



**Standalone Licences**  
CLC's Consultation  
March 2013

**Submission deadline: 19<sup>th</sup> June 2013**

## Standalone Licences

### Executive Summary

- A. The current requirement for the CLC only to be able to issue licences extending the scope of reserved legal services provided (such as probate or litigation services) to licensed conveyancers (authorised to provide conveyancing services) is outmoded and out of step with the reforms introduced by the Legal Services Act 2007 (LSA).
- B. The CLC believes that the original underlying purpose behind that requirement was to safeguard the interests of consumers. The scheme of incremental permissions explained in this consultation paper<sup>1</sup> will provide an appropriate scheme for safeguarding those interests.
- C. For the reasons set out in this consultation paper, the CLC proposes that it should license individuals who meet the 'fit and proper' test and that the licence should specify the types of legal services that the individual is licensed to provide (which need not necessarily include the provision of conveyancing services).
- D. Failure to introduce this reform is likely to continue to inhibit entry into the legal services market and hamper the natural development of the profession. Ultimately any requirement that would restrict supply will limit any potential for increased competition and access for consumers which is envisaged by the LSA. As a result any anticipated price reductions, increases in quality and innovation, and impacts on the time for consumers to have their case handled within the legal markets may be more muted than originally envisaged by the legal service reforms.
- E. For the same reason the CLC believes that similar amendments should be made to the CLC's scheme for the regulation of Recognised Bodies. In particular, the CLC is satisfied that the interests of consumers will be protected provided one manager in a Recognised Body is an individual licensed by the CLC (contrast the current requirement, namely that one of the managers of a Recognised Body must be a licensed conveyancer licensed to provide conveyancing services)<sup>2</sup>.

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<sup>1</sup> First set out in the CLC's Extension of Scope Application made in February 2012. The CLC intends to develop this scheme further when it resubmits its application in 2013.

<sup>2</sup> This would be relevant where, for example, a Recognised Body is to provide probate (but not conveyancing) services in which case it would be sufficient for the individual licensed by the CLC to be licensed only to provide probate services.

## Responding to this Consultation

- i. You are invited to respond to the questions asked in this Consultation:

### Question 1

Do you agree that the CLC should be able to issue standalone licences to individuals for probate, litigation and other reserved legal activities (ie without also requiring the licensee to have a conveyancing licence)?

### Question 2

Do you agree that the CLC should be able to issue standalone licences to recognised bodies for probate, litigation and other reserved legal activities (ie without also requiring the recognised body to have a conveyancing licence)?

- ii. Could you please state as fully as possible your reasons for the answers you give.
- iii. The CLC also welcomes general comments on the proposals.

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 would like to be able 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 to our online survey.

**Please go to our online survey to complete your response:**

**<https://www.surveymonkey.com/s/XB9PL77>**

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## Introduction

### The CLC

1. The Council for Licensed Conveyancers (the CLC) was established under the provisions of the Administration of Justice Act 1985 (AJA) to regulate licensed conveyancers. Since 1 January 2010 it has been designated an Approved Regulator under the LSA. The CLC was designated as a Licensing Authority on 6 October 2011 and has been authorised to regulate probate services since 2008.
2. As set out at section 28 LSA the CLC must, so far as is reasonably practicable, act in a way—
  - (a) which is compatible with the regulatory objectives (set out at s.1 LSA), and
  - (b) which it considers most appropriate for the purpose of meeting those objectives.
3. Further, the CLC must have regard to-
  - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  - (b) any other principle appearing to it to represent the best regulatory practice.

### The purpose of the CLC

4. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
  - secure adequate consumer protection and redress;
  - promote effective competition in the legal services market, and;
  - provide choice for consumers.

## Wider Context

5. Substantial changes have already been made to the CLC's statutory framework, since the AJA first came into force in 1987. The LSA has introduced with the establishment of the Legal Services Board (accompanied by explicit regulatory and enforcement powers) a level of oversight over the CLC and other legal regulators which did not previously exist. One of the major benefits of the LSA is that it provides substantial discretion and flexibility to the way in which the LSB carries out its functions including approval of changes to the CLC's regulatory arrangements.
6. The CLC's view is that many of the potential risks relating to the establishment of a new legal regulator which the AJA was intended to mitigate are either no longer current or are being effectively mitigated by the LSA regulatory framework. These changes have been introduced without a counter-balancing realignment of the CLC's statutory framework.
7. To address these issues, the CLC is making a request for an order under s.69 LSA making amendments to the AJA. These include:
  - the ability of the CLC to regulate reserved legal activities such as litigation<sup>3</sup> in addition to conveyancing and probate activities,
  - transfer from the High Court to the First-tier Tribunal the jurisdiction to determine appeals from determinations made by the CLC's Discipline and Appeals Committee<sup>4</sup>, and
  - the ability to issue standalone licences, the subject matter of this Consultation Paper.

