

**Response of the City of Westminster and Holborn Law Society
to the Legal Services Board (“LSB”) Consultation
“Approving Rule Changes and Issuing Direction: Solicitors
Disciplinary Tribunal (“SDT”)”**

The City of Westminster and Holborn Law Society

The City of Westminster and Holborn Law Society (“CWHLS”) enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years “the silver circle” down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practice at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors’ negligence and professional indemnity insurance.

Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, and matters affecting their practice, including matters relating to professional indemnity etc.

Response

Because of time constraints we are only proposing to respond to questions 3 and 4, which seem to us to raise important points of principle.

Question 1-Do you agree with our approach regarding the Application of the Rules to the Tribunal under section 178 of the Act?

No Comment

Question 2 –Do the proposed Rules (at Appendix 1) accurately reflects the application of the Rules to the Tribunal?

No Comment

Question 3- Do respondents agree with our approach regarding the application of our Statement to the Tribunal under section 179 of the Act?

We strongly disagree with your approach. The LSB is responsible for overseeing legal regulators. The SDT is set up by statute and is effectively a branch of the High Court. It is fully independent of the Law Society. It is in our experience both feared and respected by solicitors, and well thought of by others with experience of it. It does a good job. In our view the SDT should not be regarded as a regulator but as a court. The powers granted by section 179 should be regarded as residual powers

which (given the SDT's good reputation) the LSB should expect never to have to exercise. If ever there was a case for light touch regulation, it is this one. We are disturbed that the LSB appears to be seeking an active role in monitoring the SDT. That could compromise its independence as a court. We think it quite wrong that the LSB should (as proposed 1.8 of Appendix 2) regard part of its principal role to be the oversight regulator of the SDT. That is very much a residual role which in practice it should never have to exercise.

It is precisely because the LSB is not the day to day regulator of solicitors that it is more appropriate for these powers to reside with the LSB rather than with the SRA, so that the functions of the regulator and of the SDT as a court are kept as separate as possible. That does not mean that the LSB should actively seek to use these powers on a day to day basis. It should not.

Question 4- Do respondents agree with our proposals for assessing the failure of the Tribunal to “perform any of its function to an adequate standard (or at all)?

Again we strongly disagree. The whole approach seems to envisage an active role of monitoring the SDT's performance which seems to us to be wrong in principle. We question whether the LSB has the experience to assess the performance of a court. The SDT's function is to determine disciplinary matter involving solicitors. It has developed a considerable jurisprudence in this area, and its decisions are subject to appeal to the High Court. Clearly it is inappropriate for any regulator (including the SRA and the LSB) to seek to interfere in that process.

Paragraph 26 states: *“Therefore, we will oversee the Tribunal's performance of its functions by considering its performance against its KPIs and wider intelligence. In exercising our powers, the LSB will also have regard to the regulatory objectives, professional principles and the Better Regulation principles.”*

The reference to KPIs is management speak. In accountancy terms it tends to refer to money management and value for money. That may be of interest to the Law Society as paymaster of the SDT, but we cannot see what interest the SDT should take in this.

We assume that the LSB accepts that it cannot have any role in assessing the quality of the SDT's decisions. That would be interference in the SDT's independence as a court. Quite apart from the issue of principle, we question whether the LSB would have the experience to assess the SDT's efficiency in case management and its exercise of its judgment in balancing the need to allow the parties sufficient time to prepare their cases in the interest of justice on the one hand and the need for reasonable speed in disposing of cases on the other.

In principle there may be something to be said for the SDT seeking to obtain feedback on its performance and having a dialogue with users with a view to making any necessary improvements. We do not think that this is a role for the LSB.

The eight Regulatory Objectives are: (1) Improving and promoting the public interest; (2) Supporting the constitutional principles of the rule of law; (3) Improving access to justice; (4) Protecting and promoting the interests of consumers; (5) Promoting competition in the provision of services; (6) Encouraging an independent, strong,

diverse and effective legal profession; (7) Increasing public understanding of the citizen's legal rights and duties; and (8) Promoting and maintaining adherence (by authorised persons) to the professional principles. Attempting to judge the performance of the SDT by reference to these Regulatory Objectives is inappropriate because most of them simply do not apply to the SDT. The SDT's job is confined to deciding individual disciplinary cases fairly and impartially, applying the law of the land and the relevant rules of conduct. This shows the difficulties that arise in trying to treat the SDT as a regulator when it is in fact a court.

As to the Better Regulation principles, the important one is that a regulator should only intervene when necessary. Properly applied, this should mean that the LSB should adopt the approach that it is unlikely to be necessary to intervene in the SDT, and that only the lightest of touch oversight is appropriate.

Question 5-Does the draft Statement (at Appendix 2) and the Representation Rules (at Annex 1 of the draft Statement) accurately reflect the application of the Statement and Representation Rules to the Tribunal?

It follows from what we say in answer to questions 3 and 4, that we think that the LSB needs to reconsider its approach to its powers under section 179. We therefore do not respond directly to this question.