



Outcomes-Focused Regulation -

**Draft CLC Licensed Body (Alternative Business Structures)
Framework**

CLC Consultation Paper
September 2010

Response Deadline: Friday 17 December 2010

Executive Summary

1. The CLC believes that its regulatory framework should achieve the following:
 - consumers receive legal services appropriately tailored to their needs;
 - the regulated community is given proper opportunities for innovation; and
 - the CLC provides efficient and effective regulation.

To ensure the principle of the rule of law and the interests of the public and consumers who access the services provided by Licensed Bodies are paramount the Licensed Body Framework has been drafted with these aims in mind. It has been informed by the provisions of the Legal Services Act 2007, Legal Services Board guidance and the CLC's strategic objectives and operations.

2. It is intended that the framework in its entirety will come into force in October 2011 assuming that the CLC becomes a Licensing Authority. Many of the Recognised Bodies we regulate will need to apply to become Licensed Bodies within a year after the CLC has become a Licensing Authority (by late 2012). The consultation paper includes our proposed transitional arrangements for these bodies. In parallel with this Consultation the CLC is consulting on an application it intends to make to be authorised to regulate advocacy and litigation services from the autumn 2011.
3. The framework should be read in conjunction with the CLC's consultations on its:
 - a) Code of Conduct;
 - b) Outcomes-Focused Regulatory Framework;
 - c) Regulatory and Enforcement Policies; and
 - d) Litigation and Advocacy regulation.as Licensed Bodies will have to comply with these areas of the CLC's regulatory framework, in addition to the Licensed Body Code inherent in the Framework.
4. During the Consultation Period we will engage with the profession and with consumers, and seek the views of other Approved Regulators and stakeholders.

Responding to this Consultation

5. The questions posed in this Consultation Paper are set out on page 13. You are welcome to respond to some or all of the questions or to comment on the proposals as a whole.
6. When you respond please give your name and address, and whether you are a licensed conveyancer. If you are not a licensed conveyancer, please state, if relevant, your status or professional qualification. Unless we are notified otherwise, the CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential please let us know when you respond. All responses should be sent by email to consultations@clc-uk.org or by post to:

The CLC
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Chelmsford
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Or by to DX 121925 CHELMSFORD 6

Submission Deadline: Friday 17 December 2010

Introduction

Statutory Framework

7. The CLC was established by the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers in the provision of conveyancing services. It has no representative function. The CLC currently regulates about 1,000 licensed conveyancers and just over 200 practices.
8. As an approved regulator the CLC “must, so far as is reasonably practicable, act in a way.., which is compatible with the regulatory objectives”¹ as follows:
 - a) Protecting and promoting the public interest;
 - b) Supporting the constitutional principle of the rule of law;
 - c) Improving access to justice;
 - d) Protecting and promoting the interests of consumers;
 - e) Promoting competition in the provision of services by ‘authorised persons’²;
 - f) Encouraging an independent, strong, diverse and effective legal profession;
 - g) Increasing public understanding of the citizen’s legal rights and duties;
 - h) Promoting and maintaining adherence to the professional principles³.

The “professional principles” are—

- a) that authorised persons should act with independence and integrity,
 - b) that authorised persons should maintain proper standards of work,
 - c) that authorised persons should act in the best interests of their clients
 - d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence and in the interests of justice,
 - e) that the affairs of clients should be kept confidential.⁴
9. The CLC is also required to “have regard to...the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”⁵.

¹ S.28(2) Legal Services Act 2007

² defined at s.18 LSA

³ s.1(1) LSA

⁴ s.1(3) LSA

⁵ s.28(3) LSA

Alternative Business Structures

10. The Legal Services Act 2007 introduced Alternative Business Structures (ABS), removing restrictions on the management and ownership structures of traditional legal services firms. ABS bodies will be able to adopt more flexible management and ownership structures than traditional firms and will be able to provide other services alongside legal activities; from October 2011 Non-Authorised Persons - i.e. non-lawyers – will be able to own or part-own legal services firms.
11. The intention behind ABS is that the legal services environment provides both more choice and competition. Allowing new providers into the marketplace should lead to innovation and price reduction, increasing peoples' access to legal services. It is anticipated that the blending of legal and non-legal services, the widened scope of financing options and the increased career opportunities for non-lawyers – allowing lawyers to focus on practicing the law whilst non-lawyers focus on a firm's administration, management and development – will enable firms to innovate, grow and prosper.
12. The Act provides for Licensing Authorities to licence and regulate these bodies. Part 5 of the Act allows for Approved Regulators such as the CLC to apply for designation as Licensing Authorities. The CLC is committed to making an application in Spring 2011.

Drafting the CLC Licensed Body Framework

13. The term Alternative Business Structure is used extensively in both the legal services sector and the media. However, the term is used only to introduce the section of the Act pertaining to ownership and management provisions and therefore the framework has been drafted using the terminology used through the body of the legislation i.e. Licensed Body.
14. The framework has been informed by the Legal Services Act 2007 (the Act), the relevant guidance published by the Legal Services Board (LSB), and our own current regulatory approach and considerations. It has also been informed by the Better Regulation Principles:
Accountability - basing the framework upon the premise that only those who comply with the Professional Principles and so able to deliver the positive consumer outcomes sought are licensed makes us accountable to consumers of legal services.
Consistency – requiring ABS to comply with the same Codes as non-ABS businesses, so consumers should be given the same high standard of legal service irrespective of the structure of the provider.
Proportionality – we have sought to make the regulatory requirements sufficient that they protect consumers but not so burdensome that they create a barrier to interested entrant. The CLC will put in place proportionate arrangements to enable Recognised Bodies which it currently regulates to become ABS (as they will be required to do if they are owned or managed by non-Authorised Persons).

Targeted - focused upon the risks a Licensable or Licensed Body poses to the delivery of positive consumer outcomes.

Transparent – providing guidelines which identify how licence determinations will be made.

15. The Framework is intended to ensure that clients receive a service tailored to their needs; legal service providers develop new and different ways of delivering services to their customers; and the CLC nurtures an environment which enhances client protection, promotes competition and provides informed choice for consumers. For more information on our overall regulatory approach please see our Regulatory and Enforcement Policies consultation.
16. Licensing Authorities are required to operate a regulatory approach which is principles-based and outcomes-focused. This means that wherever possible regulatory arrangements employ Principles rather than prescriptive, cumbersome Rules. Compliance with these Principles is intended to generate positive Outcomes for legal services consumers and increased flexibility of approach for legal services providers.
17. We are currently consulting on our draft Code of Conduct. The Code identifies a number of positive outcomes we require all members of our regulated community to deliver for legal services consumers. Where there is risk to the delivery of these Outcomes action will be taken.
18. Our approach is therefore both principles and risk-based. The safeguards provided in the framework are based upon mitigating the risks of the body and its stakeholders not complying with the Principles and therefore not delivering the specified outcomes.

Outcomes-Focused Regulation

19. The Licensed Body Code within the attached framework is one element of the CLC's regulatory framework. Licensed Bodies will be required to comply with the CLC's other regulatory framework requirements e.g. the Accounts, Professional Indemnity, Compensation, and Complaints Codes etc. The outcomes-focused CLC Code of Conduct and the Regulatory Framework which sits beneath it, is currently out for consultation and should be read in tandem with this consultation paper.
20. The outcomes sought are provided in the framework and bodies will be licensed provided the CLC is satisfied that there is no substantial threat to their delivery. Where there is a potential threat to the outcomes which can be mitigated, a licence will be issued with conditions attached.

The draft CLC Licensed Body Framework

21. The Fit & Proper Test

The Act requires that beneficial owners, the Head of Legal Practice and the Head of Finance of a Licensable Body need to be declared to the Licensing Authority and to undergo a Fit & Proper Test. The LSB requires this to take the form of a declaration of:

- Any criminal charge or conviction (including spent convictions and cautions) or cases pending in the UK or elsewhere;

- Any previous disciplinary proceedings commenced by a professional or regulatory body in the UK or elsewhere (whether concluded or not);
- Any adverse order or finding of a civil court or employment tribunals;
- Any disqualification as a director;
- Any declaration of bankruptcy (and whether or not this has been discharged) or Individual Voluntary Arrangement;
- Disqualification from acting in any capacity for a legal services, financial or other provider (including a Licensed Body);
- Any other information that could reasonably be expected to have a bearing on the individual being fit and proper to own or manage a Licensed ABS Body;

for all of these roles and for this data to be verified.

22. To verify this data we propose to carry out credit and qualifications checks, and liaise with qualifications bodies and other Approved Regulators and Licensing Authorities. We have formal information-sharing agreements with other bodies to enable this. We reserve the right to check the validity of any data provided. Criminal Record Bureau (CRB) checks will also be carried out. The LSB is seeking an amendment to the Rehabilitation of Offenders Act to enable Licensing Authorities to obtain Standard CRB checks, as opposed to Basic checks. The difference is Basic checks contain only unspent convictions, Standard checks include both cautions and convictions, both unspent and spent.
23. This information will help inform our licensing determination. The provision of adverse information through the Fit and Proper Test does not mean the automatic refusal of a licence. The risks presented by the information and the person/role it pertains to will all be taken into consideration.

Owners

24. With the introduction of non-lawyer owners it is vital that improper influence is not exercised, preventing firms delivering legal services from meeting their regulatory responsibilities and upholding the principle of the rule of law. It is appropriate therefore that Licensable Body owners are subject to the Fit and Proper test to determine if they are fit to own.
25. The fit and proper test applies to all beneficial owners with 10% or more material interest. The Act enables Licensing Authorities to reduce this threshold if they wish to. The CLC has not done so as it considers the threshold to be proportionate. Therefore all, actual or potential, owners with 10% or more stake in a body must be declared and identify any steps they have taken to avoid any material conflict interest (in particular that they are not bound by other duties which may conflict with their regulatory responsibilities as owners of an ABS).
26. The CLC continues to develop its policy on associates and foreign owners.

Head of Legal Practice and Head of Finance & Administration

27. The Act requires all Licensed Bodies to have a Head of Legal Practice and a Head of Finance & Administration. The candidates for these roles are subject to the Fit and Proper Test. Firms should be looking for high-calibre individuals to fulfil these roles as firms are accountable to licensing authorities through these roles.

28. The Head of Legal Practice (HoLP) must be an Authorised Person in relation to reserved legal services. It is the HoLP's responsibility to ensure that the body and its stakeholders uphold the principle of the rule of law and that all Authorised Persons are allowed to meet their own regulatory responsibilities.
29. The Head of Finance & Administration (HoFA) does not have to be an Authorised Person. It is the responsibility of the HoFA to ensure that the Licensed Body complies with the Licensing Authority's requirements concerning the treatment of money and the keeping of accounts.
30. The qualifications and experience of the candidates are broadly considered to be a Licensable Body's decision, allowing them to take into account the business's particular needs. For example, the CLC is not proposing that an accountancy qualification is not an essential prerequisite for an HoFA in a very small firm, though in its absence, there should be accountancy experience. It is also with those small businesses in mind that it is not mandatory that the HoLP and the HoFA are separate individuals.
31. It is for the licensable body to determine what arrangements/candidates are appropriate to its business. The CLC is unlikely to decline an application for the HoLP/HoFA roles unless the candidates are demonstrably inappropriate - i.e. fail the fit and proper test, the HoLP is not an Authorised Person etc. - but may impose conditions – e.g. training requirements, increased reporting - upon the licence where there are concerns. However, should a candidate be considered inappropriate the Licensed Body application will not automatically be declined, if all other elements of its application are successful and a suitable HoLP/HoFA replacement is found.
32. Both of these roles will have targeted Continuing Professional Development requirements to ensure they keep up-to date and are enabled to fulfil their, and the body's, regulatory responsibilities.
33. Given the responsibilities of these roles, including the duty to notify to the CLC any breaches of the body's regulatory responsibilities, it is essential they are given the freedom to dissent from collective responsibility and are of a senior management level, or report to senior management.

