



Submitted by IBB Solicitors

Question 1 – How might an independent regulatory arm best be —ring-fenced|| from a representative-controlled approved regulator in the way we describe (i.e. requiring a delegation of the power to regulate processes and procedures; and the power to determine strategic direction)?

The SRA was established ahead of the Clementi proposals anticipating that the future of regulation was to separate the regulatory and the representative functions. The profession accepted this concept, particularly because the Law Society had a constant conflict between the two functions in its relations with its members and the authorities. The continued separation is therefore guaranteed. The Law Society is able to represent its members “against” the SRA where it objects to its line on regulatory matters.

Question 2 – What do you think of our proposals relating to regulatory board appointees, set out under paragraph 3.15?

I think that your proposals are trying too hard to exclude lawyers from the process of regulation and that sort of approach is likely to lead to conflict. You say that there should be a majority of non-lawyers on the board. That is a mistake. I agree that there should be “lay” representation to provide balance and to put the outsider’s view. However, those with the best knowledge of the legal profession are those who are suitably qualified and with experience of practice. It is a management function of the Board to ensure that those selected demonstrate impartiality.

Question 3 – Is it necessary to go further than our proposals under paragraph 3.15, for example by making it an explicit requirement for the chairs of independent regulatory boards/equivalents to be non-lawyers?

No – quite the opposite. The chairs of the boards should be lawyers. People selected from the industry will have a better perception of what needs to be regulated. I have experience of being regulated by the FSA too and the complaint too often is that the regulators are out of touch with practice. It leads to the setting of agendas which do not seem relevant to the practitioners and which leave a feeling of regulation for its own sake with an increasing hostility and resentment from those being regulated.

Question 4 – Do you agree with our proposals in respect of the management of resources, including those covering ‘shared services’ models that approved regulators might adopt? What issues might stand outside such arrangements as suggested in paragraph 3.22?

There is no conflict inherent with the sharing of resources and doing so brings significant savings to the cost of regulation. It needs to be understood that the cost of regulation is likely to fall on those being regulated. If that cost suddenly increases, it

is likely, especially in today's climate of ultra tight margins, to ultimately fall on the client (whether that be private consumers or commercial clients) since it could not be absorbed by the profession. I believe that there is little or no room in current climate for solicitors to cut margins to absorb the cost of regulation.

Question 5 – Is our proposed balance between formal rules and less formal (non-enforceable) guidance right? In what ways would further or different guidance be helpful?

Principal based regulation is more acceptable than rule based since it allows compliance to be exercised in the spirit of the rules rather than the letter and as such is less wasteful than prescriptive regulation. However, it is important that the guidance is useful, relevant and detailed so that firms know what they have to do in order to be compliant. Experience of the FSA has been that policies have been created such as "TCF" (Treating Customers Fairly) which are too generic and as such act as a catch all for anything the regulator chooses to focus on. They are also in danger in creating "retrospective" standards. For example, if a practitioner is investigated for conduct several years ago, present day TCF standards are applied to actions carried out before the policy was set. The FSA regularly issue guidance in "speeches" and in "Dear CEO letters" which is not a desirable way to convey rules of conduct. One ends up with the impression that they are making it up as they go along.

Question 6 – What are your views on our suggested permitted oversight role for representative-controlled approved regulators over their regulatory arms? Are practical modifications required to make it work?

I think that the SRA will need to set up industry user groups to consult with over regulation issues. Those user groups can be populated through the representation arm of the approved regulator. Ultimately, there needs to be some oversight by the LSB so that some sort of common platform between legal professions is achieved. These can be based on high level principals or objectives such as exist for the FSA as follows:-

- **market confidence:** maintaining confidence in the financial system
- **public awareness:** promoting public understanding of the financial system;
- **consumer protection:** securing the appropriate degree of protection for consumers; and
- **reduction of financial crime:** reducing the extent to which it is possible for a business carried on by a regulated person to be used for a purpose connected with financial crime

Question 7 – In principle, what do you think about the concept of dual self-certification?

I agree that the LSB should receive an annual review from the SRA showing that it is compliant. We do not want a situation to develop though whereby everything the SRA do is second guessed by the Board. I would not want to see intervention unless it were perceived that there were serious flaws in the regulation. We need to avoid "regulation creep".

Question 8 – If a dual self-certification model were adopted, how should it work in practice? Or would alternative arrangements be more appropriate, either in the short or longer term?

There needs to be a good information exchange between the SRA and the Board and indeed across all the regulatory bodies. Perhaps 2 members of the boards of each regulatory body should sit on a panel at the Legal Services Board to ensure cross pollination of good regulation and to be accountable to the Board for the compliance with its high level principals.

Question 9 – Do you agree that the mandatory permitted purposes currently listed in statute should be widened to include explicit provision for regulatory objective (g), i.e. —increasing public understanding of the citizen’s legal rights and duties|| ?

