

<b>Title:</b> <b>The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (No.2) Order 2011</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Legal Services Board (LSB)	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 101
	<b>Date:</b> 28 June 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
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## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> The Law Society, acting through its regulatory body the Solicitors Regulation Authority (the SRA), has applied to the Legal Services Board to become a licensing authority. It must demonstrate in its application that, should it be designated as such, it will have in place an appellate body to hear and determine appeals against licensing decisions of the Law Society brought under the Legal Services Act 2007 (LSA 2007) or under the SRA's own licensing rules. Government intervention is required as an appeals process for the SRA can only be established by an order under section 80 of the LSA 2007.	
<b>What are the policy objectives and the intended effects?</b> The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by the SRA (should it be designated as a licensing authority). The costs and processes for the appeal mechanism must be transparent, efficient, fair and public. The body hearing the appeals must have sufficient resources and expertise to deal with complex issues.	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> Option 0: Do nothing (base case). Option 1 (preferred option): The Solicitors Disciplinary Tribunal (SDT) (which has the primary function of hearing and determining applications about alleged professional misconduct by solicitors) acts as the appeals body for appeals against decisions of the SRA when acting as a licensing authority. Option 2: The First-tier Tribunal (part of the unified tribunals structure established under the Tribunals, Courts and Enforcement Act 2007, and administered by HM Courts and Tribunals Service) acts as the appeals body for appeals against decisions of the SRA when acting as a licensing authority.  Option 1 is preferred by the SRA because it considers this will ensure a consistent approach to the treatment of ABS and 'traditional' law firms, and because the proposed SDT rules will provide a general discretion to award costs (the First-tier Tribunal, by contrast, has a limited discretion to award costs).	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will not be reviewed separately but as part of a wider PIR of ABS post-2014
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Minister's Sign-off** For implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister: ..... Date:.....

# Summary: Analysis and Evidence Policy Option 1 – preferred option

Description: Solicitors Disciplinary Tribunal as the appellate body for appeals against SRA decisions

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate					
<b>Description and scale of key monetised costs by ‘main affected groups’</b>					
N/A					
<b>Other key non-monetised costs by ‘main affected groups’</b>					
<ul style="list-style-type: none"> <li>The SRA will fund the set-up and operating costs of the appeals mechanism.</li> <li>The costs of set-up and operation of the appeals mechanism will depend on the number of appeals received.</li> <li>The cost for individual licensed bodies will depend on how many have been licensed on 31 January 2012, but is likely to be low.</li> <li>In addition, appellants and the SRA may need to fund their own legal costs, subject to the SDT's discretion (within its proposed new procedural rules) to award costs against a party.</li> </ul>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate					
<b>Description and scale of key monetised benefits by ‘main affected groups’</b>					
N/A					
<b>Other key non-monetised benefits by ‘main affected groups’</b>					
<ul style="list-style-type: none"> <li>The SRA may be able to recoup legal costs in defending the appeal from unsuccessful appellants because the SDT will have general discretion to award costs.</li> <li>This reduces the likelihood of the SRA recouping them from the regulated community as a whole via licence fees.</li> <li>The appeal mechanism is intended to provide individuals or businesses affected by certain decisions of licensing authorities with the opportunity to challenge that decision in an independent and impartial tribunal.</li> <li>A credible appeals mechanism is a key part of a strong and effective regulatory framework, which enhances public confidence in the legal system and produces consumer welfare benefits.</li> </ul>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
<ul style="list-style-type: none"> <li>It is assumed that the SDT has the capacity and capability to hear the appeals.</li> <li>The number of appeals in the first year of operation is unknown, but for planning purposes it is assumed there will be approximately 20. If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase, although a higher number of appeals is likely to occur in proportion to a higher number of licensed businesses.</li> <li>The average cost of the appeal mechanism as part the licence fee for individual businesses is correlated to the overall volume of appeals and number of licensed businesses.</li> <li>The SRA will determine how best to apportion the costs (e.g. whether they are apportioned as a flat rate across all licensed bodies or whether the apportionment is dependent on the size of the licensed bodies and/or risk profile).</li> </ul>					N/A
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>		<b>Yes/No</b>

# Summary: Analysis and Evidence

# Policy Option 2

Description: First-tier Tribunal as the appellate body for appeals against SRA decisions

