



**Second Consultation
Outcomes-Focused Regulation**

**Proposed Application by the CLC to the Legal Services Board as an
Approved Regulator to regulate licensed conveyancers and CLC
regulated practices in the Exercise of Rights of Audience and the
Conduct of Litigation**

September 2010

Submission Deadline: Friday 17th December 2010



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Executive Summary

1. Taking account of the matters set out in this Consultation Paper, the CLC has provisionally concluded that:
 - a. it should apply as an Approved Regulator to regulate licensed conveyancers in the exercise of Rights of Audience and the Conduct of Litigation (as well as Reserved Instrument Activities, Probate Activities and the Administration of Oaths which it is currently authorised to regulate):
 - b. it should seek amendment of its statutory framework so that it can:
 - regulate licensed conveyancers in any legal services they provide, and not confined (as is currently the case) to the Reserved Legal Activities; and
 - issue licences to licensed conveyancers which do not necessarily include an entitlement to provide Reserved Instrument Activities.

Responding to this Consultation

2. The questions posed in this Consultation Paper are set out at page 33. They are not also incorporated into the main part of the Consultation Paper because the questions are not as directly linked to particular sections as they might be in other Consultation Papers. You are invited to respond to some or all of the questions. The CLC also welcomes comments on the proposals as a whole.
3. When you respond could you please give your name and address and whether you are a licensed conveyancer. If you are not a licensed conveyancer, could you please state, if relevant, your status or professional qualification. 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 could you please let us know when you respond.
4. All responses should be sent by email to consultations@clc-uk.org or by post to

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Or by to DX 121925 CHELMSFORD 6

Submission Deadline: 17 December 2010

Introduction

Review of Responses to the First Consultation Paper

5. The CLC published its first consultation on Advocacy and Litigation Rights in February 2010 (Annex 1). This has been characterised as a position paper. A summary of the responses received is at Annex 2. These raised a number of issues which are worthwhile identifying specifically:
 - a. The CLC was established to regulate conveyancing services, and litigation and advocacy services are a completely unrelated service. Such a concern was evidently not shared by Parliament which specifically provided by s.53 Courts and Legal Services Act 1990 that the CLC could apply to regulate licensed conveyancers in the provision of probate, advocacy and litigation services. The CLC has been permitted since 2008 to regulate licensed conveyancers in the provision of probate services. The power to extend the regulatory remit is now governed by the Legal Services Act 2007. Whilst it is for the CLC to make its application and for it to satisfy the requirements of the LSA, the necessary statutory provisions are in force to enable the CLC to extend its regulatory remit.
 - b. Some respondents queried why the CLC should wish to or be entitled to issue standalone licences. As set out in the first consultation paper the CLC believes that it is for the practitioners to elect which services they wish to provide, subject to satisfying the CLC's standards and other requirements. The CLC believes that it is not generally in the public or the consumer interest to require each licensed conveyancer to have a conveyancing qualification and that it is likely to have an adverse effect on competition in the provision of legal services. Licensed conveyancers would have to undertake education and training in an area of law in which they do not intend to practise at unnecessary cost in terms of time and money.
 - c. Further details of the education and training scheme envisaged for those wishing to provide advocacy and litigation services are provided in Part 2 of this second consultation paper. By issuing licences subject to conditions the CLC will ensure that only those who reach the standards required by the CLC education and training scheme will be able to provide advocacy and litigation services. The conditions will set out expressly those services which the licensee is permitted to provide. The CLC intends to encourage licensees to develop competencies in discrete areas of law. It will limit its application to civil litigation and advocacy (and in the short to medium term does not anticipate applying to regulate criminal litigation or advocacy).
 - d. The current education and training scheme for licensed conveyancers concentrates on the responsibility and duties the practitioner has to the client, and does not deal with the duties the advocate, in particular, has to the Court. The CLC agrees this is the case. Provision will be made for trainee advocates and litigators to understand this duty and appreciate its importance. It has been argued that the licensed conveyancer would not understand the distinction between the interests of the client and the duty to the Court. As lawyers, licensed conveyancers recognise any conflict of interest between the lawyer and the client has to be properly managed for the benefit of the client. The duty of the lawyer to the Court introduces a new element, but one which the CLC is confident its proposed scheme will ensure

all individuals licensed to provide litigation and advocacy services will be well aware of their duty owed.

- e. The CLC is confident that its restructuring programme of the last 3 years means it has the appropriate infrastructure in place which can be developed further if required upon where needed. As set out below, the CLC has an established monitoring programme (exercising an audit function) consisting of an accounts function to ensure that the Accounts Rules are complied with and a conveyancing and probate function which ensures that practices provide a competent standard of legal service. It accepts that it will need to have access to external resources in order to develop the processes to enable it to regulate advocacy and litigation services. At least initially it anticipates that it will require additional resources to advise on continued development of those standards and to assist in the monitoring programme. The CLC has developed rules which set standards of conduct, provide for the handling of client money and for the establishment of practices. Where a client is dissatisfied with the service received rules provide for the complaint to be considered by the practice and for the client then to be signposted to the Legal Ombudsman based in Birmingham if the complaint remains unresolved. All practices are required to have professional indemnity insurance with the possibility for the client to apply for a grant out of the CLC's Compensation Fund as a last resort.
- f. The name "licensed conveyancer" is likely to be confusing to a consumer where the practitioner is providing litigation and advocacy services which are apparently not directly related to a conveyancing transaction. The CLC proposes to address this in the short term by encouraging licensed conveyancers whilst still using the title (and stating they are regulated by the CLC, as they are currently required) to adopt explanatory (non-prescriptive) working titles such as "Property Lawyer", "Probate Practitioner", "Litigation Lawyer" and "Advocate".

Part 1

Information required for the CLC's Application

The LSB has asked for the following information to process the CLC's Application.

Reserved Legal Activities to which the Application relates

6. The CLC is applying to regulate licensed conveyancers in the provision of:
 - a. The Exercise of Rights of Audience; and
 - b. The Conduct of Litigation

restricted to civil matters. The CLC does not intend at this stage to apply to regulate these activities in criminal matters.

Details of the CLC's proposed regulatory arrangements

7. The CLC anticipates applying to the Legal Services Board in early 2011 to become a Licensing Authority so it can continue to regulate those practices which have a non-lawyer as owner or manager. The LSB's Guidance Alternative Business Structures: Approaches to Licensing states¹

We expect the regulation of ABS to be based primarily on clear outcomes supplemented by guidance, with rules where there is only one appropriate way to ensure consumer protection and broader public interest. In order to do this consistently across all LAs, we expect LAs to explain how they expect their licensing rules will support the following outcomes and how they will monitor whether the outcomes are being achieved.

8. At the same time as it publishes this Consultation, the CLC is consulting on its Code of Conduct and revised regulatory framework which adopt a principles-based and outcomes-focused approach to regulation. The intention is that the Code will apply to all entities regulated by the CLC, whether as an Approved Regulator or as a Licensing Authority. The CLC wishes to ensure as much consistency as possible between those regulated by the CLC in its capacity as an Approved Regulator and those the CLC hopes to regulate as a Licensing Authority so there is no advantage or disincentive to CLC regulated entities (and no detriment to consumers) in whatever capacity they are regulated by the CLC. This will also reduce the burden on regulated entities which change their ownership or management structure, so requiring them either to become an Alternative Business Structure or a Recognised Body.
9. A summary of the current and proposed arrangements are as follows (the current rules and guidance notes referred to have not been attached to this Consultation Paper; they may be accessed on the CLC website at www.clc-uk.org):

Authorisation Processes

10. Current – The Licensing Rules 2009 set out the requirements which have to be satisfied for an individual to be issued with a licence. Individual applicants for licences must satisfy the CLC that they are fit and proper persons to be issued with a licence and that they have reached the appropriate standard of education and training. Applicants are required to provide two independent professional

¹ Para 5 page 2

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf

references and to respond to specific questions in the application form (this includes questions about criminal offences, disciplinary proceedings and insolvency). The CLC carries out credit and other checks to satisfy itself of the integrity of the information provided. The CLC does not carry out CRB checks since it is not currently entitled to ask exempted questions under the Rehabilitation of Offenders Act (ROA) 1974 Exceptions Order 1975.

An Applicant applying for a licence to manage a new practice is required to provide (with supporting evidence) the following:

- a. details of its structure (whether it is a sole principal, partnership, LLP or limited company),
- b. a business plan, cash flow forecast, and details of the proposed office premises
- c. the names of the owners and managers with forms completed (to include CV and, if they are professionally qualified details of those qualifications).

The Applicant manager will usually be required to attend the CLC for interview. The purpose of the interview is to satisfy the CLC that the Applicant has a good working knowledge of the CLC's rules; has the capability in terms of competence and resources to keep proper accounting records; has systems in place for providing appropriate and timely information to clients; and has sufficient financial resources available. Decisions are made no later than 28 days following interview. Licences are issued either without conditions or subject to such conditions as the CLC consider appropriate. Each practice is issued with a certificate of recognition. The CLC requires each practice to notify it where there is a change of manager.

Where an application is refused or a licence granted subject to conditions the applicant may appeal to the Discipline and Appeals Committee which will determine the appeal at a hearing.

11. Proposed – the CLC anticipates that there will be no substantive changes to these processes when applied to applicants wishing to be licensed to provide advocacy and litigation services.

Practice rules

12. Current – The Accounts Rules 2008 (and Accounts Guidance Notes). All practices and licensed conveyancers providing legal services to the public are required to keep client monies separate from other monies of the practice and to be able to account on demand for all client monies. Client monies must be kept in a separate bank account, client ledgers maintained so that the balance on any client account is immediately evident and that appropriate accounting records are kept. Each practice is required to carry out a bank reconciliation at least once every six weeks and to submit each year an Accountant's Report in prescribed format completed by an independent accountant within 6 months of the end of the annual accounting period.
13. Proposed – no substantive change is anticipated.

Code of Conduct

14. Current – All licensed conveyancers and recognised bodies are required to comply with the Conduct Rules 2009 and Guidance Notes. The CLC updated the Conduct Rules 2009 and Guidance Note 9 – Complaints Procedure in August 2010 to ensure that clients who have made a service complaint are signposted to

the Legal Ombudsman if remained dissatisfied after the practice has completed the investigation of a complaint. The CLC has published a suggested complaints procedure and an Anti Money laundering toolkit to help practices comply with the rules.

Disciplinary Arrangements

15. Current – under s.24 Administration of Justice Act 1985 where the CLC receives a complaint of a disciplinary nature about a licensed conveyancer the Investigating Committee is required to carry out a preliminary investigation with a view to determining whether there is a case which ought to be referred to the Discipline and Appeals Committee for hearing and determination.

The members of the Investigating Committee are selected in accordance with the Investigating Committee Rules 2004. The Investigating Committee sits as a panel of five.

The Discipline and Appeals Committee sits as a panel of three comprising a legally qualified Chair, a licensed conveyancer and a lay member. The members of the Discipline and Appeals Committee hold office for a period of three years in accordance with the Discipline and Appeals Committee Rules 2009. These rules provide that the terms of office of the members of the Discipline and Appeals Committee in office when those rules came into effect expire on 30 September 2012. Proceedings of the Discipline and Appeals Committee are conducted in accordance with the DAC (Procedure) Rules 2001.

A Legal Adviser sits with the Committee. His role is to advise the Discipline and Appeals Committee on questions of law and the admissibility of evidence and to advise of any irregularity in the proceedings which might result in a mistake in law.

Proceedings before the Discipline and Appeals Committee are prosecuted by the Solicitor to the Council (there is provision for independent representation). The respondent licensed conveyancer is entitled to independent representation.

A transcript is taken of all proceedings. Written evidence and documents are exchanged in advance of hearings and forwarded to the Discipline and Appeals Committee and to the Legal Adviser in advance of hearings. There is provision for the giving of oral evidence on oath and for cross-examination.

The Discipline and Appeals Committee will retire at the conclusion of the case to determine whether the allegations have been proved to its satisfaction. Reasons are given for the finding. If the allegations are proved the Discipline and Appeals Committee then asks for additional information to enable it to determine what, penalty, if any to impose. The range of penalties is prescribed by s.26(2) AJA and range from the disqualification of the respondent from holding a licence, to suspension, to fine (up to £1 million), the imposition of conditions on a licence, a reprimand and the payment of costs (the DAC has power to direct either the Respondent licensed conveyancer or the CLC to pay costs – in exceptional circumstances the person making the allegation which is the subject matter of the hearing may be directed to pay costs).