Consumer Protection Arrangements

34. The advent of both ABS and outcomes-focused regulation requires a cultural shift from the legal services sector. Firms need to be consumer-focused, having arrangements to ensure consumers receive the best quality, and integrity, of service and which identify and mitigate risks to this. Firms need to have arrangements in place to identify and mitigate risks to their compliance with the regulatory responsibilities and the outcomes it seeks; arrangements to prevent and deal with improper influence and conflicts of interest; Reserved Legal Activities are always carried on/supervised by an Authorised Person; and high-quality governance, management, supervision and employment (including the employment of fit and proper employees) arrangements, operating procedures and quality assurance systems; and importantly, senior management commitment to the consumer.
35. Timely, convenient and impartial complaints-handling procedures which provide redress where appropriate are essential to ensure consumers are confident there are appropriate safeguards in place should they feel they are not provided with the level of service. Bodies will need to be able to demonstrate they will comply with the CLC

Complaints Code. Please see our Outcomes-Focused Regulatory Framework consultation paper for the draft Code.

Professional Indemnity Insurance

36. Professional Indemnity Insurance (PII) cover is a mandatory requirement of Licensed Bodies, as is a contribution to the CLC Compensation Fund. Currently all members of the CLC regulated community must take out cover under the CLC Master Policy. However, Licensing Authorities are required to allow Licensed Bodies (Alternative Business Structures) to obtain professional indemnity insurance from an Authorised Insurer. To meet this requirement the CLC will offer an opt-out from the Master Policy for those who wish to seek cover from an alternative source (provided that in all respects the cover provided is at least equivalent to that provided by the Master Policy). Contributions to the Compensation Fund are calculated as a percentage of the declared turnover of the Licensed Body and are dependent upon the financial requirements of the Fund in any year.
37. We will require information on all such arrangements to help inform our licence determination. Licensable Bodies are also welcome, though not obliged, to provide us with positive information such as accreditation scheme participation or consumer quality charters; we would be particularly interested in consumer association assessments. We ask that any supplementary information is relevant to the application; superfluous information is likely to extend the time it takes the CLC to determine the application.

Access to Justice

38. The Act identifies the following regulatory objectives:

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

Licensing Authorities must therefore only licence bodies which are compatible with these objectives.

39. Applicants will be required to provide an Access to Justice Statement, outlining how the body will improve the public's access to justice by recognising and responding to

the needs of consumers and offering different ways of delivering legal services (and enhancing value for money for the customer). It is up to the individual licensable body as to how they demonstrate this. It may take the form of provision of a greater range of services and methods of accessing these services, lower prices, extended opening hours, accessibility, online provision, or other factors; it is up to the individual applicant as to how they demonstrate this.

40. The information is primarily collected to inform an evidence base to determine if the introduction of ABS delivers the improvements to access to justice it seeks; only in exceptional circumstances would an application be refused because of access to justice implications.

Fees

41. We have based the fees upon the anticipated cost of determination to the CLC, retaining the discretion to charge the applicant more for particularly complex applications e.g. foreign ownership, or particularly complex applications which increase the CLC's costs for processing the application above the standard fee.

Determination

42. Our approach to licensing is evidence and risk based. On receipt of the application and validation of relevant data we will carry out a risk assessment to assess the potential risks to legal services consumers if we licensed the applicant body. The assessment is based upon the applicant's compatibility with the regulatory objectives by assessing their capacity, capability and inclination to deliver the Code of Conduct Outcomes. Please see our Regulatory and Enforcement Policies consultation for more information on our regulatory and risk assessment approach.
43. We aim to determine applications within 3 months of receipt of all of the information required to inform a determination (and reserve the right to request further information and/or statements should we see reasonable grounds to do so). This may be extended to a maximum of 6 months for particularly complex applications. Where the determination period is to be extended, the applicant will be notified before the end of the 3 month period of the extension, its anticipated duration and the reasons for it.
44. Applications will be determined by the CLC's Licensing & Casework Manager. This may include an interview with one or more of the Managers, the Head of Legal Practice and/or the Head of Finance and Administration. Where adverse information is provided the licence application will be determined by the Licensing & Casework Manager, in conjunction with the Head of Monitoring & Practice Support.

Granting of a Licence

45. The CLC may grant a Licence, a Licence with Conditions, or where the risk posed to the regulatory objectives cannot be mitigated by the imposition of conditions the licence will be refused. Approved Licensed Bodies will be provided with

support/guidance wherever needed. During the body's first 6 months of operation we are likely to require monthly returns so we are able to systematically identify any potentially failing entities in need of guidance.

46. Licence conditions include limiting the types of non-reserved services a body may provide, placing conditions on a non-Authorised Person's material interest holding, requiring the HoLP or HoFA candidate to be replaced or specific steps to be taken to address current arrangements, or provision of specific information on a regular basis. Conditions are imposed only where potential risks to delivery of the consumer outcomes are identified and where these can be mitigated through the steps specified.
47. The conditions and terms of the Licence will be specified. Licences are not time-limited and are valid from the date of issue. Licensed Bodies will be required to pay an annual licensing fee, make a Compensation Fund contribution to the CLC and to submit an Information Form on an annual basis.
48. An application will be refused where licence conditions could not mitigate the risks to consumers posed by licensing the Licensable Body, such as.

- False and misleading information has been provided;
- Inability to meet the CLC's Licensed Body Code;
- A holding compromises the regulatory objectives;
- Inadequate funds and/or resources;
- Inappropriate governance/management arrangements;
- Legal services would/are not delivered and/or managed by appropriately qualified persons;
- The conditions imposed by the CLC upon which a licence would be issued have not been met;
- We have reason to believe the licensable body's arrangements will allow it to be improperly influenced;
- The licensable body will not provide the application information requested, or has provided incomplete, or false or misleading information;
- Concerns about whether the proposed HoLP/HoFA/owner(s) is fit and proper for their proposed role have not been satisfied by mitigating measures or removal of the individual from the proposed licensable body's structure;
- Indemnity insurance provisions are not equal to those provided by the CLC Master Policy;
- The Compensation Fund contribution required has not been made;
- Application or registration fees due to the CLC have not been paid.

Determination Reviews & Appeals

49. Any applicant aggrieved by the CLC's determination may request its review by the CLC's Adjudication Panel within 28 days of being notified of the determination. The Panel is independent and does not include anyone involved in the initial determination process. It will re-assess the application and its determination, providing the applicant with its decision within 3 months of the review request.
50. If, following the Adjudication Panel's review determination, the applicant remains aggrieved they can appeal to the Regulatory Chamber of the First-Tier Tribunal. The

Tribunal only hear appeals from those who have exhausted their resolution options within the CLC.

Enforcement

51. Should a body, or one of its stakeholders, when licensed pose a risk to the outcomes we have a range of enforcement tools at our disposal, including:

Licence Conditions	Conditions – such as though identified in paragraph 46 - can be imposed at any time in the duration of a licence should a risk to the outcomes be identified
Financial Penalties	A penalty can be imposed upon the Licensed Body and/or one or more of its managers or employees; likely to be issued to change behavior. The penalty (up to £2.5 million) will be proportionate to the breach and the size of the body.
Disqualification	An HoLP, HoFA, manager or employee found to have intentionally, or through neglect, breached their duties, or caused, or substantially contributed to a significant breach of the licence's terms they may be disqualified from holding the post in <i>any</i> Licensed Body.
Divestiture	Where there are improper influence concerns due to an offence, breach, or contravention of a material interest holding we can apply for restrictions and/or divestiture of an owner's shares.
Licence Suspension and Revocation	A Licensed Body's licence may be suspended or revoked where there has been a significant breach of the body's regulatory responsibilities (or due to changes in a body's structure/provision arrangements mean it is no longer a Licensable Body).
Intervention	We will intervene in a body which has become insolvent or has been appointed a receiver or where a Body's Licence has expired (and has not been renewed or replaced). This power can be invoked even after the Licensed Body Licence has ceased/been revoked.

52. Wherever appropriate we will resolve an issue informally. Only when this approach has failed or is not appropriate due to severity of the risk posed will we seek to use any of the tools identified above. More details are provided in the Licensed Body Framework Guidelines attached. Please see our Enforcement Policy consultation for information on our approach to enforcement.

Appeals

53. Any CLC licence determination can be reviewed by the CLC's Adjudication Panel. As with licence applications, any review determination made by the CLC which leaves the applicant aggrieved can be appealed to the General Regulatory Chamber of the First Tier Tribunal (FST). Though the Act refers Licensing Authority determination appeals to the High Court, the LSB has determined that the FST would better serve this purpose as it will be able to perform the appeal function quicker and cheaper.

The FST is an independent public body. Appeals will be heard by a panel of a legally qualified chairperson and a lay member.

54. The FST can reach any decision which the CLC could have made and can:
- Uphold the CLC decision wholly or in part;
 - Quash the CLC decision wholly or in part;
 - Substitute the whole or part of a CLC decision with a new decision of a kind the CLC could have made;
 - Remit the matter to the CLC (generally, or for determination in accordance with a finding made or direction given by the Tribunal).
55. The FST can award costs where a party has acted unreasonably in bringing, defending or conducting the proceedings; or where there are wasted costs. Beyond that, the general policy is that each party should bear their own costs.
56. Following the decision of the First Tier Tribunal if the applicant remains aggrieved concerning a Financial Penalty, condition imposed or objection made to existing restricted interest, or divestiture finding this can be appealed to the Upper Chamber. The CLC understand that Statutory Instrument amending the appeal provisions in the Legal Services Act 2007 may vary the scope of the powers of the Upper Chamber.

Recognised Bodies

57. Due to their composition, about 50 of the Recognised Bodies we currently regulate will need to apply to become Licensed Bodies. This will need to happen within 12 months after the CLC has become a Licensing Authority. These bodies will need to appoint their HoLP and HoFA and perform a gap analysis to determine any potential issues which need to be addressed to meet the Licensed Body Code's requirements. Recognised Bodies are likely to already fulfil many of the requirements of the Licensed Body Code and we will already have some information on these bodies to help inform our licence determination. The licence fee will be lower for these applicants due to this.

Conclusion

58. The Licensed Body Framework has been devised with the intention it is client-centred, transparent and proportionate. We welcome any constructive feedback which would make it even more so and we continue to develop our approach. Please provide feedback submissions by Friday 17th December 2010.

Questions

In each case you are asked to provide reasons for the answer you have given. You may wish to give specific examples.

