

Legal Services Commission's Response to the Solicitors Regulation Authority's (SRA) consultation on "Information to be sought from firms for regulatory risk analysis – the practical approach for 2009" (Consultation paper 15)

Introduction

1. 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.
2. 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.
3. The LSC's approach to this consultation is to consider the best interests of the client/consumer of legal services. All comments are made from this perspective.

General Comments

4. We welcome SRA's move to regulate firms as well as individuals. We believe that individual conduct and competence is a product of organisational culture and standards alongside an individual's behaviour and ability. This mirrors our approach to legal aid, where we contract with the firm rather than the individual, with the majority of our contract and quality management systems applying across the whole organisation.
5. In our response to the preceding consultation in this area, we supported all the types of information SRA proposed to collect to enable risk-based regulation, as we believe this will allow the SRA to develop a robust risk assessment tool to protect clients from poor service.
6. The arrangements for 2009 only cover a small number of those outlined in the original consultation:
 - Turnover
 - Work types
 - Number of non-solicitor fee earners
 - Negligence claims
7. We understand that these are only an interim measure and that further development, and consultation, will be conducted for the 2010 information requirements.

8. The wording of the requests for information about non-solicitor fee earners and negligence claims appears sufficient to provide SRA with the information they require. We have no suggested alterations. However for turnover and work types we make the following comments.
9. We agree that turnover is a useful regulatory tool - as it is easy for firms to retrieve from their last annual accounts. There are requirements in place in the Solicitors Account rules (and reflected in the LSC's quality standard) requiring solicitor accounts to be independently reviewed, nevertheless we are aware of circumstances where this does not occur. As a result there is a risk that the turnover figures presented may not be accurate. If regulatory fees are to be based on turnover, there is the possibility that firms will understate this in order to achieve reductions in their regulatory fees.
10. Therefore SRA should ensure that organisations comply with the account rules and that submissions related to turnover are independently verified through appropriate accounting practice.
11. There may be problems with relying solely on turnover as a financial measure to decide regulatory fees. Some cases take a long time (sometimes several years) to come to fruition and therefore the issue of when to bill for work (and thus accrue fees (or turnover)) becomes a matter of selective judgement if UKGAAP or IFRS standards are not followed.
12. A way around this is to examine the relationship between turnover and work in progress. If firms had externally examined or audited accounts these would show the checked level of work in progress - that is work that is currently in hand but has yet to reach the stage where it can be successfully billed. A percentage of WIP to fees for each work category could then be calculated and, over time, the SRA could develop acceptable ranges for these percentages- with firms whose percentages that fell outside these parameters having their fees adjusted to the level that would be appropriate if their ratio was within acceptable parameters.
13. The SRA's proposal to get information on fee levels by work type is consistent with the analysis above. However, as is the case with gross turnover, that fee levels could be manipulated to give the desired result. SRA must ensure that any measures used are robust enough to withstand this type of activity.
14. The number of fee earners could be a better basis on which to base regulatory fees. This is easy to identify and is linked directly to the amount of regulatory work required.
15. Also when determining risk, the SRA should confirm the percentage of legal aid work conducted by firms. The quality assurance mechanisms in place through the legal aid contract and the nature of the work suggest that this is the least risky work, a view that should be confirmed by insurers. For example all legal aid providers are required to hold and maintain the Specialist Quality Mark, a quality standard that includes requirements on financial control, effective supervision and client care. Legal aid is also less well remunerated than private paying and commercial work. Presumably this would have an impact when assessing potential risk based interventions and fee structures.
16. As the data collected will be used to develop strategies for new fee structures and risk based regulation it is important that there is a mechanism in place to

collect equalities and diversity information to support the necessary impact assessments in these areas.

Future Risk Based Regulation

17. We would be concerned if the requirements outlined in this consultation were all those intended for regulatory risk assessment beyond 2009.
18. We believe that the focus of requirements should be on the prime areas of risk to clients such as complaints, competence (solicitor and firm), and negligence. Of these areas the 2009 proposals only capture negligence. In isolation the limited information requirements outlined in this consultation would not support robust risk management in the interests of clients.
19. We look forward to the next consultation in this area. We trust that the SRA will use the information requirements identified in the original consultation for regulation from 2010 and beyond as we believe this will provide a firm foundation for a risk based monitoring system that is in the best interests of all clients. We await with interest further details on how the system will work and how it fits with the principles laid down by the Legal Services Board.