



The Law Society

Legal Regulation Review

Call for evidence: guide to submissions

January 2009

SUPPORTING
solicitors

Legal Regulation Review

Lord Hunt of Wirral has been asked by the Law Society to conduct a review of the regulation of law firms. He has recently published a call for evidence. This note is intended to provide assistance to solicitors who wish to give their thoughts to Lord Hunt to be taken into account in his review.

The **Call for Evidence** can be found at www.legalregulationreview.com/evidence.html. The text is 54 pages long and provides a comprehensive overview of the history of legal regulation, of good regulatory principles and of the considerable number of issues that Lord Hunt sees as needing to be considered. Lord Hunt is keen to hear views on all of these points and about others that ought to be considered. The Law Society hopes that as many as possible within the profession will respond.

Purpose of the Review

The Law Society commissioned Lord Hunt's review because, although Sir David Clementi's report and the subsequent Legal Services Act 2007 dealt with the governance structures for regulation of the legal profession, they did not consider what good regulation is or how good regulation should be carried out. Since the market for legal services has changed considerably and will change further following the Act, it is the right time to ask how the existing structures need to adapt and how regulatory issues ought to be addressed.

Read the [terms of reference and brief](#) (PDF, 57kb) for Lord Hunt.

Background

The Legal Services Act provides that the Law Society (together with the Bar Council, Council for Licensed Conveyancers, and a number of other bodies) should be an approved regulator of individuals offering reserved legal services (i.e. conducting litigation, exercising rights of audience, conveyancing, probate, notarial and immigration advice and representation). However, such authorised regulators must ensure that, so far as practical, their regulatory role is not prejudiced by any representative functions and that decisions on regulatory matters are taken separately from representative decisions. To achieve this, the Law Society established the Solicitors Regulation Authority (SRA).

The Act also provides for Alternative Business Structures, whereby legal services can be offered in conjunction with non-lawyers and in entities owned by non-lawyers. There are a number of requirements that such structures must satisfy and it is also clear that there are a number of issues which will still need to be resolved about the nature of the structures that will be permitted, including ownership requirements, the services that can be offered, the approach to conflicts of interest, and how to protect access to justice..

The Act also establishes a Legal Services Board which will, amongst other things, oversee the work of the approved regulators and set out the regime governing ABSs. The Board was appointed last year and became formally constituted on 1 January 2009 (<http://www.legalservicesboard.org.uk>).

There is also considerable material about the principles that the regulatory bodies must follow and what amounts to 'good regulation'. These are set out in the appendices to the Call for Evidence (<http://www.legalregulationreview.com/files/appendices.pdf>). Of particular importance are the Regulatory Objectives in section 1 of the Act and the Principles of Effective Regulation developed by the Better Regulation Executive.

As part of the Hunt Review, the Law Society has also commissioned a review of the **regulation of corporate firms** which is being carried out by Nicholas Smedley. He will report around the end of February 2009 and this report will be taken into account in the Hunt Review.

Issues

Pages 31 – 54 of the Call for Evidence set out the main issues that Lord Hunt has identified for his review. He summarises the main questions as being:

- What new regulatory challenges and opportunities does the Legal Services Act create?
- What are the characteristics of 'good regulation'?

He then identifies the following issues:

- The role of the Legal Services Board vis a vis the approved regulators;
- The relationship between the Law Society and the SRA;
- The practices of the SRA – how have they changed?
- How should a legal regulator regulate – particularly in respect of the tensions between consumer demands, business requirements and professional values?
- How do the **Five Principles of Effective Regulation** sit in respect of the legal profession? The five principles are:
 - **Proportionality** – regulators should only intervene where necessary. Remedies should be appropriate to the risk posed, and the costs identified and minimised.
 - **Accountability** – regulators must be able to justify decisions and be subject to public scrutiny.
 - **Consistency** – rules and standards must be joined up and implemented fairly
 - **Transparency** – regulators should be open and keep regulations simple and user friendly.
 - **Targeting** – regulation should be focused on the problems and minimise side effects.

- Alternative Business Structures – how will they affect access to justice and affordability? How can conflicts of interests be avoided? How should the regulator deal with non-lawyers in these structures?

Within these headings, the Call for Evidence asks for views on such issues as:

- Entry to the profession;
- Maintaining independence and professional standards
- How a single regulator can regulate such a large, diverse profession
- The extent to which individuals should be able to choose their regulator
- The way the regulator deals with its stakeholders.

Responding

It is unlikely that many solicitors will feel able to respond to the full range of questions here. There is no reason that they should. What is important, however, is that as many as possible let Lord Hunt know what views and concerns they have. These could cover:

- Individual experiences with the SRA and perceptions of them;
- Views about the requirements for entry to the profession;
- Views about the professional standards within the profession and the way they are enforced;
- Views about the business challenges facing the profession and how the new regime will affect those;
- Views about the way in which the new regime will affect access to justice and service to the public.

The Law Society hopes that you will engage with this review. Lord Hunt will be issuing an Initial Response to this consultation in the Spring and will be carrying out a number of roadshows for the profession surrounding that. However, it is important that the profession should respond to this Call for Evidence now in order to ensure that he has the fullest possible picture.

Responses should be sent to:

legalregulationreview@beachcroft.co.uk

Or to

Rt Hon the Lord Hunt of Wirral MBE

Legal Regulation Review

c/o 100 Fetter Lane

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They should arrive no later than **Thursday 9 April 2009**.