1. Do you agree with the general structure of the framework? If not, what is needed?
2. Are the framework's requirements clear? If not, what is needed?
3. Do you agree with the licensing application requirements? If no, please specify.
4. Do you agree with the regulatory objectives being aligned with the Code of Conduct Outcomes and Principles in our licensing determination?
5. Are there areas in which more consumer safeguards are required? If so, please specify.
6. Is the suggested fee structure appropriate?
7. Are the licence determination procedures clear? If not, what is needed?
8. Are the licence determination considerations adequate and appropriate? If not, what is needed?
9. Are there areas in which additional guidance is required? If so, please specify.
10. Do you agree with the transitional arrangements for Recognised Bodies?



Alternative Business Structures - Licensing Framework

Intended outcomes of this framework

The purpose of this framework is to ensure that consumers have confidence in the way bodies owned by non-Authorised Persons deliver regulated legal services and protect the interests of Clients. To achieve this, the CLC will only license bodies able and willing to deliver the Code of Conduct's Outcomes by acting in a principled manner:-

- Act with independence and integrity;
- Maintain proper standards of work;
- Act in the best interests of clients;
- Comply with your duty to the court;
- Deal with regulators and ombudsmen in an open and co-operative way; and
- Promote equality of access and service.

Overview of Framework

This document explains:

- what is meant by an Alternative Business Structure (ABS)/Licensed Body;
- how the CLC expects applications to become a Licensed Body to be made;
- the information upon which it bases its applications;
- the circumstances in which an application may be approved, made subject to conditions or refused;
- how all aspects of licence determinations can be appealed; and
- the Licensed Body Requirements which successful applicants must comply with; and the potential regulatory/enforcement responses if they don't.

The Framework itself should be read in conjunction with the Framework Guidelines (see Annex) which provide additional and background information, including explanations of terms used.

Alternative Business Structures (ABS)

The Legal Services Act 2007 removed restrictions on the management and ownership structures of traditional legal services firms. Non-Authorised Persons – ie.those who are not regulated by Approved Regulators such as the CLC, Solicitors Regulation Authority

and the Bar Standards Board - are now able to be owners in legal services firms and such firms are now able to provide other services alongside legal activities. For instance:

- a sole Licensed Conveyancer and an independent financial adviser might set up a business providing conveyancing and independent financial advice joint body with a local mortgage advisor;
- conveyancing activity is made available alongside estate agency or surveying services;
- probate activity is made available alongside funeral services.

Combining businesses in these ways might allow overhead savings to be made whilst offering clients the choice to source a range of different services from one provider (a one-stop shop). ABS should also enhance the career progression opportunities for Non-Authorised Persons, who can help provide the skills – such as strategic leadership, management, human resources, finance and IT – which are essential to a well-run business.

We use the term licensable body to mean a business which is applying to become a licensed body.

We use the term licensed body to mean an ABS which is managed or owned either wholly or partly by persons who are not Authorised Persons.

An ABS may take the form of:

- A legal body part-owned by a Non-Authorised Person;
- A business wholly owned by a Non-Authorised Person(s) providing both legal and other services; or
- a range of models in between.

A Licensable Body may be a partnership, a Limited Liability Partnership, or Limited Company; the structure and business model is of the licensable body's choosing.

A Licensable Body can be partly or wholly owned by a non-Authorised Person(s) and it can provide both legal and non-legal services. Provided that one manager, the Head of Legal Practice, is an Authorised Person, it can otherwise be managed by non-Authorised Persons.

As a Licensing Authority regulated by the Legal Services Board the CLC is able to license and regulate ABS providing conveyancing, probate, litigation and advocacy services with a range of other services.

Who can apply?

The Licensable Body must have:

- A practising address in England and Wales (or Wales);

- A designated Head of Legal Practice who is an Authorised Person in relation to Reserved Legal Activities;
- A Head of Finance and Administration (who does not have to be an Authorised Person) .

Legal services must be provided or supervised by Authorised Persons licensed by an Approved Regulator of legal services, such as the CLC or Solicitors Regulation Authority. Any non-legal services must be provided or supervised by appropriately experienced and/or qualified persons.

Indemnity & Compensation Arrangements : the CLC’s Master Policy sets out professional indemnity insurance cover all entities regulated by the CLC must have in place, although it is now possible for entities to arrange professional indemnity cover with Authorised Insurers, other than through the Master Policy.

If the CLC is not satisfied by the PII’s conditions and cover, the body will be required to take out a supplemental policy which ensures that its insurance cover is equivalent in all respects to the cover provided by the CLC’s Master Policy.

No body may provide legal services regulated by the CLC unless and until it has in place Professional Indemnity Insurance which complies with these requirements and has produced evidence of such insurance to the CLC. NB. Each body may increase the level of indemnity above the minimum required under the Master Policy.

The CLC maintains a Compensation Fund for the purpose of making discretionary payments to persons who have suffered loss as a result of negligence, fraud or dishonesty, or a failure to account, by a CLC-regulated body. Each body licensed by the CLC is required to make an initial contribution based on projected turnover to the fund and to make an annual contribution in subsequent years based on actual turnover.

A body which is able and willing to meet all of these requirements can apply to become a CLC Licensed Body.

Currently we cannot accept applications from Special Bodies under Section 106 of the Legal Services Act.

Information about Transitional Arrangements for entities owned and managed by non-Authorised Persons already regulated by the CLC is provided on pages 13/14.

ABS Licensed Body Applications

Applications must include :

- (a) a CLC ABS Licence application form, correctly completed-provided by the proposed owner(s), Chief Executive Officer (or equivalent), the Head of Legal Practice and the Head of Finance & Administration;

- (b) declaration of each proposed beneficial owner, the HoLP and the HoFA , confirmation of identity and consent for the CLC to carry out a Standard Criminal Record Bureau check of each;
- (c) if it is a Company or LLP its certificate of incorporation;
- (d) certificates of suitability completed by each owner;
- (e) the data required by the CLC to inform the application's determination;
- (f) the fee payable according to the CLC's Fees Structure;
- (g) evidence of appropriate indemnity cover and compensation arrangements, as required by our Licensed Body Requirements.

All references to owners refer to those who have a holding of 10% or more of the material interest. Further information about those persons covered by these requirements, please see the Material Interest definition in the Guidelines.

Licence Application Data

Full and frank information disclosure is needed to help us determine if:

- owners are fit to own;
- managers are fit to manage; and
- the body is fit to provide legal services to the public.

We require the following information:

Licensable ABS Body	<ul style="list-style-type: none"> • Declaration of beneficial owner(s) and associates; • Identification of any other companies that would be caught by any aspect of the fit and proper test if it is applied to them; • Identification of all Managers; • Identify persons entitled to carry on licensed activities (i.e. identify any Authorised Person who is a Manager or employee, which activities they are authorised to provide and by which Approved Regulator); • An outline of the services proposed and how you will ensure they are delivered to a good standard; • Who will carry out Reserved Legal Activities; • Business Plan & Financial Forecasts; • Source of funding; • Bank details; • Where applicable, the organisation's last 3 years of accounts; • Arrangements for complying with CLC's Licensed Body Code and delivery of Code of Conduct Outcomes*; • Statement outlining any current incompatibility with the Licensed Body Code and delivery of the Code of Conduct Outcomes; • Arrangements for notifying us of any regulatory arrangement breach; • Arrangements for provision of any non-reserved legal activities;
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	<ul style="list-style-type: none"> • Governance, management and quality assurance arrangements and procedures; • Arrangements for dealing with conflicts of interests and improper influence (please see guidelines below for definitions); • Indemnity & Compensation arrangements; • Statement outlining how the body would improve access to justice; • Employment procedures and arrangements; • Complaints Procedure; • Diversity profile of the body.
Owner(s), HoLP and the HoFA ⁴⁹	<p><u>a) Fit & Proper Test:</u></p> <ul style="list-style-type: none"> • Any criminal charge or conviction (including spent convictions and cautions) or cases pending in the UK or elsewhere; • Any previous disciplinary proceedings commenced by a professional or regulatory body in the UK or elsewhere (whether concluded or not); • Any adverse order or finding of a civil court or employment tribunals; • Any disqualification as a director; • Any declaration of bankruptcy (and whether or not this has been discharged) or Individual Voluntary Arrangement; • Disqualification from acting in any capacity for a legal services, financial or other provider (including a Licensed Body); • Any other information that could reasonably be expected to have a bearing on the individual being fit and proper to own or manage a Licensed ABS Body. <p><u>b) HoLP & HoFA Information</u></p> <ul style="list-style-type: none"> • Experience, qualifications, training and professional history.

The requirement for past 3 years accounts for the 3 years immediately preceding an application applies to companies which own (10% or more) of the Licensable Body

* Please see pages:

- 15-18 of this Framework for the Licensed Body Code.
- 5/6 of this Framework's accompanying Guidelines for the Code of Conduct Outcomes

Ownership Details

All applicants must declare the body's ultimate beneficial owner(s) and their associates.¹ The holding by a non-Authorised Person of a material interest in a Licensed Body is subject to the CLC's approval. A Licence will not be granted until we have approved all non-Authorised Persons with a material interest. A Licence application must identify all non-Authorised Persons who hold or are expected to hold a material interest in the body when the licence is issued. All owners and relevant associates will be subject to the fit and proper test. The material interest declaration refers both to the actual or proposed

holder and/or any of that person's associates. The type of interest concerned must be identified. If any of these details change, the applicant must notify us of the changes. Failure fully and truthfully to declare this information when aware of the facts is an offence.

NB. Please see guidelines attached to this framework for details on what constitutes a material interest and for the definition of associates applied in this framework.

You must inform the non-Authorised Person that you have applied for this licence and in doing so have identified them and their interest. You must advise them that they will need to have a CRB check and may need to provide us with information/ documents to inform our licence application assessment and that provision of false or misleading information is an offence.

In very exceptional circumstances it may be appropriate for public disclosure by the CLC of the beneficial owner to be waived; it is up to the individual applicant to make such a case to us. The CLC will only consider this where a real risk of physical harm has been demonstrated.

Information Provision

You may wish to present additional positive information – such as recognised accreditation/quality assurance scheme participation, evidence of how you will actively promote the regulatory objectives (as opposed to acting in a way which is compatible with them) – to inform your application's determination. Provision of such material will be welcomed by the CLC, as long as the information is relevant to your application; please do not provide irrelevant material as this is likely unnecessarily to prolong the application determination period time.

All relevant persons must sign the application form to declare the information provided is correct and to agree to the information being checked with other bodies – such as other regulators and the Serious Organised Crime Agency – for the purposes of fraud prevention and detection. Information provided will be kept secure and only used for proper purposes.

Provision of any false, misleading or incomplete information is likely to delay consideration of your application and if material will result in the application being rejected. If the CLC becomes aware after the grant of a licence that a body has provided false or misleading information the licence may be suspended or revoked.

Please see page 1 of this Framework's accompanying Guidelines for the Regulatory objectives.

Licence Application Assessment

Acknowledgement of receipt of application

We will acknowledge receipt of your application within 3 days. If your application is incomplete we will return it to you identifying those elements which are missing or have not been properly completed.

Data Verification

We shall carry out such checks as we consider necessary to verify the information you have provided. This is likely to include credit, insolvency and insurer checks, checks with other Approved Regulators and regulators in other sectors. We have formal information-sharing agreements with other bodies to enable us to do this.

Licensing Approach

Our approach to licensing is risk and evidence based. On receipt of the application and validation of relevant data we will carry out a risk assessment to assess the potential risks to legal services consumers if we license the applicant body. This will be based upon the applicant's compatibility with the regulatory objectives through their capability and capacity to deliver the positive Outcomes identified in the CLC's Code of Conduct and to meet the CLC's Licensed Body Code.

