



## **A Review of the CLC's Authorisation Requirements for Entities**

May 2017

**Deadline for receipt of responses: 5pm, Friday 30 June 2017**

## Summary:

1. The CLC proposes to align the authorisation requirements for Licensed Bodies (ABS- which may be owned and managed by non-lawyers) with the requirements for Recognised Bodies (RBs- which may only be owned and managed by regulated lawyers), which will result in the following:
  - all practices will be required to appoint a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA)
  - it will be possible for the CLC to issue both ABS and RBS licences for an indefinite period
  - application fees for both RBs and ABS will be set at the same level ( to be addressed in the Fees Framework)
  - consequential operational changes and improvements will be made to the CLC's authorisation process.
2. The CLC proposes to amalgamate these changes into a single CLC Practice Licensing Framework.
3. The CLC believes that these proposals will:
  - remove unnecessary burdens and costs on regulated practices whilst at the same time maintaining client/consumer protection;
  - maximise the consistency between the regulatory regimes of RBs and ABS practices;
  - be more cost-effective; and
  - have regard to the better regulation principles (i.e. imposing the minimum burden necessary to achieve the CLC's objective, minimising any undesirable side-effects).
4. An 8 week, rather than 12 week, consultation period is proposed, since the changes proposed relate more to simplification of process than to substantive regulatory amendments. During the Consultation Period the CLC will engage with the profession through a series of consultation meetings to raise engagement in the review of the CLC Authorisation Code.

**Questions:**

- A. Do you agree with the proposal to apply the requirements to appoint a HoLP and HoFA to all practices?
- B. Do you agree that any risk to sole practitioners can be effectively mitigated by allowing a sole practitioner to hold both the HoLP and HoFA role?
- C. Do you agree with the proposals to allow the CLC to extend the period RB licences are issued from one year to an indefinite period?
- D. Do you agree with the proposal to issue all new practices with an initial fixed period(s) licence (usually of one year) prior to the issuing of a licence for an indefinite period?
- E. Do you agree that the CLC should start to issue licences to RBs for an indefinite period from 1 November 2018?
- F. Do you agree that the application fee for RBs and ABS practices should be set at the same level?
- G. Do you agree with the amended Fit and Proper Test and is there any other criteria for assessing whether an individual is fit and proper which should be included in the test?
- H. Do you agree with the CLC's proposal to simplify the information it requires for ABS applications?
- I. Do you agree with the proposal to align and amalgamate the authorisation requirements for RBs with the requirements for ABS into a single CLC Practice Licensing Framework and do you have any comments on the proposed Framework?

## **Responding to this Consultation**

5. You are invited to respond to our [online consultation paper](#) (you can preview the questions on page 3).
6. When you respond please give your name and address and your status, (job or professional title) or professional qualification.
7. The CLC intends 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.
8. You can also respond by sending your responses by post to:

**The Council for Licensed Conveyancers**

CAN Mezzanine

49-51 East Road

London

N1 6AH

Or by to DX 36603 FINSBURY

**Deadline for receipt of responses: 5pm, Friday 30 June 2017**

## **Statutory Framework**

9. The CLC was established by the Administration of Justice Act 1985 (AJA) and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board. It licenses and regulates CLC Lawyers and CLC Practices in the provision of reserved legal activities, currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.
  
10. As an approved regulator the CLC 'must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives'.

## **CLC's Approach to Regulation**

11. The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
  
12. The CLC's regulatory activities include:
  - issuing licences to practise to individuals and entities authorised to provide conveyancing and probate services
  - setting educational and training standards for entry to the profession
  - maintaining a register of all licensed conveyancers and CLC practices
  - setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers and CLC Practices
  - monitoring the work and conduct of CLC Practices
  - providing guidance and advice to CLC practices to maintain compliance with our regulatory requirements
  - investigating allegations of misconduct and where appropriate taking disciplinary action, and
  - collaborating with key stakeholders in the legal services market to monitor and shape future policy.

## Introduction

### Purpose of consultation

13. The CLC started its review of the CLC Handbook in 2016 to ensure that it provides proportionate consumer protection and sufficient flexibility for the regulated community to innovate, compete and grow. This consultation paper focuses on the authorisation requirements for Recognised Bodies (RBs) and Alternative Business Structures (ABS).
  
14. The purpose of this consultation is to seek views on our proposals to simplify the CLC's authorisation process and requirements, and to ask for proposals to make further changes.
  
15. In this consultation we set out:
  - a. the background to this consultation;
  - b. proposals put forward to amend the CLC's current authorisation requirements;  
and
  - c. next steps and implementation timetable
  
16. The consultation will run for 8 weeks, ending on **30 June 2017**. We are setting this deadline so that we can begin implementation as swiftly as possible; but we will remain open to, and encourage, further suggestions beyond that date.

## **Background**

17. The authorisation requirements for RBs and ABS are currently set out in separate frameworks. Each covers all matters relating to the authorisation of the relevant entity (as RB or ABS) and include initial and continuing requirements for the CLC Practice, its managers, and relevant employees.
18. The Legal Services Act 2007 which authorised the licensing of ABS made specific requirements for:
  - the approval of non-lawyer owners and managers of ABS, and
  - the appointment of a Head of Legal Practice and a Head of Finance and Administration (there is no similar statutory requirement for RBs).
19. Since ABS were first licensed in October 2011, the CLC's experience in regulating over 50 ABS (which account for 20% CLC practices) is that ABS pose no greater risk to consumers or to the public interest than RBs.
20. A review and update of the CLC's approach to the authorisation of ABS and RBs is therefore appropriate to ensure that the process for licensing ABS and RBs is proportionate to the risks which have been identified.
21. Any change to the CLC's authorisation requirements must meet the CLC's core regulatory purpose of providing appropriate protection for the public and consumers, supporting the operation of the rule of law and the proper administration of justice. In determining applications for authorisation, the CLC will continue to take account of all the regulatory objectives set out in the Legal Services Act 2007, including promoting competition and improving access to justice and will be mindful of best regulatory practice to ensure its regulation is proportionate and targeted only where needed.

