

**ALTERNATIVE BUSINESS STRUCTURES: APPROACHES TO
LICENSING**

**CONSULTATION PAPER ON DRAFT GUIDANCE TO LICENSING
AUTHORITIES ON THE CONTENT OF LICENSING RULES**

RESPONSE ON BEHALF OF THE MASTER OF THE ROLLS

1. This response is submitted on behalf of the Master of the Rolls. It is confined to one issue only: Question 7, Appellate Bodies.

Question 7: Appellate Bodies

2. The Master of the Rolls is currently required to appoint members to the Solicitors Disciplinary Tribunal (the SDT) under s46 (2) of the Solicitors Act 1974. The SDT is a statutory tribunal, and any future change to the appellate arrangements for solicitors in this regard may well require legislation.
3. Any reform ought properly to be considered in the light of the changes effected to regulatory, and practice, arrangements for the legal profession. Given the likelihood that in future there will be substantive changes to the nature of legal practice through, for instance, the creation of LDPs, MDPs and, fundamentally, ABSs, there is a need for a coherent and consistent approach to regulatory and disciplinary matters.
4. Consistency is needed where legal professionals from two distinct branches of the wider profession practice in partnership e.g., a solicitor and barrister, and where legal professionals from different branches, or one branch, of the wider profession practice in an ABS. It would seem to be contrary to the public interest for professionals from different branches of the profession and for professionals and ABSs to be subject to; a) different appeal structures and procedures; and b) differing jurisprudence. The potential for differing decisions arising out of the same facts ought to be

avoided. It would be contrary to the public interest, for instance, for a solicitor to be found guilty of a disciplinary matter where an ABS was not as an entity found guilty of an equivalent provision as a consequence of appeals from disciplinary, or regulatory, decisions being heard by different appellate bodies.

5. Given the present and future change which the Legal Services Act 2007 makes to the legal profession it appears to be essential that common standards are applicable to all members of the profession, no matter which branch an individual member belongs to, as well as to ABSs. Common standards arise from common jurisprudence built up over time by a single appellate body. The Master of the Rolls can therefore see the benefit of there being a single body responsible for all legal services appeals in the future. He also sees that such a body would be consistent with the Clementi aim of simplifying the regulatory structure of the profession.
6. The Tribunals Service has agreed in principle that it could undertake the role of final appellate tribunal for the legal profession. The Master of the Rolls has no comment as to the suitability or otherwise of the Tribunal Service playing such a role through the First Tier Tribunal, General Regulatory Chamber.
7. He does however suggest that this issue might properly be dealt with by way of a wider, and separate consultation given: the breadth of its application; the effect any changes might have on the SDT, the Discipline and Appeals Committee of the CLC and appeals brought by barristers (which are the subject of proposed legislative reform in the Draft Civil Law Reform Bill, clause 18 and which are not referred to in the present consultation).