This will be determined by an assessment of the following factors:

- The quality of the governance/management arrangements including regulatory compliance arrangements and risk management strategies;
- The quality of the arrangements to prevent and deal with Improper Influence and Conflicts of Interest;
- Client money arrangements;
- The quality of operating procedures;
- Suitability of proposed owners;
- Suitability of proposed Head of Legal Practice (HoLP) and Head of Finance & Administration (HoFA);
- The arrangements in place which permit the HoLP and HoFA to report on matters direct to the CLC; without prior consultation or approval from the licensable body, its Managers, owners or associates;
- Where the applicant is proposing that the designated HoLP and the HoFA are the same person this is appropriate to the size and risk profile of the licensable body;
- Material interests and holdings and how they may impact upon the body's independence and integrity;
- The financial viability of the applicant and the integrity of the business plan/projections i.e. whether Business Plans/Financial Statements demonstrate appropriate resources to deliver the body's proposals;
- Resources allocated to non-reserved activities;
- Where the Licensable Body has chosen to opt out of the CLC Master Policy whether their own arrangements provide their clients with cover equal to that which would be provided by the Master Policy;
- Any significant access to justice barriers;
- The Body's employment arrangements and procedures ensure it employs only 'fit and proper' persons (and no-one disqualified by one of the Licensing Authorities;

- Any other factors which the CLC believes may pose a risk to the standard of service the consumer would receive.

In determining the suitability of proposed owners we will consider the following factors:

- a) Whether there is a risk that the person's holding of interest is likely to compromise the regulatory objectives and the regulatory duties of the Licensable Body or its Authorised Persons;
- b) Any concerns identified by the fit and proper tests;
- c) Their probity and financial position;
- d) Whether they have been disqualified by a Licensing Authority from acting as an HoLP, HoFA, manager or employee of a Licensed ABS Body;
- e) The person's associates.

In determining the suitability of the proposed Head of Legal Practice we will consider the following factors:

- a) Any concerns identified by the fit and proper test;
- b) If they are an Authorised Person;
- c) Whether they have been disqualified by a Licensing Authority from acting as an HoLP, HoFA, manager or employee of a Licensed ABS Body;
- d) Whether they have been subject to disciplinary proceedings or disciplinary investigation;
- e) Their competence and credibility to fulfil the role effectively;
- f) Their level of seniority and whether this is appropriate to the size and structure of the Licensed ABS Body

We will consider the following factors in determining the suitability of the proposed HoFA:

- a) Any concerns identified by the fit and proper test;
- b) Whether they have been disqualified by a Licensing Authority from acting as an HoLP, HoFA, manager or employee of a Licensed ABS Body;
- c) Their competence and credibility to fulfil the role, including their accountancy experience, competence and/or whether they have a recognised accounting qualification;
- d) At an appropriate level of seniority and/or reports to the most senior level of management (the Board of Directors/members where appropriate).

More information on the risk assessment is provided in the accompanying guidelines.

Licence Application Determination

The CLC determines all licence applications it receives. We will only grant a Licensed Body Licence where we are satisfied that our Licensed Body Requirements are/will be complied with and the grant of the licence is unlikely to compromise the regulatory objectives, (in particular protecting consumers) and the reputation of the sector.

The CLC's Licensing & Casework Manager will determine licence applications based upon an assessment of risk and capability of the licensable body. Where clarification is required the licensable body will be contacted. Where further clarification or reassurance is needed applicants may be required to attend an interview at the CLC to discuss details of the application and the applicant's proposals. This may include an interview of the HoLP and/or the HoFA as part of their designation.

Where adverse information is provided the licence application will be determined by the Licensing & Casework Manager, in consultation with the Head of Monitoring & Practice Support.

Adverse information does not necessarily mean an application will be refused or will be granted subject to conditions. If adverse information is provided this will be discussed with the applicant to determine the risk posed to the regulatory objectives, any resource implications for the CLC and the applicant's willingness or capacity to address the issue.

The CLC aims to notify all Licensable Body applicants of its licence determination within 3 months of receiving a complete application. If, due to the complex nature of the application or because we require additional information, more time is needed to make the determination we will notify you of this before the end of the original 3 month determination period. We will inform you of the reasons for the extension and its intended period, which will not exceed a further 3 months.

The CLC will determine one of the following:

- a) To grant a Licence free of conditions; or
- b) To grant a Licence which imposes conditions (to mitigate less serious risks posed to the regulatory objectives);
- c) To refuse the application (due to the severity of the risk(s) posed to the regulatory objectives).

Granting of a Licence

Where a licence is granted it will be issued as soon as is reasonably practicable. If we are satisfied that a holder of an interest has met our approval requirements –the holding will be approved without conditions and we will advise both the Licensed Body and the investor of this as soon as is reasonably practicable.

If the application is approved, with or without conditions, as a new licensee, we will provide you with any support/guidance you require in the initial setting-up stages and any time thereafter. We may also require you to provide us with information (such as reconciliation statements) on a periodic basis to satisfy us that you have appropriate systems in place which are operating satisfactorily.

The terms of the Licence will be specified: the Reserved Legal Activities (RLA) which the Licensed Body is authorised to carry on (where the CLC is not satisfied with the delivery and/or supervision arrangements for a particular RLA we will not authorise its provision) and any conditions on which the licence is granted.

Licences are issued for an indefinite period – other than temporary licences - and are valid from the date of issue. Licensed Bodies will be required each year to pay a licensing fee and make other payments to the CLC as provided in the CLC's Requirements and to submit an Information Form.

Adverse Information

Licence Conditions

We will assess the risk posed by an applicant body. (Please see our Regulatory Policy for more details). Where risks differ, so do our requirements. If we are not satisfied that an applicant's arrangements do not meet all of our approval requirements, but could be met through the implementation of additional safeguards to mitigate the risk identified, the licence will be issued with Conditions. Any conditions will be endorsed on the licence. We will simultaneously issue you with a notice explaining the requirements of the condition(s) and the reasons for its/their imposition. Any conditions imposed will take effect at the time the CLC directs e.g. a condition may take effect, or may not have effect until after any appeal in relation to it.

Conditions may be imposed during the currency of the licence when the CLC considers that additional safeguards are needed to protect consumers of legal services.

Conditions placed upon the Licensed Body may result in it incurring expenditure and can include:

(i) a limitation of the types of non-reserved services it may provide

- This condition will be imposed where the CLC is not satisfied that there are adequate arrangements in place to ensure the non-reserved activities are provided or supervised by suitably experienced or qualified staff

(ii) a requirement that the body as a whole or a person within, or connected to it, takes a specific step

- Where a non-Authorised Person's material interest holding in the body poses a significant risk that the duty Authorised Persons owe to the rule of law will be overridden by the duties to shareholders we will issue a warning notice that the holding is subject to conditions* (conditional approval); Where the the CLC is not satisfied that the proposed HoLP or HoFA 'fit and proper' for the role (and where all other elements of the application are successful) another person may be designated for the role;

Where arrangements need to be improved, the licence will only be fully endorsed when these improvements have been made and where they are to the satisfaction of the CLC.

*We may also impose conditions on, or even object to, an existing holding of interest if the individual causes concern during the currency of the licence. All Licensed Bodies have a duty to notify us of any proposed and actual changes in holdings of 10% or more material interest during the currency of the licence. If the non-Authorised Person concerned causes us fit and proper concerns at this stage, or during the licence's currency we may impose conditions, or in more serious cases, object to the holding.

In cases where conditions would not be appropriate due to the significance of the risk posed and/or where the body lacks the capacity or inclination to comply with the proposed conditions the licence application will be refused.

A Licensed ABS Body can apply for variation or removal of conditions at any time that they consider they have taken the appropriate steps to address the issue which triggered the condition's implementation. The applicant must use the appropriate CLC form, correctly completed and signed by the Head of Legal Practice and accompanied by the fee payable. The application will go through the process outlined in the Licence Determination Review section on page 13.

Licence Refusal

When refusing an application, the CLC shall notify the applicant of the grounds on which the refusal was made.

The CLC may refuse to grant a Licensed Body licence where it is not satisfied that the business is able to comply with the CLC Licensed Body Requirements and presents a significant risk to the delivery of positive Outcomes for Clients. Factors which could determine such a decision include:

- Inability to meet the CLC's Licensed Body Code (see pages 15-18);
- A holding compromises the regulatory objectives as the Licensed Body Code and Code of Conduct cannot be complied with; Inadequate funds and/or resources;
- Inappropriate governance/management arrangements;
- Legal services would/are not delivered and/or managed by appropriately qualified persons;
- The conditions imposed by the CLC upon which a licence would be issued have not been met;
- the risk the licensable body's arrangements will allow it to be improperly influenced;
- The licensable body has not provided the application information requested, or has provided incomplete, or false or misleading information;
- Concerns that the proposed HoLP/HoFA/owner(s) is not fit and proper for their proposed role have not been resolved by mitigating measures or removal of the individual from the proposed licensable body's structure;
- Indemnity insurance provisions are not equal to those provided by the CLC Master Policy;
- The Compensation Fund contribution required has not been made; Fees owed to the CLC have not been paid.

We will not approve the application if we are not satisfied that our Notified Interest approval requirements are likely not to be met by the imposition of conditions we will object to the notified interest.

The table below provides a summary of the adverse fit and proper factors which will be taken into consideration when determining a licence application and when determining if a licensed body, or one of its stakeholders, will continue to be licensed.

(a)	The body has at any time had made against it:
	(i) one or more of the orders referred to in paragraphs 4(2), 4(2D) and 5(4) of Schedule 6 to the 1985 Act;
	(ii) an order of the High Court made under paragraph 6(1) or 6(1A) of Schedule 6 to the 1985 Act;
(b)	any charge or third party interest relating to a member or the body
(c)	<p>Any Manager or employee</p> <ul style="list-style-type: none"> ▪ is subject to an Order of Licence revocation, suspension or disqualification; ▪ has been convicted of a criminal offence involving fraud, dishonesty or deception or an indictable offence which has not been spent by virtue of a period of rehabilitation without offending under the Rehabilitation of Offenders Act 1974; ▪ has had the CLC's statutory powers of intervention exercised against them or a CLC regulated body in which they were a principal, partner, manager or employee; ▪ has had had an Order made against them by a professional body (other than an Order which provides only for the payment of costs by them) of which they were a member; or ▪ has been found guilty of an offence under section 44(1), (1A) or (1B) or subject to a section 43(2) Order under the Solicitor's Act 1974. <p>Any Manager</p> <ul style="list-style-type: none"> ▪ has breached this Code; ▪ has failed to satisfy a civil judgement within the time limited; ▪ is an undischarged bankrupt or has made a composition or arrangement with creditors unless:- <ul style="list-style-type: none"> ○ the bankruptcy is annulled on the grounds that they ought not to have been adjudged bankrupt or, they are not subject to bankruptcy restrictions or an interim order as the debts have been paid in full on the annulment date; or ○ the composition or arrangement of debts is paid in full on the date on which payment is completed or within five years from the date on which the terms of the deeds of composition or arrangement are fulfilled; ▪ has been a director of a company which has gone into liquidation on the grounds of insolvency; ▪ in their own right or as a director of a company has had an administrator or receiver appointed ▪ has been a Licensed Conveyancer in, or Manager of, a CLC regulated body which has had its authorisation refused, revoked or

	<p>made subject to conditions;</p> <ul style="list-style-type: none"> ▪ has been a Licensed Conveyancer in, or Manager of, an entity regulated by another Approved Regulator or Licensing Authority which has had its licence to practise refused, revoked or made subject to conditions ▪ is the subject of an order made by an Approved Regulator or Licensing Authority (including the CLC) or on appeal from such an order; ▪ was a Licensed Conveyancer in or Manager of a body at the time of an act or omission resulting in the body being subject to an order made by an Approved Regulator or Licensing Authority (including the CLC); ▪ is not a suitable person to be engaged in the direction or ownership of a body by reason of character, conduct or association and in particular been in breach of statutory requirements regarding payment of tax or for a licence ▪ has been disqualified by order from holding office as a Manager ▪ lacks capacity within the meaning of the Mental Capacity Act 2005 and powers under section 15 to 20 or section 48 have been exercised
(d)	The Applicant fails to pay the application fee;
(e)	The Applicant fails to provide evidence of compliance with the CLC Compensation Fund Rules; or
(f)	Any reason in the public interest that the CLC has identified.

