



Response to LSB Lay Chair Consultation

26th November 2013

Summary of Response

1. This document sets out the Council for Licensed Conveyancers' (CLC) response to the LSB's 'Chairs of regulatory bodies' consultation.
2. Regardless of the outcome of the LSB's consultation, the CLC commits itself to having an independent chair and our assumption is that that person will not be a member of the profession that we regulate. We suggest a definition of independent below and hope this might be an approach which the LSB will consider.

Details of Response

3. As a result of amendment to the Administration of Justice Act 1985 (the 1985 Act) and of the CLC Appointment Regulations, we have, since 30 September 2011, had a lay majority on our Council, applying the 'lay' definition as provided in, [Schedule 1 of the Legal Services Act¹](#),

<p>a person who has <i>never</i> been – (a) an authorised person in relation to an activity which is a reserved legal activity.”</p>
--

Because the CLC was established with an exclusively regulatory function the risk of capture of regulation by professional, representative interests is reduced. Nonetheless, we have had an independent, lay chair since 1 May 2010². The appointment of an independent chair is not a requirement either of the 1985 Act or the CLC's Appointment Regulations (which have been approved by the LSB). The Selection Panel recommended, and the CLC's Council approved, the appointment as chair of the individual with the most appropriate skills set and regulatory experience for the role.

The experience of the CLC's Council in being led by an independent chair for the last three years has reinforced its view that its chair should continue to be an independent. It has seen the benefits in having an independent chair in reinforcing the trust and confidence of consumers and the public (and indeed the profession) in the CLC.

4. The chair must undoubtedly be visibly and identifiably independent, but that is not the same as 'lay'. We suggest that the current definition of 'lay' chair in the Legal Services Act (which is similar to that in schedule 3 to the Administration of Justice Act 1985) appears unnecessarily restrictive. It excludes a candidate with a legal qualification (who has never practised or who is no longer practising), regardless of whether they have all the other skill sets, experience and specialist knowledge sought by the regulator. Any individual is at risk of 'capture' by a particular interest group. The most important thing is to identify an individual with the skills, experience and strength of purpose to operate independently and be seen as independent by stakeholders and consumers. We consider using a wider definition could mean all such suitable individuals could be considered.

¹ paragraph 2 (4) (a)

² The CLC's previous statutory provisions permitted the Council to appoint lay chairs

5. We have found no generally accepted definition of ‘independent’ chair in the legal services sector but the concept of independent non-executives is well understood generally. We suggest the definition of ‘independent’ in this context might include requirements that the individual:
 - a. is independent
 - i. of the management of the regulator,
 - ii. of the regulated community,
 - iii. of interested parties, and
 - b. is not currently
 - i. a practising Authorised Person nor
 - ii. a member of an LSA professional/representative body.

It may perhaps be appropriate to prescribe the minimum period they have not been practising/a member (depending on the intended purpose of such a restriction this may be one, three, five or ten years). We also suggest, in line with our own commitment, that the presumption should be in favour of appointing a truly lay chair unless the person who is clearly the best candidate for the role has been a practising lawyer.

6. We believe that our suggestion of the appointment of an ‘independent’ chair is a more proportionate and targeted response to the risk of professional capture to which the LSB refers, as well as being consistent with the interests of consumers, the public and indeed, the profession. Applying the definition we have suggested, the independent chair will of course usually be lay, but we do not consider this should be mandated. We understand that application of such a definition may require legislative changes.
