



Lenroy Wallace  
Better Regulation Executive  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

23 April 2014

Dear Sir,

**Re: BVCA response to BIS call for views on Small Business Appeals Champion and non-economic regulators**

The British Private Equity and Venture Capital Association ("BVCA") is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 500 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers.

Our members have invested £33 billion in over 4,500 UK companies over the last five years. Companies backed by UK-based private equity and venture capital firms employ over half a million people and 90% of UK investments in 2012 were directed at small and medium-sized businesses. As major investors in private companies, and some public companies, our members have an interest in streamlining the regulatory process and improving the regulators' impact on businesses, in particular small businesses.

There are a number of non-economic regulators which the BVCA as an association is used to dealing with, including the Financial Conduct Authority, the Financial Reporting Council, the Prudential Regulation Authority, Companies House and the Insolvency Service.

The BVCA welcomes the Government's plans to replace the former Regulators' Compliance Code with a new Regulators' Code, shorter and easier to follow for regulated businesses, expected to come into force in April 2014. We welcome the general direction of travel, with Small Business Appeals Champions to have regard to the Regulators' Code, the Better Regulation Principles – proportionality, accountability, consistency, transparency and targeting – and the duty on regulators to consider economic growth.

We believe that the key for Small Business Appeals Champions is independence, power, and time commitment. This means genuine independence from the Regulator, stronger and wider remit than is proposed here, and a full-time role. In our view, industry expertise is helpful but is not necessary.

Yours faithfully

Simon Witney  
Chairman, Legal & Technical Committee  
The British Private Equity and Venture Capital Association



Please indicate below the type of organisation on behalf of which you are responding, or whether you are responding as an individual.

<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)



**Question 1: Do you agree that the creation of Small Business Appeals Champions for non-economic regulators will lead to improvements in businesses' access to, and experience of, effective appeals and complaints mechanisms?**

☒ Yes ☐ No ☐ Not sure

Comments:

- Given research that demonstrates that 1) 6 national regulators had no easily-found guidance about how to lodge an informal appeal or seek a second opinion; 2) 7 national regulators did not appear to have any easily-found guidance about how to make a complaint and; 3) 19 national regulators did not appear to have any easily-found information about their formal appeals mechanism, the SBAC would provide an important semi-detached role.
- Our concern here (see question 12) is that the position is set to be part-time with an expectation that SBACs work 36 days per year. It is unclear whether this will enable sufficient capacity to deal with all complaints and appeals. For the larger regulators SBACs should be full-time roles. It would be preferable for a SBAC to champion business against more than one regulator (and so create a full time role) than to make the role full time by adding other functions relating to a regulator.
- It is also unclear how a SBAC can achieve his/her function of operating as a 'champion' for external parties if he/she is also an NED on the board of the regulator with other duties. The SBAC should not be weighing the merits of effective compliance procedures (etc.), but fighting them in a single-minded way.
- Each SBAC should associate more strongly with the business he/she is there to protect, and with other SBACs doing the same (often for the same businesses) in other fields, than with the Regulator and other board members of the Regulator. I.e. this is one role which should be (capable of being) adversarial more than (of necessity) collaborative.

**Question 2: Do you agree that legislation is necessary to establish Small Business Appeals Champions, and to set out their basic powers and duties?**

☒ Yes ☐ No ☐ Not sure

Comments:

- If they are to have any substantial powers and by extension truly hold regulators to account, we believe that legislation is necessary. This needs to ensure that the SBACs have clear independence from the rest of their designated regulator to ensure that, even if on the Board as the Consultation proposes, they are not influenced by the organisation.

**Question 3: Is the proposed statutory objective appropriate? If not, how should it be modified?**

☒ Yes ☐ No ☐ Not sure

Comments:



- The statutory objective seems broadly appropriate. However the wide scope covered by the Government's proposal again requires a role with greater commitment than suggested.