A respondent may appeal against an order made by the Discipline and Appeals Committee to the High Court which may make such order as it thinks fit. The decision of the High Court is final (s.26(7) & s.26(8) AJA).

16. Proposed – the LSB has published a Consultation Paper about the appeals process for ABS and proposed that appeals from decisions of licensing authorities should be determined by the Lower-tier Tribunal of the Tribunals Service, subject to a right of appeal to the Upper Chamber. The CLC supports such a proposal and has enquired whether the Lower-tier Tribunal could take over the functions of the Discipline and Appeals Committee. The CLC understands that in principle this is possible. The benefit of appeals of this arrangement would be to further separate determination of disciplinary proceedings and appeals from CLC determinations CLC from the CLC itself. It is also likely that this will result in a net saving of costs incurred by the CLC.

The CLC has made rules enabling the Investigating Committee to impose a fine of up to £3,000 (but no other penalty) where it is satisfied that an allegation of breach of the CLC's Rules has been proved to its satisfaction. It is anticipated that these rules will be brought into force after 31 March 2011 by which time new members will have been appointed to this committee.

Qualification regulations

17. Current - The CLC accepts students for registration, subject to the CLC being satisfied that they are fit and proper to be registered as a student.² Applicants are required to have at least 4 GCSEs at Grade A*-C, including English. These requirements may be relaxed where the applicant is over 25 or has been working in a CLC or SRA regulated practice. The education programme is designed to help students make the transitions to the CLC programme. They must first complete assignments at Foundation Level for:

- Introduction to Conveyancing; and
- Introduction to Law and Legal Method

leading on to examination also at Foundation Level in:

- Law of Contract, and
- Land Law.

Once the Foundation Level has been successfully completed students progress to the Finals Level leading to examination in:

- Accounts,
- Conveyancing Law and Contract, and
- Landlord and Tenant.

Those wishing to become Probate Practitioners must pass the Foundation Course Law of Wills and Succession and the Finals Course in Probate Practice.

A student may take conveyancing and probate examinations in parallel.

Applicants with prior learning may apply for exemptions.

The CLC is in the course of revising the conveyancing and probate courses so as to create an overarching qualifications and credit framework which will encompass all modules and stages within the complete CLC programme. The

² Further details of the current arrangements for education and training are in Information for Applicants accessible at http://www.clc-uk.org/professionals_index.asp?TypeId=2&CategoryId=4. The Training Rules 2004 provide the framework for these arrangements.

development of a qualification and credit framework will help to provide a coherent structure for the training programme and will clearly demonstrate how the programme components fit together. This will enable stakeholders to identify easily the different levels of achievement gained by individuals taking CLC modules. The framework will also allow stakeholders to accurately measure the value and transferability of study completed towards the CLC training programme and licence in terms of credit accumulation.

Before they are eligible to apply for a licence students must satisfy the CLC that over a two-year training period they have gained experience in a wide range of appropriate skills. The CLC will be re-working the practical training requirement at the same time as developing its current courses to ensure that all elements provide the outcomes required in preparation for practice as a licensed conveyancer.

18. Proposed – these are set out in Part 2.

Indemnification Arrangements

19. Current – as required by the Indemnity Rules 2009 all practices must provide evidence of insurance to the CLC before they are permitted to provide legal services to the public. The CLC administers a Master Policy to respond on a claims made basis to claims of civil liability. The Master Policy is currently administered by an insurance broker and claims are managed by a loss adjuster. Insurers to the Master Policy provide quotations for all practices. As required by the EU Services Directive there is provision for practices based in the EU to apply to the CLC for authorisation to provide legal services within England and Wales. Provided they can demonstrate that they have equivalent professional indemnity cover, such practices do not need to have cover through the Master Policy.
20. Proposed – the CLC is considering whether it should permit practices to opt out of the Master Policy scheme if they are able to secure professional indemnity cover in all respects equivalent to the Master Policy.

Compensation Arrangements

21. Current – the CLC maintains a Compensation Fund “for the making of grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of—

negligence or fraud or other dishonesty on the part of licensed conveyancers, or of employees or associates of theirs, in connection with their practices (or purported practices) as licensed conveyancers; or

failure on the part of licensed conveyancers to account for money received by them in connection with their practices (or purported practices) as licensed conveyancers (s.21(2) AJA).”

The Compensation Fund Rules 2009 set out the factors the CLC takes into account in determining whether to make a grant out of the Compensation Fund. The CLC may make grants of up to £1 million. Unlike the SRA Compensation Fund, grants may be made in respect of loss suffered as a result of negligence, as well as dishonesty or failure to account.

22. Proposed – no significant changes are proposed to the way in which grants out of the Compensation Fund are managed.

Licensing Rules – see details of the Authorisation Process above.

Other related rules – Monitoring Programme

23. Current - the CLC is permitted under the Accounts Rules and the Conduct Rules to inspect CLC regulated practices. Whilst, when they were first set up in the early 1990s, the primary purpose of the programme was to identify serious breaches of the rules, the monitoring programme has developed a discrete risk management focus. The CLC checks that appropriate practices and procedures are in place to protect the consumer and to provide safeguards against fraudulent activity or claims of negligence. Successful claims may have a significant impact, not only on the Practice concerned but also on the CLC's Master Policy scheme and, ultimately, on the CLC's Compensation Fund Scheme. The CLC's purpose is to create a greater awareness of the need for appropriate procedures to be in place, and in particular for files to be maintained in a manner that will avoid mistakes and omissions.

The CLC will carry out a monitoring inspection shortly after a practice has started to trade, usually within the first six months. This may be earlier if the CLC becomes aware of specific concerns. The purpose is to ensure that the practice:

- a. is maintaining proper accounting records,
- b. is carrying out bank reconciliations each month, and that it has in place appropriate accounting systems and controls, primarily for the protection of the consumer,
- c. is maintaining proper records of transactions by carrying out file checks,
- d. has an appropriate complaints handling policy in place which is being followed,
- e. has Anti Money Laundering procedures and policies in place which are being followed.

Separate reports are prepared for the accounting and transaction functions and delivered to the Practice.

The manager licensed conveyancer of a new practice is invariably required to attend a Monitoring and Practice Workshop (often with the in-house accountant or book-keeper). The purpose is to take attendees through the requirements of the Accounts Rules, complaints handling, Anti Money Laundering Compliance, establishing a retainer with the client, acting for lenders and good conveyancing practice and to explain the CLC's monitoring process.

Whilst it has no representative function, the CLC provides informal advice to the regulated community. This has a number of benefits:

- It often enables a difficulty relating to a transaction or to the management of a service complaint to be quickly resolved, helping both the consumer and the practitioner;
- Suggesting to the practitioner what steps should be taken to manage a problem, and what information should be given to the consumer if the issue cannot be resolved immediately,
- It can highlight to the CLC an area of difficulty which is likely to affect the wider regulated community, and may result in guidance being published to the profession.

24. Proposed – since 2008 the CLC has moved away from routine monitoring inspections to developing a risk-based approach to monitoring. The main tool is a Monitoring Information Request form which the practice is required to complete at the outset of the inspection process. Based on perceived risk the CLC may carry out:
- a desk-based inspection (requiring the relevant practice to submit accounting records for an accounts inspection, or a sample of transaction files for a conveyancing or probate inspection); or
 - an inspection at the offices of the Practice.

The CLC is in the process of building a risk profile for each business which ultimately will include information derived from Accountant's Reports; complaints made by the practice's clients; regulatory decisions made by the CLC (including previous inspection history); key staff changes within the practice; and intelligence received from third parties about the practice. The CLC has agreements in place with the SRA, SOCA, FSA and the Land Registry and exchanges intelligence on an informal basis with other regulators.

Explanatory Material

25. Current - The CLC is a body corporate³ governed by a Council (currently consisting of 7 members appointed in accordance with the Appointment Regulations 2009). Schedule 3 AJA requires there to be a bare majority of licensed conveyancer members on the Council. This requirement is at odds with the LSB's requirement that there should be a bare majority of lay members on the Board of Approved Regulators. The CLC has asked for schedule 3 AJA to be amended under s.69 LSA to provide for the Council to comprise a majority of lay members.

The Council comprises:

- Lay Chairman – Anna Bradley
- Licensed conveyancer members

Alexander Clarke
Rob Gurney
John Jones
John Wells

- Lay members

George Kidd
Jan Smith

The Council has agreed a Governance Framework which includes a Code of Conduct for Council members and standing orders for the Council and for its Committees. Three members of the Council sit on the Remuneration and Selection Committee and the Audit Committee (along with one independent member appointed for expertise in accounting matters).

The Investigating Committee currently consists of five members (including a Chairman) who are not members of the Council. New members are due to take office with effect from 31 March 2011. Until 31 March 2011 the Investigating

³ See para 1 sch 3 AJA

Committee's main function is to determine service complaints made against licensed conveyancers and CLC regulated practices. The Legal Ombudsman will of course accept service complaints against all Approved Persons (including licensed conveyancers) from 6 October 2010. As a result the workload of the Investigating Committee will be restricted to its jurisdiction in relation to conduct complaints and issues.

The Discipline and Appeals Committee (as set out above) consists entirely of members who are not members of the Council. Their terms of office come to an end on 30 September 2012. The terms of office of the Legal Advisers comes to an end on 30 June 2011.

The Licence and Practice Committee:

- determines applications for a licence and for recognised body certificates which raise serious fitness to practise issues,
- determines applications for grants of over £50,000 out of the CLC's Compensation Fund,
- is consulted on the exercise by the CLC on its powers of intervention are made following consultation with the Licence and Practice Committee, and
- has a policy function in relation to licence and recognised body applications, the Master Policy and the Compensation Fund.

26. Proposed – the Council is investigating whether the functions of the Investigating Committee and the Licence and Practice Committee can be amalgamated into one committee (provisionally called the Adjudication Committee). The purpose of this committee would be to determine applications for review or appeal of determinations made by the CLC under delegated powers.

Authority the CLC proposes to give persons to carry out Reserved Legal Activities

27. The CLC will, by the granting of appropriately worded conditions on licences, only permit those persons which it is satisfied have met its education and training requirements.

Regulations as to education and training persons must receive to be authorised

28. The CLC's Training Rules 2004 will be replaced by the Student Training Code and Guidance, a draft of which is attached to the Consultation Paper on the CLC's Regulatory Framework. The CLC is in the course of developing regulations. The proposed structure of the regulations is outlined in Part 2 at paragraph 10 (Assessment Regulations).

Rules as to conduct required of persons carrying on reserved legal activities

29. An explanation of the relevant rules is set out at paragraphs 12-14.

Likely effect the grant of rights is likely to have on competition

30. The CLC believes that the grant of rights will increase competition, by extending the scope of lawyers able to provide advocacy and litigation services to consumers.

Likely impact on consumers of making order

31. The CLC believes that the extension of the rights would have a beneficial effect on consumers. It would extend their choice of legal provider. It would also have the effect of encouraging lawyers delivering advocacy and litigation services not only to ensure that they have the necessary knowledge of the law and procedures in the relevant area of law, but also to improve the way in which they communicate with their clients so they are able to make appropriate and informed choices, tailoring legal services to the specific needs of consumers.

Likely impact on the Courts of the making of the order

32. The CLC anticipates that the making of an order would assist in maintaining a high standard of advocacy in the Courts, and to that extent would have a beneficial impact. The CLC will issue licences subject to conditions so that licensed conveyancers would only be able to appear as advocates in Court in matters relating to areas of the law and in relation to the types of hearings or applications where the CLC had been satisfied they could act.

Internal Governance Arrangements for the CLC

33. An explanation is set out at paragraphs 25-26.

CLC's Competence to regulate Advocacy and Litigation, and resources available

34. As set out at 5a, the CLC has regulated licensed conveyancers and CLC regulated entities in the provision of conveyancing services since 1988, and probate services since 2008. It has developed a comprehensive set of rules to regulate these services, and a monitoring programme to ensure compliance with a disciplinary process which penalises those who fail persistently to comply with the rules or who put the interests of consumers at risk. Where a practice is failing the CLC will exercise its powers of intervention to prevent the practice from continuing to trade and to ensure a structured closure. All practices are required to have professional indemnity insurance cover in place under the CLC's Master Policy scheme. This system of regulation will be appropriately modified so it is directly applicable to the regulation of advocacy and litigation services.
35. As explained at paragraphs 25-26, the CLC has the infrastructure in place. The CLC is governed by a Council of seven members currently with a licensed conveyancer majority. The CLC has applied (and the LSB is currently consulting) for amendment to schedule 3 of the AJA so that the definition of licensed conveyancer member is extended; the definition of lay member mirrors the definition at schedule 1 LSA; and there is a majority of lay members on the Council. The structure of the committees of the Council is explained at 25.
36. The CLC has a staff of 22 headed by the Chief Executive and supported by three directors: the Director of Operations, the Director of Policy and Standards and the Director of Corporate Services. Operating decisions are made by staff at the appropriate level applying agreed criteria. A diagram showing the staff organisation is at Annex 3. Where matters for determination (in particular those relating to applications by licensed conveyancers and CLC regulated entities) raise issues which go beyond those criteria or raise issues of policy, they are referred to the appropriate committee for determination. The committees (in particular the Licence and Practice Committee) carry out a review where a individual or entity is dissatisfied with the original decision which has been made.

