

Character and suitability test for non-lawyer managers of an LDP

Legal Services Act: consultation paper 1

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Introduction – purpose of the consultation

The SRA is in the process of developing its regulatory framework to facilitate the new forms of practice permitted under the Legal Services Act—legal disciplinary practices (LDPs) and alternative business structures (ABSs). The work on LDPs is particularly urgent, as they could become available in 2009. The purpose of this paper is to invite your comments on an important aspect of the project—the development of a “character and suitability” test for non-lawyers who wish to become managers in an SRA-regulated LDP. This is the first of a series of consultations on our work in relation to the Act.

In November 2007, we published a policy paper outlining our initial thoughts on the principles which should guide the SRA’s development of the new regulatory framework. This is at www.sra.org.uk/LSA and can be read in conjunction with this consultation to fill in some of the background detail. It also contains a glossary of terms which you may find useful when reading this and future consultations.

The consultation is aimed at

- all those with an interest in the delivery of legal services, including consumers and bodies representing consumers,
- all providers of legal services, including those considering setting up or working in LDPs, and
- those who procure legal services.

We would be grateful if you would read and respond to the consultation. It is an opportunity for you to help shape the regulatory regime of the future.

All comments would be helpful. The closing date for responses is 31 March 2008. We may be able to take into account comments received after this date, but please remember that we are working to a very challenging timetable.

1. Legal Services Act, LDPs and non-lawyer managers – background

- 1.1 This consultation discusses the development of a character and suitability test for non-lawyer managers in SRA-regulated legal disciplinary practices (LDPs). It outlines the broad approach we are thinking of taking, as some of the details—particularly in relation to the administrative procedures which may be necessary to support any test—have yet to be worked out.
- 1.2 As you read the consultation, it will help to bear in mind the following brief description of the statutory context and developing regulatory landscape.
- 1.3 The Legal Services Act (the Act) provides the statutory framework for firm-based regulation of legal practices, and for two new types of practice:
- legal disciplinary practices, and
 - alternative business structures (ABSs).
- 1.4 The SRA will regulate LDPs which are (broadly) legal practices owned and managed by at least one solicitor or registered European lawyer, along with other lawyers and up to 25 per cent non-lawyers. An LDP can only provide legal services.
- 1.5 ABSs will in future be able to take a wide variety of forms, including that of multidisciplinary practices wholly externally owned and as such not confined to the provision of legal services. ABSs will not be available until the Legal Services Board—the new overarching regulator of legal services—is set up and empowered, and the “front-line” regulators (such as the SRA) are in a position to operate the licensing scheme on which the regulation of ABSs will depend. This is unlikely to be before 2012.

How the Act enables LDPs – summary

- 1.6 The Act amends the existing “recognised body” regime by allowing the SRA to regulate “legal services bodies” as recognised bodies. The definition of a “legal services body” will include not only those solicitors’ companies and limited liability partnerships currently practising as recognised bodies, but also solicitors’ partnerships and LDPs.
- 1.7 A legal services body must only provide “solicitor services and other relevant legal services”.
- 1.8 A legal services body can have other “authorised persons” (barristers, notaries, licensed conveyancers, legal executives, patent and trade mark agents, and law costs draftsmen) as partners, members, directors, and shareowners.
- 1.9 A legal services body can include up to 25 per cent non-lawyers as “managers” (partners, members or directors), provided that they have been approved as suitable by the SRA. These are referred to in the consultation as “**non-lawyer managers**”.

