

## Legal Services Act: Character and suitability test for non-lawyer managers of an LDP

Legal Services Act: consultation paper 1

Response from the Legal Services Commission

### Introduction

The Legal Services Commission (LSC) is an executive non-departmental public body sponsored by the Ministry of Justice. With an annual spend of around £2bn, we are responsible for the delivery of civil and criminal legal aid services and the development of the Community Legal Service. We help over two million people in England and Wales every year.

The LSC is committed to ensuring that clients have access to quality services that meet their needs, and that providers deliver quality, value for money and client focused services. As a result the LSC welcomes the opportunity to respond to this consultation.

### **Do you agree with applying to non-lawyer managers the same general principles on the assessment of character and suitability as those applying to applicants for admission as solicitors? (paragraphs 2.2 – 2.8)**

Please enter your comments and/or concerns below:

The LSC agrees that the criteria set out on paragraphs 2.4 and 2.5 appear reasonable, including the provision to check applicants with the Criminal Records Bureau (as is the case with other 'approved people' such as solicitors).

The only concern is with regards to the ability of the applicant to comply with the regulatory requirements - when they may not fully understand what these are. This concern is explored in the response regarding training and competence.

To support the overall principle of equality and diversity, we suggest that you make reference to the Nolan Principles, which sets out seven standards for public life. These principles include qualities such as leadership, integrity, selflessness, objectivity, accountability, openness and honesty, of which underpin the underlying ethos of equality and diversity. For full details check [http://www.public-standards.gov.uk/about\\_us/the\\_seven\\_principles\\_of\\_life.aspx](http://www.public-standards.gov.uk/about_us/the_seven_principles_of_life.aspx)

**Do you agree that the SRA should require from prospective non-lawyer managers the same kind of information as that required by the FSA under the “approved persons regime”? (paragraphs 2.9 – 2.11)**

Please enter your comments and/or concerns below:

The LSC agrees with all bulleted points.

The second point is critical especially where the non-lawyer applicant has no other professional qualifications.

As part of the recruitment process (whish itself must be robust and fair) non-professionally qualified applicants should be able to demonstrate a robust history of employment, where they are able to demonstrate that they have held a responsible position in their previous organisation(s) and built up the necessary skills and experience to fulfil the role effectively.

Employer references are not mentioned as a requirement in the consultation. We would suggest that the SRA consider a requirement for organisations to satisfy themselves as to previous employment history in a management capacity.

The third bullet relating to conflict issues is also critical - potential new conflicts could arise that are additional to the ones recognised under current practice rules.

**Is there any other information which in your view the SRA should require?**

Please enter your comments and/or concerns below:

The LSC would suggest that the SRA should consider requiring confirmation of:

- The role the non-lawyer will be undertaking, akin to and comply with FSA's definition of 'controlled functions' (this will help SRA establish that the non-lawyer is not working in legal areas - such as advising clients etc.)
- What skills they have attained to carry this out and their experience to date
- The operation of an open and fair recruitment policy
- How the organisation have ensured equalities and diversities requirements have been met and ongoing monitoring
- How the organisation have assured the competence of the applicant for the role
- Whether the organisation the non-lawyer manager is seeking to join undertakes publicly funded work
- Whether they have ever been involved in publicly funded work at a solicitor's office, not for profit organisation or registered charity.

The final two bullet points will allow SRA to make necessary enquiries with the Legal Services Commission to ensure that the 'approved person' is not on the LSC 'Excluded Persons' Register.

**Do you agree that the test for non-lawyer managers should not include a training and competence requirement?** (paragraphs 2.12 – 2.14)

Please enter your comments and/or concerns below:

It is important that the firm recruiting the non-lawyer should ensure the competence of the non-lawyer and undertake any training that is necessary.

However, it is not clear how SRA will be satisfied that the non-lawyer will comply with regulatory requirements - if they do not know what these involve. A suggestion to overcome this would be a requirement for the firm to declare that relevant training will be provided within first week(s) of appointment. If a person has a supervisory role that they should also be given Equality and Diversity training.

Alternatively the SRA could require assessment of competence for the role. Having this in place will not only ensure a minimum level of competency for non-lawyer managers but also act as some sort of barrier to entry against any unsuitable candidates, who in extreme cases could seek to infiltrate LDP's as a means of utilising such organisations to further a criminal purpose.

Consideration could also be given to a requirement for non-lawyer managers to undergo CPD training that is relevant and appropriate to their professional responsibilities within their organisations, similar to those required by a solicitor.