## Standalone Licences

8. Parliament has now indicated twice that the scope of services licensed conveyancers and CLC entities can provide is capable of being extended<sup>5</sup>. Following on from the authority to regulate probate activities in 2008 and its designation as the first Licensing Authority in 2011, the CLC intends to submit a further application in late 2013 to extend the scope of services it regulates.
9. Currently, the CLC may only license individuals to carry out the extended scope of services if the person making the application is already licensed by the CLC as a licensed conveyancer (to provide conveyancing services)<sup>6</sup>.
10. As it extends the scope of services it regulates, the CLC considers that its power to issue licences should be modified so that it can issue a licence to an individual who meets the 'fit and proper' test. The licence will then specify the

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<sup>3</sup> In anticipation of its application later this year to extend the scope of reserved legal activities it is authorised to regulate

<sup>4</sup> The subject of a separate consultation which ends on 19 April 2013 at [http://www.clc-uk.org/pdf\\_files/consultations/DAC\\_Consultation\\_paper.pdf](http://www.clc-uk.org/pdf_files/consultations/DAC_Consultation_paper.pdf)

<sup>5</sup> See s.53 of the 1990 Act and Part 2 of Schedule 4 LSA.

<sup>6</sup> S.53(2) Courts and Legal Services Act 1990 (CLSA)

reserved legal activities and other legal services the licensee is entitled to provide<sup>7</sup>.

11. The CLC's view is that having determined an individual or recognised body is fit and proper to be licensed by the CLC, the licence should set out the services which the licensee is authorised to provide. The benefit in adopting this approach is that the individuals concerned will not be required to incur costs and time unnecessarily gaining qualifications which are of no practical use to them.
12. The CLC believes that the current requirement (ie that a licensee must as a licensed conveyancer be licensed to provide conveyancing services) inhibits entry into the legal services market and hampers the natural development of the profession. Ultimately any requirement that restricts supply limits any potential for increased competition and access for consumers envisaged by the LSA. As a result any anticipated price reductions, increases in quality and innovation, and impacts on the time for consumers to have their case handled within the legal markets may be more muted than originally envisaged by the legal service reforms<sup>8</sup>.
13. The CLC agrees entirely with the OFT that given the existence of information asymmetries (as between legal professional and consumers) there are clear benefits in requiring legal professionals to meet certain standards<sup>9</sup>. In its application to extend the scope of reserved legal activities it regulates submitted in February 2011 the CLC sought to mitigate the risk which might arise in this context by proposing a framework of incremental permissions<sup>10</sup>.
14. The incremental permissions concept set out in that application has three core elements: (a) authorisation to carry on a reserved legal activity, (b) the grant of permission to practise associated with that authorisation, and (c) limitations on the context in which such authorisations and permissions can be exercised. The CLC intends to refine that framework after it has considered the responses to this consultation to incorporate the concept of standalone licences.
15. Bodies and individuals will be able to apply to expand the scope of their permissions over time and upon proof of competence and experience. It is envisaged that competence and experience in probate or litigation would be assessed entirely separately from competence and experience in conveyancing<sup>11</sup>.

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<sup>7</sup> Which need not include the provision of conveyancing services

<sup>8</sup> Adapted from para 4.21 and 4.22 Economic Research into Regulatory Restrictions in the Legal Profession – A Report for the Office of Fair Trading by Europe Economics OFT 1460 January 2013 at [http://www.of.gov.uk/shared\\_of/reports/professional\\_bodies/OFT1460.pdf](http://www.of.gov.uk/shared_of/reports/professional_bodies/OFT1460.pdf)

<sup>9</sup> Paragraph 4.24 OFT 1460 *op cit*

<sup>10</sup> See

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/110204\\_clc\\_designation\\_application\\_roa\\_and\\_col.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/110204_clc_designation_application_roa_and_col.pdf)

<sup>11</sup> This is a departure from the intent set out in our application of February 2011 which we stated that a litigation licence would only be granted to a licensed conveyancer (licensed to provide conveyancing services).

16. The advantages of the incremental permissions framework were identified in the February 2011 application as:
  - Providing a greater degree of regulatory control over the acquisition of new practising entitlement
  - Lending itself to an effective process of quality assurance and monitoring
  - Relatively easy to put into effect
  - Consistent with our current experience of regulating conveyancing and probate services.
17. A licence in a particular area of the law will only be issued to an individual
  - who has satisfied a fit and proper test, and
  - who has either completed the education and practical training stages or been exempted from those requirements.
18. A licence will be capable of being modified by changing (a) the scope of its authorisations, (b) the scope of associated practising permissions granted or (c) the nature of any applicable conditions.

