

LEGAL SERVICES CONSUMER PANEL



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Dear Ms Sullivan,

I am writing as Chair of the Legal Services Consumer Panel, in response to the Legal Services Board (LSB) consultation on '*Internal Governance and Practising Fees Rules*'. As the Panel is not yet formally constituted, this response should be taken as a personal view.

The Rules on internal governance arrangements are important because they will be the foundations on which regulatory decisions affecting consumers of legal services are taken. Well-designed governance supports high quality decision-making and underpins public confidence that such decisions will be taken in the public interest, rather than sectional interests. Getting governance right is therefore essential in order to achieve the regulatory objectives.

Overall, the decisions taken by the LSB following its consultation exercise were consistent with the consumer interest. It is particularly welcome that approved regulators' regulatory boards will be required to have a majority of lay members. Whilst there was some opposition to this proposal, it was pleasing that a broad church of stakeholders including consumer bodies, regulators and elements of the legal profession, recognised that a lay majority would bolster public confidence in the integrity of the regulatory framework. The arguments for requiring a lay chair are perhaps more finely balanced. If, in five years time, it turns out that every chair is a lawyer, it will be difficult for the approved regulators to maintain that appointments were made strictly on merit.

Comments on significant changes to draft rules

The proposed definition of a 'lay person' is the correct approach. The LSB would need strong evidence to depart from the definition applicable to its own governance arrangements under the Legal Services Act, which was finally settled after much debate during the passage of the legislation. The ability to bring a lay perspective relies on the cultural mindset of the individual concerned, so it would be misleading, not to mention arbitrary, to set a time period of non-practice after which a qualified

person could be considered lay. A situation conceivably could emerge that all members are legally qualified and count as lay; this would not breed public confidence in the independence of regulation. On a related point, it would be preferable to use an alternative term to 'lay person' as this says what a person is not (i.e. not a lawyer) rather than what value they bring in terms of their breadth of experience. 'Independent person' would be a more empowering term.

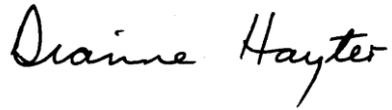
We note that, for reasons of flexibility, such as to permit models like the neutral corporate board for the Law Society proposed in the Hunt Review, the LSB considers it could be sensible not to require regulatory arms to have full control over all aspects of the appointments process. However, this argument is not persuasive – especially in the Hunt example where the Chair of the proposed corporate body could be the President of the Law Society sitting alongside other elected members – and with even the “independent members” possibly solicitors (as indeed the SRA members might be). It is essential therefore that the Rules should make it explicit that representative arms should not have any controlling influence over appointments to regulatory arms. It would be helpful if the LSB's consultation response explained its thinking here in more detail, as the current consultation paper does not offer any reasons for its proposed change in policy. If representative arms had any controlling influence over appointments, this would risk undermining confidence in the independence of the appointments process and, by extension, confidence in contentious decisions made in future by the regulatory board (which will, of course, cover decisions relating to disciplinary matters).

The proposed approach towards dual self-certification is sensible. An applicable approved regulator (AAR) is either compliant or not; allowing 'partial compliance' would be confusing for consumers and would reduce the incentive to achieve 'full compliance'. Further, it is pleasing that AARs are encouraged to invite the participation of a consumer panel associated with them as a form of peer review. Where such panels do not exist, AARs should make clear what steps they have taken to consider the impact on users. This practice would help to underpin public confidence in the AAR's governance arrangements, and serves to support a wider point about the importance of all approved regulators developing robust consumer engagement approaches.

The proposed approach towards determining the level of practising fee is prudent. In particular, the commitment to consult the Legal Services Consumer Panel about the impact of the proposed fee on persons providing non-commercial legal services is welcome as this could have access to justice implications. Reflecting the point above about consumer input to dual self-certification, it would be good practice for approved regulators to involve consumer panels associated with them before they submit the proposed fee to the LSB.

Thank you for the opportunity to respond to this consultation. Should you require further information on any of the above comments, please contact Steve Brooker (Consumer Panel Manager) on 020 7271 0077.

Yours sincerely

A handwritten signature in black ink that reads "Dianne Hayter". The signature is written in a cursive style with a large initial 'D' and 'H'.

Dr Dianne Hayter
Chair, Legal Services Consumer Panel