## Proposals

22. In reviewing the current ABS and RBs Framework, the CLC's objective is to:
- remove unnecessary burdens and costs on regulated practices whilst at the same time maintaining client/consumer protection;
  - maximise the consistency between the regulatory regimes of RBs and ABS practices;
  - be more cost-effective;
  - have regard to the better regulation principles (i.e. imposing the minimum burden necessary to achieve the CLC's objective, minimising any undesirable side-effects).
23. To achieve these aims, the CLC proposes to align the process of authorisation requirements for RBs with the requirements of ABS and amalgamate the two into a single CLC Practice Licensing Framework.
24. The alignment of authorisation requirements for ABS and RBs will consist of the following:
- requiring all practices to appoint a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA)
  - changing the duration of licences
  - aligning the initial application fees of RBs and ABS
  - making operational changes and improvements to the CLC's authorisation process.

## **1. Proposal: Requiring all practices to appoint a HoLP and HoFA**

25. It is proposed that under the amended CLC Practice Licensing Framework all CLC practices will be required to appoint a HoLP and HoFA.

### **Rationale**

26. Under the Legal Services Act 2007 (LSA), an ABS must at all times have a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA) approved by the CLC. The HoLP must be a regulated lawyer, but there is no requirement for a HoFA either to be a regulated lawyer or have accounting qualifications.

27. The legislation defines each role in terms of their responsibility for compliance with the regulatory regime (HoLP) and accounting requirements of the ABS (HoFA).

28. In extending the requirement for HoLPs and HoFAs to RBs, CLC Practices will be encouraged to be more focused on:

- achieving and maintaining compliance with their regulatory responsibilities
- improving financial management.

29. In addition, while the HoLP and HoFA provisions in the LSA are designed to address ABS-specific risks, recent monitoring and inspections have underlined the need for

- a. specified individuals within practices to be accountable to the CLC for ensuring services are compliant with the regulatory arrangements and meet the needs of clients; and
- b. client money is kept safe and there is full compliance with the Accounts Code.

30. The responsibilities of a HoLP and HoFA reinforce the requirement for CLC Practices to adopt appropriate controls and for managers to supervise compliance. This proposal is unlikely to increase significantly the regulatory burden for most practices, since it is already common amongst RBs to allocate responsibility for regulatory compliance and financial governance to separate managers, and these proposals are very much in line with that approach.

31. In making this proposal, the CLC considered whether the proposal to require all practices to appoint a HoLP and HoFA could have an adverse impact on small firms/and or sole practices because of the limited number of individuals working

within the practice. To mitigate this risk, the CLC proposes to expressly allow for a sole practitioner to be both the HoLP and HoFA in a practice.

32. The CLC's primary concern is the implementation of effective controls by the CLC Practice as a whole to minimise any detriment to the interests of clients. As is the case with ABS, the CLC will not prescribe the qualifications and experience of HoLPs and HoFAs over and above the requirements of the LSA. The CLC will expect the HoLP and HoFA to have sufficient experience and seniority within the CLC Practice to fulfil their obligations.

### **Transitional Arrangements**

33. Each RB will be required to make an application for approval of HoLP and HoFA. It is proposed that the CLC will waive the CLC fee for approval of HoLP and HoFA for existing CLC practices, but not the cost to the CLC in carrying out any identity checks.

#### **Questions**

- A. Do you agree with the proposal to apply the requirements to appoint a HoLP and HoFA to all practices?
- B. Do you agree that any risk to sole practitioners can be effectively mitigated by allowing a sole practitioner to hold both the HoLP and HoFA role?

## **2. Proposal: Changing the duration of licences**

34. The CLC proposes to issue licences to all CLC practices for an indefinite period to bring them in line with ABS licences. This will be subject to CLC practices:
- a. paying their annual practice fee
  - b. paying their Contribution to the Compensation Fund, and
  - c. providing annual return information.
35. The 'annual renewal process' will therefore be replaced with an 'annual review process' and as part of the process for paying their regulatory fees all RBs will need to confirm that they remain compliant with the CLC Practice Code.

36. In addition, for all practices seeking their first licence, the CLC proposes initially to issue shorter fixed period licences (of one year) before determining whether a licence of indefinite duration should be issued.

## Rationale

37. For all other RBs practices other than ABS, licensing is currently based on an:

- Initial application for recognition (i.e. licence), accompanied by the relevant forms and a fee
- Annual renewal of recognition, accompanied by the relevant forms and a fee.

38. Following its 2010 consultation on licensing ABS, the Legal Services Board concluded that ABS licences should be 'unlimited in duration, subject to a requirement to report relevant changes, satisfactory performance of regulatory requirements and an annual broadly cost-effective licence fee'<sup>1</sup>. This is currently provided for within the CLC's ABS Framework (requirement 8.41).

39. Issuing licences for an indefinite period for all CLC practices which are currently licensed will:

- provide a more efficient and cost effective process for the CLC, CLC practices and ultimately consumers
- reduce the regulatory burden by replacing the annual renewal process with a review process
- reduce the number of queries raised by lenders enquiring about the licence status of a CLC practice around the renewal period.

