

Quality Assurance for Advocates

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29th September 2009

Dear Mahtab,

Re: Discussion paper on designating new Approved Regulators and approving rule changes

The Legal Services Commission (LSC) is a non-departmental public body sponsored by the Ministry of Justice (MoJ). The LSC is the biggest single purchaser of legal services in England and Wales with an annual spend of £2.1 billion; we are responsible for the delivery of civil and criminal legal aid and the development of community legal services.

The LSC welcomes the opportunity to respond to the discussion paper on developing rules to approve applications for designation as an Approved Regulator and to approve changes to the rules of Approved Regulators. Whilst the LSC agrees in principle to the Board's approach, we have not provided detailed responses to each question posed at this stage. We would be happy to comment further when detailed proposals are available.

We have, however, outlined below our general comments on the discussion paper for the Board to consider at this stage.

Principles-based approach

Although the principles-based approach taken by the Board allows for greater flexibility and for the rules to evolve over time, there are risks associated with this approach. It is possible that the Board will be open to greater challenge and that this approach will not support consistency of decision-making. We therefore consider that risk assessment relating to enforcement and potential challenges to decision making should be carried out.

Content of applications to the Board

The LSC agrees with the Board's approach to the requirements for the content of applications. Whilst proportionality is important, the Board must seek to ensure there is sufficient evidence to enable them to make a proper consideration of the application. By working closely with other Approved Regulators, the Office of Legal Complaints and relevant stakeholders that may be affected by the application, the Approved Regulator should satisfy the requirements for their application. We acknowledge that in comparison to the current arrangements this is likely to increase the workload of Approved Regulators prior to application.

Prescribed fee for applications

The Board presents a number of options for calculating the prescribed fee in the discussion paper. We are sure that the Board will want to work closely with the Approved Regulators to consider the appropriate fee for an application, how the levy is calculated and any consequent impact it may have on their members. The Board

may wish to consider regulatory fees that are in place in other sectors to support this work.

The LSC understands that there is currently no fee for applications. One issue that the Board will want to consider for applications to make rule changes is the potential impact that imposing a fee may have on positive regulatory developments in the consumer interest. There is a risk that this will create a disincentive for change if costs are incurred as a result. If the fees incurred as a result of multiple applications were borne by the regulator's members, the LSC would have concerns about the potential impact on legal aid providers.

Use of external advisors to consider parts of the application

As the proposal requires applicants to pay for the costs associated with use of external advisors, it should only be used where it is deemed necessary. Wherever possible, the Board should consider whether its consultees hold the relevant expertise to consider the issue before taking this action. It is important that the Board provides guidance for Approved Regulators on the circumstances when external advice may be sought and any fee that will be attached to that service.

Supporting information

If the Board wishes to seek views on detailed proposals relating to this discussion paper, it would be beneficial to include information on the associated costs and functions that are currently carried out by the MoJ. Providing information to consultees such as the number of applications for rule changes that are submitted annually and the current resource implications for the MoJ allows for proper consideration of the issues.

I hope you will find this response useful. If you have any queries about its content, please do not hesitate to contact Sinead Reynolds, Work Stream Manager for Quality Assurance Scheme for Advocates, at sinead.reynolds@legalservices.gov.uk.

Yours sincerely,

Carolyn Regan
Chief Executive
Legal Services Commission