37. This structure has been developed over the last three years specifically to take account of the changes introduced by the LSA and to prepare the CLC to apply to become a Licensing Authority and to regulate advocacy and litigation services.
38. The CLC anticipates that in the short term the current level of staffing will be sufficient to manage the licensing of licensed conveyancers and CLC regulated entities to provide advocacy and litigation services. It is confident there are sufficient resources to carry out the bulk of monitoring and oversight required for any CLC regulated entities. It has the capacity and the capability - with the assistance of external resources, if this is considered appropriate - to develop a monitoring scheme tailored to the delivery of advocacy and litigation services. Initially, it will recruit one inspector with specific knowledge about the delivery of advocacy and litigation services to carrying out monitoring inspections and to advise the CLC on other issues related to the delivery of advocacy and litigation services.

Consistency with Better Regulation Principles

39. In developing its proposed arrangements to regulate advocacy and litigation services the CLC has taken full account of the better regulation principles, namely that the CLC's regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed:
40. They are transparent in that the CLC has set out in this Consultation Paper the basis on which it intends to regulate advocacy and litigation services. At the same time as it is preparing its application the CLC is re-working its regulatory arrangements so it can demonstrate it has a principles-based and outcomes-focused approach to regulation which is consistent across its regulated community. The education and training requirements will require those it regulates to reach a standard which gives them the competence and confidence to advise and act for consumers. However, the education and training programmes will be as flexible as possible giving the maximum number of applicants from different educational and social backgrounds the opportunity to provide advocacy and litigation services
41. The CLC will take account of all the responses received to this Consultation Paper. Assuming its application is successful the CLC will carry out periodic reviews of the arrangements (to include consultation with stakeholders) to ensure that:
 - they remain appropriately targeted delivering the outcomes the CLC considers appropriate, and
 - they continue to set the correct level of standards appropriate to the range of consumers to which those it regulates deliver legal services (this will go beyond advocacy and litigation services).

Resolution of Regulatory Conflict

42. The CLC already has a written understanding in force with the SRA, SOCA, the FSA and the Land Registry. Informal arrangements are in place with the other regulators. In the context of the CLC's and the Law Society/SRA's intended Licensing Authority applications the CLC is participating in an initiative led by the SRA for a number of Approved Regulators to agree a Memorandum of Understanding between themselves and other regulators.

Responsibilities for front line complaints

43. Since 2005 the CLC has had in place rules⁴ regarding complaints processes. CLC regulated practices must notify clients at the outset of a transaction of their right to make a complaint and how it can be made and that the complaint can be escalated to the CLC if the complainant is not satisfied with how the practice dealt with their complaint. At the conclusion of the practice's investigation the complainant is reminded that a complaint can be made to the CLC. The CLC checks compliance with its complaints-handling requirements as part of the monitoring programme.
44. The CLC has agreed a Memorandum of Understanding with the Legal Ombudsman and has reached an advanced stage in agreeing an Operational Protocol, principally for the exchange of information.

Clients money must be protected

45. As set out under paragraph 12 and provided by the Accounts Rules, client money must be held in a separate designated bank account. The practice must be able to account immediately for all monies in client account. Where there is failure to account on the part of an employee, or a manager (where there are more than one managers), it is likely that any claim will be dealt with as a claim under the CLC's Master Policy scheme. If the claim is not accepted under the Master Policy scheme, the claim can be treated as an application for a grant from the CLC's Compensation Fund. (See also paragraphs 19-23).

Authorised Persons act in interests of clients, subject to duty to the Court

46. Principles 3 and 4 of the draft Code of Conduct on which the CLC is currently consulting deal respectively with the requirement upon licensed conveyancers to treat the interests of their clients as paramount and the proposed duty of a licensed conveyancer advocate to the Court.

Regulated Legal Services should only be delivered by regulated persons with appropriate skill and competence

47. The CLC's Rules and the processes set out in this Consultation Paper are designed to ensure this is the case.

Compliance with professional principles should be enshrined in regulation

48. The CLC is currently consulting on its draft Code of Conduct (intended to come into force in late 2011). The Professional Principles are central to the Code.

Effective investigative systems and disciplinary powers

49. The CLC's investigative systems and disciplinary powers are explained at paragraphs 15-16.

Supporting Competition

50. The CLC's proposed arrangements provide a flexible programme for individuals to acquire the education and training required to deliver advocacy and litigations services to consumers. The programme will be designed so that those studying the programme develop not only the technical skills required to deliver these

⁴ Conduct Rules 2005, now Conduct Rules 2009 and Guidance Note 8 – Estimates and Terms of Engagement and Guidance Note 9 – Complaints Procedures

services, but also those skills which the consumer values, such as effective communication and provision of accessible, appropriate and timely information.

51. The extension of the scope of activities regulated by the CLC will enable licensed conveyancers and CLC regulated entities to provide an extended range of legal services to consumers in different ways.

Independence of Regulatory Functions from Representative Functions

52. The CLC was established by the Administration of Justice Act 1985 to regulate licensed conveyancers. It has an exclusively regulatory function, and has no power to assume any representative function. Since it has no representative function, the CLC is satisfied that none of its regulatory functions can be prejudiced and that all decisions relating to its regulatory function are taken independently of any representative function.

Regulation should clearly support the rule of law

53. The draft Code of Conduct makes specific reference to the Regulatory Objectives including the requirement to support the constitutional principle of the rule of law. The Code emphasises the importance of licensed conveyancers and CLC regulated entities making decisions and acting in a manner which is consistent with the law at all times.

The licensed conveyancer profession to reflect the population it serves

54. The CLC has minimal educational requirements for an individual to register as a student (4 GCSEs Grades A*-C), which requirements may be waived if the individual is over 25 or has experience working in a lawyers' office. The purpose of the Foundation Assignment modules is to provide the student with the skills necessary to study and pass the CLC's exams.
55. The CLC is currently consulting on a draft Equality Code and Guidance which will apply to the profession.

The CLC's processes address public education

56. It is intended that a version of the Code of Conduct is created to form a Client Charter, to inform the public of the outcomes which those the CLC regulates are required to deliver for their clients and their avenues of redress should this not be the case.

In summary

57. In light of some comments received to the initial consultation it is worth reiterating that s.53 Courts and Legal Services Act 1990 - enacted five years after the Administration of Justice Act 1985 which had established the CLC - specifically provided for the CLC to obtain rights to regulate licensed conveyancers in the provision of probate, advocacy and litigation rights. The Legal Services Act 2007 allows Approved Regulators to apply to regulate additional reserved legal activities and also for applications to be made by other bodies to become Approved Regulators. There is a rigorous process to assess any application. The CLC accepts that it has to meet those criteria. The issue therefore is for the CLC to satisfy the requirements of the LSA.
58. The CLC regulates over 1,000 licensed conveyancers and 200 practices. A new Council of seven members all appointed under the Appointment Regulations 2009

(approved by the LSB) took office with effect from 1 May 2010. Currently, the Council consists of a bare majority of licensed conveyancers, as required by the AJA. The LSB has agreed the CLC's request to seek amendment under s.69 LSA to provide for there to be a lay majority on the Council. The work of the CLC is now subject to a Governance Framework which ensures it makes decisions in accordance with the principles of good regulation. It is anticipated that further changes will be introduced over the next few months.

59. CLC regulated practices include partnerships, sole principals, limited liability partnerships and limited companies. Subject to satisfying the CLC's suitability requirements, there are no restrictions on who can own or manage a practice, provided that at least one of the managers is a licensed conveyancer.
60. The original version of the CLC's Conduct Rules was modelled very closely on the Law Society's Rules. The draft Code of Conduct currently out for consultation is based upon the Professional Principles of the LSA, preventing risks to the regulatory objectives and delivery of positive outcomes for clients. The CLC has sought to keep its rules easy to understand and as concise as possible. The current Conduct Rules are supplemented by Guidance Notes.
61. Applicants must submit an application form which responds to a range of different questions in order to satisfy the CLC that they are fit and proper persons to be granted a licence. The current regulatory regime is underpinned by rules which cover each aspect of the CLC's supervision.
62. As was made clear at paragraph 40 of its First Consultation Paper the CLC's aim is to set standards which ensure that the interests of consumers are protected. The way in which the programme specification is framed is designed to open the market for the provision of advocacy and litigation to new entrants. The aim is to encourage competition between providers, improve the protection of consumers and extend access to justice.
63. The CLC has an established system for the training of licensed conveyancers in the provision of conveyancing services extended to probate services from January 2009. It will be a matter for each licensee to determine the services they wish to provide and to ensure that they have the appropriate skills. The education system will build on the structure which the CLC already has in place.
64. The existing education system is in the process of being re-worked so that it focuses on students demonstrating they are able to deliver clearly defined outcomes. The advocacy and litigation training programme will build on that.
65. No general licence will be provided. Each individual will be required to satisfy the CLC that they have the necessary skills to provide the particular service. The CLC is working with Nottingham Law School to devise an education and training scheme which delivers these skills

Part 2

Draft Programme Specification: CLC, litigation and advocacy programme.

1 Overview, general educational aims and timescale for the programme.

Nottingham Law School has designed a programme to enable the CLC to license individuals (in particular those working for CLC regulated entities) to provide litigation and advocacy services not confined to the property or probate fields (“a CLC Civil Litigator”). The aim is that the individuals licensed will achieve standards that are at least equivalent to those of the other legal professions currently operating in the field whilst simultaneously allowing for a primary focus on provision of good quality services to a principally consumer client group.

Students may already be Licensed Conveyancers or they may, in principle, (subject to the appropriate amendments being made to the CLC’s statutory framework under s.69 LSA) follow the litigation and advocacy route to qualification as a CLC Civil Litigator without having previously qualified as a Licensed Conveyancer. The programme has been designed taking account of the responses received to the CLC consultation paper on advocacy and litigation.⁵

The CLC litigation and advocacy programme will be divided into four stages:

- Core academic stage – identifying the key areas of legal knowledge required (at year 2 of the timescale below) as a basis for practice in consumer-focussed general civil litigation and advocacy. This stage includes
 - Introduction to Law and Legal Method (for those not exempt from it by virtue of ILEX, CLC or degree/GDL qualification);
 - Contract (for those not exempt from it by virtue of ILEX, CLC or degree/GDL qualification);
 - Tort (for those not exempt from it by virtue of ILEX or degree/GDL qualification)
 - At present it is envisaged that those who wish to practise in conveyancing and/or probate should continue to pursue the CLC’s existing assessment regime which includes land law and landlord and tenant law.
- Core vocational stage – a higher element of consumer-focus is brought in at this stage as the student concentrates on skills, client care and solutions to clients’ problems in civil litigation and County Court advocacy. This stage includes:
 - CLC accounts (for those who have not already completed it);⁶
 - Professional Knowledge and Skills (partial exemption for those with LPC, BVC/BPTC or ILEX qualifications);
 - Civil Litigation and County Court Advocacy (for those not exempt from it by virtue of LPC, BVC/BPTC or ILEX qualifications).

⁵ CLC Consultation Paper, February 2010, *Proposed Application by the CLC to the LSB as an Approved Regulator to regulate licensed conveyancer practices in the Exercise of Rights of Audience and the Conduct of Litigation.*

⁶ It may, however, be necessary to extend the Accounts course for those working in litigation and advocacy to take in additional factors arising in those areas of practice.

- As with the existing conveyancing route, a period of practical training in civil litigation and advocacy will be required before a licence permitting a licensee to practise as a CLC Civil Litigator is granted. The CLC will develop a scheme setting outcomes and providing for the appropriate recording of evidence of achieving those outcomes so that there is a robust work based assessment of skills.
- Optional specialist stage post-licensing – a combination of distance learning and face- to-face skills teaching allows CLC Civil Litigators to apply the knowledge and skills attained in the core vocational stage to a more specialist field. In some cases the specialist stage will involve a more directed “top-up” to the core vocational stage only (for example, personal injury/clinical negligence); whilst in others it will be necessary for students to cover additional key areas of core academic knowledge (such as land law). Those who successfully complete a specialist option will then be able to obtain a modified additional licence to practise in the nominated specialist field. Rights of audience in the Higher Courts is also an option at the specialist stage. Post-licensing study will attract CPD.