40. The CLC considered whether the proposal to remove annual renewal requirements for all practices including RBs could in any way be prejudicial to consumer protection. In particular it considered whether the removal could weaken the incentive for RBs to maintain acceptable standards of behaviour. This is unlikely under the revised Licensing Framework, because the CLC will:

- still have the power to remove licences or issue them subject to conditions in circumstances where there has been a breach of the regulatory requirements and it is appropriate to do so

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<sup>1</sup>[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/abs\\_guidance\\_on\\_licensing\\_rules\\_guidance.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf)

- introduce shorter fixed period licences for all new practices (before they are eligible to be licensed for an indefinite duration), the incentive for these practices to maintain appropriate standards of behaviour is unchanged.

### **Transitional Arrangements**

41. Existing CLC practices will be issued with licences for an indefinite period when their current licences expire on 1 November 2018, unless the CLC is satisfied they should be issued for a shorter fixed period.
42. All new practices will be issued with shorter fixed period licences from 1 November 2018. On renewal, the CLC may issue licences for an indefinite period where the CLC is satisfied it is appropriate to do so having regard to the regulatory objectives.

### **Questions**

- C. Do you agree with the proposals to allow the CLC to extend the period RB licences are issued from one year to an indefinite period?
- D. Do you agree with the proposal to issue all new practices with an initial fixed period(s) licence (usually of one year) prior to the issue of a licence for an indefinite period?
- E. Do you agree that the CLC should start to issue licences to RBs for an indefinite period from 1 November 2018?

## **2. Proposal: Removing disparities in initial application fees between RBs and ABS**

43. Currently, the CLC requires ABS to pay an initial application fee of £1,200 and RBs a fee of £150 (which does not reflect the time spent in determining RBs applications). Given that the CLC is seeking to align the RB and ABS authorisation process, the CLC considers it appropriate to set the initial application fee at the same level for all practices. This figure has yet to be determined, but is anticipated to be in the £1,200-£1,500 range based on an assessment of the time required by the CLC to approve the application and so will be set on a cost money basis.

## Rationale

44. The revised first application fee will be broadly cost reflective. The CLC will retain its right to charge additional amounts above the standard fee for applications which take more than the expected determination period of 2 days (based on an £80 hourly charge rate).

## Transitional Arrangement

45. This change will take effect on 1 November 2017 when the Fees Framework 2017 are planned to come into force.

## Questions

- F. Do you agree that the application fee for RBs and ABS practices should be set at the same level?

## 3 Proposal: Overall operational changes and improvements

46. As part of the CLC's ongoing work to improve operational processes and drive continuous improvement, the CLC has been working on a range of proposals aimed at reducing the time and costs incurred by CLC practices in submitting an application for authorisation. Some of these are relatively minor changes which are likely to have minimal impact on consumers but will reduce the regulatory burden proportionately for those we regulate and enable practices to manage their own risks more effectively.

47. The operational changes and improvements that the CLC propose are set out below:

a) **Revise the Fit and Proper Test to ensure it is proportionate and targeted**

48. Individuals seeking to be authorised for the first time as a Manager, Owner, HoLP or HoFA of a practice or as a CLC Lawyer are required to satisfy a Fit and Proper Test. The CLC's test sets out the criteria for assessing both the probity and financial soundness of individuals.
49. The CLC proposes to make some minor changes to its current Fit and Proper Test – to ensure that it appropriately reflects current assessments of risks and is proportionate and targeted.

50. The test applied will still focus on honesty and competence with an additional financial management and probity test for managers, HoLPs and HoFAs, but will be more streamlined and consequently shorter. This will bring the CLC more in line with the approach taken by other regulators, particularly in the legal sector.

51. An amended version of the draft Fit and Proper Test is provided at **Annex 1**.

#### **b) Simplify information the CLC requires within ABS applications**

52. Currently, information that the CLC requires to be submitted in an ABS application is prescriptive, lengthy and in some areas unnecessarily detailed. Given that the CLC has not identified any risks specific to ABS practices, the CLC proposes to change the application data that it requires to ensure that applicants need only submit sufficient information to satisfy the CLC that risks have been appropriately mitigated. In particular, the CLC proposes to remove the requirement for ABS practices to set out within their application a statement:

- explaining how the body aims to improve access to justice
- detailing compatibility with Code of Conduct outcomes and the Licensed Body Code.

53. ABS applicants have in the past struggled to complete this part of the application, with most practices relying on generic statements that add little value. The CLC therefore considers that removing the need for ABS practices to consider this issue is likely to save time and resources.

54. The amendments proposed do not alter the CLC's view of the key importance of licence data collection as we believe this plays an essential role in the CLC's risk-based approach to assessing whether a practice should be authorised. However, the CLC believes that there are areas where the ABS application process could be further simplified and proportionate. Any decisions on when further information may be necessary will be driven by our assessment of the risk posed by the individual practice.

#### **Rationale**

55. These changes are intended to simplify the application process and reduce the time taken to approve applications

### Questions

- G. Are there any other criteria for assessing whether an individual is fit and proper which should be included in the test?
- H. Do you agree with the CLC's proposal to simplify the information it requires within ABS applications?

#### 4. Proposal: Overall operational changes and improvements

56. The alignment of authorisation requirements will ensure equivalent risk-based proportionate and consistent consumer protection for clients of RBs and ABS. Some areas do not lend themselves to alignment because of the difference in statutory requirements, but also in the difference in risk posed to consumers and the public interest resulting primarily from non-lawyer ownership and management.

57. The unified regime for both RBS and ABS is also intended to make operation of the authorisation process more efficient as the CLC will no longer have to operate two separate systems. This will not mean that all practices will be subject to the same regulatory burden (e.g. the extent of information required when a practice applies for authorisation will be determined by the risks posed by the practice), but rather that cost efficiencies will be achieved through alignment of processes.