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised costs by 'main affected groups'</b>					
As per option 1, except the following:					
<ul style="list-style-type: none"> <li>The SRA would fund the set-up costs (jointly with the Council for Licensed Conveyancers) and additional operating costs incurred by the GRC through the initial and periodic fees charged to licensed bodies.</li> <li>In addition, appellants and the SRA will need to fund their own legal costs, subject to the First-tier Tribunal's limited discretion within its procedural rules to award costs.</li> </ul>					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
As per option 1, except the following:					
<ul style="list-style-type: none"> <li>The SRA will not be able to recoup the legal costs of defending appeals from unsuccessful appellants, except where a party has acted unreasonably in bringing, defending or conducting proceedings, or where there are wasted costs.</li> </ul>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
As per option 1, except the following:					N/A
<ul style="list-style-type: none"> <li>It is assumed that the First-tier Tribunal has the capacity and capability to hear the appeals.</li> <li>The number of appeals in the first year of operation is unknown, but for planning purposes it is assumed there will be approximately 20, but there is a potential for it to be higher than option 1 because no cost recovery could induce speculative appeals.</li> </ul>					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:		Yes/No

## 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?		Autumn 2011			
Which organisation(s) will enforce the policy?		The Solicitors Disciplinary Tribunal 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 £0.001	< 20 £0.001	Small £0.001	Medium £0.001	Large £0.001
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b>	No	11
<b>Economic impacts</b>		
Competition	No	11
Small firms	No	11
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	11
Wider environmental issues	No	11
<b>Social impacts</b>		
Health and well-being	No	11
Human rights	No	11
Justice system	No	11
Rural proofing	No	11
<b>Sustainable development</b>	No	11

<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	Legal Service Board Consultation – Alternative Business Structures: Appeal Arrangements <a href="http://www.legalservicesboard.org.uk">http://www.legalservicesboard.org.uk</a>
3	Legal Service Board Consultation – Alternative Business Structures: Approaches to Licensing <a href="http://www.legalservicesboard.org.uk">http://www.legalservicesboard.org.uk</a>
4	

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

- 1.1 The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA) and is charged with responsibility for overseeing the regulators of legal services and ensuring that its activities reflect the regulatory objectives set out in the LSA 2007. The LSB's mandate is to ensure that regulation in the legal services industry is carried out in a manner that is consistent with the public interest and that the interest of consumers is central in policy making.
- 1.2 The LSA enables the operation of Alternative Business Structures (ABS). ABS permit the management and ownership of legal firms by non-lawyers. The LSA also sets out the framework for designating Licensing Authorities (LAs) and their statutory basis to license Alternative Business Structures (ABS). In order to regulate ABS, Approved Regulators (ARs) can be designated as LAs. The licensing rules of LAs come into force when the LA is designated.

### Current Situation

- 1.3 Currently there is no LA to license the ABS, however the Solicitors Regulation Authority (SRA) could be designated as a LA under part 5 of the LSA. The SRA is the independent regulatory arm of the Law Society, regulating solicitors and solicitor practices in England and Wales. We anticipate that, following the LSB's decision to recommend the designation of the SRA as a LA, it will take effect in autumn 2011.
- 1.4 Should the SRA be designated as a LA, a mechanism is required to hear appeals against certain decisions of the Law Society. In relation to the SRA's existing role as an AR, disciplinary and appeals matters are dealt with by the Solicitors Disciplinary Tribunal (SDT), which is a statutory tribunal established under the Solicitors Act 1974.
- 1.5 The LSA 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.
- 1.6 An order under s.80 of the LSA could amend the functions of the SDT for the purposes of hearing and determining ABS appeals. Alternatively, an order under s.80 could provide for the appeals to be heard by the First-tier Tribunal, which is part of the unified tribunals structure established under the Tribunals, Courts and Enforcement Act 2007 and administered by HM Courts and Tribunals Service. The First-tier Tribunal combines a number of previously separate administrative tribunals into one unified structure, which has its own infrastructure and administrative support function. The First-tier Tribunal is made up of a variety of jurisdictions which are grouped into Chambers, including the General Regulatory Chamber which consists of a number of jurisdictions concerned with hearing appeals against the decisions of regulatory bodies.
- 1.7 There are some explicit appeal rights under the LSA (s.96 and schedule 13), concerning decisions to impose a financial penalty or to impose restrictions on the ownership of a licensed body. Licensing rules made by the SRA will also include rights of appeal. The Board has issued guidance specifying those decisions which, as a minimum, the Board considers ought to be appealable. We expect the following decisions of licensing authorities to be appealable as they could affect a person's civil rights (the relevant sections of the LSA are shown in brackets):
  - Refusal of application for a licence (s.84)
  - Imposition of conditions on a licence (s.85)
  - Modification of licence (s.86)
  - Refusal to designate as Head of Legal Practice, or withdrawal of approval (Schedule 11, paragraph 12)
  - Refusal to designate as Head of Finance and Administration, or withdrawal of approval (Schedule 11, paragraph 14)
  - Disqualification from some or all roles within a licensed body (s.99)
  - Suspension and revocation of licence (s.101)

