions of licensing authorities (LAs). There are some explicit appeal rights under the Legal Services Act 2007 ("the Act") (s.96 and schedule 13), and licensing rules made by licensing authorities may also include rights of appeal. The Act provides the Lord Chancellor with an order making power (to be exercised only on the recommendation of the LSB) to establish a new body to hear and determine the appeals, or make provision about an existing body for the purpose of enabling it to hear and determine the appeals.

### What are the policy objectives and the intended effects?

The policy objective is to put in place a single appeal mechanism to hear all ABS-related appeals by the time LAs make their first licensing decisions (expected to be October 2011). A single appeal mechanism will lead to greater consistency in decision making, enable a body of expertise to develop and enable economies of scale to be achieved in relation to administrative and appellate functions.

The costs and processes for the appeal mechanism should be transparent, efficient, fair and public. The body hearing the appeals should have sufficient resources and expertise to deal with complex issues.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing.

Option 2: Each LA has its own separate appeals body, with appeals dealt with through their existing appeal mechanism - for example appeals against decisions of the Solicitors Regulation Authority would be heard before the Solicitors' Disciplinary Tribunal (SDT), and appeals against decisions of the Council for Licensed Conveyancers would be heard before its Discipline and Appeals Committee.

Option 3: SDT acts as single appeals body for appeals against decisions of all licensing authorities (including LSB in its capacity as a licensing authority).

Option 4 (preferred option): First-tier Tribunal acts as single appeals body for appeals against decisions of licensing authorities, with the functions allocated to the General Regulatory Chamber of the Tribunal. This will lead to consistency in decision making, the development of a single body of expertise in relation to ABS appeals, and will also be cost-effective as the existing infrastructure and administrative support of the Tribunals Service can be utilised.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will not be reviewed separately but as part of a wider PIR of ABS

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Chief Executive's Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Chief Executive: ..... Date:.....

# Summary: Analysis and Evidence

# Policy Option 1

## Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

Licensed bodies (LBs) will fund the set-up and operating costs of the appeals mechanism through the licence fee. The costs of set-up and operation of the appeals mechanism for the first year are estimated at £66,000 (assuming 10 - 30 appeals). The cost for individual LBs will depend on how many have been licensed on 31 January 2012, but is likely to be less than £1,000 each. In addition, appellants and LAs will need to fund their own appeal costs (but there will be no fee on application).

### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

It is not possible to monetise the benefits of the appeals mechanism.

### Other key non-monetised benefits by 'main affected groups'

The main benefit of the appeal mechanism is to provide individuals or businesses affected by the certain decisions of LAs with the opportunity to challenge that decision in an independent and impartial Tribunal. The ability to challenge administrative decisions which affect the rights of individuals or businesses to carry on business activities is an important safeguard on the exercise of power by the state. Providing such a mechanism is in the public interest and supports the rule of law.

### Key assumptions/sensitivities/risks

Discount rate (%)

It is assumed that the number of appeals in the first year of operation will be in a range of: 5 (low), 20 (medium) and 40 (high). If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase. However, a higher number of appeals are likely to occur in proportion to a higher number of licensed businesses, so the cost of the appeal mechanism as an element of the licence fee for individual businesses is not likely to increase significantly.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Net:	Policy cost savings:	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	06/10/2011				
Which organisation(s) will enforce the policy?	The First-tier Tribunal Service will provide the appeal mechanism				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	Yes/No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	Legal Services Act 2007 <a href="http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1">http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1</a>
2	
3	
4	

### Evidence Base

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0.016									
<b>Annual recurring cost</b>	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050
<b>Total annual costs</b>	0.066	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## Problem under consideration

A mechanism is required to hear appeals against certain decisions of licensing authorities (LAs). There are some explicit appeal rights under the Legal Services Act 2007 ("the Act") (s.96 and schedule 13), and licensing rules made by licensing authorities may also include rights of appeal. The Act provides the Lord Chancellor with an order making power (to be exercised only on the recommendation of the LSB) to establish a new body to hear and determine the appeals, or make provision about an existing body for the purpose of enabling it to hear and determine the appeals.