Given the likely student demographic perhaps the most obvious specialist stage will be property litigation and advocacy but a template is provided which could accommodate different specialist routes once these are defined.

The CLC anticipates that provision will be made for periodic retesting and relicensing.

It is likely that the CLC may decide:

- To absorb some or all of the specialist stages into the core academic and core vocational stages (year 4); and/or
- To incorporate the conveyancing and/or probate routes with the litigation and advocacy route into a single programme of study or at least for the common aspects of the core academic stages of each to be combined into a single course of study (year 5).

Providers

The programme is designed so that the core academic stage can – given the co-operation of those providers - be studied at a wide range of existing providers, including all or part of a GDL, degree, ILEX qualification or as relevant existing CLC provision (as, for example, for CLC accounts (albeit possibly augmented to take litigation aspects into account), contract or land law). This presupposes, however that in the case of partial completion of a more extensive qualification such as a degree or GDL, the individual has reached or exceeded the pass mark in the relevant components. It also assumes that providers will be prepared to allow students to attend and sit only such parts of a more extensive qualification as will satisfy the CLC core academic stage. In due course, as suggested for years 4 and 5, it may be possible to consolidate the core academic stage into a single programme offered by one or more providers accredited by the CLC.

The core vocational stage, however, does constitute a single coherent programme, although it would be possible for it to be offered by a number of providers or for an individual to study one module with one provider and the other with another. At this stage it is not proposed to make any changes to the study and assessment of the existing (or augmented) CLC Accounts requirement (at least until year 5). The CLC may choose strategically to limit the number of CLC accredited providers of the core vocational stage for consistency of standards and educational and financial viability.

It is anticipated that the number of CLC accredited providers of optional specialist programmes will be limited for consistency of standards and educational and financial viability.

Timescale

Implementing the entirety of such a project in one go is challenging and, in addition, it is not known at the stage which specialist routes will be of interest. It is proposed that the overall scheme might evolve over a five year timescale:

Year one

- Design, approval and authorisations including those of the core academic and core vocational stages as well as the optional specialist stage template.

Year two

- Implement (by discussion with providers as necessary) civil litigation and County Court advocacy core academic stage;
- Implement initial version of core vocational stage (for those with exemptions from core academic stage).

Year three

- Continue core academic and core vocational stages;
- Implement practical training stage in civil litigation and County Court advocacy;
- Implement first tranche of optional specialist routes following market research.

Year four

- Continue core academic and core vocational stages;
- Continue practical training stage;
- Continue first tranche of optional specialist routes;
- Implement higher rights (will require some existing practical experience in post-licensing advocacy before CLC Civil Litigators can undertake the higher rights programmes);
- Review range of specialist routes:
 - whether any or all can be brought forward to be subsumed in the core academic and core vocational stages
 - whether any additional specialist routes are to be added.

Year five

- Continue core academic and core vocational stages (as augmented from year four review);
- Continue practical training stage;
- Continue optional specialist routes (insofar as not now part of augmented core academic and core vocational stages) and higher rights;

- Review and consolidate. Consider amalgamation of core academic stage for conveyancing, probate and civil litigation into a single programme for all routes unless it is determined that qualification as a Licensed Conveyancer and as a CLC Civil Litigator should remain separate.

2 Programme Learning Outcomes (“PLOs”) for the core academic and core vocational stages

These outcomes are intended as “macro-outcomes” defining the core stages of study. More specific “micro-outcomes” will be set for individual units of study in the core academic, core vocational and optional specialist stages.⁷ In defining these outcomes as appropriate for the CLC award, attention has been given to providing parity with the QAA benchmark statement for Law⁸ in relation to the core academic stage in particular; the Legal Practice Course outcomes as well as generic level descriptors for level 6 study identified by QCF and by QAA.⁹ The programme outcomes describe what a student should be able to know and do by the end of the programme (assuming an appropriate level of commitment to study). It should be emphasised that these outcomes, are, as with the equivalent LPC outcomes, identified at the point prior to the undertaking of the period of practical training and not at the point of licensing.

For simplicity they are here divided into outcomes relating to “knowledge and understanding” and to “skills, qualities and attributes”. What is also critical in a workable learning outcome used for the purposes of assessment is that it should not only articulate the *scope* of the area of knowledge or skill involved but also set out the expected *level* of performance in a way that can be meaningfully assessed. The latter, at vocational and professional levels of attainment, is not easy to do and demands careful consideration of the alignment between micro-level outcomes which nest under these programme level macro outcomes and the assessments set and their marking criteria.

Knowledge and Understanding¹⁰

By the end of the programme (and any prescribed period of practical training) you should be able to:

- 1 demonstrate a systematic knowledge and understanding of defined areas of law and procedure, legal concepts, methods and institutions;
- 2 demonstrate a systematic knowledge and understanding of defined rules of professional conduct, ethics and court etiquette;

Skills, Qualities and Attributes

⁷ It should be noted that micro-outcomes and assessment criteria for the higher rights specialist route will need to be at least equivalent to those now prescribed by the SRA for solicitors: SRA, *Statement of Standards for Solicitor Higher Court Advocates* (2010).

⁸ <http://www.qaa.ac.uk/academicInfrastructure/benchmark/honours/law.asp>.

⁹ Other level descriptors exist, such as those for the National Occupational Standards for Legal Advice: http://www.skillsforjustice.com/las/section_a/index.html and the Australasian Professional Legal Education Council competency standards for entry level lawyers (http://www.aplec.asn.au/aplec/dsp_resources.cfm)

¹⁰ These outcomes seek to state a level of performance at level 6. However it is at present possible to study and achieve exemption at a lower level. A university, for instance, which offers Criminal Law in its first year, will do so at QCF level 4; whereas the same subject offered in a third year at a different institution may be at level 6. It should however be assumed that all GDL/CPE provision is at level 6. The ILEX Professional Diploma is treated as level 3 (although currently providing an exemption from the CLC level 5 foundation in relation to introduction to law and legal method). The existing CLC Foundation is at level 5 with Finals at level 6.

By the end of the programme (and any prescribed period of practical training) you should be able to:

- 3 apply your knowledge and understanding of those defined areas to hypothetical and actual problems of limited definition (but involving interacting factors) in order to devise and sustain arguments or recommend solutions to problems;
- 4 critically analyse arguments, concepts, facts, risk factors and evidence to make judgments and evaluate potential solutions within hypothetical and actual problems of limited definition (but involving interacting factors);
- 5 demonstrate a basic ability to carry out effective legal research, including determination of the scope and objectives of the research task, using primary and secondary sources and both online and paper resources so as to inform your analysis and evaluation;
- 6 understand and use the English (or Welsh) language proficiently to communicate effectively both in writing and orally to a range of recipients including consumer-clients and, in the context of advocacy, the County Court, as well as effectively drafting defined legal documents;
- 7 in interview and other contexts; identify and address consumer-clients' objectives in obtaining information and in formulating possible solutions to problems of limited definition including cost/benefit analysis whilst maintaining good client relations and an appropriate ethical stance and demonstrating appropriate sensitivity to matters of equality and diversity;
- 8 take responsibility and initiative in initiating, planning and pursuing consumer-clients' objectives and best interests within an appropriate ethical context and in the context of problems of limited definition;
- 9 demonstrate self-awareness in the context of your own learning and employ effective strategies for your own personal and professional development, including the review, consolidation and extension of your knowledge, understanding and skills and an awareness of current developments in your field.

3 *Teaching and Learning Methods*

The existing CLC Foundation and Finals conveyancing programme can be studied by attendance or by distance learning. The breadth of the civil litigation and advocacy programme, including as it does a considerable element of skills, lends itself to some form of face to face interaction at the core vocational stage in particular. The mandatory accounts programme and assessment can, of course, continue in the form currently administered by the CLC save that it is recommended that this provision be augmented to cover matters relevant to litigation and advocacy.

The *core academic stage* for the litigation and advocacy route is envisaged at present as building on existing provision in the relevant areas of law in the FE and HE sectors, allowing students to select (assuming that the relevant providers will permit this) from modules delivered as part of existing CLC provision, from the FILEX diet of programmes or from modules of a degree or Graduate Diploma in Law. In the course of time (Year 5), a discrete core academic stage, whether formulated as a degree or otherwise, may be desirable to replace or supplement this "piggybacking" on existing provision. An "introduction to study" module is however recommended for those new to FE or HE to induct students into new

methods of study and of assessment and is discussed further in section 7. Such a module will require separate design and delivery.

The *core vocational stage* for the litigation and advocacy route, again whether formulated as a degree or otherwise, is envisaged as a face to face programme combining lecture, workshop, demonstration, feedback and practice of key skills including research, writing and drafting, interviewing and client care and advocacy. It is envisaged that a programme of 20-30 days' class contact (including assessment days) spread over a series of long weekends or evening or day release would be feasible in the year two iteration.

The precursor to granting of a licence permitting the licensee to practise as a CLC Civil Litigator, is of course, the period of practical training.

4 Assessment Methods

Core academic stage for the litigation and advocacy route – this will be assessed according to the methods applied by the provider. In the case of areas of legal knowledge this will usually be by examination but some providers, particularly at degree level, might also employ coursework or elements of oral presentation (including mooting) as part of the assessment. Students will have to achieve the pass mark nominated by the provider. It is assumed that the core vocational stage will teach and assess at least PLOs 1, 3, 4 and 5 but may, particularly if governed by the QAA benchmark, teach and assess others. It should be noted that at LLB/BA level achievement may not be at level 6 but, as this is regarded as acceptable for the JASB qualifying law degree, it is treated as acceptable here provided achievement is at least equivalent to that of the first year of a law degree.

It is proposed that the *core vocational stage* for the litigation and advocacy route is assessed by a combination of methods appropriate to its consumer-client focus:

- Professional knowledge and skills:
 - a written paper and
 - a skills assessment involving a sequence of interview, research activity and report to a consumer-client (orally and/or in writing);

The module will teach and assess PLOS 2, 4, 5, 6, 7, 8, 9.

- Litigation and County Court advocacy skills:
 - a further written paper based on a hypothetical situation requiring application of knowledge of civil procedure and evidence; analysis of risk and other factors and litigation drafting (such as drafting or correction of a statement of case) and
 - a skills assessment involving advocacy (which may also require research and analysis as a precursor to oral submissions).

The module will teach and assess PLOs 1, 2, 3, 4, 5, 6, 8, 9.

Optional specialist stage template: in specialist streams other than higher rights of audience, the assessment can be envisaged as a shorter version of the kind of assessment used in the core vocational stage, focussing on specifics of procedure, analysis and advocacy peculiar to the specialist area of practice. The emphasis in the higher rights course and assessment will be on advocacy and court etiquette and its assessment may involve a written paper as

well as an extended advocacy assessment including conduct of a complete simulated High Court or Crown Court trial.

5 *Programme Structure and Curriculum*

Core academic stage

Institutions, particularly those offering degrees, may vary as to the level at which a particular key knowledge area is delivered and assessed as well as the way in which it is assessed.

The minimum components, then for completion of the academic stage for the litigation and advocacy route will be

- introduction to study at FE/HE level, assuming that the student has not previously studied at FE/HE level
- Introduction to law and legal method
- Contract
- Tort

Those who wish to proceed along one of the specialist streams are likely to have to cover additional areas of law. Those pursuing the existing CLC conveyancing route will also continue to study land law and landlord and tenant law.

The cost to the individual student of pursuing the core academic stage is dependent on the fees charged by the individual provider which may be less than that of a full LLB (which might be envisaged, at present, as involving 3 years each with a tuition fee of c £3000). It will be critical, however, to obtain the co-operation of providers to achieve the core academic stage as envisaged. Aside from the costs involved in accreditation and regulation there are no additional design costs until year five.

Core vocational stage

This stage of the litigation and advocacy route in its first iteration is envisaged as a non-specialist course in civil litigation and advocacy at level 6, with the addition of mandatory completion of the CLC existing Accounts assessments as modified to include coverage of specific CLC accounts rules relating to litigation and advocacy practice. The core academic stage is designed as a necessary precursor and basis for the core vocational stage. Given the desired consumer focus and the likelihood nature of the CLC's typical client base, it will focus on civil litigation involving individuals or small businesses in, for example, debt; defective product or service claims, principally in the County Court, rather than heavyweight commercial litigation (which could form a stream at the specialist stage).