The CLC shall notify the Applicant of the grounds on which the application has been refused and their right for this to be reviewed.

Licence Modification

A Licensed Body is entitled at any time to apply for a modification of its licence conditions. Should it wish to do so it must provide us with evidence to justify the modification. However, unless there are exceptional circumstances it is unlikely that an application will be successful if it is made within the first 12 months after the conditions have been imposed. It is a matter for the Licensed Body to satisfy the CLC that the condition should be removed.

The CLC will only seek to modify licence conditions without first obtaining consent from the affected body or individual where there is an evidenced need to do so, for example:

- There has been a legislative change which impacts upon the terms of the licence;
- The licensed body has not consented to the licence condition;
- A risk to consumers has been identified and the CLC requires prompt provision of relevant information.

Licence determination review

For all licence determinations – these include where an application has been refused , the licence is subject to conditions, licence has been modified, the notified interest has been conditionally approved or objected to, an HoLP or HoFA candidate has been declined - the applicant has a right to a review of the CLC's decision.

Any applicant dissatisfied with a determination of the CLC may request a review of the determination by the independent Adjudication Panel within 28 days of being notified of the determination. The Panel will re-assess the application and its determination, providing the applicant with its decision within 3 months- of the determination review request.

We will formally audit our licensing determinations after our first six months as a Licensing Authority and every 12 months after to ensure they are consistently applied.

If, following the determination of the CLC Adjudication Panel, the applicant – the licensable body , investors in the body, or individuals working within it - remains aggrieved with the findings of the CLC they can appeal to the independent First-Tier Tribunal e.g.:

- Refusal of application for a licence;
- Imposition of conditions on a licence;
- Modification of a licence;
- Refusal to designate as Head of Legal Practice, or withdrawal of approval;
- Refusal to designate as Head of Finance and Administration, or withdrawal of approval;
- Disqualification from some or all of the roles within a Licensed Body;
- Suspension and Revocation of licence.

NB. The Tribunal will only hear appeals from those who have exhausted their resolution options within the CLC. Your appeal must be lodged within 28 days of when the CLC sends you notice of its decision.

There is a right of onward appeal to the Upper Tribunal on any point of law arising from a decision made by the First-Tier Tribunal.

Transitional arrangements for CLC Recognised Bodies

This applies to CLC-regulated bodies currently licensed as a Recognised Body but which, because they are owned or managed by persons who are not authorised persons, need to become a Licensed ABS Body by Autumn 2012.

These bodies must appoint their Heads of Legal Practice and Heads of Finance and Admin; provide disclosure on owners and their associates; and declare any information which may impact upon their 'fit to own' status.

They must complete the licence application form as required by all ABS Licensable Body applicants. The reduced application fee is reflective of the fact that we anticipate using less resources to assess applications from these CLC Bodies as we are familiar with their structures, systems and controls; they have a track record with us; and we have carried out monitoring inspections on them, often over a number of years.

Their applications will be fast-tracked. A CLC Recognised Body will receive notification of the CLC's determination of their application within 42 days of receipt of their completed Licensed ABS Body application. The application will be assessed and determined using the same criteria as set out on pages 6-10.

Licensed Bodies regulated by other Licensing Authorities

An ABS licensed by another Licensing Authority which is seeking instead to be licensed by the CLC will need to complete the licence application as required by all applicants. An applicant which has had its ABS Licence revoked by another Licensing Authority will not automatically be excluded from applying for a CLC Licence. However, the licence revocation will be a relevant factor in the determination of the Licence. The issue which had triggered the revocation would need to have been addressed to the satisfaction of the CLC and the remainder of the application would need to evidence that all CLC Licensing Requirements had been met in full.

Fees

The fees are broadly cost-reflective of the cost to the CLC of processing a standard application. The standard application fee for a first time Licensable Body application is £500.

We anticipate there will be less resource required to process an application from an existing CLC Recognised Body than from a brand new applicant and have therefore prescribed a lower fee of £250 for such applications.

We reserve the right to require further information and/or statements should we see reasonable grounds to do so. We reserve the right to charge additional amounts above the standard fee for particularly complex applications which take more than the expected 10 hours e.g. foreign ownership, or particularly complex structures. These will be charged at £50 per hour.

Applicant bodies will be expected to pay for all of the CRB Checks which need to accompany the application.

Licence Modification Fee £250

Removal of Conditions Application Fee £250

Annual Practice Fee to be determined each year

Compensation Fund contribution to be determined each year

Other

Any CLC document served on a Licensable or Licensed ABS body under these rules will be posted to its principal office in the United Kingdom.

We reserve the right to extend any determination timescales where the individual case requires it.

Licensed Body Code

Only those bodies able and willing to deliver the Code of Conduct's Outcomes by acting in a principled manner are licensed as CLC Licensed ABS Bodies.

All managers, employees and owners of the Licensed Body must comply with the CLC Code of Conduct's Principles:

- | |
|--|
| <ol style="list-style-type: none">1. Act with independence and integrity;2. Maintain proper standards of work;3. Act in the best interests of Clients;4. Comply with your duty to the court;*5. Deal with regulators and ombudsmen in an open and co-operative way;6. Promote equality of access and service. |
|--|

*Applicable to bodies providing litigation and advocacy services.

Governance and Management arrangements

Principles

- All owners, managers and employees understand their regulatory responsibilities and do not compromise the duty to the Court or Client;
- Systematically identifies and addresses improper influence, allowing independence to be maintained and justice and the rule of law to be upheld;
- Systematically identifies and addresses potential conflicts of interest;
- Clear and effective governance, management, supervision and risk management arrangements enable the business to comply with its licence terms;
- Identifies risks, in particular, to consumers, of its activities.

Specific Requirements

- The owner(s) is a 'fit and proper' person and declares to the Head of Legal Practice (HoLP) any factors affecting this;
- The owners do not attempt to exert improper influence on the body;

- At all times has an individual who is designated as the HoLP and has applied for/obtained approval from the CLC of this individual;
- Succession arrangements in the circumstance of the owner(s), HoLP or Head of Finance & Administration (HoFA) changing;
- The HoLP and HoFA are a member of the senior management team, or report to the senior management team;
- The HoLP and HoFA have access to the Chief Executive Officer, Board, the Licensed Body's staff and the CLC whenever necessary and their views are taken into account and the recommendations taken forward wherever possible;
- The HoLP and HoFA are specifically authorised to dissent from collective responsibility when reporting to the CLC.

Business arrangements

Principles

- The quality of work carried out in client matters is of an appropriate standard;
- Consumers are properly protected and receive good quality advice;

Specific requirements

- At all times has a Practising Address in England and Wales;
- A Reserved Legal Activity is only carried on through a person entitled to carry on that activity;
- Has appropriate and CLC-approved levels of Professional Indemnity Insurance;
- At all times at least one Manager must be an Authorised Person; and
- The body does not employ any person disqualified from being employed by a Licensed Body or any person not fit and proper.

Co-operation with Regulators

Principles

- All staff comply with the Licensed Body Requirements, the Code of Conduct and other Codes in the Handbook applicable to the body;
- If the body fails to comply with its regulatory responsibilities it informs the CLC of the failure;

Specific Requirements

- Notifies the CLC of any change in the HoLP, HoFA or Directors within 7 days of the change taking place;
- Systematically and promptly notifies the CLC of a 'fit and proper' issue concerning the owner(s), the HoLP, HoFA, other Managers or Authorised Persons;
- Pays fees and other charges as required by the CLC's regulatory arrangements and keeps up to date with its CLC Compensation Fund contributions;
- Provides the CLC with information and/or documents requested in the form and timeframe stipulated;
- Pays any financial penalties which the CLC may impose for breaches of Licensed Body Requirements;

- Notifies the CLC of the body's plan to change a business or registered office address within 7 days of the move;
- Authorised Persons regulated by an Approved Regulator other than the CLC are able to comply with that Approved Regulator's requirements;
- Managers or employees of an Authorised Person comply with the relevant Approved Regulator's regulatory requirements.

Client Protection

Principles

- Consumers are made aware of the risks that can arise in obtaining legal advice, the protection that is available and the circumstances in which they may not be protected;
- All staff are aware of the complaints procedure and of responsibilities for complaints-handling;
- Complaints are dealt with fairly, promptly, constructively and honestly;
- Complaints about both lawyers and non-lawyers are considered;
- Members of staff who are the subject of a complaint are treated fairly and measures are put in place to help address the issue

Specific Requirements

- Members of the public are informed of the status of the person they are dealing with and the nature of the work that person will carry out.

Head of Legal Practice

Principles

-
- Is a member of the senior level of management, or reports to a senior manager;
- Has experience and qualifications appropriate to the ABS' requirements, its business requirements and the expectations of staff;
- Understands the licensed body and its regulatory requirements;
- Keeps up- to-date with legislative and regulatory requirements through targeted Continuous Professional Development;

Specific Requirements - of the Individual

- Is an Authorised Person in relation to one or more of the reserved legal activities the licensed body is authorised to provide;
- Is a 'fit and proper' person and declares to the ABS and the CLC any factors affecting this;

Specific Requirements – of responsibility

- Ensures the Licensed Body complies with the terms of its licence and promptly reports to the CLC any failure to comply with these;
 - Ensures Authorised Persons are able to comply with their regulatory responsibilities and promptly reports to the CLC any failures to comply;
 - Ensures All non-Authorised Person employees, managers or those who have a direct or indirect interest do not cause or substantially contribute to a breach of the Licensing requirements by the Licensed Body, or a breach of their regulatory responsibilities by one of its employees or managers who is an Authorised Person; and promptly reports to the CLC any failures to comply;
 - Systematically identifies and declares to the CLC any issues they consider may compromise the regulatory objectives, including full disclosure of:
 - Acquisition of an interest or option in a shares interest in the licensed body within 7 days of the acquisition*;
 - Any significant breaches of the body's regulatory responsibilities.
 - Ensures they are informed promptly of any circumstance identified under the Notification Requirements and notifies the CLC within 14 days of becoming aware of it;
 - Provides the CLC with information and/or documents requested in the form and timeframe stipulated
- * NB. Compliance failures should be reported to the CLC's Head of Monitoring & Practice Support.