- Power to modify application of licensing rules etc to special bodies (ss.106 and 107)

### Problem under consideration

1.8 If no provision is made in an order under section 80 of the LSA for appeals, it will not be possible to designate the SRA as a LA. It will not therefore be possible for ABS firms to be licensed by the SRA, and the benefits associated with removing restrictions on the ownership and management of entities providing legal services (in terms of increased competition and removal of barriers to entry) cannot be fully realised. This would also be unfair on potential market entrants.

### Economic rationale

1.9 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

1.10 In this case intervention would be justified primarily on the basis of equity. Decisions of a LA affect the civil rights of licensed individuals and applicants for licences, and therefore need to be accompanied by a right of appeal to an independent and impartial Tribunal. A credible appeals mechanism is also a key part of a strong and effective regulatory framework, which enhances public confidence in the legal system and produces consumer welfare benefits. There may also be efficiency gains if the absence of an appeals mechanism restricts the efficiency gains from ABS.

### Policy objective

1.11 The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by SRA (should it be designated as an LA). LAs are expected to make their first licensing decisions in autumn 2011. The SDT will hear all appeals about the SRA's decisions as a LA.

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

### Proposals

1.13 In order to designate the SRA as an LA for ABS, the following options are under consideration to address the need for an appeal mechanism to be in place;

- Option 0: Base case – to do nothing
- Option 1: Solicitors Disciplinary Tribunal as the appellate body for appeals against SRA decisions
- Option 2: First-tier Tribunal as the appellate body for appeals against the SRA decisions

### Affected stakeholder groups, organisations and sectors

1.14 The following individuals/sectors are likely to be affected by the proposal:

- SRA – the body whose decisions will be appealed
- SDT- the body to which appeals will be made
- ABS firms (and applicants for an ABS licence) – which will be the subject of the decisions that are appealable
- Consumers – who will bear the regulatory costs through the prices paid for legal services

## 2. Costs and benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these two options. The costs and benefits of Option 1 & 2 is compared to the do nothing option (Option 0). Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal

impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

### **Option 0: Base case (do nothing)**

- 2.2 Without intervention in the form of an order under s.80 of the Legal Services Act 2007, there is no body with the power to hear and determine appeals against SRA decisions under part 5 of the Act. SRA could not therefore be designated as a licensing authority for ABS.
- 2.3 Because the do nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

### **Option 1 (preferred option): Solicitors Disciplinary Tribunal as the appellate body for appeals against SRA decisions**

#### **Description**

- 2.4 Currently there is no mechanism to hear appeals from ABS against decisions made by the SRA, should it be made a LA for ABS. We propose a section 80 order is made modifying the functions of the Solicitors Disciplinary Tribunal to enable it to hear the appeals.
- 2.5 It is proposed that new rules of procedure will be made by the SDT to govern the exercise of its appellate jurisdiction (including ABS appeals). It is proposed that these rules will provide a general power to award costs against the parties (equivalent to the SDT's power to award costs under its existing rules).

#### **Costs**

##### **SRA**

- 2.6 The SRA may incur costs associated with defending appeals. However it is assumed the SDT would exercise its power to award costs in the SRA's favour on an unsuccessful appeal (although it may not award costs against the SRA when an appeal is successful, as the Tribunal's current practice is not to ordinarily order costs against SRA on the basis that costs follow the event – a principle established by the Court of Appeal in *Baxendale-Walker v Law Society* [2007] EWCA Civ 233). The costs have not been quantified at this stage. LAs will pass on all costs to the firms they regulate in the form of higher fees.
- 2.7 The SRA would also need to fund the set-up and additional SDT operating costs associated with hearing these additional appeals. These would consist primarily of daily fees for panel members, plus administrative support and training costs. The administrative support would include dealing with enquires and all administrative tasks associated with the appeals, including scheduling appeal dates.
- 2.8 The number of appeals that will be made is unknown. As an indicative example, the cost of an additional 40 sitting days (that might be required if an appeal required two days to hear, and there were 20 appeals annually) is estimated at around £90,000 (around £2,300 per sitting day).
- 2.9 Initially there are not expected to be additional estates costs required to take on this work. Any additional IT and telephony costs are expected to be negligible. In addition there would be some initial set up costs to cover activities such as training and communications which we assume would be around £12,000.

