

**Legal Services Commission Response to a Consultation Paper from the Legal Services Board on Oral and Written Representations**  
**16 September 2009**

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**Introduction**

1. Thank you for providing the Legal Services Commission (LSC) with the opportunity to respond to your consultation paper entitled “*Oral and written representations and evidence and the alteration of reserved legal activities*”. The 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.

Our response is given as below.

**Q1 – Do you agree with the approach taken to making oral representations and giving oral representations?**

2. In general, the Commission agree with the approach taken. We would point out, however, that in principle oral representations are better given in person as a person’s body language may give some indication as to the truthfulness of the answers in question. Furthermore, a hearing in person tends to re-enforce the serious nature of the matters under review.

**Q2 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the regulatory process.**

3. General: Regulation strives to maintain a balance between creating and maintaining a defined level of control over specified activities and minimising the cost of that defined level of control on affected persons or bodies. It is also important to ensure that regulation is evenly and consistently applied to all those affected by it.
4. One way to achieve these objectives is to have a prescribed set of understood and accepted rules that are adhered to in all circumstances. The Commission therefore agree with the LSB’s statement in paragraph 3.5 of their consultation paper that, from the three options listed in paragraph 3.4, the making of detailed rules to adhere to in all circumstances is the preferred option.
5. However, the LSC would point out that these rules should allow some scope for flexibility when circumstances suggest that this would be in the wider public interest. If such exceptions are not provided for then unfair treatment of an individual or firm may occur in the future.

6. There is also the issue of legal professional privilege. This would need to be waived for LSB enquires / investigations to be effective; and yet a brief search of the Act did not seem to make reference to this. It would be helpful if this issue were clarified.
7. Rule 5 Consideration might be given to faxed representations.
8. Rule 6 While this rule allows the Board to have discretion to allow alternative means of submission, the LSC is concerned that sole or smaller practitioners may not have the technology, skills or administrative support needed to submit evidence using an on-line tool. In this respect, therefore, reliance on an on-line submission tool may not have a uniform impact on the legal profession when implemented.
9. Rule 7 The LSC agree that those submitting representations and evidence should be given sufficient time to prepare these. However, there is no indication as to what will be put in place to protect Regulatory Objectives as set out in the footnote to paragraph 1. The objectives relating to protecting and promoting the public interest and consumers are of particular relevance as innocent third parties, such as the Commission, might be affected by an adverse decision.
10. Rule 11 Some form of identification should be used for oral representation and evidence and particularly when this is given by telephone or video conference.
11. Rule 12 It would be helpful if some guidance, as to the circumstances when hearings can be held in private, were published.
12. Rule 14 It would be helpful if the LSB defined the term “reasonable opportunity”, in relation to commenting on a draft report.
13. Rule 15 Any costs associated with transcribing oral representations which are passed onto the represented person, should be:
  - a. Reasonable to ensure that proceedings are conducted in a way that does not breach the individual’s right to a fair hearing; and,
  - b. Refunded if the hearing decides in favour of the person(s) subject to regulatory activity.

I hope you will find this response useful. If you have any queries about its contents, please do not hesitate to contact Mike Gilbert of the Provider Assurance Counter Fraud Team at [Michael.gilbert@legalservices.gov.uk](mailto:Michael.gilbert@legalservices.gov.uk).

Yours sincerely

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