Head of Finance & Administration

Principles

- Protects client money and assets at all times;
- Is a member of the senior level of management, or reports to a senior manager;
- Has experience and qualifications appropriate to the ABS' requirements, its business requirements and the expectations of staff;
- Understands the licensed body and the regulatory requirements upon it;
- Keeps up- to-date with legislative and regulatory requirements through targeted Continuous Professional Development;

Specific Requirements – of the individual

- Is a 'fit and proper' person and declares to the HoLP any factors affecting this;

Specific Requirements – of responsibility

- Identifies and declares to the CLC any issues which they consider may compromise the Licence terms;
- Ensures the body complies with the CLC's treatment of money requirements as per the CLC's Account Code, Anti-Money Laundering & Combating Terrorist Financing Code and the CLC Code of Conduct;
- Promptly reports any breach of the CLC's treatment of money requirements;
- Promptly reports to the CLC when the body is in financial distress or is at significant risk of becoming financially distressed;

- Provides the CLC with financial information and/or documents requested in the form and timeframe stipulated.

Licensed Body Compliance

All Licensed Bodies and their stakeholders must comply with the Licensed Body Code at all times. Where the CLC identifies an issue of non-compliance we will always seek to resolve it informally in the first instance. However, where this is not appropriate, because of the severity of the risk posed, or has failed, the CLC has a number of statutory powers available to it to ensure the consumer and public interest is protected. These powers can be exercised against the Licensed Body itself or an owner, manager or employee of it, or both.

We always seek to ensure our enforcement response is proportionate to the risk identified. Where we have taken formal enforcement action which has left an individual or body aggrieved they have the right to have the decision reviewed by the CLC Adjudication Panel. Should they remain aggrieved they have the right to appeal the CLC’s decision to the First Tier Tribunal.

The attached Licensed Body Framework Guidelines provide more detailed information on the:

- enforcement powers the CLC has at its disposal with regard to Licensed ABS Bodies and their stakeholders; and
- the bodies which CLC licence determinations are reviewed by and appealed to.

The CLC Regulatory Policy explains what we as a regulator of legal services are seeking to achieve and how we seek to put our regulatory philosophy into practice. The CLC Enforcement Policy explains how we identify and respond to non-compliance with our regulatory requirements and what factors determine the form our response takes.

Licensed Body Changes

New shareholders

All new shareholders of a floated ABS whose accumulative value of shares is 10% or more of the business’s overall value will be given temporary pre-approval of their notifiable interest for an initial period of 3 months (which may be extended on notice to the shareholder by up to a further 3 months by the CLC) which will become permanent approval on having passed the relevant fitness to own conditions.

Transfer and Continuity of Licences

In an LLP of two Members, if one of them:

(a)	is committed to prison in civil or criminal proceedings; or
(b)	is unable, because of incapacity caused by illness, accident or age, to attend to the body for a period of more than 14 days (or such other period as the CLC may determine); or

(c)	lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him; or
(d)	abandons the body; or
(e)	has a licence issued by the CLC subject to a condition which would be breached by continuing as a LLP Member; or
(f)	is not a Licensed Conveyancer; or
(g)	dies,

the Licence will only continue to have effect the remaining LLP Member is an Authorised Person, and within 28 days of the occurrence an additional person has become an LLP Member. We may extend the 28 day period upon the Licensed Body's request.

Where the Head of Legal Practice or the Head of Finance and Administration:

(a)	is committed to prison in civil or criminal proceedings;
(b)	is unable, because of incapacity caused by illness, accident or age, to attend to the body for a period of more than 14 days (or such other period as the CLC may determine);
(c)	lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15-20, or section 48, of that Act have been exercised in relation to him;
(d)	Leaves the ABS Licensed Body;
(e)	has a licence issued by an Approved Regulator subject to a condition which would be breached by continuing as a Head of Legal Practice or Head of Finance and Administration; or
(f)	dies;

the Licence will only continue to have effect be transferred if an appropriately qualified and suitable replacement is in place within 28 days of the occurrence. We may extend the 28 day period upon the Licensed Body's request.

We must be promptly informed of all such changes and we must be provided with the details of the new relevant person so that we can approve their appointment.

If the above requirements are not met the licence will be suspended, cease to have effect or be revoked.



Licensed Body Framework Guidelines

These Guidelines should be read in conjunction with the Licensed Body Framework.

Definitions

This section defines terms referenced in the Framework:

What is meant by a 'non-Authorised Person'?

A non-Authorised Person is someone who is not authorised to provide a reserved legal activity (such as conveyancing, probate, advocacy and litigation services).

Applicants who are non-Authorised Persons must be declared and must in turn declare any issues which may be considered to compromise the regulatory objectives. This includes anyone holding a material interest that is subject to other duties which could potentially conflict with the objectives (and the steps in place to avoid this).

What is meant by 'Regulatory Objectives'?

S.1 Legal Services Act 2007 identifies the following regulatory objectives:

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

What is meant by a 'Material Interest'?

A person holds a material interest in a body if the person:

- holds at least 10% or more shares in the applying body or in a parent undertaking of the body;

- is someone able to exercise significant influence over the management of the Licensable Body or a parent undertaking of the body because of the person's entitlement to exercise, or control the exercise of voting rights in the body or its parent undertaking;
- is entitled to exercise or control the exercise, of voting powers in the body or its parent undertaking, which, if it consists of voting rights, constitutes at least 10% or more of the voting rights;
- as a partner having at least 10% interest in the capital or profits of the partnership.

What is meant by 'associates'?

Applications must declare the holding by a non-Authorised Person of a restricted interest and this includes the person's associates. 'Associate' is defined in Schedule 13 of the Legal Services Act 2007 as:

- a spouse or civil partner;
- child or step-child;
- trustee of a settlement under which they have a life interest in possession;
- an undertaking of which the non-Authorised Person is a Director, partner or employee;
- has agreement or arrangement with respect to the acquisition/holding/ disposal of shares with, or under which, they act together in exercising voting power.

What is meant by 'Improper Influence'?

By improper influence we mean an owner or employee who is not an Authorised Person might try to influence the decisions of the licensed body or the conduct of Authorised Persons in a way which would constitute a breach of licensing requirements and of regulatory duties. Licensed Bodies and the Authorised Persons within them must always support the constitutional principle of the rule of law and act in the best interests of their clients. Licensable bodies must be able to demonstrate that they have in place arrangements enabling this.

We will always investigate allegations of improper influence and where we are satisfied there is evidence of improper influence we will follow our enforcement policy.

Should an HoLP need to report improper influence they should do so to the CLC Head of Monitoring and Practice Support.

What is meant by 'Conflict of Interests'?

Where a body represents two or more parties with substantially different interests in a transaction, there is a risk that the interests of the parties will be in conflict. The CLC requires that if the body represents a Client and another party in any transaction they and the other Client are at all times represented by different qualified persons conducting themselves in the matter as though they were members of different entities.

What is meant by an 'authorised insurer'?

Should you choose to opt out of the CLC Master Policy you are required to obtain Professional Indemnity Insurance from an authorised insurer. The definition of authorised insurer is that provided at s.21 Administration of Justice Act 1985 and at Section 64(5) of the Legal Services Act 2007, which means:-

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c.8) to effect or carry out contracts of insurance of a relevant class; or
- (b) an EEA firm (within the meaning of that Act) of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or to carry out contracts of a relevant class; or
- (c) a person who does not fall within paragraphs (a) or (b) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member State other than the United Kingdom.

What is meant by ‘Special Bodies’?

We are not currently able to accept licensing applications from Special Bodies. By this we mean the bodies listed in Section 106 of the 2007 Act:-

- (a) an independent trade union,
- (b) a not for profit body,
- (c) a community interest company,
- (d) a low-risk body (see section 108), or
- (e) a body of such other description as may be prescribed by order made by the Lord Chancellor on the recommendation of the Legal Services Board.

Application Guidelines

Access to Justice Statement

The applicant must be able to demonstrate that licensing the body would improve access to justice i.e. recognising consumers’ needs and offering different ways of delivering legal services (and enhancing value for money for the customer). This may take the form of provision of a greater range of services and methods of accessing these services, lower prices, extended opening hours, accessibility, online provision, or other factors; it is up to the individual applicant as to how they demonstrate this.

Only in exceptional circumstances would an application be refused because of access to justice implications.

Business Plan & Cash Flow Forecast

The applicant will need to demonstrate they have critically examined the proposed body. A Business Plan should provide information on:

- financial forecasts;

- employees numbers, skills and knowledge; anticipated turnover;
- running expenses;
- capital investment;
- capital expenditure and liquidity;
- how the body will be initially funded (and how prepared for a given initial period where it is likely to receive little comparative income);
- proposed premises;
- the body's marketing strategy;
- its accounting systems and procedures; and
- any other information deemed relevant by the applicant or the CLC.

Other Information

You may wish to provide additional information to support your application. Please keep this to what is relevant. Those who ensure the quality of service provision on a voluntary basis, for instance: -

- Certification or assessment of activities by independent or accredited bodies;
- Drawing up your own quality charter or participation in quality charters or labels drawn up by professional bodies (particularly consumer association assessments)

will be judged favourably.

Professional Indemnity Insurance

Please see the Professional Indemnity Code and Guidance

HoLP & HoFA - Qualifications

We set no specific requirements in this area other than the HoLP should be an Authorised Person, as required by the Legal Services Act 2007, and a recommendation that the HoFA should have accountancy experience and/or an accountancy qualification. We consider the qualifications and experience of the Licensed Body's employees to be a matter for the body itself to decide.

The suitability of the proposed candidate will be judged according to the body's size and risk profile: it may be acceptable for the HoFA of a very small firm not to have an accountancy qualification.

We will be looking for skilled individuals suited to the business needs of the body to fill these roles. Unless a HoLP or HoFA is demonstrably inappropriate for the role, we are unlikely to decline an application for either of these posts, but if a candidate is in our view insufficiently skilled given the body's size or profile this will inform our risk assessment of the body and may result in increased supervision.

If all other aspects of the application are satisfactory we will not use the decision about a proposed HoLP or HoFA as a reason to deny the licensed body application itself if a more satisfactory individual is subsequently nominated.

Licence Application Determination

The purpose of this section is to provide applicants with information on the factors which will be taken into account when the CLC determines a licence application:

Regulatory Objectives

The Regulatory Objectives are set out on page 1 of these Guidelines. Licensed ABS Bodies and all of their stakeholders need to act in a manner which is compatible with these objectives. Both the Licensed Body Code and our Code of Conduct seek to promote these regulatory objectives. Our Code of Conduct identifies a number of positive Outcomes all whom we regulate/license must deliver for their clients. They must do so through compliance with a number of Overriding Principles of behaviour. The aim of the Code is to help promote regulatory objectives. All applications will be assessed against the body's capability and capacity to deliver these Outcomes and comply with the Principles.

CLC Code of Conduct Overriding Principles & Outcomes

Principle 1. Act with independence and integrity

You must deliver the following Outcomes for Clients:

- Clients are able to make informed decisions about the services and options available to them;
- Clients trust and value the service you provide and feel adequately protected;
- Clients are confident that they receive independent representation and advice;
- Clients are confident that you comply with the law.

Principle 2. Maintain proper standards of work

You must deliver the following Outcomes for Clients:

- Clients are confident that you act with reasonable care, skill and diligence;
- Clients trust you to provide them with a competent standard of legal services;
- Clients are confident that any arrangements you have for the referral of work are consistent with your obligations to Client and the CLC, and comply with the law.
- Clients are aware of who is dealing with their matter and who is responsible for overall supervision.