##### **ABS**

- 2.10 ABS would incur costs in preparing for appeals. ABS firms may choose to be legally represented before the SDT, which would result in additional costs. Additionally, if the SDT exercises its power to award legal costs to the SRA, the ABS firms may incur this extra cost when their appeal has been unsuccessful.

#### **Consumers of legal services**

- 2.11 All regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher prices, thus the costs faced by consumers would equate to the cost faced by the SRA. This includes the extra costs associated with any appeals about SDT decisions.

## Benefits

### SRA

2.12 The SDT would have a general power to award costs, therefore in unsuccessful appeals the SRA might be awarded costs. The benefit to the SRA has not been quantified at this stage.

### ABS

2.13 ABS firms would benefit under the proposal as they would be able to appeal against the decisions of the SRA as a LA. The right of appeal will apply in relation to a range of decisions (see para 1.7 above), including the imposition of a financial penalty, the refusal of a licence, or the decision to suspend the right of an individual to work in an ABS.

2.14 ABS are likely to benefit from better decision making in the first place because LAs know they must make appropriate decisions due to the risk of appeal.

### Consumers of legal services

2.15 Ultimately, the proposal should lead to a better regulatory system – of which a credible appeal mechanism is an essential part. This is likely to enhance consumer confidence in the legal services market.

## Option 2: First-tier Tribunal as the appellate body for appeals against SRA decisions

### Description

2.16 Currently there is no mechanism to hear appeals from ABS against decisions made by the SRA, should it be made a LA for ABS. Another option is to make an order under section 80 making provision for the First-tier Tribunal to hear appeals against decisions of the SRA, with the functions allocated to the General Regulatory Chamber of the Tribunal.

### Costs

#### SRA

2.17 SRA would incur costs associated with defending appeals. Unlike the SDT in option 1, the GRC has a limited power to award costs against the parties, so we assume the SRA would normally be expected to bear its own costs. The costs have not been quantified at this stage, but since under this option the SRA is less likely to be able to recover costs, the legal costs associated with defending appeals are likely to be higher than under option 1.

2.18 The cost for the SRA may also be higher relative to option 1 because secondary effects may lead to the volume of appeals to be higher; this is because ABS firms will not have to bear the cost of the SRA should their appeal be unsuccessful, potentially leading to more speculative appeals being made. LAs will pass on all costs to the firms they regulate in the form of higher fees.

2.19 The SRA would also need to fund the costs associated with hearing appeals by the First-tier Tribunal. These would consist primarily of daily fees for panel members, plus administrative support supplied by the HM Courts and Tribunals Service. The administrative support would include dealing with enquires and all administrative tasks associated with the appeals, including scheduling appeal dates. The First-tier Tribunal has sufficient capacity already available to hear the appeals - no additional accommodation or staff resources will be required.

2.20 The number of appeals that will be made is unknown, but is expected to be small. As an indicative example, the cost of an additional 40 sitting days (that might be required if an appeal required two days to hear, and there were 20 appeals annually) is likely to be approximately £90,000 per annum (consisting of £5,000 annual fixed costs, plus £85,000 variable costs). This is broadly equivalent to the anticipated operating costs of the SDT under option 1.

2.21 There would be no additional staff or estates costs required to take on this work. Any additional IT and telephony costs are expected to be negligible. In addition there would be some initial set up costs (shared with the Council for Licensed Conveyancers) to cover activities such as training and communications which we assume would be no more than £10,000.

#### ABS

2.22 ABS would incur costs in preparing for appeals; however in the absence of cost recovery for the SRA, overall costs will be lower relative to option 1. ABS firms may choose to be legally represented before the GRC, which would result in additional costs.

### *Consumers of legal services*

2.23 All regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher prices, thus the costs faced by consumers would equate to the cost faced by the SRA (including the higher cost faced by the SRA in the absence of cost recovery). This includes the extra costs associated with any appeals about SRA decisions.