- 1.10 Under the Act non-lawyer managers are managers who are “not legally qualified”. There is no requirement that they hold any qualification at all. This means that there could be two types of non-lawyer manager in an LDP:
- one who holds a non-legal professional qualification, and
 - one who holds no professional qualification.
- 1.11 One of the questions discussed later is how far, if at all, this distinction ought to be reflected in the criteria and procedures for approving non-lawyer managers.
- 1.12 Under the Act, all firms will in future have to become recognised bodies, even if they do not want to have non-lawyer managers. This will enable the SRA to operate a regulatory system based primarily on firms rather than individuals. The Act also provides for sole practitioners to be regulated in broadly the same way as recognised bodies.
- 1.13 A firm which wants to take on non-lawyer partners etc will need to apply for approval for such persons and demonstrate that those persons are fit and proper.
- 1.14 A non-lawyer manager must be an individual, not a corporate person; and he or she must be part of the delivery of the LDP’s legal services, not merely an external investor. These are two of the key differences between an LDP and an ABS.
- 1.15 The SRA will be able to apply its code of conduct, accounts rules, etc, directly to everyone in a firm, including non-solicitor managers, non-lawyer managers, and all employees in a firm.
- 1.16 The provisions of the Act allowing for non-lawyer managers in an LDP are time-limited. When the ABS licensing scheme comes in, an LDP with a non-lawyer manager will have to be licensed as an ABS.
- 1.17 The introduction of LDPs will not directly affect sole practitioners or in-house lawyers.

What this consultation does not cover

- 1.18 There are two important related areas which this consultation does not cover. The first of these is the question of whether we need to undertake checks to ensure non-SRA regulated lawyers are of good character and suitable to become owners or managers of an SRA-regulated LDP, and if so, what criteria we should use. We are currently discussing this issue with other regulators of authorised persons.
- 1.19 The second area is the question of what information we will require from firms when they apply for recognition or renewal of recognition.
- 1.20 Both of these areas will be consulted on early in 2008.

Why concentrate on LDPs and non-lawyer managers?

- 1.21 Much of our current activity with regard to the Act is focused on how our regulatory regime needs to be adapted for LDPs. There are several reasons for this.
- One of our strategic objectives is “to promote choice, innovation and accessibility in the provision of legal services through different types of business structure”. We are also keen to allow the public and the profession to benefit as soon as possible from the new forms of practice which the Act allows.
 - We are aware of considerable interest in the profession in the possibility of taking on non-lawyers as managers in firms; and we appreciate that these firms will need to know as much as possible about the direction of our thinking to enable them to make informed decisions about their businesses.
 - Unlike ABSs, LDPs can be made available as soon as we can develop, consult on and make the necessary changes to our rules, regulations and procedures. We hope to be in a position to authorise LDPs by early 2009.
- 1.22 As the Act requires the SRA to approve non-lawyer managers it is critical to develop an appropriate set of criteria and procedures for this as soon as possible. We would therefore be grateful to hear from you with your comments on our thoughts so far.

What principles will guide our development of the character and suitability test for non-lawyer managers?

- 1.23 The maintenance and promotion of public confidence in the legal profession is a key task for the SRA, and the character and suitability checks we apply to the firms and individuals we regulate are pivotal to this.
- 1.24 In our outline policy paper we set out the strategic and design principles which we have adopted to guide our approach to the many changes we will need to make to our current regulatory arrangements. Of particular relevance to the development of the character and suitability test for non-lawyer managers are our commitments
- to “... adapt our regulations to enable the new forms of practice provided for in legislation, and ... only impose restrictions, over and above those provided for in the Act, when necessary in the consumer and public interest”; and
 - to seek to introduce changes in a way which minimises regulatory burdens and unnecessary bureaucracy.
- 1.25 We would like to know whether you think we have achieved this.

2. Character and suitability – developing the criteria and procedures for approving non-lawyer managers

- 2.1 The Act requires the SRA's rules to make provision as to the criteria and procedures for approving non-lawyer managers. The next two sections of the consultation deal with these in turn.

Developing the criteria

- 2.2 What criteria should we apply when we approve non-lawyer managers as suitable to become managers in an LDP? In approaching this question our starting point has been that clients, the public, the profession, and other stakeholders have the right to expect the same level of honesty and integrity from non-lawyer managers as from the lawyer managers in an LDP. Therefore, we believe that there is a presumption in favour of applying to non-lawyers the same general principles on the assessment of character and suitability as those applying to individuals wishing to become solicitors.

