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Mr N Buckley
Chief Executive
Legal Services Board

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2 December 2016

Dear Neil

Encouraging a diverse profession – a response to the consultation on revised guidance for regulators

I am writing on behalf of the Master of the Faculties in response to the consultation paper issued by the LSB in relation to its proposed revised guidance for approved regulators on encouraging a diverse profession.

I will respond to the consultation questions individually in due course. Firstly, however, I want to make some general comments on the proposals.

- Section 162 of the Legal Services Act 2007 provides that the Board may give *guidance* in respect of the six matters listed and that such *guidance* may consist of such information and advice as the Board considers appropriate. Whilst noting the provisions of S.162(5), I do have concerns that the revised 'guidance' goes beyond what one might ordinarily define as 'guidance' (ie 'advice or information aimed at resolving a problem', O.E.D.) and is rather more akin to a set of expectations or requirements with which regulators are required to comply within the specified timescale.
- The move away from principally data collection and the renewed focus on 'outcomes' (consultation para.16) would be welcome but for the fact that the guidance is made up, not of outcomes, but rather a series of required actions to be undertaken within a specified period with an accompanying performance assessment.
- The Master of the Faculties, acting through the Faculty Office, has been and remains committed to the regulatory objectives set out in the Act including the requirement to encourage an independent, strong, diverse and effective legal profession. However, I am not at all clear that the proposed guidance, focussed as it is on just one aspect of the

objective and on a fairly narrow definition of that one aspect, will assist in achieving the entirety of the objective.

Turning now to the specific numbered questions set out at paragraph 23 of the consultation paper:

1. As I have indicated above, if the proposed guidance was truly a switch to outcomes it would be welcomed as this would allow each of the diverse branches of the profession and their regulators to actively promote policies which are specific, targeted and appropriate to the hugely varying contexts within which each of the approved regulators operates. The effective imposition of a set of required actions common to each approved regulator is neither helpful, nor likely to achieve the desired result of encouraging a more diverse (in the consultation's narrow interpretation of that term) profession. I am concerned that the focus on achieving the specific actions within the required timescale will have an adverse affect on the freedom of approved regulators to consider the matter as part of their wider regulatory regimes.
2. I am not sure that it will. By requiring approved regulators to achieve a set of LSB defined actions within an imposed timescale could divert attention away from the bigger picture. The important and necessary work to achieve changes in the diversity of the legal profession as a whole and within the individual distinct professions within the wider legal cohort cannot be achieved overnight and in some cases will, necessarily, take many years to achieve – a newly appointed notary from amongst the BME or LGBTI communities, for example, whilst immediately having the same status in the profession as a notary who has held her faculty for 30 years, will clearly take many years to become one of the senior (in terms of long-service) members of the cohort of notaries.

In order to achieve an appropriate level of consumer protection, it is necessary to ensure that all aspirants to the profession from every group within society are adequately trained and qualified. All of the regulators, and those whom we regulate, are subject to the Equality Act 2010 which prohibits discrimination against individuals under any of the protected characteristics¹ and there is no question of the Master of the Faculties or, I would expect, any of the other approved regulators declining to admit an appropriately qualified applicant from any area of the community. The issue is how to encourage a greater diversity of aspirants to apply in the first instance and the proposed guidance will not, in my view, achieve that aim.

¹ Age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity

Much of the difficulty in addressing the issues of diversity of appropriately academically qualified applicants stems, unfortunately, from issues which are outside the sphere of influence of, particularly, the smaller regulators but also to the likes of the SRA and BSB, in the areas of secondary education and the often prohibitive costs of university or other further education required to ensure the maintenance and enhancement of the quality of services provided to consumers.

3. In a small profession, such as the notaries, it will take time to collect a meaningful data set in which to establish the current level of diversity, the extent of the issue and to establish the momentum towards progress or change. The Master of the Faculties, acting through the Faculty Office, remains committed to achieving as diverse a profession as possible. As can be seen from our published data, the profession is small and changes are going to be slow to come through but anecdotal evidence points to a positive change, certainly in terms of gender and ethnicity, feeding through amongst applicants for the notarial practice course and admissions:

<http://www.facultyoffice.org.uk/notary/the-faculty-office-as-regulator-of-the-notarial-profession/>.

4. In order to achieve consistent and comparable data, the model form of survey questionnaire should remain unchanged. Clearly, there will always be differences as the diverse professions within the legal community in England & Wales have differing models. For example, seniority as a solicitor may be measured by the status of an individual within the business model in which he or she operates (eg. trainee, newly qualified, associate, senior associate, partner etc). The vast majority of notaries public are sole practitioners and have equal status from their admission, or certainly once they have been released from the initial two (or three) year supervision period, and seniority can then only really be measured in terms of the length of time during which they have practised.
5. For the reasons outlined above, we do not feel that assessment of performance against 'guidance' is appropriate if it were truly guidance. However, given that this guidance is, in effect, a series of required actions, then the extent to which regulators have complied with the requirements ought to be measurable. Any such assessment must, however, take into account the diversity amongst the regulators in terms, *inter alia*, of the size and nature of their regulated communities and avoid the one-size-fits-all approach which the LSB had historically taken in its approach to oversight but from which, we have been pleased to note, it has been moving away under the current chair and the chief executive and his immediate predecessor.

6. a) I cannot see that the guidance will have any effect on the deliverance of better services for consumers.
- b) I cannot see that the guidance will either support or discourage innovation in legal services.
- c) For regulators whose regulated communities operate within business models other than primarily sole practitioners there would always be scope for regulators to encourage business-led initiatives but I do not believe that the proposed guidance would impact this either positively or negatively.
- d) I am sure that it will assist to encourage regulators and others to take such steps as are within their control to encourage more diversity (in the narrow sense covered by the guidance) in the legal professions. As indicated above, the steps which regulators have in their control to take and influence will not be a 'quick-fix' and the fruits of our efforts are likely to be some years away before they become measurable.

I am sorry if much of what appears above seems to be negative. This is in no way intended to diminish the importance of the aims which the guidance has at its core and which is vital to achieve a profession which more closely matches the diversity of the consumers which it serves. However, I do not believe that the proposals take proper, or perhaps a realistic, account of the timescales, nor of the approved regulators ability to influence some of the underlying issues, which will be needed to achieve this result.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H J Dellar', written in a cursive style.

H J DELLAR
Registrar