## **Benefits**

### **ABS**

2.24 ABS firms would benefit under the proposal as they would be able to appeal against the decisions of the SRA as a LA. The right of appeal will apply in relation to a range of decisions (see para 1.7 above), including the imposition of a financial penalty, the refusal of a licence, or the decision to suspend the right of an individual to work in an ABS.

2.25 Unlike option 1, in the absence of a general power for the GRC to award costs, the costs of appealing will be lower as ABS firms will not have cover SRA costs should their appeals be unsuccessful.

2.26 ABS are likely to benefit from better decision making in the first place because LAs know they must make appropriate decisions due to the risk of appeal.

### *Consumers of legal services*

2.27 Ultimately, the proposal should lead to a better regulatory system – of which a credible appeal mechanism is an essential part. This is likely to enhance consumer confidence in the legal services market.

## **Risks and assumptions**

2.28 The following risks and assumptions apply to the analysis of both options considered.

2.29 It is assumed that:

- The number of appeals in is unknown but is expected to be low
- The amount of compliance will determine number of appeals, as will the quality of decision making by LAs.
- Appeals do not lead to increased costs for SRA as a result of behavioural change; e.g. SRA operates more cautiously due to the possibility of new appeals, or ABS operate in a more risky way.
- If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase. Moreover the higher the average numbers of appeals per licensed business, the higher the costs of the appeal mechanism to each individual business as an element of the licence fee. 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.
- For the purposes of estimating costs, each appeal is assumed to require a two day hearing on average in both the SDT and First-tier Tribunal.
- 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.
- The legal costs for SRA associated with defending appeals will be lower in option 1 than option 2, because it is likely that the SDT will exercise its broad discretion to order costs in the SRA's favour where appeals are unsuccessful.
- The number of appeals may be higher under option 2, relative to option 1 because ABS firms will not normally have cover the legal costs of the SRA if their appeal is unsuccessful, thus potentially leading to more speculative appeals being placed.

## **3. Enforcement and Implementation**

3.1 The assumption for the proposal is that it will be implemented from autumn 2011. The Solicitors Disciplinary Tribunal will operate the appeals mechanism.

## 4. Specific Impact Tests

### *Equality Impact Assessment*

4.1 After carrying out an initial equality impact assessment screening we do not believe that the proposal will affect any sector of society more than another and we do not believe that there are any significant age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation issues involved in these proposals. We concluded a full Equalities Impact Assessment was not required.

### *Competition Assessment*

4.2 We do not consider that these proposals impact on competition, except to the extent that no intervention to put in place an appeals mechanism will prevent the implementation of alternative business structures and the associated competition benefits.

### *Small Firms Impact Test*

4.3 These effects will not disproportionately impact small firms.

### *Environmental Impacts*

4.4 The proposals are not expected to have any significant environmental impacts.

### *Health Impact Assessment*

4.5 We do not anticipate any significant impact on human health or the demand for health and social care services in the UK as a consequence of this proposal.

### *Human Rights*

4.6 The proposals in this Impact Assessment have been subjected to a Human Rights screening to ensure it is compliant with the Human Rights Act 1988. The appeal mechanism will involve a substantive rehearing of determinations affecting an individual's civil rights. It will therefore protect the right under Article 6 of the European Convention of Human Rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

### *Justice Impact Test*

4.7 Justice impacts have been considered and it is not expected that the proposal will have a justice impact. The Solicitors Disciplinary Tribunal is an independent statutory tribunal – it is not part of the Unified Tribunals Structure and is not administered by HM Courts and Tribunals Service.

### *Rural Proofing*

4.8 Rural proofing impacts have been considered and there are not expected to be any significant rural impacts. The proposed regulation will be enforced throughout England and Wales and does not have a geographical bias.

### *Sustainable Development*

4.9 Sustainable development impacts have been considered and there are no expected sustainable development impacts.

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

<b>Basis of the review:</b> N/A
<b>Review objective:</b> N/A
<b>Review approach and rationale:</b> N/A
<b>Baseline:</b> N/A
<b>Success criteria:</b> N/A
<b>Monitoring information arrangements:</b> N/A
<b>Reasons for not planning a PIR:</b> A PIR of ABS generally will be carried out, 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 SDT and the SRA 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. The LSB also plans to undertake a separate, broader review of disciplinary and appeal arrangements across approved regulators during 2011/12.