The core vocational stage for the litigation and advocacy route is divided into two modules (in addition to the mandatory CLC accounts course/assessments) to be taken after satisfactory completion of the core academic stage:

1 *Professional Knowledge and skills (10-15 days class contact including assessment)*

This module covers:

- Legal research in a practical context (PLOs 4, 5, 8)

- Interviewing and client care (PLOs 2, 4, 6, 7, 8)
- Letter writing, meeting and telephone skills (PLO 6)
- Self awareness and professional development (PLO 9)
- Professional conduct and ethics (PLOs 2, 8)

And

2 Civil Litigation and County Court advocacy skills (10-15 days class contact including assessment)

This module covers:

- Civil procedure and evidence from pre-action protocol to enforcement and appeal, focussing on fast track and small claims track cases but introducing High Court and multi-track procedure (where it differs) (PLO 1)
- Case and risk analysis (including cost/benefit and CPR Part 36) (PLOs 3, 4, 8)
- Writing and drafting in the litigation context (statements of case, applications, orders, witness statements) (PLOs 6, 8)
- Alternative Dispute Resolution including the advantages and disadvantages of negotiation, arbitration and mediation (PLOs 1, 3)
- Civil advocacy before the district judge (PLOs 2, 3, 4, 5, 6)
- Civil advocacy in a County Court trial (PLOs 2, 3, 4, 5, 6)

The two modules must be studied sequentially with Professional Knowledge and Skills being undertaken first. The student fees for the programme will be dependent on the number of students recruited and whether or not any costs of development (the core vocational stage described here contains elements such as risk analysis which are not constituent parts of an LPC) are to be paid by the CLC as an investment or need to be recouped by the provider from student fees. Student fees (excluding accommodation) might be in the region of £5,000-£6,000. This is to be compared to typical fees for the LPC in the region of £10,000.

Draft curricula for the core vocational stage appear at Appendix I.

Optional specialist stage - template

The specialist stages currently identified for CLC Civil Litigators are: personal injury/clinical negligence; property litigation and advocacy; immigration litigation and advocacy; employment litigation and advocacy; High Court civil litigation and advocacy. The same PLOs, with recognition that they are to be exercised in the relevant specialist field can be employed for the majority of the specialist stages. More specific micro-outcomes must be set at a high level for the two higher rights routes.

Whether the specialist stage is a comparatively short “top up” to the core vocational stage or whether it involves a more substantial period of study or an additional academic stage will depend on the specialism.

Because it is not yet clear which specialist routes will be of interest to the relevant demographic, five possible examples are shown in the table which follows by way of explanation of the overall template.

The student fees for the programme will be dependent on the number of students recruited and whether or not any costs of development) are to be paid by the CLC as an investment or need to be recouped by the provider from student fees. Student fees (excluding accommodation) might be in the region of £2,000-£3,000. The content of each specialist route may mean that the class contact time for each differs.

	Property Litigation and Advocacy	Person injury and clinical negligence litigation and advocacy	Commercial Litigation and Advocacy	Employment Litigation and Advocacy	Higher Rights in the Civil Courts
Required preliminary study or qualifications	CLC Civil Litigator	CLC Civil Litigator	CLC Civil Litigator	CLC Civil Litigator	CLC Civil Litigator Demonstrated period of practice and competence in County Court advocacy
Additional academic stage	Land Law Landlord and Tenant Law	N/A	EU law [Commercial law]	N/A (academic law is contained in vocational stage)	N/A
Specialist vocational stage	<ul style="list-style-type: none"> Property procedure and evidence including repossession s landlord and tenant; Lands Tribunal (PLO 1) Case and risk analysis in property cases (PLOs 3, 4, 8) Writing and drafting in the property litigation context (witness statements; statements of case; Part 8 claims) (PLOs 6, 8) Advocacy in property cases (PLOs 2, 3, 4, 5, 6) 	<ul style="list-style-type: none"> Procedure and evidence including pre action protocol in fast track and multi-track cases; calculation of special damages; interim payments and structured settlements; working with expert witnesses (PLO 1) Case and risk analysis in PI/clinical negligence cases (PLOs 3, 4, 8) Writing and drafting in the PI/clinical negligence litigation context (witness statements; 	<ul style="list-style-type: none"> Procedure and evidence including pre action protocol in the Commercial and Mercantile Courts; working with expert witnesses; cross border issues; injunctions (PLO 1) Case and risk analysis in commercial cases (PLOs 3, 4, 8) Writing and drafting in the commercial context (witness statements; chronologies; case 	<ul style="list-style-type: none"> Employment Law (PLO1); Procedure and evidence in employment cases including wrongful, unfair dismissal, redundancy and discrimination claims (PLO 1); Case and risk analysis in employment cases (PLOs 3, 4, 8) Writing and drafting in the employment context (Employe 	<ul style="list-style-type: none"> Review of civil procedure and evidence in particular interim applications, injunctions and preparation for trial; Court etiquette and the CLC Code for Advocacy;¹¹ Legal and evidential submissions Opening and closing speeches Examination, cross-examination and re-examination Dealing with specific types of witnesses (vulnerable witnesses; experts) Trial

¹¹ Assuming a discrete Code is developed.

		statements of case; schedules of loss; Scott schedules) (PLOs 6, 8) <ul style="list-style-type: none"> County Court advocacy in PI/clinical negligence cases (PLOs 2, 3, 4, 5, 6) 	memoranda) (PLOs 6, 8) <ul style="list-style-type: none"> County Court advocacy in commercial cases (PLOs 2, 3, 4, 5, 6) 	nt Tribunals documents; settlement agreements) (PLOs 6, 8) <ul style="list-style-type: none"> County Court and Employment Tribunal advocacy (PLOs 2, 3, 4, 5, 6) 	preparation
Additional practical training period	Recommended	Recommended	Recommended		Periodic relicensing is suggested
Specialist licence	Licence to practise property litigation and conduct property advocacy in the County Court and tribunal	Licence to practise personal injury/clinical negligence litigation and conduct advocacy in the County Court	Licence to practise commercial litigation and conduct advocacy in the County Court		Licence to carry out civil advocacy in the High Court and above.

6 Admission to the programme and exemptions

It is proposed that, as currently, it would be possible for a student, with appropriate support, to enter the programme without prior qualifications at 'A' level or above (as can be the case for an individual pursuing the FILEX qualification or applying for the Open University law degree). Care should be taken first in the selection and briefing of such candidates and secondly in their induction into the programme and support whilst studying.

Those who do hold prior qualifications in the relevant field may, however, apply for exemption from parts of it, provided that their prior qualifications are assessed by the CLC are being sufficiently current. The CLC is likely to require minimum pass marks (which may be higher than the pass mark set by the provider) before exemption is given.

Core Academic stage

	<i>CPE/GDL/LLB/BA/LPC (LLB/BA may be at levels 4-6)</i>	<i>ILEX</i>
<ul style="list-style-type: none"> [introduction to study at FE/HE level] 	N/A	N/A
<ul style="list-style-type: none"> introduction to law and legal method 	<i>CPE/GDL/LLB/BA exempt</i>	exempt
<ul style="list-style-type: none"> Contract 	<i>CPE/GDL/LLB/BA exempt</i>	Level 6 equivalent qualification
<ul style="list-style-type: none"> Tort 	<i>CPE/GDL/LLB/BA exempt</i>	Level 6 equivalent qualification
<ul style="list-style-type: none"> [Land law] 	<i>CPE/GDL/LLB/BA exempt</i>	Level 6 equivalent qualification
<ul style="list-style-type: none"> [Landlord and tenant] 	<i>CPE/GDL/LLB/BA/LPC exempt on proof of completion of an equivalent qualification (i.e. a suitable landlord and tenant option)</i>	Level 6 equivalent qualification

Core Vocational Stage

	LPC (level 6)	ILEX
CLC accounts	N (partial exemption for LPC accounts)	N
<i>Professional Knowledge and skills</i>		
<ul style="list-style-type: none"> Legal research in a practical context 	Y	Level 6 equivalent qualification (provided it includes research in a litigation context)
<ul style="list-style-type: none"> Interviewing and client care 	Y	Level 6 equivalent qualification gives partial exemption (provided it has been studied in a litigation context)
<ul style="list-style-type: none"> Letter writing, meeting and telephone skills 	Y (as to writing skills only)	N
<ul style="list-style-type: none"> Self awareness and professional development 	No exemption	No exemption
<ul style="list-style-type: none"> Professional conduct and ethics 	No exemption – must study CLC code	No exemption – must study CLC code
<i>Civil Litigation and County Court advocacy skills</i>		
<ul style="list-style-type: none"> Civil procedure and evidence from pre-action protocol to enforcement and appeal, focussing on small claims and fast track cases with an introduction to the High Court 	Y	Level 6 equivalent qualification
<ul style="list-style-type: none"> Case and risk analysis (including cost/benefit and CPR Part 36) 	N	N
<ul style="list-style-type: none"> Writing and drafting in the litigation context (statements of case, applications, orders, witness statements) 	Y	Level 6 equivalent qualification provided writing and drafting assessed at appropriate level
<ul style="list-style-type: none"> Alternative Dispute Resolution including the advantages and disadvantages of negotiation, arbitration and mediation 	N	N
<ul style="list-style-type: none"> Civil advocacy before the district judge 	Y	N
<ul style="list-style-type: none"> Civil advocacy in a County Court civil trial 	N	N

Optional Specialist stage

Any provider seeking authorisation to provide academic, vocational or specialist stages must demonstrate how candidates with exemptions, including partial exemptions (at level 6) in their assessment strategy will be accommodated.

7 *Support for Learning*

Specific care will be taken with those entering at a pre-A level stage: not only will they be required to pass a discrete module but they will also be allocated mentors, who may be members of teaching staff or more experienced students, to act as part of their support network during study.

All students will be encouraged to form study circles and networks. Whilst these may be hosted within the electronic and other resources of individual providers, the CLC will also host a website and chat room for all students in the programme.

Course providers will be required to provide welfare and pastoral care and careers support for all students. This will include provision for extensions of time and intercalation or deferral of study to accommodate life events of working students (such as pregnancy, loss of job etc). In addition, providers will be required to make provision for academic support including tutor contact, revision days and mock assessments.

8 *Programme Standards and Quality*

Standards and Quality for the core academic stage will be defined by the relevant provider and the CLC will satisfy itself of appropriate quality before confirming exemption or satisfaction of the academic stage.

The CLC will satisfy itself of the quality framework of any provider seeking to offer the core vocational or specialist stages. Matters falling for consideration will include:

- Mechanisms for setting, maintaining and enhancing standards and quality in provision of teaching and assessment;
- Robust assessment mechanisms including provision for security and identity of candidates; confidentiality and where appropriate anonymity in assessment; calibration and moderation of assessments; external examination etc;
- Mechanisms for dealing with issues of equality and diversity.

In authorising a provider of the core vocational stage the CLC will also consider provisions for internal (by the provider) reporting and review as well as the CLC's requirements for periodic review and annual reporting to it on quality matters. The CLC will reserve the right to withdraw accreditation of a provider or of a programme or any part of it if standards and quality are not maintained.

10 *Assessment Regulations*

The CLC will publish Assessment regulations for the core vocational and optional specialist stages (and for the discrete core academic stage in year 5). The CLC will also publish specimen Assessment Regulations to be applied by institutions it approves. These will deal with, inter alia:

- Exemptions;
- Number of attempts at any one assessment, provision for referral papers, retaking of complete modules etc;

- Weightings of different assessments or papers against each other as a contribution to the overall final assessment result;
- Confirmation of the level of performance required to pass including pass marks and “merit” or “distinction” awards;
- Condonation/compensation (where a fail in a paper is regarded as having been made up for by something else, such as strong performance in another part of the assessments);
- Treatment of performance in assessments impeded by matters beyond the candidate’s control such as illness, bereavement etc;
- Use of external examiners to approve papers and contribute to final decisions about assessment awards;
- Appeals against results.

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 proposed regulatory arrangements? If not, what is needed?
2. Are the proposed qualifications arrangements appropriate? If not, what is needed?
3. Is the programme specification appropriate? If not, what is needed?
4. Do you agree with the implementation timescale?
5. Is there anything else you wish to comment on?