58. Any reduction in the administrative burden will contribute to a reduction in overheads of the practice which could then be passed on to clients.

59. The CLC will continue to look for areas where its current process for licensing both RBs and ABS practices can be streamlined and simplified. It may be possible to make further changes about the approval of external owners if the proposals made by the Ministry of Justice in its 2016 consultation paper '*Removing the Barriers*' come into force.

60. The draft Practice Framework is at **Annex 2**.

**Questions**

- I. Do you agree with the proposal to align and amalgamate the authorisation requirements for RBs with the requirements for ABS into a single CLC Practice Licensing Framework?

**Next steps and implementation timetable**

61. The timetable for implementation is as follows:

January 2017	Council approve amendments to CLC authorisation proposals
May 2017	Publish Consultation Paper
June 2017	End of Consultation Period
July 2017	Application to LSB to approve amended authorisation requirements
November 2017	Implementation of CLC Practice Licensing Framework

**Conclusion**

62. Cumulatively, the CLC believes that the proposed changes will have indirect benefits for consumers, because they will help (albeit in relatively minor ways) to deregulate the legal market in ways that support growth and innovation and reduce costs choice for consumers.



## Fit and Proper Test

### Application and Purpose

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1.1 The CLC's Fit and Proper test (FIT) applies to:

- a. An applicant applying to be licensed as a CLC Lawyer;
- b. Those seeking continued authorisation as a CLC approved person.

1.2 The purpose of the FIT is to set out and describe the factors the CLC will consider when determining:

- a. An application by an individual to be licensed or otherwise approved by the CLC; and
- b. The continued fitness of an individual licensed or approved by the CLC.

1.3 The CLC will only license an applicant if they are able and willing to act in a principled manner and deliver the CLC Code of Conduct's Outcomes by complying with its Overriding Principles:-

- a. Act with independence and integrity;
- b. Maintain high standards of work;
- c. Act in the best interests of Clients;
- d. Comply with the duty to the court;
- e. Deal with regulators and ombudsman in an open and co-operative way; and
- f. Promote equality of access and service.

1.4 The factors taken into account in making such a determination are:

### Criminal Conduct

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2.1 Unless there are exceptional circumstances, the CLC **will** refuse an application if an applicant has been convicted by a court of a criminal offence:

- a. Involving dishonesty, fraud, perjury and/or bribery;
- b. Involving violent behaviour;
- c. For which the applicant has received a custodial or suspended sentence;

- d. For which the applicant has been listed on the Violent or Sexual Offenders Register;
- e. Which in the CLC's view is so serious as to prevent the individual from being licensed as a CLC Lawyer or otherwise approved by the CLC.

2.2 The CLC **may** refuse an application if the candidate has accepted a caution from the police for an offence not involving dishonesty.

### **Academic Misconduct**

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3.1 Where the matter being considered concerns academic misconduct, the CLC **will** refuse an application if an applicant has committed deliberate and dishonest acts (e.g. plagiarism, cheating) in order to achieve personal gain or advantage for themselves or for any other person.

3.2 The following factors would therefore be of particular interest to the CLC:

- a. The extent to which the individual was aware of the rules and procedures governing the referencing of material, or the use of group work;
- b. The extent to which the individual acted with intent to deceive; and
- c. The degree of benefit or advantage gained as a result of the offence.

### **Regulatory Misconduct**

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4.1 Unless there are exceptional circumstances, the CLC **will** refuse an application if an applicant has:

- a. Failed to disclose information to a regulatory body when required to do so or has provided false or misleading information;
- b. Been refused registration by a regulatory body;
- c. Been formally disciplined, sanctioned or barred by a regulatory body; or
- d. Failed to comply with the reasonable requests of a regulatory body.

4.2 The CLC **may** refuse an application if an applicant has been rebuked, reprimanded or received a warning about conduct by a regulatory body, unless there are exceptional circumstances.

### **Financial Affairs**

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5.1 Unless there are exceptional circumstances, the CLC **will** refuse an application if an applicant:

- a. Has been made bankrupt
- b. Has entered into an individual voluntary arrangement
- c. Has deliberately sought to avoid responsibility for debts; or

- d. There is evidence of dishonesty in relation to the management of finances.

5.2 The following might help to establish confidence in the individual's ability to manage their financial affairs:

- a. If in view of the time since the bankruptcy or occurrence of the debts there is evidence of subsequent sound financial managements and conduct and that creditors have been paid;
- b. The individual was affected by exceptional circumstances beyond their control, or which they could not have reasonably foreseen.

### **Behaviour which diminishes public confidence in the profession**

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6.1 Unless there are exceptional circumstances the CLC **will** refuse an application if an applicant

- a. Has misused their position to obtain pecuniary advantage, particularly if associated with the provision of legal services;
- b. Has knowingly worked when his competence was impaired by alcohol or drugs;
- c. Has otherwise acted in a way which is in breach of the CLC's Overriding Principles.

### **Supporting Evidence**

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7.1 To help the CLC determine an application where a disclosure has been made, the candidate the following evidence should be included where appropriate:

- a. At least one independent account of the event(s), including sentencing remarks in the case of a criminal conviction;
- b. Evidence of any rehabilitation independently corroborated e.g. independent reports
- c. References from employers or from a professional or regulatory body;
- d. The individual's account of the events and behaviour that has given rise to the concerns; or
- e. Certificates of standing or statements from the relevant regulatory body or disciplinary tribunal and any limitations on the individual's rights to practice or act;
- f. Any other evidence the candidate believes is relevant.