## Rationale for intervention

The establishment of an appeal mechanism is necessary to enable the operation of the ABS licensing regime in accordance with the requirements of the Act. The Board cannot approve licensing rules unless it is satisfied that there will be a body with the power to hear and determine appeals, so without an appropriate appeal mechanism no approved regulator can be designated as a licensing authority. The Act provides the Lord Chancellor with an order making power to make about provision about appeals. The order needs to be made in advance of ABS go live, which is expected in October 2011.

## Policy objective

The policy objective is to put in place a single appeal mechanism to hear all ABS-related appeals by the time LAs make their first licensing decisions (expected to be October 2011). The Board considers that it is desirable for there to be a single appeal mechanism for all appeals under Part 5 of the Act or licensing rules. This will help ensure that:

- There is consistency in decision making (both in relation to licensing authority decisions about ABS ownership/regulation; and in relation to disciplinary decisions about all authorised persons working in licensed bodies)
- A single body of expertise is developed in relation to ABS regulatory appeals
- Economies of scale are achieved in relation to administrative and appellate functions

The costs and processes for the appeal mechanism should be transparent, efficient, fair and public. The body hearing the appeals should have sufficient resources and expertise to deal with complex issues.

## Description of options considered (including do nothing)

Option 1: Do nothing. This is not an option for the reasons described above. A mechanism for hearing and determining appeals against decisions of licensing authorities is a prerequisite for the designation of an LA and is required by the Act.

Option 2: Each LA has its own separate appeals body, with appeals dealt with through their existing appeal mechanism - for example appeals against decisions of the Solicitors Regulation Authority would be heard before the SDT, and appeals against decisions of the Council for Licensed Conveyancers would be heard before its Discipline and Appeals Committee. Having different appeal mechanisms for each LA could lead to inconsistency in decision making and therefore variation in outcomes for appellants according to which licensing authority regulates them, which would be contrary to the public interest. It may also be a less efficient and cost-effective way of handling the appeals compared with option 4 - see analysis of costs below.

Option 3: SDT acts as single appeals body for appeals against decisions of all licensing authorities (including LSB in its capacity as a licensing authority). This option would have the advantage of greater consistency in decision making. However, under some circumstances the LSB may act as a licensing authority and we do not consider that it would be appropriate for the SDT to hear appeals against decisions of the Board (acting in its capacity as a licensing authority) given the oversight function the Board has in relation to the SDT's rules and budget. In addition, while the SDT clearly has significant expertise in relation to regulatory decisions about the conduct of individual solicitors, as a conduct only body which considers cases against individuals, it does not have expertise in considering cases against entire entities, particularly in the complex issues of ownership which may arise in relation to ABS. The costs of this option may also be more than the costs of option 4 - see analysis of costs below.

Option 4 (preferred option): First-tier Tribunal acts as single appeals body for appeals against decisions of licensing authorities, with the functions allocated to the General Regulatory Chamber of the Tribunal. This will lead to consistency in decision making, the development of a single body of expertise in relation to ABS appeals, and will also be cost-effective as the existing infrastructure and administrative support of the Tribunals Service can be utilised. It also provides a mechanism which is completely independent of LAs (including the LSB).

## **Costs and benefits of each option**

Option 1: n/a

Option 2: The SDT's budget for 2010 is £2.24m for an estimated 300 sitting days. The SDT has advised that it would not require any additional staff or office accommodation meaning that these costs would be fixed and would not rise in direct proportion to the number of sitting days. However, the cost of members' fees, expenses and administration would need to be met for the extra sittings required to hear ABS related appeals. In addition there would be some initial set up costs to cover activities such as training and communications which we assume would be similar to the £16,000 estimate that the First-tier Tribunal has provided us with (see option 4 costs below). However, we will ask the SDT to confirm this.

We estimate 20 appeals in the first year, requiring two sitting days each on average. If we were to assume that two thirds of these appeals were to the SDT, it would mean the addition of an estimated 27 sitting days, representing an increase in workload of around 9%.

On the basis of figures provided by the SDT, and assuming a two member tribunal, the SDT would cost £1,765 per sitting day which would be the cost of members' fees, expenses and administration. This cost would also include any preliminary hearings. Therefore the cost of the SDT to hear appeals against SRA decisions might be £1,765 x 27 additional sitting days (£47,655) + £16,000 set-up costs = £63,655 in the first year and then £47,655 thereafter.