- 2.3 The current guidelines for solicitors were revised in 2007 can be found at <http://www.sra.org.uk/documents/students/student-enrolment/characterguide.pdf>.

- 2.4 The "General principles for assessment" set out in the guidelines seek to ensure that there is confidence that an individual is

- honest and trustworthy; and
- willing to comply with regulatory requirements; and
- able responsibly to manage financial affairs for themselves and clients;

and that there is no reasonable risk that his or her admission will:

- diminish the public's confidence in the solicitor's profession; or
- be harmful to members of the public, the profession or to him or herself.

- 2.5 The tests applied under each of these principles, as set out in the guidelines, focus on

- criminal convictions,
- cheating and plagiarism,
- county court judgments or other evidence of inability to manage financial affairs,
- investigations by professional or regulatory bodies,
- any criticism, censure or suspension directed at an applicant by professional or regulatory bodies, and

- investigations concerning allegations of misconduct in business activities.
- 2.6 Individuals applying for admission as solicitors are required to complete a Criminal Records Bureau standard disclosure. Spent convictions must be declared by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. We have raised with the Ministry of justice the question of whether the scope of the Order should be extended to cover non-lawyer managers.

Other checks

- 2.7 Character and suitability issues arise in the context of other applications and processes
- to become a registered foreign lawyer (RFL);
 - to become a registered European lawyer (REL);
 - to become a recognised body and on renewal of recognition (including information on individual directors, members and shareowners);
 - to transfer to become a solicitor under the Qualified Lawyers Transfer Test;
 - to become a member of certain SRA accreditation schemes;
 - where section 12 of the Solicitors Act 1974 applies (e.g. where a solicitor has failed to give the SRA a satisfactory explanation of his or her conduct; or where the solicitor has entered into a composition with his or her creditors).
- 2.8 Most of the information on character and suitability under these procedures is obtained by way of self-declaration on the part of the individual or his or her firm, particularly through the annual practising certificate renewal exercise. Some comes to the SRA through other agencies – the police, the courts, and other regulators. Some comes as a result of the professional obligation in rule 20.04 in the Solicitors' Code of Conduct 2007 for solicitors to report others thought to have committed serious professional misconduct or to be in serious financial difficulty.

Benchmarking

- 2.9 We think that the general approach currently taken to the character and suitability of the individuals and bodies the SRA regulates covers the right ground and can, with minimal adaptation, become the basis of the test for non-lawyer managers. However, as a comparison, we have found it helpful to look at the criteria and procedures used by the Financial Services Authority in deciding whether to grant "approved person" status to an individual who is to perform "controlled functions" within an FSA regulated firm.

- The FSA asks for more personal identification details, including where a candidate has had more than one previous name, passport number or nationality, or is known by any other names.
 - The FSA requires considerable detail on the candidate for approval, including details of the candidate's employment history for the past five years, and directorships over the last ten years.
 - The FSA asks whether a candidate is aware of any business interests, employment obligations, or any other situations which may conflict with the role for which he or she is applying for approval.
 - The FSA asks whether any business in which the candidate is or has been a senior manager or director has ever been subject to certain proceedings or investigations.
 - The FSA asks whether a candidate is aware of any intention of a third party to take proceedings against the candidate which could result in county court judgments or judgment debts.
 - The FSA asks whether the candidate has ever decided, after making an application for authorisation etc (whether in connection with financial services or with another regulatory body), not to proceed with the application.
- 2.10 We think we should ask for information of this kind about prospective non-lawyer managers, given that the SRA will start with no information at all about them (unlike solicitors, about whom we will have gathered considerable information during the qualification process). Additional information might enable us to assess risk and target our resources - provided it was only of a kind relevant to the requirements of the regulatory system.
- 2.11 We are interested in your views on this.

