

**Legal Services Board consultation:
*'Approving rule changes and issuing directions:
Solicitors Disciplinary Tribunal'***

Response from the Solicitors Regulation Authority

October 2010

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Legal Services Board consultation: “Approving rule changes and issuing directions: Solicitors Disciplinary Tribunal”

Response from the Solicitors Regulation Authority

Introduction

1. The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales. We regulate individual solicitors, other lawyers and non lawyers with whom they practise, solicitors’ firms and their staff, and refer alleged misconduct to the Solicitors Disciplinary Tribunal (SDT) and prosecute matters before it. We are subject to overall regulatory supervision by the Legal Services Board (LSB).
2. We welcome the opportunity to take part in this consultation, and have set out our comments below.

SRA comments

Q1 Do respondents agree with our approach regarding the application of the Rules to the Tribunal under section 178 of the Act?

3. We agree with the LSB’s proposed approach in applying the existing Rules for Rule Change Applications to the SDT. We also agree with the proposed approval process for the SDT in making or altering its rules, as described at paragraph 14 of the consultation paper.

Q2 Do the proposed Rules (at Appendix 1) accurately reflect the application of the Rules to the Tribunal?

4. We agree that the updated Rules set out at Appendix 1 of the consultation paper adequately capture the application of the Rules to the SDT.

Q3 Do respondents agree with our approach regarding the application of our Statement to the Tribunal under section 179 of the Act?

5. Please see our comments below in response to Q4.

Q4 Do respondents agree with our proposals for assessing the failure of the Tribunal to “perform any of its functions to an adequate standard (or at all)”?

6. In respect of both questions three and four, we agree that the LSB can give directions to the SDT where it considers that the SDT has failed to perform any of its functions to an adequate standard or at all. The SDT’s functions are set out in section 46 of the Solicitors Act 1974; sub section (9) refers to the SDT making “...rules about the procedure and practice to be followed in relation to the making, hearing and determination of applications and complaints”. In our view, the definition of the SDT’s ‘functions’ should be construed broadly. Ultimately the SDT has one primary function, that is to determine allegations of professional misconduct.

7. We do not therefore consider that the directions the LSB could issue to the SDT are in any way limited to service-type issues, such as those relating to timeliness or costs. In our view, should the LSB have genuine concerns that the SDT was not, for example, modifying its practices to deal with issues in an appropriate or necessary way, then it could issue a direction to the SDT requiring the change to be made.
8. We have no objection to the LSB having regard to the SDT's Key Performance Indicators (once available) in assessing the performance of its functions. However in practice this is only one piece of information and will need to be used in conjunction with wider intelligence relating to the work of the SDT, including information from Approved Regulators and other stakeholders.

Q5 Does the draft statement at (Appendix 2) and the Representation Rules (at Annex 1 of the draft Statement) accurately reflect the application of the Statement and Representation Rules to the Tribunal?

9. In light of our comments under questions three and four above, we would find it helpful for paragraph 1.42 of the Statement of Policy to clarify the definition (albeit broadly) of the SDT's 'functions'.
10. On a very minor note, the amended paragraph 1.13 of the Statement of Policy, shown in Appendix 2 of the consultation paper, the second reference to "...*the Approved Regulator*.." should be amended to refer to "...*the Approved Regulator (or the Tribunal)*...".

**The independent regulatory body of the Law Society of
England and Wales**

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