7.2 The onus is on the individual to provide any evidence that is considered necessary and/or appropriate. However, the CLC reserves the right to carry out its own investigation or refuse the application if there is insufficient information provided or if further evidence is not forthcoming.



## CLC Practice Licensing Framework

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### Part 1- General provisions

- 1.1 The purpose of this Framework is to ensure that consumers have confidence in the way CLC Practices (both Recognised Bodies and Licensed Bodies), are owned and managed.
- 1.2 This Framework applies to Managers, Owners and Employees of CLC Practices.
- 1.3 The CLC will only license applicants who are able and willing to act in a principled manner and deliver the CLC Code of Conduct Outcomes by complying with its Overriding Principles:
  - a. Act with independence and integrity;
  - b. Maintain high standards of work;
  - c. Act in the best interests of clients;
  - d. Comply with their duty to the court;
  - e. Deal with regulators and ombudsmen in an open and co-operative way; and
  - f. Promote equality of access and service.

### Part 2- Eligibility to apply

- 2.1 The CLC may only grant an application for authorisation if it is satisfied that the eligibility requirements as set out below are met, namely:
  - a. The applicant is established as a Partnership, LLP, or Company and has:
    - A practising address in England and Wales;
    - A designated Head of Legal Practice (HoLP), who is an Authorised Person in relation to Reserved Legal Activities;
    - A Head of Finance and Administration (HoFA)
  - b. If the application is for authorisation as a Company, the applicant must also:
    - Be registered in England and Wales under the Companies Acts; and
    - Have its registered office in England and Wales at the place or one of the places of business of the Company

- c. If the application is for authorisation as a LLP, the applicant must:
  - Be registered in England and Wales under the Limited Liability Partnerships Act 2000;
  - Have its registered office in England and Wales at the place or one of the places of business;
  - Have at least two LLP Members
- d. If the application is for recognition as a Recognised Body, the applicant may only be owned or managed by Authorised Persons and at least one of the managers must be a CLC Lawyer.
- e. If the application is for recognition as a Licensed Body, at least one of the managers must be an Authorised person.

### **Part 3-Forms, fees, timing of applications**

3.1 All applications made to the CLC under this Framework, must include:

- a. A correctly completed application form (including a statement of the reserved legal activities the applicant wishes to provide);
- b. Declaration and proof of identity of the HoLP and HoFA and consent for data verification to be carried out;
- c. The application fee payable (prescribed by the CLC's Fees Framework);
- d. Evidence of or an offer of appropriate professional indemnity insurance;
- e. Any contribution required towards the CLC's Compensation Fund;
- f. The endorsements for which the application is made;
- g. If the applicant is a Company or LLP, its certificate of incorporation;

3.2 If the application is for authorisation as a Licensed Body, the applicant must also include within its application:

- a. Declaration and proof of identity of each Authorised Person Manager;
- b. Declaration and proof of identify of each Non-Authorised Manager and consent for a data verification check to be carried out;
- c. Declaration and proof of identity of each Authorised person with a material interest and
- d. Declaration and proof of identity of each Non-Authorised person with a material interest, together with their consent for data verification to be carried out.

3.3 An applicant must ensure that any information it provides within its application is complete and accurate and must inform the CLC, as soon as reasonably practicable, of any changes which occur to the information it has provided in support of its application.

- 3.4 An applicant which is already licensed by another Licensing Authority must complete the licence application as required by all applicants.
- 3.5 It is not necessary to submit all documents, information and payments simultaneously, but an application will only be treated as having been made on the day on which the CLC has received all of the documentation, information and payments required to determine that application.

#### **Part 4- Determination period**

- 4.1 Subject to requirement 4.2, before the end of the period of 90 days, beginning with the day on which the application for authorisation is made (the determination period), the CLC must:
- a. Determine the application;
  - b. Notify the applicant of its determination; and
  - c. If it decides to refuse the application, set out the reasons for the refusal.
- 4.2 If, because of the complex nature of the application, or because additional information is required, the CLC may give the applicant a notice extending the determination period (extension notice), but:
- a. The extension notice must be given before the end of the original 90 days determination period;
  - b. The total determination period must not exceed 180 days
  - c. The extension notice must set out the reasons for the extension.

#### **Part 5- Licence determination**

- 5.1 The CLC will determine applications for authorisation as far as is reasonably practicable, in a way which is compatible with the Regulatory Objectives and most appropriate for the purposes of meeting those objectives.
- 5.2 In reaching a decision, the CLC will take into account a range of outcomes, namely:
- a. The applicant's proposed activities and client type;
  - b. The quality of governance/management arrangements to ensure that its managers and employees, comply with the CLC Code of Conduct and all other CLC Codes;
  - c. The quality of arrangements to prevent improper influence;
  - d. The financial viability of the applicant;
  - e. Client money handling arrangements;
  - f. The quality of operating procedures including complaints handling;
  - g. Resources allocated to and arrangements for reserved legal activities;
  - h. Competence to deliver non-reserved activities;

- i. Suitability of proposed Non-Authorised Persons with material interests;
- j. Suitability of proposed HoLP and HoFA
- k. Any other matter which puts at risk any of the regulatory objectives including access to justice.

5.3 The CLC will determine one of the following:

- a. To grant a licence free of conditions; or
- b. To grant a licence subject to conditions;
- c. To refuse the application.

5.4 The CLC may refuse an application for authorisation if in its judgement:

- a. A material interest causes significant concern which cannot be mitigated through conditions;
- b. The applicant has inadequate funds and/or resources;
- c. There are inappropriate governance/management arrangements;
- d. The conditions imposed by the CLC upon which a licence would be issued have not been met;
- e. The legal services are not or will not be delivered or managed by appropriately qualified Authorised Persons;
- f. The applicant has not provided the application information requested, or has provided incomplete or false or misleading information;
- g. There are concerns that the proposed HoLP/HoFA/Owner(s) is not fit and proper for their proposed role, which cannot be resolved by mitigating measures and there is no suitable substitute;
- h. Or any other reason that the CLC considers would be against the public interest or otherwise to do so.