**Question 4: Is the range of areas described at points (i) to (vi) adequate? If not, what do you think should be added or not included?**

☐ Yes                      ☒ No                      ☐ Not sure

Comments:

- The range of areas described appears incomplete. The Champions' remit could be expanded regarding the overall scope of the scrutiny role.
- The range seems narrow and liable to prevent SBACs being effective. For example, the first, perhaps principal item is "whether there is a clear and impartial route to appeal or complain". It is not hard to design (or suffer to exist) an appeal process that is clear and impartial, but utterly ineffective due to cost, time or other factors.
- A further deficiency is that there is no power to probe on the issue of whether proper reasons are given (unless item (iv) is very widely construed). A core principle of natural justice is the giving of reasons for decisions – the SBAC does not apparently have any standing to encourage this, either in specific cases or generally.
- It is understood and agreed that SBACs should have no powers to *adjudicate* in specific cases, but it is unclear that the existing list allows an SBAC to 'take up the cudgel' in a specific case of apparent delinquency or prejudice, to force (a) a proper application of a proper appeal process in a timely way, and (b) the giving of reasons.
- The last two items on the list are desirable but highly tailored, and ought to arise by natural implication from wider earlier items.
- We agree with notion that a "safe space" is required to query the intervention of a regulator or ask for a second opinion from elsewhere in the organisation – for example in respect of compliance advice given. The SBAC should have power to audit that any apparent and represented 'safeness' is genuine, i.e. that 'informal appeals' conducted through the safe space are not in fact 'safe' (for example because all comments and information provided are made available to the department that gave the contested ruling).

**Question 5: Do you agree with the proposals in respect of the Champion's report?**

☒ Yes                      ☐ No                      ☐ Not sure

Comments:

- The report appears to be a sensible means of informing businesses affected by particular regulators of developments relating to that organisation's policies.
- Direct engagement with businesses and their representatives (trade associations), in addition with information provided by the Regulator and the Government, is key for Champions to gather the necessary evidence relating the impact of regulator's policies and practices on businesses, and to be able to feed this back to the regulator.
- It is unlikely that reports of high quality could be prepared without greater time commitments from the SBACs than the recommended working time of 36 days a year.



**Question 6: Do you consider it necessary to enshrine the duty to report in law?**

☐ Yes ☒ No ☐ Not sure

Comments:

- We believe that the Champions' duty to report to the Regulator should not be enshrined in law, as we don't want to place too much of a burden on them to produce documents. Besides they will want to report in many cases, and where they don't feel the need this may not indicate a problem.

**Question 7: Do you agree that regulators should be under a duty to provide relevant information when requested by a Champion?**

☒ Yes ☐ No ☐ Not sure

Comments:

- The proposal that regulators be under a duty to provide evidence requested by a Champion constitutes a vital part of ensuring transparency and clarifying the reasons behind regulators' decisions. However if such duty does not necessarily imply legislation, we believe this does not suffice and recommend that this provision should be enshrined in law and be accompanied by statutory provisions.

**Question 8: Do you anticipate any potential conflict of this requirement with any statutory restrictions on disclosing this information or other obligations of confidence? Are these avoided altogether by the fact that the Champion is appointed for the regulator?**

☐ Yes ☐ No ☒ Not sure

Comments:

- This would likely need to be decided on a case-by-case basis, particularly regarding legal matters relating to appeals and complaints.

**Question 9: Do you agree that this "comply or explain" approach is appropriate, and that it should be set out in guidance rather than legislation?**

☐ Yes ☐ No ☒ Not sure

Comments:

- The "comply or explain" approach, with regards to the response to the Champions' recommendations, is appropriate as it ensures a response. It is important to accord sufficient strength and independence to the role of a SBAC.
- The problem however revolves around whether the SBACs are perceived as powerful enough within their regulator to ensure that 'explaining' rather than 'complying' is not overused. If SBACs have no legal abilities they may well become a lame duck, investigating but never achieving concrete results.



**Question 10: Do you agree that to do the job effectively the Champion should normally be at the equivalent of Board level?**

☒ Yes ☐ No ☐ Not sure

Comments:

- Yes, as the SBAC position is one of oversight and criticism a senior position is necessary. However if their position is “grafted onto an existing position” as a Non-Executive Director as suggested in the consultation document, SBACs may not be as independent as necessary to ensure a unbiased view untainted by existing culture within particular regulators. The SBAC should attend board meetings wherever practicable with Observer status, but their independence from the rest of the organisation is paramount.
- The Impact Assessment also suggests the option of a central body for SBACs. While this seems a move too far in the opposite direction and would require considerable expense and time, informal links between Champions must be encouraged as essentially they will perform similar roles and networking would be beneficial.

