

Consultation response

CLC: Proposed application to regulate the exercise of rights of audience and the conduct of litigation

Overview

1. **The Legal Services Consumer Panel welcomes the Council for Licensed Conveyancers' (CLC) proposed changes to its regulatory remit. The proposed regulation of all legal services provided by licensed conveyancers will provide clearer and more consistent consumer protection. Licensing separately for each reserved activity will allow for specialisation of legal services delivery to consumers.**
2. **The proposed widening of the CLC regulatory remit will place it in direct competition with the Solicitors Regulation Authority. It is essential this change does not reduce consumer safeguards. We encourage the CLC to adopt high standards rather than allow regulatory competition to drive down standards to the lowest common denominator.**
3. **The CLC must be able to demonstrate that it has the requisite expertise to regulate areas outside of conveyancing, as well as the resources to enforce such regulation, prior to assuming such a role.**

The proposals

4. The CLC regulates the provision of conveyancing and probate services by licensed conveyancers, as well as any unreserved legal services directly related to these activities. Any other unreserved legal

services provided by a licensed conveyancer, such as willwriting, are not regulated.

5. The CLC is proposing two main changes:
 - to regulate all legal services provided by licensed conveyancers; and
 - to regulate licensed conveyancers in the exercise of Rights of Audience and the Conduct of Litigation, both reserved legal activities under the Legal Services Act 2007.
6. The CLC is proposing that separate licences would be required for each reserved legal activity that a licensed conveyancer wishes to deliver. However, a licensed conveyancer would not need to hold a licence for conveyancing to apply for other licences. This would allow the CLC to regulate persons who do not provide conveyancing services.

The Panel's response

Regulating the provision of unreserved legal services by licensed conveyancers

7. The Consultation Paper outlines the challenges faced by regulators in determining how, and whether, to regulate unreserved legal services. This includes the potential costs and benefits of regulation, and whether regulation should be linked to a provider or to a service.
8. It is likely that consumers expect all legal service provided by licensed conveyancers

to be regulated by the CLC. For example, when a consumer uses a licensed conveyancer for conveyancing or probate services, it is likely they would assume other services offered by the same professional, such as willwriting, would have the same protections. In addition to regulatory requirements, it is inconsistent and potentially confusing for users to only have access to redress via the Legal Ombudsman if something goes wrong for some, but not all, of the legal services delivered by a single provider.

9. The importance of regulating all legal activities delivered by licensed conveyancers increases with the proposed broadening of the CLC's regulatory remit, as the proposed changes will allow licensed conveyancers to shift from working on a specific legal area to providing any legal service. This is likely to be accompanied by an increase in the diversity of legal work (including unreserved activities) delivered to consumers.
10. Overall, the CLC's proposal to regulate all legal services provided by a licensed conveyancer will ensure consistency with solicitor regulation, and is in-line with our preferred approach for regulating Alternative Business Structures, in advance of the LSB's review of reserved and unreserved activity regulation.¹

The introduction of regulatory competition

11. The proposed extensions to the CLC's regulatory coverage will allow licensed conveyancers to deliver all reserved activities, other than notarial services. This will provide the CLC with equivalent regulatory reach to the Law Society and the General Council of the Bar. Equally, licensed conveyancers will be able to provide the same services as solicitors or barristers. Such competition may provide

benefits to consumers, such as greater choice in service provider and downward pressure on prices.

12. The Legal Services Act 2007 facilitates competition between regulators. Encouraging efficient regulation is in the consumer interest, but it also brings risks. In particular, necessary consumer protection and safeguards must not be weakened to attract authorised persons and entities from one regulator to another.
13. The broadening of the CLC's remit presupposes that the requisite expertise to regulate areas outside of conveyancing, as well as sufficient resources to enforce such regulation, will be in place. The Consumer Panel is a mandatory consultee on LSB Approved Regulator applications; in advising the LSB, we would expect such expertise and resources to be clearly demonstrated. Caution is needed to ensure that the CLC does not attempt to take on too many regulatory functions too quickly.
14. To consumers, a licensed conveyancer and a solicitor will look very much the same and will offer the same range of services. Consumers are unlikely to know that there are different regulators and what this means. It is therefore essential that there are consistent and robust consumer protections across the regulatory landscape. We encourage the CLC to adopt high standards rather than drive regulatory competition to the lowest common denominator. The Legal Services Board, through the designation and rule approval process, also has an important oversight role in this respect.

Licensing separately for each reserved activity

15. Subject to the comments above, the proposed approach of licensing reserved areas separately seems sensible, as it will

allow for specialisation and the delivery of targeted services to consumers.

16. Provided that the training and licensing regime for each reserved activity is robust, in future, licensed conveyancers should have a guaranteed base level of competence within each of their chosen areas. In developing this training, it is essential that the CLC take account of other developments in the legal sector, such as the current work on advocacy standards being undertaken jointly by other approved regulators.² We would also recommend that the CLC consider how quality assurance for consumers can be maintained across different regulators.

Promotion

17. Finally, the CLC has a responsibility to communicate the proposed changes to consumers. Many consumers would presumably expect a professional called a 'licensed conveyancer' to undertake conveyancing. Given this will not necessarily be the case, the CLC should consider if it needs to change its name or make other branding changes in order to avoid consumer confusion.

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¹ Legal Services Consumer Panel, *Response to the Legal Services Board Consultation on Alternative Business Structures: Approaches to Licensing*, February 2010, available online at http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/index.html

² Solicitors Regulation Authority, ILEX Professional Standards and Bar Standards Board, *Joint Consultation on advocacy standards*, December 2009, available online at <http://www.barstandardsboard.org.uk/consultations/OpenConsultations/>