

Statement of policy on section 15(4) of the Legal Services Act 2007: regulatory arrangements for in-house lawyers

Issued under section 49 of the Legal Services Act 2007

February 2016

Provision

1. This statement of policy is issued under Section 49(2) of the Act, which provides for Legal Services Board (LSB) to prepare and issue a statement of policy about any matter. In preparing this statement, LSB has had regard to the principle that its principal role is the oversight of approved regulators, as required by section 49(3).
2. LSB must have regard to any relevant policy statement published under section 49 in exercising or deciding whether to exercise any of its functions. For the purposes of this policy statement, LSB's statutory decision making functions, set out in Schedule 4 and Schedule 10 to the Act, are likely to be the most relevant.
3. In accordance with section 49(6) of the Act the LSB may at any time alter or replace a policy statement.

Purpose of this document

4. This statement of policy will be considered by LSB in exercising or deciding to exercise any of its functions. In so far as any provision relates to section 15(4) of the Act, LSB functions which are likely to be the most relevant include:
 - those in relation to an approval of proposed alterations to regulatory arrangements under Part 3 of Schedule 4 to the Act
 - a recommendation that a body be designated as an approved regulator under Part 2 of Schedule 4 to the Act
 - a recommendation that a body be designated as a licensing authority under Part 1 of Schedule 10 to the Act.
5. The statement of policy, below, does not prejudice the prevailing rules, processes and tests established by LSB to deliver the statutory functions listed above. This includes having regard to the Act's regulatory objectives, the principles of better regulation, and best regulatory practice. Rather, the principles in the statement of policy provide additional focus on those areas identified through our thematic review as important in improving regulatory arrangements for in-house lawyers.

Background

6. LSB has reviewed the regulatory arrangements of approved regulators as they relate specifically to section 15(4) of the Act. Section 15(4) states that an employer who employs an employee who is carrying on a reserved legal activity, does not itself carry on a reserved legal activity unless part of its business is to provide that reserved legal activity to the public, or a section of the public.
7. We considered that in some cases the regulatory arrangements of approved regulators and the provisions of section 15(4) did not align and in some cases were more restrictive than anticipated by section 15(4). In addition, the existence, or not, of regulatory arrangements in relation to section 15(4) of the Act did not appear to be evidence based.
8. Informed by LSB's February 2015 discussion paper about the regulatory restrictions for in-house lawyers¹ and the responses received to that discussion paper², LSB has developed a set of principles that it will consider when asked to approve regulatory arrangements (or an alteration to existing regulatory arrangements) that pertain to section 15(4) of the Act.
9. In keeping with the provisions of section 15(4) of the Act, the statement of policy applies regardless of whether legal services are carried on with a view to profit. In principle, the LSB supports the provision of pro bono services and nothing in the statement of policy should be seen to specifically restrict or deter the provision of pro bono services by in-house lawyers within the current legislative framework.
10. While it is most likely that the principles will be relevant in relation to LSB's statutory decision making functions, LSB may consider these principles when exercising any of its statutory functions.

¹*Are regulatory restrictions in practising rules for in-house lawyers justified? A discussion paper*, February 2015, is available at: www.legalservicesboard.org.uk.

²*Are regulatory restrictions in practising rules for in-house lawyers justified? Summary of responses received to a discussion paper and the LSB's response to them*, July 2015, available at www.legalservicesboard.org.uk.

LSB Statement of Policy: principles for assessing regulatory arrangements that pertain to section 15(4) of the Act

11. Where LSB is asked to approve regulatory arrangements (or an alteration to existing regulatory arrangements) that pertain to section 15(4) of the Act, in addition to considering proposed alterations against any relevant rules made by LSB under the Act, LSB will also consider the principles set out below:

1. The approach taken to regulatory arrangements pertaining to section 15(4) is evidence based

12. We will expect an approved regulator which chooses to apply regulatory restrictions that are additional to those required by the Act, to justify its approach with a sound evidence base. Equally, when regulators opt not to apply regulatory restrictions, this should be an active decision taken in light of an appropriate assessment of any need for such action.
13. For regulatory arrangements which pertain to section 15(4) of the Act, it will be particularly important for LSB to understand any evidence that informs a decision by an approved regulator to place regulatory restrictions on in-house lawyers providing unreserved legal services to consumers unconnected to the employer's business.

2. Regulatory arrangements that pertain to section 15(4) have been considered in light of wider regulatory arrangements

14. Our guidance on Schedule 4, Part 3 applications suggests that approved regulators should confirm in their applications to alter regulatory arrangements that any consequential effects of their proposed changes have been considered in light of wider regulatory arrangements.
15. Our work suggests that the approach approved regulators take to regulating in-house lawyers impacts more widely than can be addressed with a simple, isolated change to a definition or rule. LSB will consider the extent to which a review by regulators of regulatory arrangements that relate specifically to section 15(4) has been far reaching and considered in light of any wider regulatory arrangements, including those approved under a designation process (Schedule 4, Part 2 and Schedule 10, Part 1).

3. The impact on consumers of any regulatory arrangements that pertain to section 15(4) of the Act has been assessed

16. Any alterations to regulatory arrangements must, in accordance with LSB rules, assess the impact on consumers,³ as part of a wider assessment of the impact of alterations against the regulatory objectives. This will involve, for example,

³ Under rule nine of the LSB's rules for rule change applications (available at www.legalservicesboard.org.uk), an application must include a statement explaining how and why an alteration will either help to promote, be neutral towards or be detrimental to each of the regulatory objectives, one of which is to protect and promote the interests of consumers.

assessing the extent to which regulators have balanced access to justice with mitigating risks around potential consumer detriment.

17. Where new or revised regulatory arrangements pertain to section 15(4), LSB would further consider how regulators communicate and keep consumers informed about the benefits and consequences of different regulatory approaches for in-house lawyers.

4. Consistency in approach to regulating in-house lawyers has been considered

18. In accordance with the Act and LSB rules, any alterations to regulatory arrangements should have regard to the principle of consistency. Consistency in approach is also a key means of ensuring consumer understanding about recourse and may influence consumers' choice in accessing legal services.
19. When proposed changes to regulatory arrangements relate to section 15(4), LSB will consider the extent to which there is consistency in the approach to regulation taken across the different regulators and across those lawyers, regulated by the same regulator, who work in-house and those who do not.