Training and competence

- 2.12 The FSA's approved person regime has a training and competence element. We do not intend at this stage to introduce a similar requirement into the character and suitability criteria for non-lawyer managers. We think it is reasonable to expect the lawyer managers in a firm (who will be in the majority) to assess, on a risk basis, the training and competence of those non-lawyers they intend to invite into the senior management structure of the firm.
- 2.13 However, we will have to give further thought to whether our rules should place any restrictions on the activities of non-lawyer managers over and above the restrictions imposed by statute in relation to reserved legal work (for example, their activities in relation to a firm's client account).
- 2.14 Do you agree with our provisional view about training and competence?

Criminal records checks

- 2.15 The FSA's standard vetting of applicants for approved person status does not include a Criminal Records Bureau (CRB) check. In contrast, the SRA requires a CRB check prior to admission as a solicitor. Our current view is that we should require a CRB check as part of the character and suitability test for non-lawyer managers. Do you agree?

What about non-lawyers who have another professional qualification?

- 2.16 One of the attractions of LDPs, and one of the reasons the SRA has supported their introduction, is that, for the first time, firms will be able to take into full partnership individuals with different professional backgrounds – for example, accountants or surveyors—and thus enhance the quality and delivery of the firm's legal services.
- 2.17 These individuals might well be subject to character and suitability tests laid down by their own professional bodies. Should such persons be subject to as detailed a series of checks as those non-lawyer managers with no professional qualification?
- 2.18 Our provisional view is that the same criteria and procedures should apply to all non-lawyers, because the nature and extent of the checks by other professional bodies, and their relevance to the SRA, may vary so widely as to make it inappropriate to rely on them. It could also be administratively complex (and therefore less cost-effective) to have to draw fine distinctions between different professions. However, we would welcome your views on whether you think this is the correct approach.

When is a non-lawyer not a non-lawyer?

- 2.19 Under the Act, a non-lawyer is “an individual who is not legally qualified”, and “legally qualified” is also defined in the Act. Our rules are likely to state that a person who is or would be capable of participating in legal practice as an authorised person will not have the option of participating as a “non-lawyer”. There might be some exceptions – for example, in the case of a solicitor who has voluntarily come off the roll altogether.

3. Character and suitability – developing the procedure

- 3.1 What will be the procedure for applying for approval of a non-lawyer manager? In addressing this question we have again found it useful to look at the FSA's approach under the approved person regime.
- The FSA requires the firm to submit the application for the candidate for approval, and the candidate to verify the information provided. This is consistent with firm-based regulation, and we have a preference for this way of proceeding with applications for the approval of non-lawyer managers. We would not propose to verify or validate all the information given to the SRA, but would (like the FSA) reserve the right to make random checks.
 - A person is approved by the FSA in respect of specific controlled functions in a particular firm. The approval process does not generally entitle the individual to perform different controlled functions at the same firm, or the same functions at different firms – although further approvals may be subject to a shortened form of application. In other words, approval is not granted once-for-life and is not transferable.
- 3.2 This degree of control of non-lawyer managers may not be necessary for the SRA as the role of the non-lawyer is not tied in to specific “controlled functions” within a legal practice, as it is for FSA approved persons within financial services firms. However, it would seem consistent with firm-based regulation to require a firm wishing to take on a non-lawyer manager from another firm to make a fresh (although probably shorter) application for approval. This would increase the visibility of non-lawyers within the regulatory system. Do you agree with this approach?

Other aspects of the procedure

- 3.3 There will be a mechanism for appealing against SRA decisions to refuse approval. This will be developed in accordance with the work we are currently undertaking on our decision-making processes generally.
- 3.4 The Act provides for a final appeal to the High Court.
- 3.5 The rules dealing with the criteria and procedure for approval will also have to cover withdrawal of approval by the SRA.

4. Next steps

- 4.1 As previously stated, the Act requires the SRA's rules to make provision for the criteria and procedure for approving non-lawyers, and for withdrawing approval. LDPs will in future be regulated as recognised bodies. Currently, recognised bodies are subject to the rules of conduct governing solicitors, including the Solicitors' Code of Conduct 2007, the Solicitors' Recognised Bodies Regulations 2007, the Solicitors' Accounts Rules and the Solicitors' Indemnity Rules, all of which will have to be substantially amended to cater for the changes required by the Act. The Recognised Bodies Regulations will contain the basic provisions relating to the approval of non-lawyers. There will be a consultation on the draft amendments to the rules and the Regulations early in 2008.
- 4.2 In the meantime, we would be grateful to hear from you on the issues raised in this consultation. The next two sections set out the questions we would like you to answer and provide details of how you can respond.

