

Legal Services Commission's Response to the Solicitors Regulation Authority's (SRA) consultation on ' Legal Services Act: New forms of practice and regulation

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 share the SRA's view that the focus of regulation should be on consumer protection. We recognise SRA's desire to concentrate resources on dealing with serious risk, however this can only be achieved within a regulatory framework underpinned by robust quality assurance systems and effective risk assessment. SRA have consulted on risk-based regulation to which the LSC has also responded. Clarity is needed on the role of quality assurance within SRA's regulatory framework, and how these elements will interlink to ensure that consumers receive good services from all practices regulated by the SRA.
5. We believe it is the responsibility of the practitioners/providers to manage their performance and risks and the role of the regulator to enable providers to demonstrate that their performance is at an appropriate level, and take appropriate action where there is evidence that it is not.
6. We welcome SRA's move to regulate firms as well as individuals, and see this as an important shift in emphasis. 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.
7. Our response to the specific questions should be considered in light of these comments.

Specific Comments

Question 1 What are your views on the suggested criteria and decision tree?

8. The LSC agrees that there may be circumstances where it is appropriate to investigate an individual for evidence of breach of regulatory obligations.
9. The criteria outlined appear reasonable. The criteria and decision tree set out the process, however further detail/guidance is required on how the criteria will be applied and how decisions at each stage of the process are made.
10. For the most part the criteria are self-explanatory, however certain criteria would benefit from further explanation to ensure clear understanding. For example the criteria 'personal responsibility at law' would benefit from examples of what activity falls under this category. Also it is not clear what is covered by the 'SRA Policy' criteria. The inclusion of 'SRA policy' raises questions about the interaction between policy and regulatory obligations. If there are specific SRA policies where non-compliance with would warrant investigation, they should form individual criteria.
11. Although failures relating to competence are in some way covered under the serious conduct criteria, there may be instances where an individual caused (or had the potential to cause) significant adverse impact through their actions, without those actions being deliberate or premeditated. A separate criteria relating to competence/capability should be added to cover this circumstance.
12. The SRA should also consider including a criteria covering information from third parties for example Legal Complaints Service or The Independent Office of Legal Complaints.
13. We believe that unless the breach was solely linked to conduct outside the practice it would be necessary to consider the role of the firm as well. Firms have a responsibility to ensure that all staff are effectively supervised, that all practitioners have the capability and competence to deliver a good quality service to clients, and are complying with their regulatory and professional obligations.

Question 2 What are your views on the adoption of a new core duty defining a firm's relationship with the regulator?

14. As outlined above we believe that it is the responsibility of the practitioners/providers to manage their performance and risks. We view the development of a new regulatory relationship and core duty, which recognises the accountability of the firm (and individual), that is founded on transparency, openness as a positive step.
15. However whilst we recognise the benefits of an open relationship that encourages firms to disclose problems and take action, this cannot be at the expense of the enforcement of regulatory obligations where breaches occur. Public interest is best served where there is a clear and transparent regulatory framework, which has at its heart robust risk management and quality assurance systems.

16. It is also important that regulators and providers are open and transparent with consumers, as this will foster confidence in the system. As part of this there must be clarity surrounding the responsibilities and accountabilities of the regulator and those it regulates.
17. The consultation paper suggests that in the future there may be some situations where minor breaches are left to the firm to identify and put right. The LSC has concerns about this. If this is looked at in the future careful consideration will need to be given to what constitutes a minor breach. This adoption of this type of approach may have an impact on consumer confidence as this will not help to dispel the perception that the regulatory system is 'run by lawyers, for lawyers'.

Question 3: Where a disciplinary penalty has been applied to a firm, do you agree that it is important for the record to show those who were the managers in a firm that has been disciplined?

18. The LSC strongly agrees with the concept that where disciplinary penalties apply to a firm it is important that the details of managers of that firm are also recorded.
19. From a risk management perspective, clearly, the more serious the penalty the more monitoring is required of managers of such firms.
20. The regulator should be consulted where a manager of a said entity chooses to transfer to an alternative entity and the new entity should be made aware of the history related to any penalties the manager (or firm) was responsible for at the previous entity.
21. The LSC considers tracking managers (and individuals) in this way as a preventative but proportionate step in reducing the likelihood of Phoenix Firms which could hopefully lead to eradicate this type of activity from the market.
22. The LSC suggests that the best protection to the public and the most appropriate mechanism for identifying any potential risk would be at authorisation stage of a new entity. Processes need to be created to enable identification and evaluation of the proposed management and history of any manager as authority to permit the new entity becoming operational.