Appendix I

Core vocational stage

1 *Professional Knowledge and skills*

Duration 10-15 days class contact including assessment

Pre, post and co-requisites

Pre: core academic stage and CLC Accounts

Post: Civil Litigation and County Court advocacy skills

Post: Period of supervised litigation practice

Post: Optional specialist routes

Overview and aims

To build on the core academic stage with a professional socialisation and induction into the ethical framework of the profession. Essential legal and client care skills for consumer-focussed practice.

Module content

- Legal research in a practical context (PLOs 4, 5, 8). This activity will include introduction to resources available both paper and online, legal research skills, problem identification in a litigation and advocacy context, evaluation of potential solutions. Students will undertake at least one formative practice research problem prior to the formative assessment.
- Interviewing and client care (PLOs 2, 4, 6, 7, 8). This activity will include client care rules and skills with a focus on the client's perspective as to being kept up to date both as to progress and costs. Interviewing skills will include setting the client or witness at ease, obtaining information (including an introduction to techniques adapted from cognitive interviewing), identifying client's needs, objectives and priorities, sensitivity and appropriate responses to vulnerability and diversity in clients and other interviewees. Students will undertake at least one formative practice research problem prior to the formative assessment.
- Letter writing, meeting and telephone skills (PLO 6). This activity will include spelling, grammar, register and changes in register appropriate to different kinds of written and spoken communication; oral presentation skills on the telephone and in meetings and conferences with counsel; meeting and telephone etiquette. Building on activities in research and interviewing, the context of these communications will range from the regular update to substantial letters of advice and advising in meeting or on the telephone. Students will undertake at least one formative practice research problem prior to the formative assessment
- Self awareness and professional development (PLO 9). This activity will involve students in self-diagnosis of their own strengths and weaknesses and exploration of methods of expanding both the range and quality of performance including the giving and receiving of feedback and techniques of reflective learning and deliberate practice.

- Professional conduct and ethics (PLOs 2, 8). This activity will cover general issues of conflict, confidentiality and acting in the best interests of one's client as well as distinct litigation and advocacy issues such as and obligations to the court. Students should cover the topic both discretely by way of introduction and as a pervasive topic with issues relating to conduct and ethics embedding in other activities.

Assessment methods (50% of final marks for the core vocational stage)

1 Written paper under examination conditions. This assessment will cover:

Professional conduct and ethics (PLOs 2, 8). (25% of module)

2 Skills assessment in which the student carries out an interview with a simulated client, carries out research under supervised conditions to produce one or more recommendations to the client and then reports the results to the client orally and in more detail in writing, followed up by a personal assessment of performance. This assessment will cover (75% of module):

Legal research in a practical context (PLOs 4, 5, 8).

Interviewing and client care (PLOs 2, 4, 6, 7, 8).

Letter writing, meeting and telephone skills (PLO 6).

Self awareness and professional development (PLO 9).

2 *Civil Litigation and County Court advocacy skills*

Duration 10-15 days class contact including assessment

Pre, post and co-requisites

Pre: core academic stage and CLC Accounts

Pre: *Professional Knowledge and skills*

Post: Period of supervised litigation practice

Post: Optional specialist routes

Overview and aims

To introduce the rules, strategies and tactics involving in dealing with consumer-clients' disputes, including evaluation of alternatives to litigation and to involve students in using that repertoire of methods to address consumer-client's problems. Oral presentation skills including those involved in interim applications and trial advocacy in the County Court.

Module content

- Civil procedure and evidence from pre-action protocol to enforcement and appeal, focussing on fast track and small claims track cases but introducing High Court and multi-track procedure (where it differs) (PLO 1). This activity will involve a through grounding in the procedural "shape" of litigation and the options within it to bring disputes to an early resolution or to obtain advantages (such as interim payments) en route to trial.

- Case and risk analysis (including cost/benefit and CPR Part 36) (PLOs 3, 4, 8). This activity will involve students in analysing the legal and evidential framework of their case and advising on prospects of success or of beating a Part 36 offer. Risk analysis will involve them in evaluating and advising on the likely risks of pursuing a claim to trial or resolving it by other means.
- Writing and drafting in the litigation context (statements of case, applications, orders, witness statements) (PLOs 6, 8) This will involve practical application of rules and practice directions as to style and format but also build on the case and risk analysis to determine the contents of witness statements and applications to be applied for or defended.
- Alternative Dispute Resolution including the advantages and disadvantages of negotiation, arbitration and mediation (PLOs 1, 3). Students will explore by example various options for resolving disputes by other means and evaluate the advantages and disadvantages of such methods by reference to worked examples.
- Civil advocacy before the district judge (PLOs 2, 3, 4, 5, 6). Building on knowledge of the rules and written evidence, students will practise advocacy in a number of different hearings, both face to face and on the telephone including procedural applications (such as for set aside of a judgment) and more substantive applications (such as summary judgment or security for costs).
- Civil advocacy in a County Court trial (PLOs 2, 3, 4, 5, 6). Students will practise openings, cross-examination and re-examination and closing speeches in the context of a County Court trial.

Assessment methods (50% of final marks for the core vocational stage)

1 Written paper under examination conditions based on a hypothetical situation requiring application of knowledge of civil procedure and evidence; analysis of risk and other factors and litigation drafting (such as drafting or correction of a statement of case). This assessment will cover (50% of module)

Civil procedure and evidence (PLO 1).

Case and risk analysis (PLOs 3, 4, 8).

Writing and drafting (PLOs 6, 8)

Alternative Dispute Resolution (PLOs 1, 3).

2 Advocacy assessment in which the student carries out research under supervised conditions to make oral submissions and to carry out a cross examination followed up by a personal assessment of performance. This assessment will cover (50% of module)

Civil advocacy before the district judge (PLOs 2, 3, 4, 5, 6).

Civil advocacy in a County Court trial (PLOs 2, 3, 4, 5, 6).

Annex 1



**Proposed Application by the CLC to the Legal Services Board
as an Approved Regulator to regulate licensed conveyancer
practices in the Exercise of Rights of Audience
and the Conduct of Litigation**
CLC Consultation Paper
February 2010

Submission Deadline: 31 March 2010

Executive Summary

1. Taking account of the matters set out in this Consultation Paper, the CLC has provisionally concluded that:
 - a. it should apply as an Approved Regulator to regulate licensed conveyancers in the exercise of Rights of Audience and the Conduct of Litigation (as well as Reserved Instrument Activities, Probate Activities and the Administration of Oaths which it is currently authorised to regulate):
 - b. it should seek amendment of its statutory framework so that it can:
 - regulate licensed conveyancers in any legal services they provide, and not confined (as is currently the case) to the Reserved Legal Activities; and
 - issue licences to licensed conveyancers which do not necessarily include an entitlement to provide Reserved Instrument Activities.

Responding to this Consultation

2. The questions posed in this Consultation Paper are set out at page []. They are not also incorporated into the main part of the Consultation Paper because the questions are not as directly linked to particular sections as they might be in other Consultation Papers. You are invited to respond to some or all of the questions. The CLC also welcomes comments on the proposals as a whole.
3. When you respond could you please give your name and address and whether you are a licensed conveyancer. If you are not a licensed conveyancer, could you please state, if relevant, your status or professional qualification. 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 could you please let us know when you respond.
4. All responses should be send by email to consultations@clc-uk.org or by post to

The Council for Licensed Conveyancers
16 Glebe Road
Chelmsford
Essex CM1 1QG

Or by to DX 121925 CHELMSFORD 6

Submission Deadline: 31 March 2010

Introduction

Statutory Framework

5. 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 under 200 practices. About 25% of these practices already have Managers and/owners who are not licensed conveyancers and are not Authorised Persons¹². These arrangements have been permitted by the CLC since 2000 when its Recognised Bodies Rules 2000 came into force.
6. As an approved regulator from 1 January 2010 the CLC “must, so far as is reasonably practicable, act in a way.., which is compatible with the regulatory objectives”¹³ 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’¹⁴;
 - 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 principles¹⁵.
7. 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 in the interests of justice, and
 - (e) that the affairs of clients should be kept confidential.¹⁶
8. 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”¹⁷.

¹² Defined by LSA as individuals regulated by Approved Regulators as listed in Annex1

¹³ S.28(2) Legal Services Act 2007

¹⁴ defined at s.18 LSA

¹⁵ s.1(1) LSA

¹⁶ s.1(3) LSA

¹⁷ s.28(3) LSA

CLC's Approach to Regulation

9. The CLC's Corporate Strategy for 2009-2014 summarises the purpose of the CLC as setting entry standards and regulating the profession of licensed conveyancers effectively in order to:
 - secure adequate consumer protection;
 - promote effective competition in the legal services market; and,
 - provide choice for consumers.

10. The CLC fulfils its responsibilities by undertaking a range of activities, which are outlined as follows:
 - Set educational and training standards for entry to the profession;
 - Issue licences to practise to those qualified to provide conveyancing services to clients;
 - Maintain a register of all Licensed Conveyancers;
 - Set standards to regulate the professional practice, conduct and discipline of licensed conveyancers;
 - Set standards to maintain adequate professional indemnity insurance and a compensation fund to protect the public;
 - Undertaking accounts investigations and practice inspections to monitor the work and conduct of Licensed Conveyancers and to determine whether they are meeting the required standards;
 - Provide guidance and advice to Licensed Conveyancers to maintain compliance with the standards and those regulations relevant to our duty of consumer protection;
 - Investigate complaints against a Licensed Conveyancer and order redress for the client for poor service where appropriate;
 - Investigate allegations of misconduct against a Licensed Conveyancer and where appropriate take disciplinary proceedings before the Discipline and Appeals Committee;
 - Collaborate with key stakeholders in the conveyancing services market to monitor and shape the impact of proposed regulations on the conduct of Licensed Conveyancers in order to maintain adequate consumer protection.

Reserved Legal Activities

11. The Legal Services Act 2007 defines Reserved Legal Activities as:
 - The exercise of rights of audience¹⁸
 - The Conduct of Litigation¹⁹
 - Reserved Instrument Activities²⁰
 - Probate Activities²¹
 - Notarial Activities²²
 - The Administration of Oaths²³

¹⁸ para 3 sch 2 LSA

¹⁹ para 4 sch 2 LSA

²⁰ para 5 sch 2 LSA a variation of Conveyancing Services, the Reserved Legal Service regulated by the CLC up to 31 December 2009

²¹ para 6 sch 2 LSA

²² para 7 sch 2 LSA

²³ para 8 sch 2 LSA

12. Other Approved Regulators are authorised to regulate lawyers in the provision of these Reserved Legal Activities (see Annex 1²⁴). Notarial Activities currently remain the exclusive province of Notaries Public regulated by the Master of the Faculties.
13. The Law Society is entitled to make²⁵, and has made²⁶, rules relating to all legal services provided by solicitors, whether or not those activities are Reserved Legal Activities.

Regulatory Policy Dilemma

14. In the White Paper leading to the introduction of the Legal Services Bill the Department of Constitutional Affairs commented “The problem at present is that any person can provide unreserved services without any form of regulation (other than the general law) and this is where most damage occurs”²⁷ highlighting the problems consumers had experienced with claims managers (now subject to regulation).
15. The Legal Services Board (LSB) has commented “...some legal activities can be delivered exclusively by non-authorised persons and hence not be regulated by an AR. This presents a regulatory policy dilemma: are the risks and costs of such an extension to the scope of regulation greater than those arising from actual or potential consumer confusion and mis-purchase?”²⁸ The responses from the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB) to the LSB’s Discussion Paper on ABS considered that it was in the interests of consumers for reserved and non-reserved legal activities to be regulated in the same way because “consumers may not distinguish between the services they are receiving”.
16. As the LSB has observed “In some contexts a legal activity may be regulated and in other contexts that same legal activity may not be regulated. This is a result more of historical accident than design”.²⁹ Even within the areas to which they relate, Reserved Legal Activities have a relatively narrow scope “and much consumer interaction with lawyers involves unreserved legal activities”³⁰.
17. The White Paper included a brief overview of the extent of regulatory reach in the legal services sector. “There is a mix of provider and service based regulation: everything done by a solicitor is regulated by virtue of his professional status, whereas service regulation has developed in areas such as immigration. Some services, such as general legal advice, are regulated if provided by, for example, a solicitor or barrister, but are otherwise unregulated. There are only six areas which are regulated by virtue of their being reserved to those who are appropriately qualified. There are a number of services which most people would regard as legal services which are not reserved and can be provided by anyone who cares to do so. The consumer may, therefore, buy such services from providers who are regulated by virtue of their professional status, or from unregulated providers. The following table sets this out:-

²⁴ based on Annex C: Reserved and Unreserved Legal Activities – a diagram at p.98 LSB’s Consultation Paper Alternative Business Structures: approaches to licensing (“ABS Consultation Paper”)

²⁵ s.31 Solicitors Act 1974

²⁶ SRA Code of Conduct accessible at <http://www.sra.org.uk/solicitors/code-of-conduct.page>

²⁷ p 52 The Future of Legal Services: Putting Consumers First Cm 6679 October 2005

²⁸ para 17 p5 ABS Consultation Paper

²⁹ para 162 p42 ABS Consultation Paper

³⁰ para 163 p43 ABS Consultation Paper

Reserved	Unreserved
Probate	General legal advice
Immigration	Will drafting
Conveyancing	Employment advice [this includes appearing on behalf of one of the parties before the employment tribunal]
Notarial functions	Claims assessment and management [now regulated]
Rights to litigate	
Rights of audience. ³¹	

18. The CLC has identified other examples:

- the Administration of an Estate following the death of an individual is not classed as a Probate Activity and may be carried out for reward by persons who are not legally qualified;
- acting as a Deputy, or advising a Deputy, in the Court of Protection is not a Reserved Legal Activity, and therefore can be undertaken by any person;
- the provision of Home Information Packs (HIPs) is not classed as a Reserved Instrument Activity, so any person may produce a HIP (whether or not they are an authorised person within the meaning of the LSA);
- the provision of advice relating to commercial and company law is not a Reserved Legal Activity.

