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27 May 2011

Dear Dawn

Request to make amendments to the CLC's Application to the Legal Services Board to approve the CLC's Adjudication Panel Rules and Disciplinary Procedure
Applicable Standard of Proof

This application is supplemental to the CLC's Application submitted to the Legal Services Board on 21 February 2011 to approve the CLC's Adjudication Panel Rules and Disciplinary Procedure which was approved in part by the LSB by Decision Notice dated 21 March 2011.

The CLC's Licensing Authority Application and schedule 4 application for approval to revise the CLC's Rules and Guidance provided that the applicable standard of proof should be the civil standard except where dishonesty is alleged in which case the applicable standard of proof is the criminal standard.

In its response as a mandatory consultee to the CLC's Licensing Authority application the Legal Services Consumer Panel queried why the CLC had continued to apply this formulation given the approach taken by other Approved Regulators. The Lord Chief Justice also commented that it would seem appropriate for the CLC to move to a position commensurate with that of the other regulators in respect of the burden of proof in disciplinary proceedings. In its further representations to the LSB the CLC stated at paragraph 13:

The CLC's initial view was that the applicable standard of proof was by no means as clear cut as had been suggested by the mandatory consultees. However, the CLC considers it critical that the standard of proof it applies is the same as that applied by the... General Regulatory Chamber which will determine appeals against enforcement and other determinations made by the CLC as a Licensing Authority. Failure to do so would lead to confusion within the CLC regulated community and is likely to diminish the reputation of both the profession and the CLC because there may be a perception that enforcement action is not being taken against the regulated community if too low a standard of proof is applied.

Consultation on the applicable Standard of Proof

The CLC published its Consultation Paper on the Standard of Proof (see attached) on 7 April 2011 asking for responses to be submitted by 27 April 2011. The CLC considered that a short consultation period was appropriate because the issue raised



(the standard of proof) was very narrow and the rationale for the change was clear cut. The CLC received five responses (four from members of the CLC's regulated community). The fifth response, from ILEX Professional Standards, supported the CLC's proposed change. Three of the responses from the regulated community supported the proposed change. The fourth did not on the grounds that there is a real risk that allegations may wrongly be found proved against an innocent regulated person. The CLC answered that response by commenting that in a recent case the Supreme Court had distinguished between the standard of proof and the quality of evidence. If an event were inherently improbable it may take better quality evidence to persuade the judge that such an event has happened than would be required if that event were commonplace.

In the CLC's judgment it is appropriate that the civil standard of proof should be applied in all disciplinary proceedings (as set out in the Consultation Paper) to maintain consistency with the standard of proof applied by the General Regulatory Chamber.

Amendments Consequential on changing the Standard of Proof

The CLC wishes to make the following amendments to the CLC's Rules as a result of this change (copies of the relevant rules are attached):

1. Approved Regulator (Disciplinary Procedure) Rules 2011

Amendment of rule 12 by deletion of rule 12.2 and deletion of the reference to rule 12.2 in rule 12.1.

2. Discipline and Appeals Committee (Procedure) Rules 2011

Amendment of rule 18 by deletion of rule 18.2 and deletion of the reference to rule 18.2 in rule 18.1. Other amendments have been made to reflect the transfer of service complaint enforcement to the Legal Ombudsman and that the adviser to the Discipline and Appeals Committee is now the 'Legal Adviser', previously 'Legal Assessor'. These amendments have been tracked.

3. Adjudication Panel (No 2) Rules 2011

These Rules are in the form of the Rules included at Annex C of the Application previously made by the CLC, but not approved by the LSB. As set out at paragraph 14 of the Decision Notice:

The Adjudication Panel Rules (No2) 2011 and the CLC Licensing Authority (Disciplinary Procedure) Rules 2011 were not approved. The changes proposed by these rules will be needed should the CLC be designated as a licensing authority. The LSB has received the CLC's application for such a designation and these two sets of rules will be reviewed and (if acceptable) approved as part of the consideration of that application.

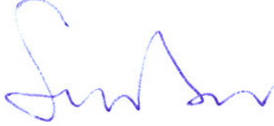
4. Licensing Authority (Disciplinary Procedure) Rules 2011

These Rules are in the form of the Rules included at Annex D of the Application previously made by the CLC (and not previously approved by the LSB for the reasons set out at paragraph 14 of the Decision Notice –

see paragraph 3), except that rule 12 has been amended by deletion of rule 12.2 and deletion of the reference to rule 12.2 in rule 12.1.

Please let me know whether you require any additional information to enable the Legal Services Board to determine this supplemental application.

Yours sincerely



Simon Blandy
Director of Policy and Standards