No – the burden of educating the public on their legal rights and duties is not a function for which the profession should pay through its regulatory body. The profession provides services to the public in return for remuneration. It is the function of government to increase public awareness of their rights and duties or otherwise for the representative bodies of the professions, if they choose to do so in the commercial wider interests of their members, to promote the interests of its members by educating the public of their needs. The FSA has as one of its objectives “promoting public understanding of the financial system” and in pursuit of that spends large sums in educating the public on matters financial. This may be a laudable objective but it is done at the vast expense of those practioners and corporates who pay fees to the FSA. They are presently actively considering dropping this objective, which, in my view does not belong with the regulator.

Question 10 – Should any other (general or specific) purpose be permitted under our section 51 rules?

It is important that the Regulator maintains confidence of the public in the legal system and also that the legal system is regulated to avoid the commission of financial crime. Therefore the regulator ought to be permitted to use practicing fees received to promote these objectives.

Question 11 – What do you think about our proposal to seek evidence that links to the regulatory objectives in the Act?

These objectives will be apparent in the annual review and accounts of the Regulator. If the Regulator has spent fees ultra vires its objects, then it needs to be brought to account. I believe that you are suggesting that the Regulator accounts in advance for what it is intending to spend from the fees which it levies. This is an imposition that creates an unnecessary costs layer and an unnecessary interference with the agenda of the regulator.

Question 12 – What criteria should the Board use to assess applications submitted to it?

I do not think that it is a process that the Board needs to be involved in, unless the members of the profession feel that the setting of the fee is somehow unfair.

Question 13 – If they are adopted, what should Memoranda of Understanding between the Board and approved regulators contain? For approved regulators in particular, are there any particular implications for your organisations?

This will be for the Board and the SRA to work out between you.

Question 14 – Should there be a requirement on approved regulators to consult prior to the submission of their application each year – and if so, who should be consulted, and on what? Should there be a distinction drawn between approved regulators with elected representative councils or boards; and those which have no such elected body?

This will be for the Board and the SRA to work out between you. We have no such consultation in place at the moment other than ad hoc consultations issued by the SRA on proposed rule changes. We do not have a say in the style and tenor of the regulator's actions other than through our representative body.

Question 15 – What degree of detail would be most appropriate to require when seeking to maximise transparency but be proportionate in terms of bureaucracy? Have we got the balance right?

It is wrong for you to emphasise that the practising fee should be kept in proportion to protect consumers (“the paying public”) from increased fees. Although you mention “profit margins” as a factor, that should be the main reason to keep fees as low as possible. Most solicitors practices represent commercial clients and in my view it is equally important that solicitors have enough margin to supply services to clients whether they be “private” or “commercial” for if they do not, this will affect the “access to justice” that is one of the primary objectives of the legislation. Commercial clients are equally as sensitive to higher fees as private “consumers”. Apart from your emphasis, I agree that the profession should be given a breakdown of how the fee is spent/to be spent. The level of detail that is provided, for example, in one's annual council tax/rates bill should be required.

Question 16 – Are there any issues in respect of practising certificate fees that you think we should consider as part of this consultation exercise?

The profession is already strongly regulated. Since the establishment of the SRA, regulation is much more high profile and there is already concern that they are trying too hard to show themselves to be tough. Feedback from those who have had monitoring visits is that the attitude is more confrontational than helpful. One assumes that the higher visibility is inevitably going to cost more to maintain. If the cost of regulation becomes disproportionate by the addition of another layer of bureaucracy, there will be a backlash. The board therefore need to assist by allowing the SRA to continue without interference and without escalating costs, other than establishment of high level principals of regulation.

Question 17 – Please comment on our draft proposed rules, both in terms of the broad framework and the detailed substance.

I think that the Board needs to put these proposed rules against the existing SRA model which was established with the likelihood of these rules in mind. I expect that

there is already a substantial synergy. There is presently a consultation being undertaken by the Law Society (in its representative function) to highlight deficiencies in the way we are regulated. See comment above regarding proposed Rule 3 (2) (g) in question 9 above.

Question 18 – Are there any comments that you wish to make in relation to our draft impact assessment, published at **Annex C** alongside this consultation paper?

You clearly recognise that the Law Society has worked hard over the past few years to put in place a separate regulation arm. That has been quite traumatic for the profession in terms of new rules and regulations and a new regime of regulation that is more hands on. You need to take account of that process to see how best you can fit the existing structures and processes into the new legislation so that the impact on the practitioner is lessened. The Law Society need to see a benefit for “jumping the gun” on separate regulation rather than be punished for it.

Question 19 – Are there any other issues that you would like to raise in respect of our consultation that has not been covered by previous questions?

No.

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