Principle 3. Act in the best interests of your Clients

You must deliver the following Outcomes for Clients:

- Clients are confident that you act in their best interests, and that you have the appropriate resources, skills, procedures and intentions in place for this;

- Clients are able to make informed decisions about the services they need, how the matter will be handled and the options available to them.
- Clients are confident that their informed consent will be obtained before the entity agrees to act for another person in a matter;
- Clients are aware of any limitation or conditions resulting from your relationship with any other person which may affect or limit the steps you can take on their behalf;
- Clients trust you to treat their affairs confidentially except as required or permitted by law or with the Client's consent;
- Clients are confident that their information is processed in accordance with data processing law and good practice.

Principle 4. Comply with your duty to the court – litigation & advocacy

You must deliver the following Outcomes for Clients:

- Clients are confident you act in the interests of justice;
- Clients consider that you act in good faith towards them;

Principle 5. Deal with regulators and ombudsman in an open and co-operative way.

You must deliver the following Outcomes for Clients:

- Clients are confident that you operate in accordance with regulatory requirements.

Principle 6. Promote equality of access and service.

You must deliver the following Outcomes for Clients: -

- Clients feel their interests are actively promoted and protected;
- Clients are confident that the legal services sector is accessible to them and responsive to their needs;
- No Client is unlawfully discriminated against;
- Complaints can be made by any reasonable means and the way in which they are handled takes proper account of Clients' individual needs (in particular the needs of those who are vulnerable);

- Clients are aware how and when you can be contacted;
- Clients are confident that complaints handling procedures provide effective safeguards for them;
- Complaints are dealt with comprehensively and swiftly, with appropriate redress where necessary.

For instance, we need to be satisfied that:

- those issued with licences have a level of integrity, honesty, trustworthiness and professionalism expected by the public;
- clients can have confidence that they will receive good quality advice and service from the bodies we license and are adequately protected should they not do so;
- the needs of the public and consumers are met (including being informed of their rights);
- the body has appropriate business, governance and management arrangements in place
- the body is financially viable
- the public's access to justice is not prejudiced;
- there is no significant risk that non-Auhtorised Persons will exert improper influence over the body;
- complaints will be dealt with appropriately and are learnt from so the body continuously improves.

If we are not completely satisfied that the body will be able to deliver the Outcomes and comply with Principles, thereby causing a risk to the regulatory objectives, we may issue a licence subject to conditions or may refuse the application for the issue of a licence.

Factors to be taken into account in determining an application

We will carry out an assessment of the risk posed or likely to be posed by the body to:

- the public's confidence in the profession; and
- the justice and rule of law.
- willingness to comply with regulatory requirements;
- responsibly manage financial affairs both personally and on behalf of their clients; and
- exposing members of the public, the profession or the applicant to harm.

Factors which may influence this risk assessment can include:

- Body's activities and Client type;
- Entity's finance information;
- Qualifications and experience of the Head of Legal Practice and the Head of Finance and Admin;
- Foreign ownership (our scope for data verification may be limited in some instances);
- Risk-management systems;

- Conflicts of interest arrangements; and
- Improper influence arrangements;

More detailed information on our approach to risk assessment is provided in our Regulatory Policy.

When assessing an application against these criteria the CLC will apply the following tests:

(a) Is there full confidence that the HoLP, HoFA and beneficial owner (and anyone captured by the fit to own test) has integrity and is trustworthy and honest?

(i) Unless there are exceptional circumstances the CLC will not be satisfied that the applicant is a fit and proper person and will refuse the application if the applicant has:

- convictions for offences involving dishonesty; or
- deceived or sought to deceive others, e.g. academic authorities, employers or members of the public.

(ii) The following might satisfy the Committee of the applicant's present integrity, honesty and trustworthiness:

- if in view of the time since the behaviour occurred the applicant has demonstrated a subsequent pattern of exemplary behaviour; or
- the incident was of a minor nature, as indicated by the sentence or sanction applied.

(iii) The type of evidence considered should normally include each of the following:

- at least one independent account of the event(s), including sentencing remarks where a criminal conviction is being considered;
- references from at least two independent people who know the applicant well and are familiar with the matters being considered. Ideally one of the references should be provided by a licensed conveyancer of good standing;
- evidence of rehabilitation independently corroborated e.g. independent reports, references from employers, or from a professional or regulatory body; and
- the applicant's account of the events and attitude towards them.

(iv) Where a conviction or disciplinary hearing is being considered the CLC will not question or look behind the finding other than in exceptional circumstances, although material such as sentencing remarks and any explanatory statement will be considered. For example, a decision may be demonstrably wrong where later events, such as after acquired evidence or a change in the law, call the original decision into question.

(v) Where the matter being considered concerns academic misconduct (eg plagiarism) the CLC will take into account the range of academic misconduct that occurs.

(vi) For the purposes of the assessment whether an applicant is a fit and proper person to become an HoLP, HoFA or owner, there will be particular concern where in the commission of academic misconduct the applicant has committed deliberate and dishonest acts in order to achieve personal gain or advantage.

(vii) The following factors would therefore be of particular interest to the CLC:

- the extent to which the individual was aware of the rules and procedures governing the referencing of material, or the use of group work or collaborative material;
- the extent to which the individual could reasonably have been expected to realise that the offence did not constitute legitimate academic body;
- the extent to which the individual acted with intent to deceive; and
- the degree of benefit or advantage gained as a result of the offence.

(viii) As in the approach to consideration of criminal convictions, the assessment will not seek to re-open the investigation undertaken by the training organisation, nor will it cast doubt on the validity and appropriateness of the decision taken, providing appropriate investigation and disciplinary procedures were followed, but statements intended to explain or mitigate the conduct in issue will be considered.

Summary – the factors the CLC will take into account in determining whether an individual is not a fit and proper person ^{cc)vi}

- Conviction for fraud, theft or other dishonesty related conviction;
- Bankruptcy;
- disciplinary proceedings;
- Adverse Order or finding of court;
- Disqualification;
- The HoLP is not an Authorised Person in relation to one or more of the licensed activities.

We will assess the information provided against the individual's proposed role. Adverse information does not automatically mean that an application for a licence will be refused or that the licence will be granted subject to conditions e.g. we may disregard minor convictions in some cases, depending upon the proposed role and the nature of the conviction.

(b) Is there full confidence that the HoLP, HoFA and owner are willing now to comply with legal and regulatory requirements?

(i) Unless there are exceptional circumstances there will not be full confidence and the application will be refused if the applicant:

- has been convicted of a criminal offence;
- has failed to disclose information to a regulatory body when required to do so or has provided false or misleading information;
- has breached the requirements of a regulatory body; or
- has failed to comply with the reasonable requests of a regulatory body.

(ii) It may be possible for full confidence to be established in the applicant's willingness to comply with legal and regulatory requirements if:

- in view of the time since the incident the applicant is able to demonstrate that there has been a subsequent pattern of exemplary behaviour;
- a matter that was not disclosed was trivial or in view of the time when it occurred is no longer material or the breach was minor, as indicated by any sanction imposed;

or

- the incident can be shown to have been the result of a genuine mistake or oversight.

(iii) The evidence considered should normally include each of the following:

- certificates of standing or statements from the relevant regulatory body or disciplinary tribunal and any limitations on the applicant's rights to practise or freedom to act;
- the applicant's explanation for failure to comply; and
- evidence of rehabilitation independently corroborated e.g. independent reports, references from employers, or from a professional or regulatory body.

It is the licensable body's duty to ensure it has the appropriate people in place to ensure the regulatory requirements are met and that the rule of law is supported. Unless an HoLP or HoFA is demonstrably inappropriate to fulfil their role – for instance, the HoLP is not an Authorised Person - we would not expect to decline an application for these roles.

(c) Is there full confidence that the HoFA and owner are able responsibly to manage financial affairs?

(i) Unless there are exceptional circumstances there will not be full confidence that the applicant can responsibly manage financial affairs and the application will be refused if:

- the applicant has been made bankrupt, has entered into an individual voluntary arrangement or has unmanageable debts arising from the applicant's recklessness, incompetence or dishonesty;
- the applicant has deliberately sought to avoid responsibility for debts; or
- there is evidence of dishonesty in relation to the management of finances.

(ii) The following might help to establish confidence in the applicant's ability to manage financial affairs:

- if in view of the time since the bankruptcy or occurrence of the debts there is evidence of subsequent sound financial management and conduct and that creditors have been paid;
- the applicant is able to establish that he was affected by exceptional circumstances beyond his control or which he could not have reasonably foreseen.

(iii) The type of evidence considered should normally include each of the following:

- credit check information;
- the applicant's explanation of the circumstances, corroborated where possible;
- actions taken to clear any debts.

iv) The Business Plan and Financial Forecasts will be reviewed to determine:

- if it has adequate resources, including financial, skills and knowledge, for the body to be viable and to be effectively run;
- how critically they have examined the business and the market for it;
- how realistic the financial projections are;
- if the strengths and weaknesses have been analysed and take account of potential opportunities and threats;
- if the financial forecasts take into account a realistic anticipated turnover, fixed costs and calculated variable costs.

Where there are concerns about the viability or suitability of a licensable body the CLC may refuse to issue a licence or issue a licence subject to conditions.

(d) Is there a risk that the issue of a licence to the body will diminish public confidence in the legal services profession?

(i) Unless there are exceptional circumstances there is a risk that public confidence in the profession will be diminished if a licence is issued to a body in which a Manager, HoLP, HoFA or owner has:

- has served a prison sentence, has remained on licence or is listed on the Sexual Offenders Register;
- has misused his position to obtain pecuniary advantage, particularly if associated

with the provision of legal services;

- has been responsible for dishonest or violent behaviour;
- has been convicted of offences associated with obstructing the course of justice;
- who has been convicted of a racially motivated offence; or
- has knowingly worked when his competence was impaired by alcohol or drugs in which case, unless the risk can be addressed to the satisfaction of the CLC, the application will be refused or will be issued subject to conditions.

(ii) The risk might be addressed satisfactorily if:

- in view of the time since the misbehaviour occurred the individual concerned is able to demonstrate that there has been a subsequent pattern of exemplary behaviour; or
- the misbehaviour was not of a serious nature, as indicated by the sentence or sanction applied.

(iii) The evidence provided should normally include each of the following:

- independent accounts of the convictions and behaviours that have given rise to the concerns, e.g. sentencing remarks;
- evidence of rehabilitation independently corroborated e.g. independent reports, references from employers, or from a professional or regulatory body.

(iv) Proposed governance and management arrangements are not sufficiently adequate to ensure the licensed body meets the licensing requirements and all members of staff are aware of their licensing responsibilities.

v) Proposed owner arrangements demonstrate there is a significant risk of undue or improper influence risk

vi) Proposed operating procedures and quality assurance systems are not sufficiently adequate to instil public confidence in the quality of services provision.

vii) The HoLP& HoFA are not readily provided with access to the CEO, Board, non-executives and the CLC whenever necessary and are not of an appropriate management level) ^{(i) (x) (v)}

(e) Is there a risk that the issue of a licence to the body could result in harm to members of the public, the profession or the body?

