



31 March 2008

Our ref: ICAEW Rep 42/08

Your ref:

Derek Mitchell
Solicitors Regulation Authority
Berrington Close
Ipsley Court
Redditch
Worc B98 0TD

By email: LSA@sra.org.uk

Dear Mr Mitchell

LEGAL SERVICES ACT: CHARACTER AND SUITABILITY TEST FOR NON-LAWYER MANAGERS OF AN LDP (CONSULTATION PAPER 1)

The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the consultation paper *Legal Services Act: Character and suitability test for non-lawyer managers of an LDP (consultation paper 1)* published by The SRA in January 2008.

The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

General comments

We are extremely disappointed that consultation paper 1 disregards our previous comments regarding a proportionate approach to assessing the “fit and proper” status of non-lawyer managers, made in our response dated 20 December 2007 to Peter Williamson’s letter seeking comment on the SRA’s approach to implementation.

We are concerned that the proposals would over burden highly qualified and equivalent professionals with the same criteria for character and suitability as non-qualified persons. We do not consider this is risk based and could leave the SRA open to allegations of protectionist and anti-competitive behaviour.

We are of the view that the proposals go against the Government’s intentions to introduce, rapidly, an interim measure in advance of Part 5. Further we believe that these proposals will act as a disincentive to firms to take advantage of the LDP concession, achieved late in the day and hard fought by the Institute and Law Society

during the passage of the bill. Failure to maximise the benefits for consumers at the earliest convenience will represent a missed opportunity.

Specific questions

1. 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?

The public have the right to expect the same general principles regarding integrity and honesty from non-lawyer managers as lawyer managers from whom they are receiving professional services. The SRA's starting point in this consultation is that it will have no knowledge of the individual seeking approval unlike the extensive knowledge gained during the qualification and admission process for a trainee solicitor.

Whilst the SRA may have no knowledge of the individual, in the case of an equivalently qualified professional in good standing, the professional body of which they are a member will.

At the point that students enter into training contracts towards becoming Chartered Accountants questions as to suitability are asked. The employers of the individual students undertake due diligence measures of their own on their prospective employees. The circumstances of the student's suitability post qualification and before being admitted as a member are again considered.

Throughout the life of Chartered Accountants they are subject to CPD requirements, an ethical code requiring amongst other things integrity, objectivity and competence, disciplinary sanctions for misconduct and a duty to report misconduct, including criminal convictions. Finally failure to satisfy a judgement debt or entering into an individual voluntary arrangement give rise to liability to disciplinary action; bankruptcy automatically ceases the individual's membership.

These checks and balances as to the suitability and character of an individual may not exactly mirror those undertaken for a trainee solicitor but provide an equivalent level of assurance as to the individual's:

- honesty and trustworthiness,
- willingness to comply with regulatory requirements,
- ability to manage personal financial affairs

and gives assurance that that there is no reasonable risk that the individual's admission as a manager will diminish the public's confidence or be harmful to them or the profession.

We are extremely disappointed with the failure to recognise the existing and established testing applied to other non-lawyers professionals, such as Chartered Accountants.

It should be remembered that:

- LDPs will be under the control and majority ownership of lawyers.
- The non-lawyer principals will not become approved or exempt persons by being admitted as managers.
- The non-lawyer principals are highly likely to already hold senior positions within the legal practice.

We view the proposals as heavy handed and disproportionate. We believe they will put unnecessary barriers to the new forms of practice which the Government clearly wished to see, introduced in the interests of consumers and the public well in advance of 2010. Bridget Prentice said during the third reading "*On report I brought forward amendments to allow the Law Society to regulate limited forms of alternative business structure in advance of Part 5. In doing that I do not expect us to delay Part 5.*"

Our proposals in this area should not be viewed as diminishing or undermining the firms' own due diligence undertaken on employees or prospective managers. Nor should the approach be delayed whilst the SRA conduct lengthy comparison exercises into the character and suitability tests undertaken by other professional bodies.

We strongly urge you to think again and reiterate our offer to assist in developing a more proportionate approach.

2. 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"?

The FSA's approach to "approved persons" is applied equally to all persons operating in an authorised firm and when moving between firms (with different specific detail applying dependent on the role the individual is seeking to undertake). The SRA's approach does not apply equally between established lawyers and non-lawyer professionals. For example there does not appear to be an equivalent process for solicitor managers, who move from one firm to another, to reapply for recognition.

An established professional of equivalent status as a lawyer should be treated on the same footing as an established lawyer. It would be appropriate to ensure that information is kept up to date but this could be achieved through submission of returns either by the individuals or the firm (proposals in respect of this are of course the subject of another SRA consultation).

Please also see above comments regarding the appropriateness of testing proposed.

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

We would advocate a different approach from the proposal; for example the information requested from members of chartered bodies should be limited to a letter of good standing from the relevant body, agreement to uphold the objectives of the Legal Services Act and "confirmation of suitability" from the principals of the LDP to which they are being appointed. See also response to question 6.