## **Part 6- Notification, effect and duration of authorisation**

6.1 The CLC will notify all applicants of its licence determination within 90 days of receiving a complete application.

6.2 A determination takes effect from the date on which the licence is issued, unless a later date is specified in the licence.

6.3 A licence continues in force for such period as may be set out in the licence (which may include an indefinite period) unless it ceases to take effect in accordance with requirement

6.4.

6.4 A licence ceases to have effect if:

- a. It is revoked under requirement 9.1 of this Framework;

- b. It is suspended under requirement 9.1 of this Framework;
- c. The CLC Practice is wound up for any other reason, so that it ceases to exist;
- d. The CLC Practice is issued with a licence by another Approved Regulator or Licensing Authority.

## **Part 7 - Terms and conditions of authorisation**

7.1 Where a licence is granted, the licence will specify its terms by way of endorsement.

7.2 The following terms apply from the date of the licence. A CLC Practice must:

- a. All CLC Practices must comply with the Code of Conduct and all other CLC Codes;
- b. Provide only those reserved legal activities which it has been authorised to provide;
- c. Provide only those non-reserved legal activities it has been permitted to provide;
- d. Comply at all times with the terms and conditions of its licence;
- e. Pay a regulatory fee at such times as may be determined by the CLC;
- f. Make a contribution to the CLC's compensation fund at such times as may be determined by the CLC;
- g. Comply with any further conditions determined by the CLC;
- h. Submit any additional information required by the CLC;
- i. As soon as reasonably practicable, inform the CLC of any changes in its circumstances which give or may give rise to a material breach by the CLC Practice, its Managers, Owners or Employees (including its HoLP and HoFA) of this Framework or any other obligations set out in the CLC's Regulatory Arrangements, including the Code of Conduct.

7.3 If the CLC is not satisfied that the applicant's arrangements meet its approval requirements, but could be met through the implementation of additional safeguards, the licence will be issued with conditions. Any conditions will be noted on the licence and on the CLC's register, in addition to any endorsements.

7.4 The CLC will simultaneously issue the CLC Practice with a notice explaining the requirements of the condition(s), the reasons for its imposition and its duration (if time-bound).

7.5 Any conditions imposed will take effect at the time the CLC directs e.g. a condition may take immediate effect or at a future date.

7.6 Conditions placed upon a CLC Practice's licence may result in it incurring expenditure and may include:

- a. A limitation of the types of reserved and or non-reserved services it may provide;
- b. A requirement that the CLC Practice as a whole or a person within, or connected to it, takes a specific step.

7.7 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.

## **Part 8- Modification of terms or conditions**

8.1 A CLC Practice is entitled at any time to apply for a modification amendment of its licence or conditions.

8.2 A CLC Practice wishing to modify its licence terms, endorsements or conditions must complete the appropriate CLC form, make payment of the standard fee and provide the CLC with evidence in support of the application.

8.3 The CLC reserves the right to charge additional amounts above the standard fee for non-standard modification applications where the time spent by the CLC in determining the application exceeds 5 hours.

8.4 The CLC will only modify licence terms, endorsements or a condition without notice to a CLC Practice or individual:

- a. If there has been a change in legislation or its regulatory arrangements;
- b. If it is satisfied it is in the interest of the consumers or the other Regulatory Objectives to do so;
- c. If it is satisfied that any condition or endorsement in force is no longer applicable;
- d. For any other reason it considers necessary.

8.5 The modification will take effect from the time the CLC gives notice, or such later time as the notice may specify.

## **Part 9- Continuity of licence**

9.1 In addition to the requirements of the CLC Notification Code, the CLC must be promptly informed of all Manager, HoLP or HoFA vacancies or changes and must be provided with full and complete details of the new relevant person so that the CLC can determine their application for appointment.

9.2 In a LLP of two Members, if one of them:

- a. Is committed to prison in civil or criminal proceedings;
- b. Is unable, because of incapacity by illness, accident or age, to attend to the CLC Practice for a period of more than 28 days;
- c. Lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under section 15-20, or section 48 of that Act have been exercised in relation to that individual;
- d. Abandons the CLC Practice;

- e. Has a licence issued by the CLC subject to a condition which would be breached by continuing as a LLP member; or
- f. Dies

The licence for the LLP will continue in full force and effect provided the remaining LLP member is an Authorised Person, and within 28 days of the occurrence an additional person has become an LLP member. The CLC may extend the 28 day period (up to a maximum of 120 days) from the date of the occurrence.

9.3 With the exception of a LLP (to which requirement 11.2 applied) where a Recognised Body has only one Manager who:

- a. Is committed to prison in civil or criminal proceedings;
- b. Is unable, because of incapacity by illness, accident or age to attend to the CLC Practice for a period of 28 days;
- c. Lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under section 15-20, or section 48 of that Act have been exercised in relation to that individual;
- d. Abandons the CLC Practice;
- e. Has a licence issued by the CLC subject to a condition which would be breached by continuing as a Manager; or
- f. Dies

The licence for the Recognised Body will continue in force and effect provided a Manager who is an Authorised Person is appointed within 28 days of the occurrence. The CLC may extend the 28 day period (up to a maximum of 120 days) from the date of the occurrence.