**Question 11: Do you agree that the Champion should have a background in the type of business predominantly regulated?**

☐ Yes ☐ No ☒ Not sure

Comments:

- This is potentially a double-edged sword. An individual drawn from the type of business overseen by the regulator may be too biased to conduct himself in a way that is fair to both the business concerned and the regulator itself. Similarly of course, an understanding of the nuances of a particular sector would be highly advantageous given that complaints often come down to minutiae.

**Question 12: Do you agree that Champions will be able to operate effectively as part-time appointments?**

☐ Yes ☒ No ☐ Not sure

Comments:

- The 36 day limit proposed in the consultation is too short to ensure that the SBAC can perform his/her role with enough attention and care.

**Question 13: Do you agree that the support which Champions are likely to require from regulators’ staff will be limited?**

☐ Yes ☒ No ☐ Not sure

Comments:



- If the SBAC solely holds a ‘freedom of information’ right to see files etc, the support required from regulators may be limited. Nonetheless, SBACs might benefit from some central resource for research/administration/reporting. More staff time is therefore likely to be required if the SBAC is only on a 36 day-a-year contract, with regulator staff likely to take on more of the work regarding the annual report.
- Notably, the 36 day-a-year contract does not take account of the time required by SBACs to liaise with the industry regulated by his/her organisation.

**Question 14: Do you agree that in some cases it would be sensible for one Champion to cover more than one regulator? Do you know of any groups of regulators where this approach might be worth considering?**

☒ Yes ☐ No ☐ Not sure

Comments:

- Yes – to the extent that this makes the roles full time for some of the smaller regulators, and that enough independence and power are granted. The industry expertise is helpful, but essentially the role is to check that procedures work properly rather than get into specifics.

**Question 15: Are there any cases where sharing regulators would be inappropriate? Why?**

☐ Yes ☐ No ☒ Not sure

Comments:

**Question 16: Do you agree that in order to ensure genuine independence, appointments should normally be made by whoever appoints the regulator (typically the relevant Secretary of State)?**

☒ Yes ☐ No ☐ Not sure

Comments:

- It would be a useful safeguard of independence if the relevant Secretary of State took guidance from relevant industry bodies etc, but there is perhaps no cost-effective way to formalise this. Current or recent experience within the Regulator should usually be a bar to consideration, in grounds of independence (both actual and apparent).

**Question 17: Do you agree that the role should normally be added to an existing office-holder or employee’s responsibilities?**

☐ Yes ☒ No ☐ Not sure

Comments:

- This may be necessary due to statute governing particular regulators – but if particular regulators’ are expected to wait for an NED to leave before they can hire someone qualified for the role of Champion the position may be diminished somewhat.



**Question 18: Do you agree that Champions' contracts should normally be based on existing arrangements for appointments in respect of a particular regulator? Are there any regulators for which this will not be possible?**

☐ Yes ☐ No ☒ Not sure

Comments:

**Question 19: Are you aware of any non-economic regulators where the appointment of a Champion would not be legally or practically possible? If so, what alternatives do you suggest?**

☐ Yes ☐ No ☒ Not sure

Comments:

- Perhaps some regulators do not particularly interface with or affect *small businesses*. This raises the question – what purpose do they serve, who is thereby affected, and should there be a champion for those affected interests.

**Question 20: Do you agree that any familiarisation costs for business associated with the appointment of Small Business Appeals Champions are likely to be very low?**

☒ Yes ☐ No ☐ Not sure

Comments:

- Businesses will need to learn what SBACs can and can't do. Aside from this small time requirement, costs should be negligible.

**Question 21: Can you suggest how much time a typical business might need for such familiarisation?**

Comments:

- This would depend on the number of staff to be informed and the level of detail to which an employer will seek to inform his employees about the SBAC



