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By email only

Dear Karen

Re: LSB Draft Strategic Plan 2015-18 and Business Plan 2015/16

I am writing to set out the SRA's response to your consultation on the LSB's Strategic Plan 2015-18 and Business Plan 2015-16.

We welcome the overall approach set out in the Plans and in particular the section on the overview of the three strategic priorities you have identified for your work which gives an excellent assessment of the current position and identifies a clear way forward through those priorities. Your Theme A (breaking down regulatory barriers to competition, growth and innovation) closely reflects a key aim of our own Corporate Strategy to reform regulation so as to enable growth and innovation in the market, as well as our Business Plan priorities to remove or reduce structural regulatory barriers to innovation and disproportionate regulatory burdens. We share your vision of a legal services market which is competitive, innovative and open, and agree that such a market is most likely to deliver the regulatory objectives.

We have the following observations on particular aspects of your proposals:

Theme A - breaking down regulatory barriers to competition, growth and innovation

1. Reviewing and removing obligations

(a) Thematic review of potentially restrictive requirements

For the reasons set out above, we welcome this focus for the LSB's work. You will be aware that we are doing significant reform work ourselves in this area, including looking at insurance arrangements and entry and exit requirements.

We note that following on from its thematic reviews in this area, the LSB may consider the case for making recommendations regarding the reservation of additional activities. We agree that any such additional reservation would only be appropriate where it is a proportionate response to clear evidence of identified need.

(b) Identification of duplication, inefficiencies and inconsistencies between regulators

We strongly support the promotion of efficiency and consistency and measures to reduce the cost of regulation. This reflects the aim of our own business plan to improve our operational effectiveness and efficiency and we are keen to continue to work with the LSB to ensure that we deliver efficient and effective services. We note the specific proposal that the LSB should explore options for regulators to jointly commission services, such as “back office” functions. This might well be one option worth exploring for some of the smaller regulators and we suggest that the LSB might look for evidence of where such sharing has been successfully achieved.

We note that you propose looking at variations in regulators' work on dealing with firms in financial difficulty and that you may conduct a thematic review about how regulators identify and deal with such firms. While we understand your reasons for wishing to look at this area, variations between regulators in this area may simply reflect differences between the particular parts of the legal services market which they regulate. We recognise that properly functioning markets will routinely have entities which leave the market place, as well as new entrants to it. However, the fact that law firms hold clients' money means that there is a particular risk of significant consumer detriment associated with a disorderly exit from the market. This does not necessarily apply to other markets, or other sectors of the market for legal services. For example, the impact on consumers of a disorderly closure of a firm of solicitors is likely to be significantly greater than a barristers' chambers ceasing to operate. Our work in relation to the financial stability of law firms is not directed at preventing the closure of entities which we regulate, but at seeking to ensure that a firm's exit from the market is handled in a way which minimises the consumer impact.

2. Reviewing the LSB's statutory decision making process

While we welcome your proposals for reviewing your decision making processes, we would like to understand further how the suggestion of an "ideal" set of regulatory arrangements could be identified and applied across all frontline regulators. The introduction of an "ideal" set of regulatory arrangements has implications which are wider than improving decision making processes, with the risk that they would become a single blueprint for all frontline regulators. We are concerned that this would be overly prescriptive.

3. Developing options for regulatory change

The Legal Services Act 2007 (LSA) has enabled major improvements to be made in the regulation of legal services in England and Wales but the full benefits of the reforms enabled by the Act, particularly around market liberalisation, are still being realised. There remains more to be achieved within the current legislative framework. Given this, our view is that the main focus of the LSB's work should be to support and enable independent frontline regulators to promote a competitive, innovative and open legal services market, particularly through their work to reduce the burden of regulation. Work on more fundamental regulatory change, requiring changes to primary legislation, must also progress in order to identify further benefits from such reforms so as to build the case for further legislative change. However, work on the latter, longer term, changes should not distract from the work necessary to deliver the full potential benefits of the 2007 Act.

Theme B - enabling the need for legal services to be met more effectively

4. Work packages

We agree with the suggestion in the consultation paper that undertaking a thematic review of education and training during 2015-16 would be premature. We and other frontline regulators are still in the relatively early stages of major change programmes, underpinned by statutory guidance issued by the LSB only a few months ago. There is a risk that a further review might delay the introduction of a new training and assessment framework for solicitors and exacerbate uncertainty about the future direction of educational reform. We would find it more helpful to continue to engage closely with the LSB about this developing area of work through discussion and monitoring.

Under Theme B, you identify five packages of covering issues such as accessibility, affordability, information, etc. We believe it would be helpful if each of these packages more explicitly identified that they will take into consideration the diversity of consumers in England and Wales, including the needs of groups of people with particular protected characteristics.

We also think that there is scope for doing much more to educate consumers about both the work of the LSB and regulators and, more specifically, what they can expect from their engagement with those providing regulated services.

There is a strong focus in this section on the operation of the legal services market and ensuring it operates in the interests of consumers. That focus is important, and it will be equally important to continue to recognise the core public interest purpose of legal services regulation in supporting the rule of law and the administration of justice.

Performance, evaluation and oversight

5. Discharging our regulatory oversight function

We believe that the Board's role, in ensuring the independence of frontline regulators, will be of critical importance during this period. The changes that frontline regulators will have to deliver, if the LSB's own objectives under Theme A and Theme B are to be achieved, will generate a degree of opposition from some current market incumbents. This is both inevitable and understandable. It was recognised at the time of the development of the LSA 2007 that enabling independent regulation was the key to unlocking the fundamental reforms required within legal services provision in England and Wales. The LSB has a core function, under the LSA, of ensuring and safeguarding independent regulation in the public interest, and we believe that should be more explicitly referenced in the plans.

We welcome the suggestion that the LSB intends to seek the views of consumers, providers of legal services and those who represent them on their understanding of the roles and the performance of front line regulators. This will give us information to support one of the key aims of our own Business Plan - to improve our operational effectiveness and efficiency and to deliver a better customer experience for those who interact with us.

6. Cross-cutting research and evaluation

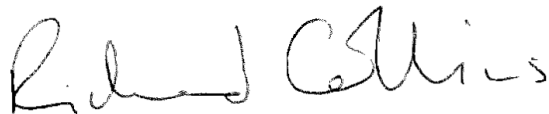
As stated, we are already working with the LSB to explore the possibility of creating an on-line independent legal services research hub. We take note of your other research plans and would welcome the opportunity to discuss each in more detail once you have a better idea of your priorities and the timeframes.

We also think that there could be benefit in exploring how the regulators could work with you on the research you are already doing to monitor the impacts of regulation on the legal services market and a full market evaluation.

7. Possible LSB requests to the Consumer Panel

You have asked for views about the areas where you might seek the advice of the Legal Services Consumer Panel. We are happy to support the suggestions you have set out at paragraph 69 of your Consultation Paper.

Yours sincerely

A handwritten signature in black ink that reads "Richard Collins". The signature is written in a cursive style with a large initial 'R'.

Richard Collins
Executive Director
Solicitors Regulation Authority