4. Do you agree that the test for non-lawyer managers should include a training and competence requirement?

Non-lawyers will be undertaking a wide variety of roles which may or may not be client facing and which may or may not be linked or complimentary to legal services. It is difficult to see how the SRA could efficiently introduce a wide ranging testing for competence and training which would serve any useful or meaningful purpose.

Firms will undertake competence and due diligence on their employees. It is highly unlikely that a practice will admit as a manager an individual over whom they have

concerns regarding competence or integrity. The lawyers appointing such non-lawyer managers should be able to assess the ability of the individuals to undertake activities relevant to their role.

Where non-lawyers are members of chartered bodies they will already be subject to CPD requirements. Credit for the reduced risk such CPD obligations present should be given.

The SRA should not impose additional restrictions on non-lawyers to those outlined in the Act, whether professionally qualified or not, unless there is a good public interest justification for doing so. The SRA should be able to rely on the ability of their own members to assess the training requirements and competence of new managers as they no doubt currently do with the non-lawyers that they employ in senior positions. If there are doubts as to the ability of solicitors to do this the SRA should consider placing an obligation on individual solicitors and firms, with a penalty or sanction for non-compliance, to verify the competence and training of new managers, but we think this would be an onerous requirement.

5. Do you agree that the prospective non-lawyer managers should be required to complete a Criminal Records Bureau standard disclosure?

CRB checks should only be required as part of a risk assessment. A letter of good standing from a member of a chartered body together with confirmation of no additional information regarding criminal convictions or unsatisfied judgement debts (if deemed necessary) should be sufficient for non-lawyer managers who are professionally qualified.

For other non professionals the requirement should be dependent on role and function within the LDP.

Any measures introduced should apply equally to lawyers as to non-lawyers. Thus CRB checks before being admitted as a non-lawyer manager should only be applied if solicitors being admitted as a manager are similarly tested.

6. Do you agree that the non-lawyers with other professional qualifications should be subject to the same character and suitability test as those with no professional qualification?

No, we strongly disagree. The reasons for disregarding well established and rigorous standards obtained and retained by members of professional bodies with criteria for testing competence, entry level requirements, maintenance of CPD and with powers to sanction members for non-compliance, are not persuasive.

Successive Governments have granted Chartered status to bodies who have exacting requirements regarding entry, ethical standards, CPD and sanctions for non-compliance. Such bodies act in the public interest and, whilst detailed requirements as between different professional sectors may not be identical in wording, the standards applied are equivalent and comparable to that of lawyers.

Bodies which operate under Charter can be distinguished easily from other non-qualified individuals or members of non-chartered bodies.

The checks subject to consultation are to establish the suitability and character of an individual to be admitted into partnership with a majority of lawyers. Good standing in a chartered body may not mirror the exact wording used in establishing suitability

to become a solicitor but is clearly equivalent and comparable to the status of lawyers.

Disregarding these simple and easy measures of suitability imposes an unnecessary and disproportionate burden on professionally qualified non-lawyers. Additional form filling and processing will introduce far more cost burdens on firms than consideration of a simple letter of good standing provided by one regulator to another would for the SRA.

If the SRA is concerned that the professional bodies have slight differences in specific information sought then it is entirely possible to require further information (in addition to a letter of good standing), through guidance notes, for example by stating that a letter of good standing is disappplied in the case of a current unsatisfied judgement debt, criminal record or other particular features.

Alternatively if the SRA are concerned that not all Chartered bodies are of the same high standing we suggest an appropriate level may be determined by referring to other regulatory responsibilities granted by statute or regulation and roles undertaken by the specific bodies (for example audit regulation or Part 1 to Schedule 3 of the Money Laundering Regulations 2007).

The SRA's current approach is overly onerous, fails to give recognition of the exacting ethical standards, testing of competence and entry level requirements in place for a number of professional bodies.

7. 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?

It is essential to have the endorsement of the principals of the entity to which the non-lawyer is being admitted. However this could be achieved as easily by requiring 'sign off' by the firm on the non-lawyer's application as by the firm submitting the application on the non-lawyer's behalf.

One benefit which may arise from the firm being required to make the application could be where multiple non-lawyers are being admitted as managers if such multiple applications could be submitted on one form, reducing the administrative burden on the firm.

8. Do you think that firms taking on a non-lawyer manager from another firm should have to make a fresh application for approval?

No. Confirmation by the non-lawyer manager that their situation has not changed and by the outgoing firm that the non-lawyer continues to be suitable to be a non-lawyer manager in an LDP would be sufficient. To require a fresh application is to introduce an extra and unnecessary administrative burden for the firm, the individual and the SRA. Solicitors moving between practices do not have to apply for their status to be reconfirmed.

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

We can see no impact on diversity or equality.

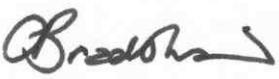
10. Any other comments

You will note from previous representations that the Institute is keen to see the earliest introduction of LDPs and ABSs. We have a wealth of experience in dealing with overlapping regulation for firms and reiterate our offer to assist with the implementation of the Act.

We refer you again to our representation 128/07 dated 20 December 2007.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely



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