19. The LSB has noted “It is unlikely that consumers make any distinction between reserved and unreserved legal activities – or more broadly between regulated and unregulated legal activities. Consumers are therefore likely to assume that, to the extent they are aware of any protection afforded by ‘regulation’, all the advice they receive is subject to the same degree of protection”.³² It is therefore possible for lawyers, who are not regulated by an Approved Regulator, to deliver legal services which can have a serious effect on the person to whom those services are delivered. In the CLC’s view, this creates a serious imbalance within the legal services market detrimental to the interests of the consumer. Clementi referred to this as “an asymmetry in the regulatory reach as regards individuals providing the same legal service”.³³

20. Lawyers providing regulated services must comply with the requirements of their regulators to have professional indemnity insurance and compensation arrangements in place, the cost of which is recouped from the consumer. They are also required to comply with regulations, the intent of which is to provide appropriate safeguards for the consumer. The likelihood, therefore, is that the fees

³¹ para2 pp92-93 Review Of The Regulatory Framework For Legal Services In England And Wales Final Report Sir David Clementi December 2004

³² para 164 p43 ABS Consultation Paper

³³ para19 p98 Review Of The Regulatory Framework For Legal Services In England And Wales Final Report Sir David Clementi December 2004

charged by regulated lawyers are greater than those charged by unregulated lawyers. It is only when things go wrong that the consumer realises the limitations of the contract to provide services made with the unregulated lawyer.

21. The LSB suggests that consumers “should be free to purchase any legal service, but they must be made aware: (i) that the legal service being purchased is unregulated; and (ii) what protections a LA provides in these circumstances. We therefore expect LAs (licensing authority) to focus on educating the consumer on what is or is not subject to the protection of regulation”.³⁴ Whilst it has no objection in principle to some legal services being delivered by individuals who do not have formal legal qualifications, in the CLC’s view, it is likely to take a number of years for the level of consumer education about the different nature of legal providers and services to reach a level to which the LSB aspires.
22. The Government has suggested it can rely on competition to iron out the difficulties the consumer experiences in the market place. “The Government takes it as axiomatic that consumers are best served when the markets for the goods and services they purchase are competitive. Competition within the legal services industry is expected to deliver two key benefits:
 - Lawyers in effective competition with each other will seek to innovate - to develop new ways to deliver services to their customers, using new delivery methods and new business structures. Insofar as these innovations reduce costs or improve the quality of the services on offer, consumers will ultimately benefit as the price of legal services falls.
 - Those lawyers (and their firms) that offer better value for money can expand at the expense of the inefficient. This process will not only improve outcomes for domestic consumers; it will also improve the competitiveness of the legal services market in an increasingly global market.³⁵
23. Clementi considered that variety within the regulatory environment is healthy and is a driver for change which benefits consumers. “Some degree of choice in the type of provider, and the regulatory rules under which they operate, is to be welcomed, subject to a minimum standard being met. It is a point that is made in the submission of the Council for Licensed Conveyancers who argue that not all providers of this reserved service need follow the same rules”. The point was echoed by the Bar Council. The Office of Fair Trading suggested that Clementi’s preferred model of an oversight regulator (LSB) with Approved Regulators (as provided for by the LSA) allowed for “the possibility of regulatory choice and competition...putting the LSB ‘in a position to both encourage such competition, but also to step in if it appeared that such competition was weakening regulation to the point where this was endangering consumer protection’”.³⁶

Current Scope of Legal Activities regulated by the CLC

24. As set out at paragraph 5 the CLC was established by the AJA to regulate licensed conveyancers in the provision of conveyancing services.

³⁴ para 18 p6 ABS Consultation Paper

³⁵ para 30 p12 Legal Services Market Study Quality in the Legal Services Industry A Scoping Study August 2005 Department for Constitutional Affairs

³⁶ para 29 pp34-35 Review Of The Regulatory Framework For Legal Services In England And Wales Final Report Sir David Clementi December 2004

25. References in Part II AJA conveyancing services “are references to—
- (a) the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land, and
 - (b) any other activities which are reserved instrument activities for the purposes of the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act)”.³⁷
26. On this basis the CLC regulates licensed conveyancers in the provision of all activities ancillary to the provision of conveyancing services. For instance,
- instructing Counsel about matters incidental to or arising from the provision of conveyancing services;
 - advising clients on landlord and tenant matters;
 - the provision of HIPs.
27. The CLC requires a licensed conveyancer when providing conveyancing services to:
- comply with rules made by the CLC³⁸,
 - have in place a complaints procedure³⁹,
 - comply with requirements for professional indemnity insurance⁴⁰, and
 - contribute to a Compensation Fund out of which grants are made to persons who have suffered loss (in the case of the client of a licensed conveyancer) as a result of the negligence, fraud, or other dishonesty of a licensed conveyancer, or the failure to account.⁴¹
28. However, there are serious limitations to the extent of the CLC’s regulatory reach which it is concerned are not properly appreciated by consumers (if at all) and therefore may be seriously detrimental to their interests. There is no statutory restriction preventing a licensed conveyancer with a conveyancing practice from setting up a separate practice (unregulated by the CLC or any other Approved Regulator) providing those elements of a conveyancing service which are not reserved,⁴² the most obvious example is the provision of a HIP. The CLC’s view has been that although it can not prevent a licensed conveyancer from providing services other than as a licensed conveyancer, it can require a licensed conveyancer to “inform the Client in writing that such work is not so regulated and that it is not covered by indemnity insurance taken out in accordance with the Council’s Rules”.⁴³ The LSB has separately identified this risk since it “want[s] to avoid a situation where a provider of legal services could escape regulation by creating two businesses – one an ABS (Alternative Business Structure) which only provides reserved legal activities and one which only provides unreserved legal activities (and which, perhaps, has the primary role in interacting with the consumer).⁴⁴ It has also concluded that there is a need to collect better evidence on how well consumers understand the current situation and whether any actual or potential detriment arises from any confusion.⁴⁵

³⁷ s.11(3) AJA (as amended by LSA)

³⁸ s.20 AJA

³⁹ r. 4.6.4 Conduct Rules 2009

⁴⁰ s.21 AJA and Indemnity Rules 2009

⁴¹ s.21(2) AJA

⁴² ie can only be undertaken by authorised persons authorised to provide Reserved Legal Activities

⁴³ rule 4.4.4 Conduct Rules 2009

⁴⁴ para 167 p43 ABS Consultation Paper

⁴⁵ para 171 p44 ABS Consultation Paper

29. Licensed conveyancers have since 1994 been authorised to administer oaths⁴⁶, a further Reserved Legal Activity. On 1 January 2010 the CLC was specifically empowered to make rules “prescribing its arrangements for authorising licensed conveyancers...to carry on activities which consist of the administration of oaths”⁴⁷. These Rules will be made shortly.
30. From November 2008 the CLC has been entitled to regulate licensed conveyancers in the provision of probate services defined as:
- “services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person”.⁴⁸
31. The CLC cannot make rules relating to the drafting of Wills by licensed conveyancers, since that it not an activity which the CLC has been authorised to regulate. However, a number of Licensed Conveyancers provide will drafting service through a separate non regulated entity.
32. For the reasons set out at paragraphs 17 and 18, the CLC believes that its current regulatory arrangements, as prescribed by the statutory framework within which it functions, create a real risk of detriment to consumers.
33. It follows that the CLC is of the view that this is not compatible with the regulatory objectives, namely:
- Protecting and promoting the public interest;
 - Supporting the constitutional principle of the rule of law;
 - Improving access to justice;
 - Protecting and promoting the interests of consumers.
34. The CLC considers (principally from the engagement it has with consumers on a day to day basis) there is an assumption by consumers that they will receive full compensation for any loss they incur as a result of the negligence or dishonesty of a lawyer. Whilst the CLC administers a Compensation Fund, because of the restricted nature of the legal services which it regulates, this belief has only limited applicability so far as clients of licensed conveyancers are concerned. Grants may only be made out of the Compensation Fund where they have suffered loss as a result of the negligence or dishonesty of a licensed conveyancer whilst acting as a licensed conveyancer in the provision of conveyancing or probate services (assuming he has a probate licence). The CLC would not have power to make a grant out of the Compensation Fund to a consumer who had suffered loss as a result of the actions of a licensed conveyancer if that individual had not been acting as a licensed conveyancer when providing the service resulting in loss to the consumer (eg drafting a will).
35. The CLC was established to regulate specific lawyers (licensed conveyancers) in the provision of a specific service (conveyancing). Whilst the scope of legal

⁴⁶ SI 1994 No. 1380

⁴⁷ s.33A AJA in force 1 January 2010

⁴⁸ r. 1.2 Probate rules 2008 – definition taken from s.119 CLSA

services the CLC is now able to regulate, and licensed conveyancers are now able to provide, has been extended to probate services, even within conveyancing and probate services there is significant risk that consumers will not understand fully the limitations of regulatory reach. In the CLC's view, this risks having a detrimental effect on the reputation of licensed conveyancers.

36. Whatever the outcome of the LSB's review of the scope of Reserved Legal Activities⁴⁹, the CLC believes that it is in the consumer interest and in the interest of licensed conveyancers for it to make an early application to regulate licensed conveyancers in the provision of:

- The exercise of the rights of audience; and
- The conduct of litigation.

37. The CLC considers that such an application is necessary in order to facilitate meaningful or effective implementation of the ABS in the legal service market and to facilitate improvement in regulatory standards by stimulating healthy consumer focused competition among Approved Regulators, as Clementi recognised (paragraph 23).

38. The CLC believes that consumers will experience significant benefits if the CLC is able to extend its regulatory reach. Comparing the potential benefits identified by the LSB in relation to ABS, the CLC believes that consumers will have:

- more choice: they will have greater flexibility in deciding from where to obtain legal and some non-legal services.
- reduced prices: consumers should be able to purchase some legal services more cheaply.
- better access to justice: some Licensed Conveyancers already provide services in rural areas or to less mobile consumers and will be able to extend those services. Alternatively, some Licensed Conveyancers may choose to deliver services remotely, relying on contact telephone, text, email and internet, which appeal to a different consumer sector.
- improved consumer service: consumers may benefit from an extended service since Licensed Conveyancers are currently able to access external finance and may choose to take advantage of specialist non-legal expertise.
- greater convenience: Licensed Conveyancers will be able to provide a greater range of legal and allied services.
- increased consumer confidence: Licensed Conveyancers will be able to provide the same high standards in an extended range of legal services. They will have a strong incentive to keep that reputation when providing legal services.⁵⁰

Maintaining Professional Standards

39. The CLC recognises that professional qualifications go a long way to giving consumers confidence that an individual solicitor or barrister is an appropriate person to be dealing with their legal problems. However, as the White Paper observed, the most significant feature of those qualifications (in contrast to the

⁴⁹ para 86 LSB draft Business Plan 2010-2011

⁵⁰ pp 40-41 The Future of Legal Services: Putting Consumers First Cm 6679 October 2005

licensed conveyancer qualification) is that they are general ones that allow a lawyer to practise in any area of law.⁵¹ It is possible for a solicitor or barrister to provide legal services without appropriate expertise.

