LEGAL SERVICES BOARD CONSULTATION ON REGULATORY INDEPENDENCE – CPS CORPORATE RESPONSE

1. How might an independent regulatory arm best be "ring fenced" from a representative controlled approved regulator in the way we describe (i.e. requiring delegation of the power to regulate processes and procedures; and the power to determine strategic direction)?

The exact mechanism for 'ring fencing' the regulatory arm will depend to some extent on how the approved regulator is organised. However it will be important that, whatever mechanisms are devised, the governance of each and the relationship between each is transparent with a clear definition of the roles and responsibilities of both.

2. What do you think of our proposals relating to regulatory board appointees, set out under paragraph 3.15?

We welcome the proposals, particularly the proposal that the board should have an in-built majority of non-lawyers. This will help to build confidence that the board is acting independently from the profession when undertaking its functions.

3. Is it necessary to go further than our proposals under paragraph 3.15, for example by making an explicit requirement for the chairs of independent regulatory board/equivalents to be non-lawyers.

Whilst in many circumstances it will be preferable for the chairs to be non-lawyers we do not believe that this should be made a mandatory requirement. Whilst the role of the chair will be important, if there is a majority of non-lawyers on the board, this should ensure that the board is, and is seen to be, independent of the approved regulator.

4. Do you agree with our proposals in respect of the management of resources, including those covering 'shared services' models that approved regulators might adopt? What issues might stand outside such arrangements as suggested in paragraph 3.22?

In principle we believe that the proposals suggested are appropriate. However it may be beneficial to give some guidance about how the proposed service level agreement might be enforced in practice.
We agree that the minimum requirements are appropriate and have not identified any issues that might stand outside such arrangements.

5. **Is our proposed balance between formal rules and less formal (non-enforceable) guidance right? In what ways would further or different guidance be helpful?**

   The balance seems to be appropriate but we feel it would be advisable to indicate clearly the status of the guidance. For example it is said that the guidance will not be enforceable, but how far will a failure to follow guidance be considered when deciding whether a formal rule has been breached?

6. **What are your views on our suggested permitted oversight role for representative-controlled approved regulators over their regulatory arm? Are practical modifications required to make it work?**

   Since the approved regulators are responsible for the discharge of the regulatory functions it is important that they are able to monitor and supervise the activities of their regulatory arm, consistent with the operational independence of that arm. We agree with the view expressed in the consultation paper that any rules governing the regulation of this relationship should not be overly detailed or costly.
   The two supervisory roles envisaged in the consultation paper seem appropriate and we have not identified any practical modifications required to make them work – although again this may depend on the approved regulator concerned.

7. **In principle, what do you think about the concept of dual self-certification**?

   This concept seems appropriate and, as the consultation paper points out, should lead to constructive relationships between the approved regulator and the regulatory arm.

8. **If dual self-certification model were adopted, how should it work in practice? Or would alternative arrangements be more appropriate, either in the short or longer term?**

   How the dual self-certification process should work in practice will again depend on the individual approved regulators / regulatory arms. However, transparency will be important as well as clear ‘demarcation lines’ concerning who will do what.
   Whilst we think that it is appropriate that much of the process is managed by the approved regulators / regulatory arms, we feel that that LSB should consider further whether there should be some regular random or targeted evaluation of the self-certification process. This will help build public confidence in the process.

9. **Do you agree that the mandatory permitted purposes currently listed in statute should be widened to include explicit provision for regulatory**

objective (g), i.e. “increasing public understanding of the citizen’s legal rights and duties”?

Yes. It is important that citizens are aware of their rights and duties.

10. Should any other (general or specific) purpose be permitted under our Section 51 rules?

We considered particularly whether the regulatory objective at Section (1)(g) of the Legal Services Act (‘promoting and maintaining adherence to the professional principles.’) should be specifically added to the list of purposes. However, on reflection we feel that this is already adequately covered by the ‘regulation, accreditation, educations and training’ requirement at (a).

11. What do you think of the proposal to seek evidence that links to the regulatory objective in the Act?

We are in favour of this requirement. If the LSB are to approve the level of the practising fee it is important that they are aware of any impact it may have on the regulated community in general or sections of that community.

12. What criteria should the Board use to assess applications submitted to it?

We would suggest that the Board should primarily consider how the proposed practising fee will be used to further the regulatory objectives. They should also consider the value for money and how the proposed practising fee may impact on the regulated community or sections within it.

13. If they are adopted, what should Memoranda of Understanding between the Board and approved regulators contain? For approved regulators in particular, are there any particular implications for your organisations?

Again it is difficult to comment on this because the memoranda will need to take account of the structure of the approved regulator.

14. Should there be a requirement on approved regulators to consult prior to the submission of their application each year – and if so, who should be consulted, and on what? Should there be a distinction drawn between approved regulators with elected representative councils or boards; and those which have no such elected body?

We are not in favour of a requirement to consult prior to submission of an approved regulator’s yearly application since we believe this will be an unnecessary administrative burden. Whilst it may be argued that those approved regulators with elected representative councils may be more ‘in

tune' with the views of their members and thus less likely to submit an application which is likely to impact adversely on their members, these tend to be the larger approved regulators e.g. the Law Society or Bar Council. However, since many of the other regulators without an elected representative council are smaller they too are in tune with the views of their members. They are also less likely to have the wide range of practice that, for example, barristers and solicitors have which may make it easier to gauge the views of their members which may be more likely to be homogeneous.

15. **What degree of detail would be most appropriate to require when seeking to maximise transparency but be proportionate in terms of bureaucracy? Have we got the balance right?**

    Again it will depend on the approved regulator but the balance seems appropriate.

16. **Are there any issues in respect of practising certificates fees that you think we should consider as part of the consultation exercise?**

    We believe strongly that consideration should be given to whether all individuals need to pay the same practising fee. For example solicitors within the CPS pay a reduced practising certificate fee and it may be that individuals or organisations which are less likely to require involvement from the LSB or referral to the OLC should pay a reduced fee. A number of factors may be relevant. For example if an organisation has a robust internal complaints procedure or they or their regulated employees do not handle client's money or act directly for an individual.

17. **Please comment on our draft proposed rules, both in terms of the broad framework and the detailed substance.**

    The draft rules seem to be appropriate to meet the objectives outlined in the consultation paper. We have no additional comments to those referred to above.

18. **Are there any comments that you wish to make in relation to our draft impact assessment, published at *Annex C* alongside this consultation paper?**

    None

19. **Are there any other issues that you would like to raise in respect of our consultation that has not been covered by previous questions?**

    None