**Do you agree that prospective non-lawyer managers should be required to complete a Criminal Records Bureau standard disclosure?** (paragraph 2.15)

Please enter your comments and/or concerns below:

Yes - as is the case with all Solicitors/Barristers - this should be no different.

It is also suggested that individuals seeking approval as non-lawyer managers should be required to disclose spent convictions under the Rehabilitation of Offenders Act 1974 (exceptions) Order 1975. Consideration should also be given to excluding individuals with certain convictions relating to dishonesty, fraud, financial crime, offences relating to companies and any offences involving vulnerable members of the public

**Do you agree that non-lawyers with other professional qualifications should be subject to the same character and suitability test as those with no professional qualification?** (paragraphs 2.16 – 2.18)

Please enter your comments and/or concerns below:

The LSC agrees that the application of a different criteria and procedures will be burdensome and complex and could lead to misunderstandings. It is more practical to adopt one criteria for all.

In effect it should be easy to demonstrate requirements for those with professional qualifications but SRA may want to ask any additional questions necessary to establish whether they have had any adverse findings made against them under their regulator. Individuals seeking to become a non-lawyer manager in an LDP should be requested to grant the SRA permission to make relevant enquiries with any regulatory authority, professional body, government body or agency they may have been a member of during the course of their professional or academic career.

**Do you agree that the SRA should require firms to submit the application for approval of their non-lawyer managers, and for the non-lawyers to verify the information given?** (paragraph 3.1)

Please enter your comments and/or concerns below:

Yes

**Do you think that firms taking on a non-lawyer manager from another firm should have to make a fresh application for approval?** (paragraph 3.2)

Please enter your comments and/or concerns below:

Once a non-lawyer is accepted by SRA they should be 'badged' as an 'approved person' in line with the current definition set out in last year's consultation. This status should remain with them until it is removed. Therefore as long as their status is 'approved', firms should not have to re-apply to SRA.

A facility should be provided where firms can check the status of the non-lawyer to validate the non-lawyer's 'approved status'. Non-lawyers who are approved may need to declare to SRA that they still meet the other criteria upon a change of organisation.

There is a caveat to this if approval (as for FSA) is restricted to defined 'controlled functions'. In that case, only approved controlled functions are covered. Also, depending on any specific arrangements in place in an individual LDP, the SRA may want to specify – by exception – that approval is not transferable.

Alternatively SRA could consider having a licensing process, which is subject to expiration after a specified period, similar to the annual Practising Certificate renewal

process. This will enable the SRA to impose conditions or place restrictions on a non-lawyer manager's licence, in line with those imposed on solicitors practicing certificates.

**Do you believe any of these proposals will have an impact on equality and diversity?**

Please enter your comments and/or concerns below:

An impact assessment is required and also ongoing monitoring is necessary to demonstrate no differential impact as a result of the change.

The opening up of the legal practice to non-lawyers may be a potential impact on the representation and membership of LDP's. In order to ensure transparency, promote and encourage diversity and enable a voice for minority groups such as disability etc positive steps will need to be taken. These steps include having a fair recruitment processes, which involves close monitoring the diversity of applicants and attaining feedback from unsuccessful applicants. In addition, there should be positive steps to ensure that the recruitment panel has fair representation, in order to inform the decision making processes for candidates.

**If you want to make any other comments, please do so below.**

SRA may wish to consider whether there should be a limit or a consideration of a limit on one person's ability to be a non-lawyer for a number of firms, especially if there is the potential for conflict of interest.

SRA should consider setting out a list of roles that cannot be undertaken by a non-lawyer such as: supervision (legal aspects), advising clients, representing at court etc. This links to FSA's definitions of 'controlled functions'.

In general the move to LDPs may increase the risk of organisations being targeted by Organised crime looking to expose any early weaknesses in individual firms' management controls and/or any weaknesses in the regulation of LDPs. Obviously the SRA will have to balance this risk against the risk of preventing firms legitimately progressing as LDPs.

SRA may also want to consider providing training for existing solicitor partners/directors who are considering a move to LDP status to ensure that the different management/control risks associated with LDP status are fully understood and managed by the firm before any changes to the firm's constitution are made.

Mental Health issues may impact on the suitability of an individual to hold a particular role within an LDP or Solicitors practice (whether they are practitioners or non lawyers). We would expect SRA to incorporate appropriate mechanisms to identify mental health issues and provide the necessary support to practitioner and non-lawyers.

When considering the scheme overall, SRA should exercise caution to prevent over regulation.