40. The CLC accepts this risk would apply equally to licensed conveyancers extending their field of practice to advocacy and litigation services. In order to reduce significantly or eliminate this risk, the CLC's intention is that any licensed conveyancer wishing to exercise rights of audience or conduct litigation will be required to achieve the relevant standard, either through the CLC's education and training requirement, or by recent, relevant prior learning. As in the CLC's regulation of Probate Activities, the standard licensed conveyancers would be expected to achieve would be equivalent to that of other Authorised Persons. The CLC will have particular regard to the standard expected of barristers and solicitors specialising in those areas of practice. It believes that by issuing separate licences in respect of different Reserved Legal Activities, rather than by providing blanket authorisation, licensed conveyancers will continue to deliver legal services across the sector to a consistently high standard. Where standards are not met in respect of a specific reserved legal activity it will be open to the CLC to withdraw the licence for that activity or to impose appropriate conditions to ensure that the standards of service expected are maintained. This would enable Authorised Persons to transfer between Approved Regulators, and provide choice in the legal services market without detriment to the quality of service generally provided. The CLC's existing regulatory regime would apply equally to licensed conveyancers able to exercise rights of audience or conduct litigation, in particular the requirements relating to conduct, the holding of client monies, professional indemnity insurance and compensation fund.
41. The CLC also intends to apply for amendment of the AJA so that it regulates licensed conveyancers in the provision of any legal service they provide (examples of which are at paragraph 18). This will ensure that consumers are provided with services which meet the standards expected of a licensed conveyancer and comply with the CLC's Rules. Licensed conveyancers will no longer be able to provide some legal services through practices which are regulated by the CLC and other legal services through separate practices which are not regulated.
42. As the AJA is currently framed, the CLC may only issue a probate licence to a licensed conveyancer who has been issued with a licence to provide conveyancing services. Whilst it is likely that a licensed conveyancer providing conveyancing services may also wish to provide probate services, it is unlikely with the current state of specialisation within the legal services market that a lawyer licensed to provide litigation services (and choosing to specialise in personal injury) will wish also to provide conveyancing services. The CLC's view is that the range of legal services provided by a licensed conveyancer should be a choice for that practitioner, rather than an artificial requirement imposed, largely for historical reasons (ie that the CLC was established to regulate licensed conveyancers in the provision of conveyancing services). The critical factor from the consumer's point of view is to instruct a lawyer with the necessary expertise. Whilst some knowledge of the conveyancing market may be helpful where the matter relates to property litigation, that knowledge is unlikely to be relevant in a personal injury claim. In that case, the CLC's view is that there should be no requirement for that licensed conveyancer to have passed the CLC's conveyancing exams.

⁵¹ p3 Legal Services Market Study Quality in the Legal Services Industry A Scoping Study August 2005 Department for Constitutional Affairs

Timing

43. The LSB has set out the following timetable for implementation of the ABS regime:⁵²
- March 2010 – Final Guidance on licensing rules and how to apply to become a LA
 - August 2010 – First approved regulator applies to become a LA
 - March 2011 – First LA are designated by the Lord Chancellor
 - July 2011 – First licensable bodies are licensed as ABS
 - July 2012 – End of grace period for LDPs and special bodies
44. The CLC will discuss with the LSB the precise timing of steps required in order to make it feasible for its applications
- as an Approved Regulator to regulate licensed conveyancers in the exercise of rights of audience and in the conduct of litigation;
 - for amendment of its statutory framework to enable it to regulate licensed conveyancers in the provision of all legal services they provide, not just the reserved legal activities; and
 - to become a Licensing Authority regulating ABS in the exercise of rights of audience, in the Conduct of Litigation, in Reserved Instrument Activities, in Probate Activities and in the Administration of Oaths
- to be approved and implemented by July 2011.
45. The timing is challenging and the CLC's resources are limited. Nevertheless, as set out in its Corporate Strategy for 2009-2014, the CLC is already committed to achieving many of the objectives set out in this Consultation Paper in order to align it more closely with the requirements set out in the LSA and currently being rolled out by the LSB. The CLC is issuing a Consultation Paper "Review of Licence and Practice Fee Arrangements" at the same time as this Consultation Paper. The Consultation Period for both these Consultations is short, but necessarily so, given the time within which it aims to implement the changes proposed. The relatively small size of its regulatory community is a positive advantage for the CLC in that it enables it to engage more directly with it and other stakeholders. The CLC is confident this will result in a reinvigorated profession ready for the challenges of the new regulatory regime providing improved service to the clients and consumers with which it engages.

⁵² para 38 p 14 Consultation paper "Alternative business structures: approaches to licensing"

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 the CLC's proposal to extend its regulatory remit? In particular, do you agree that:
 - (i) It should apply to regulate:
 - (a) the exercise of rights of audience;
 - (b) the conduct of litigation;
 - (ii) it should have power to issue standalone licences for different legal activities;
 - (iii) it should press for amendment to statute so it is able to regulate licensed conveyancers in all unreserved legal services they provide?
2. Do you think there are any other consumer benefits of the CLC's proposal to extend its regulatory remit and to enable licensed conveyancers to be regulated in all unreserved legal services that they provide?
3. Do you think that there any risks to consumers associated with the CLC's proposal to extend its regulatory remit and to enable licensed conveyancers to be regulated in all unreserved legal services that they provide?
4. What do you think are the benefits to licensed conveyancers of the CLC's proposal to extend its regulatory remit and to enable licensed conveyancers to be regulated in all unreserved legal services that they provide?
5. What do you think are the risks to licensed conveyancers associated with the CLC's proposal to extend its regulatory remit and to enable licensed conveyancers to be regulated in all unreserved legal services that they provide? In particular, do you think that some sections of the regulated community would be disproportionately impacted by these proposals? Do you have suggestions on how the risks identified can be effectively mitigated?
6. What do you think are the potential benefits to new entrants to the legal services market and/or authorised persons regulated by other Approved Regulators of the CLC's proposals to extend its regulatory remit and to enable licensed conveyancers to be regulated in all unreserved legal services that they provide?
7. What do you think are the benefits and risks to Licensed Conveyancers and Practices currently regulated by the CLC of enabling the CLC to regulate the provision of advocacy and litigation rights by individuals and Practices which do not also provide conveyancing services?

Annex 1

Reserved and Unreserved Legal Activities

Approved Regulators/ Quasi-Approved Regulators	The exercise of a right of audience	The conduct of litigation	Reserved Instrument Activities	Probate Activities	The administration of oaths	Notarial Activities	Unreserved Legal Activities
The Law Society	X	X	X	X	X		All unreserved legal activities given in the course of legal advice, included that provided through a separate business
The General Council of the Bar	X	X	X	X	X		All unreserved legal activities given in the course of legal advice
The Master of the Faculties			X	X	X	X	All unreserved legal activities which form part of the notary's practice
The Institute of Legal Executives	X				X		Where a legal executive is employed by a barrister or solicitor, all unreserved legal activities given in the course of legal advice
The Council for Licensed Conveyancers			X	X	X		All unreserved legal activities related to conveyancing or probate
The Chartered Institute of Patent Attorneys	X	X	X		X		All unreserved legal activities which form part of the relevant lawyer's practice
The Institute of Trade Mark Attorneys	X	X	X		X		All unreserved legal activities which form part of the relevant lawyer's practice
The Association of Law Costs Draftsmen	X	X			X		None, unless the unreserved legal activities are provided in such a way as to bring the Association of Law Costs Draftsmen into disrepute
The Association of Chartered Certified Accountants				X			None, unless the unreserved legal activities are provided by someone who deems themselves competent to provide them

The Association of Chartered Accountants in Scotland				X			None, unless the unreserved legal activities are provided by someone who deems themselves competent to provide them
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Annex 2

Advocacy & Litigation consultation responses –

Summary

Legal Services Board's Consumer Panel

1. The Consumer Panel is very supportive of the proposal, welcoming the proposed changes to the CLC's regulatory remit,

'The proposed regulation of all legal services provided by licensed conveyancers will provide clearer and more consistent consistent consumer protection. Licensing separately for each reserved activity will allow for each reserved activity will allow for specialisation of legal services delivery to consumers'.

2. The Consumer Panel characterises the proposal to license reserved areas separately as 'sensible' and judges the increase in scope to be of likely benefit in creating greater choice in service provider and providing a 'downward pressure on prices'.
3. It emphasises the importance of the CLC demonstrating expertise and high standards in its proposed regime and advises caution,

'To ensure the CLC does not attempt to take on too many regulatory functions too quickly'.

Regulated community

4. Of the five responses from licensed conveyancers, four were in favour of the CLC extending the scope of its regulated activities and recognised the benefit this will have in making both the CLC and its regulated community on a par with the rest of the legal services sector. One respondent tempered their endorsement by strongly suggesting that the CLC should treat other regulated activities as 'add-ons' to the CLC's 'specialism' of conveyancing and does not regulate any Practice whose main stay is anything other than conveyancing. The fifth respondent was unsure and believed the CLC should carefully consider which activities it should seek to regulate.

Change of Name

5. The Solicitors Regulation Authority understood the reasoning behind the CLC's proposal to extend its regulatory scope and supported the proposal, though it joined ILEX, two members of the CLC-regulated community and the Consumer Panel in their recommendation that should the application prove successful, 'licensed conveyancer' be replaced with another, more easily understood, term,

'Many consumers would presumably expect a professional called a 'licensed conveyancer' to undertake Conveyancing. Given this will not necessarily be the case, the CLC should consider it needs to change its name or make other branding changes in order to provide consumer protection'. *LSB Consumer Panel*

ILEX

6. ILEX asked for more evidence and clarification on a number of issues. It did not rule out welcoming the proposal at a later point, but asked for additional information:

'...as to how the CLC proposes to develop the skills and expertise in these new areas when its entire focus, and its leadership, knowledge, skills and experience relate to conveyancing and probate and do not lie in contentious areas or areas related to court-based activity'. *ILEX response*

Law Society, Bar Standards Board, Bar Council and the Young Barristers' Committee

7. The Law Society, Bar Standards Board, Bar Council and Young Barristers' Committee expressed concern to the principal elements of the proposal and attributed this to what they saw as the CLC's lack of experience, competence and lack of knowledge in the area of advocacy and litigation.

8. None were convinced by the CLC's and the Consumer Panel's argument that increased competition and choice for the consumer were likely to be a tangible benefit of the CLC increasing its regulatory scope for the CLC. They suggest this would contribute to declining standards of regulation,

'It would be an unfortunate and retrograde step if the BSB's efforts to improve advocacy and to enhance advocacy training were accompanied by a lowering of entry and training requirements for licensed conveyancer advocates'. *BSB response*

9. The risk to standards was judged most acute if the CLC were able to license the exercise of rights of audience in the higher courts. In particular, the Young Barristers Committee declared itself to be particularly unconvinced as to why higher rights of audience are,

'in any way necessary to the practice of a licensed conveyancer' and 'why, if such services are required in relation to Conveyancing practice, they should not be provided by those currently properly trained, qualified and regulated to provide such services'.
Young Barristers Committee

10. The Bar Council considered that the CLC should contain itself to the regulation of conveyancing as it was 'artificial for the CLC to consider that its remit extends, or should extend beyond this'. It invites answers to the following specific questions,

- How would the scope extension benefit consumers?
- Why would litigation functions be exercised as part of a Conveyancing transaction?
- How would the CLC parallel the training and CPD requirements of those currently permitted to exercise litigation functions?
- What expertise/knowledge the CLC has to enable effective supervision of these specialist activities?

11. The Law Society considered that someone practising as a licensed conveyancer should only be able to provide unreserved legal activities through their business and only when they have demonstrated that their training and competency is 'equivalent to that of a solicitor'. It enquired how the CLC would seek to gain the necessary expertise to regulate this area effectively, warning that failure to do so would be,

'...entirely detrimental to licensed conveyancers, and indeed to the credibility of the legal regulatory system as a whole. More importantly we believe it will be detrimental to clients'.

Financial Services Authority

12. The Financial Services Authority commented on the impact the proposal would have upon the CLC's status as a Designated Professional Body (DPB) under s. 332(3) of the Financial Services Market Act 2000 (FSMA). In particular, it urged the CLC to consider the following:

- The range of additional FSMA activities that may arise;
- Required changes to DPB rules; and
- Impact on member firms and the assistance provided to them in helping them understand the implications.

13. It is also interested in knowing what measures the CLC would put in place to monitor and enforce the provision of unreserved legal services by CLC regulated practices.

Annex 3
Organisational Diagram of the CLC

