

**RESPONSE OF THE DEVON & SOMERSET LAW SOCIETY (DASLS)
TO THE LEGAL SERVICES BOARD CONSULTATION
ON REGULATORY INDEPENDENCE**

Question 1 – How might an independent regulatory arm best be “ring-fenced” from a representative-controlled approved regulator in the way we describe (i.e. requiring a delegation of the power to regulate processes and procedures; and the power to determine strategic direction)?

DASLS accepts as correct the “ring fencing” principle of Governance as put forward in Paragraph 3 of the Consultation Paper but has no present proposals as to how it should be implemented.

Question 2 – What do you think of our proposals relating to regulatory board appointees, set out under paragraph 3.15?

DASLS thinks these are correct: clearly appointments should be made on merit (only) and in accordance with the principles set out in 3.15 (bullet point 1).

Although the view was expressed in our discussion that, ideally, there should be no prescription of the number or proportion of members from any profession upon the Board, the majority of our Vice President’s Committee strongly felt that to command public confidence, it is essential that a majority of the board should at all times be non-lawyers. Self regulation is thought to be no longer credible.

No member of the Board should be (or regard him/herself as being) a representative of any sectional interest unless statute explicitly so provides. Rather appointees should regard themselves as, in effect, “trustees” in their exercise of the regulatory objectives pursuant to the Act.

Question 3 – Is it necessary to go further than our proposals under paragraph 3.15, for example by making it an explicit requirement for the chairs of independent regulatory boards/equivalents to be non-lawyers?

No. To do so would deviate from the ethos that appointments should be made on merit.

Question 4 – Do you agree with our proposals in respect of the management of resources, including those covering “shared services” models that approved regulators might adopt? What issues might stand outside such arrangements as suggested in paragraph 3.22?

Yes. We have no comments as to issues outside such arrangements.

Question 5 – Is our proposed balance between formal rules and less formal (non-enforceable) guidance right? In what ways would further or different guidance be helpful?

We think so: time and experience will tell.

Question 6 – What are your views on our suggested permitted oversight role for representative-controlled approved regulators over their regulatory arms? Are practical modifications required to make it work?

We feel that the first sentence of para 3.37 is correct. We do not wish to comment on the detailed proposals but agree with the general thrust of them.

Question 7 – In principle, what do you think about the concept of dual self-certification?

Whilst it works, this is satisfactory and cheap. Adopting it has obvious risks.

Question 8 – If a dual self-certification model were adopted, how should it work in practice? Or would alternative arrangements be more appropriate, either in the short or longer term?

We have no views we wish to express at this time about this and the subsequent Questions.

Question 9 – Do you agree that the mandatory permitted purposes currently listed in statute should be widened to include explicit provision for regulatory objective (g), i.e. .increasing public understanding of the citizen’s legal rights and duties.?

Question 10 – Should any other (general or specific) purpose be permitted under our section 51 rules?

Question 11 – What do you think about our proposal to seek evidence that links to the regulatory objectives in the Act?

Question 12 – What criteria should the Board use to assess applications submitted to it?

Question 13 – If they are adopted, what should Memoranda of Understanding between the Board and approved regulators contain? For approved regulators in particular, are there any particular implications for your organisations?

Question 14 – Should there be a requirement on approved regulators to consult prior to the submission of their application each year – and if so, who should be consulted, and on what? Should there be a distinction drawn between approved regulators with elected representative councils or boards; and those which have no such elected body?

Question 15 – What degree of detail would be most appropriate to require when seeking to maximise transparency but be proportionate in terms of bureaucracy? Have we got the balance right?

Question 16 – Are there any issues in respect of practising certificate fees that you think we should consider as part of this consultation exercise?

Question 17 – Please comment on our draft proposed rules, both in terms of the broad framework and the detailed substance.

Question 18 – Are there any comments that you wish to make in relation to our draft impact assessment, published at Annex C alongside this consultation paper?

Question 19 – Are there any other issues that you would like to raise in respect of our consultation that has not been covered by previous questions?

Dated 25th day of June 2009

SignedR.Parkman – Vice President.....

For and on behalf of the Devon & Somerset Law Society