### **Recognised Bodies**

19. The CLC is entitled to make rules for the authorisation and recognition of bodies licensed by the CLC where at least one of the managers is a licensed conveyancer. The CLC intends to apply for amendment of this requirement so that an individual licensed by the CLC (rather than a licensed conveyancer) meets the requirement to be recognised as a manager of a recognised body.
20. A body applying for recognition in respect of one of the new reserved legal activities will be required to employ, or have as a manager, someone who has at least three years' experience practising as an individual authorised in respect of that reserved legal activity. Provided there is at least one individual licensed by the CLC in that practice, there will be no requirement for the other managers authorised in respect of other reserved legal activities to be licensed by the CLC. This means that CLC recognised bodies who seek to expand their activities into litigation will in most instances be obliged to have those activities supervised by at least one experienced litigator.
21. That individual may well also serve two further roles: (a) as an authorised person qualified to supervise students in order to satisfy the practical element of their training, and (b) as a mentor for new litigation licence holders.
22. Licences issued to recognised bodies will be similar in structure to those issued to individuals licensed by the CLC
  - Authorisations – stating the nature of authorisations granted to the body
  - Permissions – any non-reserved legal services associated with the grant of the particular reserved legal activity
  - Conditions – will mirror the conditions of those managers within the recognised body that hold a relevant licence (eg the recognised body will only be able to provide probate services if one of its managers or employees holds a probate licence or is otherwise authorised to provide probate services).
23. As with licences, any increase in the scope of authorisations of a CLC recognised body will require compliance with the threshold criteria. If, on the

other hand, a CLC recognised body only wants to change the scope of existing conditions on its recognition, then we expect that in most cases this will follow automatically upon any changes to the scope of the practising entitlements of its managers. The body will however have to apply to us in all cases to change such conditions.

## **Education and Training**

24. These proposals are in line with the changes we intend to introduce for education and training requirements<sup>12</sup>.
- it will take at least two years for a student with no prior legal qualifications to complete the education and practical requirements for the grant of a typical licence (such as conveyancing and/or litigation).
  - the timeframe will be shorter for an individual who is currently licensed by the CLC (as a licensed conveyancer) seeking to expand their practising entitlements by obtaining a licence to provide probate, litigation and/or other reserved legal activities, but there will remain a minimum education and practical requirement that must be satisfied.
  - the practical training requirement will involve engagement with the delivery of the relevant legal activity, supervised by an authorised person, and where that engagement must satisfy defined outcomes.
  - we will usually require a CLC recognised body with newly licensed litigation licence holders also to have a suitable person available to mentor them (in most cases this will be an authorised person).

## **Quality Assurance**

25. Quality in the provision of legal services “[goes] to the very purpose of why legal services are regulated in the public interest.”<sup>13</sup>
26. Our proposal for the grant of incremental permissions lends itself particularly well to a quality assurance framework. Licensed conveyancers will be allowed to expand their authorisations and permissions in a gradual, regulated manner. Each expansion will require additional training and/or demonstrable experience and competence. The new permissions, once granted, will be monitored. Each further expansion will require additional evidence of competence and experience. This system will ensure ongoing competence in a manner that goes well beyond the possibilities offered by continuing professional development. From the consumer’s perspective, knowledge of the existence of such an incremental system will bring confidence whilst the visibility of permissions on the register will bring a verifiable form of assurance as to the competence of a given individual or body.
27. One student might want to attain sufficient education and training qualifications to enable them to practise the same range of legal services available to another legal professional (such as a solicitor). Another student might choose a different pathway, passing modules that lead to a conveyancing licence and a litigation licence limited in its exercise to property law. The difference here is that the CLC offers students the option to aim for a limited set of practising entitlements, whereas to date other approved

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<sup>12</sup> We will also take into account the conclusions of the Legal Training and Education Review (now expected in May/June 2013)

<sup>13</sup> ["Quality in Legal Services"](#), November 2010, Legal Services Consumer Panel.



regulators require each licensee to achieve a level and breadth of attainment which may not properly reflect their intended area of practice.

28. Our incremental permissions framework will be reinforced by regular monitoring of the new permissions. For example, litigation licence-holders will be required to demonstrate they are exercising their new permissions and are complying with a practice-specific requirement to undertake targeted continuing professional development training. If a litigator wishes to expand the permitted scope of their activities, we will have to be satisfied of their competence and experience. This system of monitoring and gradual expansion of permissions also lends itself particularly well to the maintenance of quality standards.

## **Risks**

29. The proposals for the structure of the new licensing framework are cautious building on the current licensing and monitoring process. The CLC will identify the generic risks relating to the new activities and adjust its regulatory processes to mitigate further risks as they emerge. However, it is not anticipated that the issue of the first standalone licence will in itself lead to an increase in regulatory risk.
30. Licensees will be required to notify clients at the outset of the services they are regulated to provide<sup>14</sup>. These details will also be included on the CLC register. Licensees will continue to be required (as they are now) to act in the best interests of their client and to accept instructions and act in relation to matters within their professional competence.
31. The CLC acknowledges that the name 'Council for Licensed Conveyancers' may give rise to confusion where it licenses lawyers and entities who do not provide conveyancing services. It is investigating how this risk might be reduced or avoided completely. One of the options currently under active consideration is a change of name to reflect the increased scope of services it regulates.

Thank you for taking the time to consider and respond to this consultation.

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<sup>14</sup> The current requirement is to advise clients when they are carrying out activities which are not regulated by the CLC (OP3(q) Code of Conduct)