

SRA response

Discipline and Appeals Arrangements, Council for Licensed Conveyancers consultation

Published on 29 April 2013

Introduction

1.

The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society in England and Wales. We regulate solicitors, the firms in which they operate and all those working within the firms. We regulate in the public interest.

2.

We welcome the Council for Licensed Conveyancers' (CLC) Consultation on this matter and share the CLC's desire to align so far as is possible and appropriate the regulatory regimes under which the Approved Regulators and Licensing Authorities operate under the Legal Services Act 2007.

Question 4 (Questions 1-3 relate to details of the respondent)

Do you agree our analysis of the mismatch between the appeal jurisdiction where the CLC is acting as a Licensed Authority and where it is acting as an Approved Regulator?

Question 5

Do you agree our proposal for aligning the disciplinary jurisdictions of the CLC where it is acting as an Approved Regulator or as a Licensing Authority?

3.

We acknowledge the differences that the CLC has identified both in relation to the disciplinary jurisdictions it exercises and between the rights of appeal from its decisions depending upon whether it is acting as an Approved Regulator or a Licensing Authority.



4.

We agree that it is appropriate for both the disciplinary jurisdictions and the routes of appeal for those supervised by the CLC to be the same. A lack of transparency of the appeal process which results from having differing regimes for similar appeals risks impeding access to justice. Aligning the jurisdictions would enable the CLC to ensure that

appeals by the different types of entities that it supervises are dealt with consistently, and

the appeal routes are fair and transparent to its supervised population.

5.

There seems to be no obvious detriment to transfer the appellate jurisdiction from the DAC to the Adjudication Panel and from the High Court to the First Tier Tribunal (General Regulatory Chamber) ('FTT') save in relation to the ability to recover the costs of proceedings which we refer to again below. The position may be different if the suggested transfer was from the DAC to the FTT. This would remove the oversight of a tribunal whose members have specialist knowledge in the area at the earlier stage. The FTT would potentially be deprived of informative decisions of the DAC embodying appropriate specialist knowledge.

Question 6

Do you agree that the maximum fine which can be awarded against a licensed conveyancer, or a manager or employee of a recognised body should be increased to £150 million, and against a recognised body to £250 million?

6.

We agree that the maximum level of fine that can be imposed should be the same and not vary on the basis of whether the CLC is acting as an Approved Regulator or a Licensing Authority. Therefore we believe that the appropriate fining levels are £50 million for licensed conveyancers, managers or employees of a recognised body and £250 million for recognised bodies.

7.

The difference in the fining powers of the CLC which arises depending upon its regulatory status appears to be contrary to the principles of fairness and consistency which lie at the heart of better regulation. This was the focus of Professor Macrory's work investigating what measures could be taken to



enhance consistency between and within penalty regimes which followed Sir Phillip Hampton's review 'Reducing administrative burdens: effective inspection and enforcement'.

8.

Achieving consistency in the levying of penalties is also important in ensuring effective and credible deterrence and consistent consumer protection.

9.

Inconsistency in the penalty that may be applied to a body resulting from its structure risks businesses choosing to structure themselves in order to minimise the penalties that they may be subject to. This would be neither in the public interest nor in the interests of consumers. Also, it may lead to businesses failing to choose the most appropriate business model and so restrain innovative business development restricting competition in the market.

Question 7

Do you agree our analysis of the effect of the changes we propose?

10.

There are some potential disadvantages in relation to the transfer from the High Court to the FTT in relation to potential costs recovery as the tribunal only awards costs where it considers a party has acted unreasonably or where it is satisfied costs have been wasted. The CLC should perhaps not underestimate the potential significance of this as a regulatory expense which could be spread across the CLC's regulated community rather than borne by the unsuccessful party, if, as it anticipates, the changes result in increased numbers of appeals to the FTT. The informality of the procedure before the FTT compared to the High Court should not be overestimated nor should the perceived change in the need for the CLC to require independent legal representation before the FTT.

Question 8

Are you able to identify any detriment to respondents which we have not mentioned?

11.

No.

Question 9

Are you satisfied with the procedures for appeals? If not, why not?

12.

See above.

Question 10

(Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against designations and the associated circumstances? If not, why not?

Question 11

We welcome any comments that you wish to make on the proposals as a whole.