



Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Council for Licensed Conveyancers (CLC) rule change application for approval to alterations to the CLC’s regulatory arrangements relating to its Disclosure of Profits and Advantages Code

The Legal Services Board (“the Board”) has granted an application from CLC who sought approval to changes to its Disclosure of Profits and Advantages Code in respect of disclosure of fee sharing and referral arrangements.

This decision notice sets out the basis for the Board granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The Board is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. CLC is an approved regulator.
2. Paragraph 25 of Schedule 4 to the Act explains that the Board may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the Board’s granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the Board has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² [Rules for Rule Change Applications – Version 2 \(November 2010\)](#)

25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the Board's rules.

4. The chronology for the Board's handling of this application can be found towards the end of this decision notice.

Proposed alterations

5. The proposed alterations encompass the following key changes to CLC's Disclosure of Profits and Advantages Code, introducing the following key principles to deliver CLC's Code of Conduct Outcomes :

- Acting in the best interests of clients.
- A requirement that fee sharing agreements with an introducer will have to be in writing.
- Periodic reviews by the approved person of their referral arrangements so that they deliver key outcomes in the Code.
- Informing clients in writing of referral arrangements.
- Advising clients that they have a choice of provider.
- Informing clients of the nature of the arrangements.

Decision

6. The Board is pleased that CLC is introducing requirements that will make referral and fee sharing arrangements more transparent for clients, reflecting the Board's guidance on referral fees issued in its Decision Document in May 2011³.
7. During its consideration of the application, the Board raised just one query with CLC in respect of the drafting of the revised principles. The Board asked why there were three separate principles (10, 14 and 16) that related to the need to inform clients about fee and referral arrangements, and whether CLC had considered combining into one single principle. CLC responded that the reason for this approach was that the principles are covering different issues: principle 10 is about generic fee arrangements and changes; principle 14 is about the timing of referral arrangement information; and principle 16 is about the type of referral arrangement information given. While the Board does not consider this to be a significant issue that would lead it to consider refusing the application, once CLC has had the opportunity to assess the effectiveness of the arrangements, the Board would encourage CLC to consider whether there is scope for reviewing the wording of principles 10, 14 and 16 to make it clearer which type of arrangements are being referred to.

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http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20110525_referral_fee_decision_paper_final3.pdf

Conclusion

8. The Board is satisfied that, having considered CLC's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, there is no reason to refuse this application; accordingly, the LSB grants this application.
9. Annex A to this decision notice contains a table setting out all of CLC's proposed changes, which the Board has now approved.

Chronology

- On 12 July 2013, the Board received an application from CLC.
- The 28 day initial decision period for considering the application ends on 8 August 2013.
- This decision notice is being issued to CLC on 6 August 2013.
- The notice will be published on the LSB website on 7 August 2013.

Crispin Passmore, Strategy Director

Acting under delegated authority granted by the Board of the Legal Services Board

6 August 2013

Annex A



Disclosure of Profits & Advantages Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- **Clients receive good quality independent information, representation and advice; (Outcome 1.1)**
- **Clients receive an honest and lawful service; (Outcome 1.2)**
- **Clients have the information they need to make informed decisions; (Outcome 3.3)**
- **Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC. (Outcome 3.4)**

Transparent referral arrangements help you deliver these **Outcomes** and act in a principled way:

1. **Act with independence and integrity. (Overriding Principle 1)**
2. **Maintain high standards of work. (Overriding Principle 2)**
3. **Act in the best interests of Clients. (Overriding Principle 3)**
4. You do not allow your independence to be compromised. (**CoC** P1a)
5. You act honestly, professionally and decently. (**CoC** P1b)

6. You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute. (**CoC** P1c)
7. You promote ethical practice and compliance with regulatory requirements. (**CoC** P2g)
8. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (**CoC** P3b)
9. You only recommend a particular person, business or product when it is in the best interests of the **Client**. (**CoC** P3f)
10. You provide the **Client** with all relevant information relating to any fee arrangements or fee changes. (**CoC** P3j)
11. Where the entity represents parties with different interests in any transaction each party is at all times represented by different **Authorised Persons** conducting themselves in the matter as though they were members of different entities. (**CoC** P3n)
12. Where you enter into an arrangement, including any fee sharing agreement, with an introducer, the agreement is in writing.
13. You periodically review referral arrangements/fees to ensure they deliver the Outcomes identified at the outset of this Code.
14. You inform the Client in writing of the existence of the referral arrangement no later than when accepting instructions, or when introducing a Client to another person.
15. You advise the Client that they have a choice of provider.
16. You inform the Client of the nature of the arrangement (including any payment made), with whom it is made, and any impact (including any legal costs they are charged).