9.4 Where the HoLP or the HoFA of a CLC Practice:

- a. Is committed to prison in civil or criminal proceedings;
- b. Is unable, because of incapacity by illness, accident or age, to attend to the CLC Practice for a period of more than 28 days;
- c. Lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under section 15-20, or section 48 of that Act have been exercised in relation to that individual;
- d. Leaves the CLC Practice;
- e. Has a licence issued by an Approved Regulator subject to a condition which would be breached by continuing as a HoLP or HoFA; or
- f. Dies

The licence will continue in full force and effect provided an appropriately qualified and suitable replacement is in place within 28 days of the occurrence. The CLC may extend the 28 day period (up to a maximum of 120 days) from the date of the occurrence.

#### **Part 10- Transitional arrangements for CLC Recognised Bodies**

- 10.1 These provisions apply to CLC Recognised Bodies who wish to apply to become a CLC Licensed Body;
- 10.2 These applications will be fast tracked owing to the CLC's familiarity with these CLC Practices' structure, systems and controls.
- 10.3 Applicants will receive notification of the CLC's determination within 42 days of receipt of their completed Licensed Body application. The application will be assessed and determined using the same criteria as new applicants.
- 10.4 Should there have been significant changes to ownership, the CLC will extend the determination period to 90 days to ensure that it is confident that any new owner(s) do not present a risk to the Code of Conduct Outcomes.

#### **Part 11- Criteria for Approval of Managers, HoLPs and HoFAs**

- 11.1 An application for approval of a Manager, HoLP or HoFA may be made by an applicant or the CLC Practice and must include evidence to satisfy the CLC that the individual is suitable to be a Manager, HoLP or HoFA of the CLC Practice, as appropriate.
- 11.2 When considering whether an applicant should be approved to be a Manager, HoLP or HoFA of a CLC Practice, the CLC will take into account a range of factors including:
  - a. Any concerns identified by the Fit and Proper test;
  - b. Whether the person has been disqualified (by the CLC or by any other Approved Regulator or Licensing Authority) from acting as a Manager, Owner, HoLP or HoFA;
  - c. Whether they have been subject to disciplinary proceedings or a disciplinary investigation;
  - d. Their competence and credibility to fulfil the role effectively;
  - e. Their level of seniority and whether this is appropriate to the size and structure of the CLC Practice;
  - f. Any other relevant information.
- 11.3 The CLC may not approve a person to be a Manager, HoLP or HoFA of a CLC Practice if the CLC is not satisfied that the person concerned is suitable to be involved in the provision of

legal services, and to exercise influence over the conduct of the CLC Practice. This may be because the person concerned:

- a. Has been disqualified from being a company director;
- b. Has been disqualified from being a Manager, HoLP or HoFA by an Approved Regulator or Licensing Authority;
- c. Lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under section 15 to 20 or section 48 of that Act are exercisable in relation to that person;
- d. Has been committed to prison in criminal proceedings;
- e. Has been involved in other conduct which calls into question their integrity or respect for the rule of law;

11.4 The HoLP of a CLC Practice must be an individual who:

- a. Is an Authorised Person in relation to one or more of the reserved legal activities for which the CLC Practice is authorised;
- b. Identified by the CLC to be a fit and proper person in accordance with the Fit and Proper Test;
- c. Not disqualified from acting as a HoLP;

11.5 The HoFA of a CLC Practice must be an individual who is:

- a. Suitably qualified to fulfil the role of HoFA;
- b. Identified by the CLC to be a fit and proper person in accordance with the Fit and Proper Test.
- c. Designated by the CLC Practice to be the HoFA of the CLC Practice and that designation has been approved by the CLC under this Framework;
- d. Not disqualified from acting as a HoFA;

11.6 Provided that the criteria for approval and other requirements are met, the CLC will not prevent an individual from acting as both the HoLP and HoFA of a CLC Practice.

## **Part 12- Approval Process for Managers, HoLPs and HoFAs**

12.1 An application for the approval of a Manager, HoLP or HoFA may be made:

- a. In advance of an application for authorisation;
- b. When applying for authorisation; or
- c. At any time after authorisation has been granted;

- 12.2 Where the CLC Practice applies for the approval of a Manager, HoLP or HoFA following the grant of a licence, it must not allow the person concerned to take office and assume responsibility until it has received written confirmation from the CLC that the person concerned has been approved.
- 12.3 The CLC's decision to approve or refuse approval of the person concerned will be notified in writing to the CLC Practice.
- 12.4 Approval takes effect from the date of the decision unless otherwise stated and continues until:
- a. The approval is withdrawn; or
  - b. The approved person is disqualified;
  - c. The person ceases to hold the approved position in the CLC Practice.
- 12.5 The CLC may grant temporary approval of a designated HoLP or HoFA, where due to unforeseen circumstances, a CLC Practice ceases to have a designated and approved HoLP or HoFA and within seven days the CLC Practice has:
- a. Informed the CLC of that fact;
  - b. Designated a suitable person to replace the previous HoLP or HoFA; and
  - c. Makes an application for the temporary approval of that person.
- 12.6 A temporary approval shall be valid for 28 days or such other periods as specified by the CLC.
- 12.7 The CLC may withdraw an approval, including temporary approval, if:
- a. The information or documentation required is not promptly provided in response to a request made by the CLC;
  - b. The CLC is satisfied that the approved person has breached a duty imposed on them under the CLC Regulatory Arrangements including its Code of Conduct;
  - c. It is not satisfied that the approved person continues to meet the criteria for approval.
- 12.8 Withdrawal of approval takes effect on expiry of the notice period or such later date as stated within the notice.
- 12.9 If an appeal is made before the withdrawal of approval takes effect, the withdrawal is suspended pending the determination of the appeal.

