

Our ref:
Your ref:



The Law Society

Dawn Reid
Legal Services Board
Victoria House
Southampton Row
London
WC1B 4AD

2 June 2011

Dear Dawnl

Re: ABS Application: Response to comments from mandatory consultees.

You sent to Des Hudson a copy of your letter to Antony Townsend enclosing the comments of the mandatory consultees on the Law Society/ABS application for designation as a licensing authority, and invited representation on them by 14 June. I am replying on behalf of the Law Society.

I will deal in turn with each of the mandatory consultees comments.

Legal Services Consumer Panel

The Consumer Panel expresses concern that SRA's new code is an adaptation of the existing model, rather than starting from a blank sheet of paper. The Law Society recognises that SRA was under very considerable time pressure (if in part self inflicted) in settling the new code in time for its planned introduction in October 2011. In those circumstances, we think SRA took a sensible and pragmatic approach to the question. It is not as if the current code is wholly unfit for purpose. The new code simply represents a wish to move to a different balance between detail prescriptive rules and broader principles.

In the Law Society's view, the question of whether individual consumers "relate" to the existing principles is of limited relevance. They are not all intended simply as a matter of consumer protection. Some reflect the much wider regulatory objectives of the Legal Services Act. Nor do we consider that it is a high priority for the code itself to be readily comprehensible to lay people, although we can see that there is a case for publishing a consumer guide to the Code. It is far more important that the code is clear to those who are bound by the code, and to those who are apply it.

The Law Society sympathises with the Consumer Panel's concern that consumer vulnerability issues should be addressed in SRA's risk assessment, although we think the fact that consumer vulnerability does factor in the enforcement strategy removes any significant risk of consumer detriment arising from the omission in risk assessment.

The Law Society endorses the Consumer Panel's support for the establishment of a single regime across regulated entities, so that consumers have the same protections - and, we would add, the same public interest protections are also in place - when dealing with traditional firms.



The Law Society endorses the Consumer Panels support for the separate business rule. We think it is essential that where an organisation is regulated by the SRA, all of its legal activities are regulated, rather than some of them being hived off to an associated company outside the regulated sector. On a related question of potential consumer confusion, we are concerned that the SRA plans to permit ABS firms to carry out, within the ABS entity, some activities which are not regulated either by the SRA or by any other professional regulator. We are surprised that the Consumer Panel has not commented adversely on that proposal.

The Law Society agrees with the Consumer Panel that the operation of the SRA's enforcement policy will be crucial to the success of Outcomes Focus Regulation. The Law Society agrees that the SRA "must get tough with providers that abuse the freedoms given to them". But the Society would also emphasise the importance of SRA not taking a punitive approach to firms who seek to comply, but who in SRA's opinion have fallen short of what is required. If such firms are subject to regulation by ambush, outcomes focus regulation would rapidly become discredited, and SRA would lose the confidence of the regulated community which is essential if it is to be an effective modern regulator.

The Lord Chief Justice

The Law Society supports the approach taken by the Lord Chief Justice in his response. The Law Society agrees with the Lord Chief Justice that the SRA has an established track record of regulating a broad spectrum of legal services providers. The Law Society also agrees that the public interest would be best served by a very small number of licensing authorities for any particular type of service, since otherwise there is a real risk that regulators will compete on the basis of the laxest and cheapest regime.

The Law Society also agrees with the Lord Chief Justice that it is important to ensure that regulatory regimes facilitate access to justice. The Law Society considers it would be helpful for SRA's policy statement to be more explicit about the approach SRA would take when considering whether conditions should be placed on licences in order to promote access to justice.

Office of Fair Trading

The Law Society does not support the OFT's approach to the separate business rule. In the Law Society's view, there is a clear consumer and public interest benefit in maintaining the SRA's current separate business rule. The Law Society would not support those provisions being subject to a sunset clause. The Law Society accepts that the separate business rule (like any other rule) should be subject to review in the light of changing circumstances, but the Law Society does not accept - as a sunset clause would imply - that there should be any presumption against continuation of the separate business rule.

The Law Society does not wish to make oral representations in response to the mandatory consultees' comments. The Law Society is content for the Legal Services Board to deal with the application as soon as our response, and that from the SRA,

have been considered. We do not require the LSB to wait until the conclusion of the period allowed for our representations.

Yours sincerely,

Russell Wallman

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