The CLC's Discipline and Appeals committee deals with extremely small numbers of appeals - less than 10 per year and sometimes only 1 per year. The costs of its appeal arrangements consist of the daily fees for panel members, plus administrative support supplied by the Council. The cost of an additional 12 sitting days is estimated at £18,000 (£1,500 per sitting day).

The total cost of option 2 is therefore estimated at £81,655 in the first year and £65,655 per annum thereafter.

Option 3: This option would require the SDT to accommodate 40 additional sitting days per year. Using the same assumptions as in option 2 above, the cost would be £1,765 x 40 additional sitting days (£70,600) + £16,000 set-up costs = £86,600 in the first year and £70,600 per annum thereafter.

Option 4: As with the SDT, the First-tier Tribunal has sufficient capacity already available to hear the appeals - no additional accommodation or staff resources will be required. The main additional costs are daily fees for panel members.

Set-up costs are estimated at approximately £16,000. This includes:

- a full day's training for five judges, 10 members and two admin staff
- communication and project costs (including admin time for setting up process, amending website, producing guidance etc).

Operating costs for the first year of operation will be fixed in advance of go-live and are estimated at approximately £50,000 on the basis of our assumption that there will be 20 appeals per year. However, the fixed cost of the First-tier Tribunal allows a tolerance of plus or minus 10 appeals and therefore the cost would remain the same if it were to hear anything between 10 and 30 appeals. The estimated £50,000 cost is based on the following assumptions:

- each appeal will require, on average, a two day hearing
- judge/member fees would be around £1,000 for a panel consisting of one judge, one member

- admin costs are based on a % of a team leader's salary and % of admin time and expected to be around £7,000 to support 20 appeals
- administration would be based in London
- existing Tribunals Service buildings will be utilised for hearings
- the costs include any preliminary hearings required.

The total cost of option 4 is therefore estimated at £66,000 in the first year and £50,000 per annum thereafter.

### **Risks and assumptions**

It is assumed that the number of appeals in the first year of operation will be in a range of: 5 (low), 20 (medium) and 40 (high). If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase. However, a higher number of appeals are likely to occur in proportion to a higher number of licensed businesses, so the cost of the appeal mechanism as an element of the licence fee for individual businesses is not likely to increase significantly.

The costs are also estimated based on an assumption that each appeal will require a two day hearing on average.

It is assumed that there is sufficient existing capacity with the First-tier Tribunal and the SDT in terms of staff, judicial and administrative resources to deal with the anticipated number of appeals.

### **Administrative burden and policy savings calculations**

The establishment of an appeal mechanism will not impose any quantifiable administrative burden on LAs. They will need to be represented at appeal hearings and are likely to instruct legal representatives in relation to appeals. However, these costs would occur regardless of which appellate body hears the appeals - the order under s.80 does not create the rights of appeal, which are statutory rights or rights created under licensing rules.

### **Wider impacts**

No wider impacts have been identified. The impacts of ABS generally will be considered in a separate impact assessment.

### **Summary and preferred option with description of implementation plan**

An order under s.80 of the Act is required to make provision about the body that will hear appeals against certain decisions of licensing authorities. The Board's preferred option is for these appeals to be heard by the First-tier Tribunal. A single mechanism will ensure consistency and lead to economies of scale. The First-tier Tribunal is considered the most appropriate body to carry out this role, bearing in mind its existing expertise in regulatory appeals, its independence from LAs (including the LSB) and the estimated costs of implementation.

Following consultation, it is anticipated that a recommendation will be made by the Board to the Lord Chancellor by the end of 2010. Subject to the Lord Chancellor agreeing the recommendation, the Ministry of Justice will then arrange for the order to be laid before parliament and approved by a resolution of each house. It is proposed that the order comes into force on 6 October 2011.

# Annexes

## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

A PIR of ABS generally will be considered, including appeal arrangements. It is not considered appropriate or proportionate to carry out a formal PIR for the appeal arrangements separately. The arrangements will be monitored by the Tribunals Service and the relevant LAs during the first year of operation, and then reviewed at the end of that first year to agree whether any operational adjustments are required based on experience of running the process.