Thank you for your help.

Questions

1. Do you agree with applying to non-lawyer managers the same general principles on the assessment of character and suitability as those applying to applicants for admission as solicitors? ([paragraphs 2.2 – 2.8](#))
2. Do you agree that the SRA should require from prospective non-lawyer managers the same kind of information as that required by the FSA under the “approved persons regime”? ([paragraphs 2.9 – 2.11](#))
3. Is there any other information which in your view the SRA should require?
4. Do you agree that the test for non-lawyer managers should not include a training and competence requirement? ([paragraphs 2.12 – 2.14](#))
5. Do you agree that prospective non-lawyer managers should be required to complete a Criminal Records Bureau standard disclosure? ([paragraph 2.15](#))
6. Do you agree that non-lawyers with other professional qualifications should be subject to the same character and suitability test as those with no professional qualification? ([paragraphs 2.16 – 2.18](#))
7. Do you agree that the SRA should require firms to submit the application for approval of their non-lawyer managers, and for the non-lawyers to verify the information given? ([paragraph 3.1](#))
8. Do you think that firms taking on a non-lawyer manager from another firm should have to make a fresh application for approval? ([paragraph 3.2](#))
9. Do you believe any of these proposals will have an impact on equality and diversity?
10. If you want to make any other comments, please do so.

The next section gives details of how to respond.

How to respond

You can respond to the consultation in a variety of ways.

Download and complete an electronic form

Download a comments form, which can be completed offline, at your convenience, using MS Word. We recommend this option to anyone who plans to deliberate over their comments at length or needs to discuss their views with colleagues.

1. Go to consultations.sra.org.uk.
2. Select **Character and suitability test – LDP non-lawyer managers**.
3. Click **Download comments form**.
4. Save the file locally—before and after completing it.
5. Return your completed form as an email attachment to LSA@sra.org.uk.

Download and submit a printed form

If you wish to submit your comments by post, please follow steps 1 to 4 described immediately above. Then, print your completed form and send it to

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

or

Derek Mitchell
Solicitors Regulation Authority
DX 19114 Redditch

Send us an email or letter

If you prefer not to use one of our forms, simply detail your main comments or concerns in an email or letter. Send your email to LSA@sra.org.uk, or post your letter to the address provided above.

Please ensure that, in your email or letter, you

- identify yourself,
- state on whose behalf you are responding, and
- if you wish us to treat your response as confidential, state this clearly.

Deadline for receipt of comments

The deadline for receipt of responses is 31 March 2008.

Confidentiality

- We may publish a list of respondents with a report on responses. Partial attributed responses may be published.
- If you prefer your response to be treated as confidential, please ensure that you advise us accordingly. Our online and downloadable forms include a question that asks you to state your preference.

How we will communicate with you

- We are unable to acknowledge individual responses. We take this opportunity to thank you, in advance, for your response.
- We encourage you to visit our website. Please bookmark sra.org.uk/LSA for the latest information on regulatory changes required by the Legal Services Act.
- SRA Update (update.sra.org.uk), our e-newsletter for regulated individuals, includes news about our plans, progress and regulatory changes. If you are a working solicitor, trainee solicitor, registered European lawyer or a law student with an SRA student number, we send you SRA Update as a matter of course—provided you have supplied us with a contact email address and have not previously unsubscribed. To ensure that the SRA has your current contact email address on record, please email recordchanges@sra.org.uk, asking us to note your current email address.
- To stay informed about our consultations on regulatory changes required by the Legal Services Act, please subscribe to SRA consultation alerts. Go to consultations.sra.org.uk, select **Subscribe to alerts** and follow the on-screen instructions