(i) The CLC will consider there is a risk of harm to members of the public, the profession or the applicant if there is evidence in respect of a Manager, HoLP, HoFA: or owner that

- they are or have been dependent on drugs or alcohol;
- their mental health or their exposure to stressful situations can seriously impair their judgement, their ability to manage their work or their professional relationships;
- they have been violent with colleagues or clients; or
- they have experienced recurrent episodes of behaviour/dependency/illness

which have given cause for concern in which case, unless the risk can be addressed to the satisfaction of the CLC, the application will be refused.

(ii) The evidence considered will normally include:

- recent and full medical reports, including psychiatric reports where relevant;
- accounts from employers and other parties; and

- a statement from the individual concerned.

Licensed Body Code

This section outlines our expectations of what constitute good arrangements and management systems:

Business Arrangements

- Compliance policies ensure a culture that promotes ethical practice and compliance with licensing rules;
- Effective supervision and quality assurance arrangements across the organisation, which include suitably competent and experienced people regularly checking the quality of work carried out in clients matters;
- Recruitment, selection and employment arrangements ensure that the body does not employ any person with a relevant disqualification or conviction;
- Training arrangements enable all employees to maintain a level of competence appropriate to their work and level of responsibility;
- Staff are encouraged to act in a way which is compatible with the regulatory requirements;
- Staff are aware who they can raise concerns of non-compliance or wrong doing to, are encouraged and feel able to raise concerns, and are confident these will be acted upon appropriately and they will not be victimised for doing so.

Risk Management

- Appropriate arrangements and operating procedures mean that any risks to:
 - the achievement of licensing responsibilities, particularly delivery of the positive outcomes identified in the Code of Conduct;
 - assets and money clients have entrusted to you;
 - the best interests of clients;
 - business continuity; and
 - the body's financial stability;are systematically identified, monitored, managed and determined efforts made to mitigate the risks presented.

Annual data requirements

Every business regulated by the CLC is required to update on an ongoing basis the information held on them on the secure online CLC Management Information System and to certify once a year that this information is correct. The data the Licensed Bodies are required includes:

- HoLP and HoFA,- Managers, owners and Authorised Persons (including any changes in their circumstance);
- HoLP/HoFA CPD Records;
- Who is involved in the operation of various money-holding stages;
- The type of work provided;
- Turnover and profits;
- How clients access services;

- Any additional information you may wish to provide e.g. evidence of recognised external accreditation.

NB. According to the risk posed by the body we may require information more frequently (and more varied) this will only be requested when justified by risk assessment.

Compliance with Licensed Body Code

All Licensed Bodies and their Managers, employees and stakeholders must comply with the Licensed Body Code. Please see below for an overview of the statutory powers we have available to us in our enforcement of those bodies and stakeholders who do not comply with the Code.

Where a non-compliance issue is identified we will always seek to informally resolve it in the first instance. Where this has failed, or where it is not appropriate due to the severity of the risk posed we will take enforcement action.

CLC Enforcement Powers

Licence Conditions

The CLC can impose conditions upon a licence where it considers additional safeguards are needed to protect consumers of legal services. Conditions include:

(i) a limitation of the types of non-reserved services a body may provide

- This condition will be imposed where the CLC is not satisfied that there are adequate arrangements in place to ensure the non-reserved activities are provided or supervised by suitably experienced or qualified staff

(ii) a requirement that the body as a whole or a person within, or connected to it, takes a specific step e.g.

- Where the the CLC is not satisfied that the proposed HoLP or HoFA 'fit and proper' for the role (and where all other elements of the application are successful) another person may be designated for the role;

We may impose conditions on, or even object to, an existing holding of interest if the individual causes concern during the currency of the licence. All Licensed Bodies have a duty to notify us of any proposed and actual changes in holdings of 10% or more material interest during the currency of the licence. If a non-Authorised Person causes us fit and proper concerns we may impose conditions, or in more serious cases, object to the holding.

The CLC must notify the Legal Services Board of any decisions its makes regarding holdings of shares and must provide both the investor and the Licensed Body with a copy of the notification.

Financial Penalties

The CLC can impose a financial penalty upon a Licensed Body, and/or one or more of its Managers or employees. We are likely to issue a financial penalty when behaviour is inappropriate and needs changing to deter future non-compliance. We will determine if the act or omission was deliberate, the impact (potential or actual) of the behaviour on

consumers, the reputation of the legal services sector, whether the breach was a one-off or a repeated issue and the attitude of the individual or body, to determine if a financial penalty could be considered an appropriate action and if so, the appropriate level. The penalty will be proportionate to the breach and to the size of the Licensed Body.

Disqualification

If an HoLP, HoFA, manager or employee is found to have intentionally, or through neglect, breached their duties, or caused, or substantially contributed to a significant breach of the licence terms or its conditions they may be disqualified from holding that post in any Licensed Body.

Divestiture

Where there are improper influence concerns regarding an owner we will act. Our enforcement response can ultimately result in divestiture. Where we are satisfied that there has been an offence, breach, or contravention of a restricted interest due to the following:

- failing to inform the CLC that a non-Authorised Person holding a material interest proposes a step to acquire a restricted interest (or intends to acquire an additional kind of interest);
- failing to inform the CLC that a non-Authorised Person holding a material interest has already taken the step of acquiring a restricted interest and has not sought the CLC's approval of the investor's holding;
- the Conditional Approval of Notified Interest has been breached;
- there is an objection to the Acquisition of Notifiable Interest;
- Imposition of conditions (or further conditions) on existing restricted interest or an existing objection to existing restricted interest;

we will issue you with a Restriction Notice advising you of our intention to apply to the First-tier Tribunal for the holding to be divested. Restriction options open to us include:-

- a transfer of shares or the right to be issued with them is void;
- no voting rights to be exercisable in respect of the shares;
- no further shares to be issued to that individual; and
- no payment to be made of any sum due from the company on the shares (except in a liquidation).

The relevant shares are subject to that restriction until further notice (until the First-Tier Tribunal makes an Order, or if we decide not to apply for an Order, or the body ceases to be licensed by the CLC).

We will notify the Legal Services Board (the oversight regulator for legal services regulation) of any objections/conditions imposed regarding a Non-Authorised Person's holding of interest.

If the First-tier Tribunal is satisfied that the divestiture condition is met it may order the sale of the shares so the Non-Authorised Person no longer has a holding in the Licensed Body. Where this is the case, the proceeds of the sale (less the sale costs) must be paid into the court for the benefit of the persons beneficially interested in them.

Alternatively, in the case of notified interest conditions being breached the First-tier Tribunal may order compliance of the conditions.

Notices

Where an issue has been identified the CLC will provide you with a warning notice to inform you of the action it intends to take. This will take the form of a Notice informing you of the action, why it is considered necessary and when the Notice will come into effect. The CLC may issue a Licensed Body with a Notice concerning the following:

- Financial Penalties;
- Divestiture;
- Withdrawal of approval;
- Disqualification;
- Production/delivery/possession of documents;
- Intervention;
- Licence Conditions;
- Material interest conditional approvals or objections;
- Failure to comply with Licence Conditions;
- Licence Suspension or Revocation.

Applications & Orders

The CLC can also request Orders by/apply to the First-tier Tribunal for the following:

- Communication redirection;
- Appointment of a new trustee (where the Licensed Body is a trustee of a trust);
- Payment of costs incurred due to enforcement;
- Information about and identification of money and accounts held;
- Prohibiting the payment of money by a person or financial institution holding money on behalf of the Licensed Body;
- Possession/Disposal/destruction/take copies of documents;
- Production/delivery of documents.

The CLC will only seek to use these powers where there is a significant breach of the Licensing Framework's regulatory requirements. We must inform you of our intention to do so via a Notice (as identified above). If an application or Order is agreed by the Court it will take effect once we have issued you with a copy of it.

Intervention

Where a Body's Licence has expired (and has not been renewed or replaced) or the CLC is satisfied that one or more of the following conditions applies:-

- The Licence Terms are not complied with;
- A Person has been appointed receiver or manager of the Licensed Body's property;
- A relevant insolvency event has occurred;
- It has reason to suspect a Manager's or employee's dishonesty in connection with the Licensed Body's business, any related Trust or the business of another body in which a Manager or employee is or was employed;
- Undue delay of compliance with, or non-compliance with, Notice Conditions;
- It is necessary to protect the interests of Clients or the beneficiaries of a related Trust.

we may deem it appropriate to intervene in the business. This power can be invoked even after the Licensed Body Licence has ceased/been revoked.

Suspension and/or Revocation of a body's Licence

A Licensed Body's licence may be suspended or revoked if:

- There has been a significant breach of the CLC's Licensed Body Requirements by the body itself, or one of its managers or employees, or it is no longer able to comply with the Licensed Body Requirements;
- The body changes its structure/provision arrangements so it is no longer a licensable body;
- Reserved Legal Activities are no longer carried on/supervised by an Authorised Person;
- Licence Conditions are not complied with;
- A non-Authorised Person holds a material interest without CLC's approval and has committed an offence in doing so;
- A non-Authorised Person has breached the conditional approval/conditions imposed by the CLC, or their holding is objected to;
- The body employs a person who is disqualified from being a manager or an employee of the body;
- A Licensed Body's licence automatically ceases to have effect if the CLC refuses to continue to license the body where the body ceases to be registered as an LLP under the Limited Liability Partnerships Act 2000.

If the body is issued a Licensed Body Licence by another Licensing Authority the CLC Licence ceases to have effect.

Review/appeal of CLC determination/enforcement

An individual or Licensed Body who is dissatisfied with any CLC licence determination or enforcement decision may request a review by the CLC Adjudication Panel within 28 days of being notified of the determination. The Panel will provide the applicant with its decision within 3 months of the determination review request.

If, after following the CLC review process, the Licensed Body or relevant individual remains aggrieved by a CLC decision they can appeal to the independent First-Tier Tribunal. The appeal must be made within 28 days of the CLC's determination being sent. The Tribunal will only hear appeals from those who have exhausted their resolution options within the CLC.

If, after the First-tier Tribunal's finding, a Licensed Body, Licensable Body, or individual (an owner or individual working within the body) remains aggrieved they have a right of onward appeal to the Upper Tribunal on any point of law arising from the First-tier's decision.

Appeal/Review Bodies:

This section explains how the determination review and appeal bodies are qualified for their role:

Adjudication Panel

The Adjudication Panel is appointed by the CLC to review decisions made by the CLC. No member of Adjudication Panel is a member of the Council or an employee of the CLC.

First-Tier Tribunal

The First-Tier Tribunal (FTT) was established under the Tribunals, Court and Enforcement Act 2007. Due to its experience in regulatory matters the General Regulatory Chamber of the FST will hear the appeal, which will constitute a substantive re-hearing of the issue and its determination. The FST is an independent public body. Appeals will be heard by a panel of a legally qualified chairperson and a lay member.

The FTT can reach any decision which the CLC could have made and can:

- Affirm the CLC decision wholly or in part;
- Quash the CLC decision wholly or in part;
- Substitute the whole or part of a CLC decision with a new decision of a kind the CLC could have made;
- Remit the matter to the CLC (generally, or for determination in accordance with a finding made or direction given by the Tribunal).

The FTT can award costs where a party has acted unreasonably in bringing, defending or conducting the proceedings; or where there are wasted costs. Beyond that, the general policy is that each party should bear their own costs.

The Upper Chamber deals with appeals against decisions of the FTT.