### **Part 13- Criteria and Approval process for Owners**

- 13.1 The holding by a non-authorised person of a material interest in a Licensed Body is subject to the approval of the CLC in accordance with Schedule 13 of the Act.

13.2 An applicant applying to be licensed must provide full details of any non-authorised person who holds or is expected to hold a material interest together with the amount to be held or expected to be held.

13.3 Once licensed a CLC Practice must inform the CLC if there is any change to the extent of interest held by a non-authorised person within the CLC Practice.

13.4 If the CLC has approved a non-authorised person to hold a specific type of material interest and that person then acquires a different type of material interest, this will need to be approved as set out above.

13.5 Failure to notify a proposed or act step or actual acquisition, is a criminal offence which upon conviction could result in a fine.

13.6 If the CLC is notified of a proposed step and the person subsequently takes the step without approval, they are liable on summary conviction to a fine and a conviction on indictment to a term of imprisonment or a fine (or both).13.7 In deciding whether to grant approval to the holding of the non-authorised person, the CLC may require the person to provide relevant documents or information and will have regard to all relevant circumstances including:

- a. Whether there is a risk of improper influence;
- b. Any concerns identified by the fit and proper test;
- c. Their financial position
- d. Whether the person has been disqualified by the CLC or by any other Approved Regulator or Licensing Authority from acting as a HoLP, HoFA, Manager or employee of a practice;
- e. The person's associates;
- f. Any other relevant information.

13.8 If the CLC objects to a holding or decides to permit it subject to conditions, the CLC practice or the non-authorised person may appeal the determination under part 16 of this Framework.

## **Part 14- Suspension or revocation of authorisation**

14.1 The CLC may suspend or revoke a CLC Practice's licence if:

- a. The licence was granted as a result of fraud, error or dishonesty;
- b. The CLC Practice does not have a designated HoLP or HoFA approved by the CLC;
- c. The CLC Practice or one of its Managers, Owners, or Employees has breached their regulatory responsibilities or terms or conditions;

- d. The CLC Practice employs a person disqualified from being a Manager or Employee;
- e. The CLC Practice employs a person without prior authorisation from the CLC;
- f. The CLC Practice is the subject of an allegation or complaint which, if substantiated, is likely to have serious implications for that CLC Practice;
- g. In respect of a Licensed Body:
  - A Non-Authorised person has gained a material interest within the CLC Practice which is in breach of the conditions or further conditions the CLC has placed upon the Licensed Body;
  - The CLC has objected to the Non-Authorised person holding a material interest in the Licensed Body.

14.2 The CLC may, at its discretion, suspend or revoke the licence of a CLC Practice for any other reason, if it considers it would be contrary to one or more of the Regulatory Objectives for the CLC Practice's licence to continue.

#### **Part 15- Disqualification**

15.1 An individual may be disqualified from being a Manager, Owner, HoLP, HoFA, or Employee of a CLC Practice, if the CLC is satisfied that they have intentionally, or negligently acted in breach of their duties or caused or substantially contributed to a breach of licence terms or conditions of the CLC Practice.

15.2 A disqualified individual may apply for the disqualification to be terminated only after 12 months has passed since they were disqualified.

15.3 In respect of a Licensed Body, the CLC will notify the LSB within 14 days of an individual being disqualified. The LSB will maintain a list of those individuals who have been disqualified to ensure that people who are disqualified from the provision of legal services are kept from further harming the public.

15.4 The list of disqualified persons is available to view on the LSB's website.

#### **Part 16- Financial Penalties**

16.1 The CLC may impose a financial penalty upon a CLC Practice and/or one or more of its Managers or employees.

16.2 The CLC is likely to issue a financial penalty when behaviour is inappropriate and needs changing to deter future non-compliance.

16.3 The CLC will determine if the act or omission was deliberate the impact (potential or actual), whether the breach was a one-off or a repeated issue and the attitude of the

individual or CLC Practice, to determine if a financial penalty could be considered an appropriate action and if so the appropriate level.

16.4 Any penalty imposed will be proportionate to the breach and take account of the resources of the CLC Practice.

#### **Part 17- Review/appeal of CLC determination**

17.1 An applicant or CLC Practice who is dissatisfied with any CLC licensing or enforcement determination, namely:

- a. Refusal of application for a licence;
- b. Any endorsement or condition imposed on a licence;
- c. Modification of a licence;
- d. Refusal to approve a HoLP or HoFA or withdrawal of that approval;
- e. Refusal to grant the holding by a non-authorised person of a material interest;
- f. Suspension and/or Revocation of a licence

May appeal against the determination. The respondent must submit an appeal to the CLC within 28 days of being notified of the determination.

#### **Part 18- Register of CLC Practice**

18.1 The CLC must keep a register of all CLC Practices.

18.2 The register must contain, for each CLC Practice:

- a. Its name;
- b. Any previous name(s) under which the CLC Practice has been authorised by the CLC;
- c. The CLC Practice's main practising address in England and Wales;
- d. All of the CLC Practice's other practising addresses;
- e. The date from which the authorisation has effect;
- f. Details of the reserved legal activities that the CLC Practice is authorised to undertake.
- g. If the licence is suspended or revoked, the date on which suspension or revocation took place;
- h. Any enforcement action or sanction on the CLC Practice, its Owner or an Employee;
- i. Whether the CLC Practice is a Recognised Body or a Licensed Body;
- j. The CLC Practice's registered office and registered number, if it is an LLP or Company;
- k. The name of the HoLP and HoFA of the CLC Practice;

I. Any conditions placed on the CLC Practice.

18.3 The Register shall be kept in electronic form and will be accessible from the CLC's website.

18.4 Entries in the Register shall be available for inspection by any member of the public.