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Michael Mackay
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30 January 2014

Dear Mr Mackay

Response to Consultation on the LSB's Draft Business Plan for 2014/15 (Draft Business Plan) issued 5 December 2013

On behalf of the Tunbridge Wells, Tonbridge & District Law Society (**Society**) I present the response of its Regulatory Committee (**Committee**) to the Consultation. The Committee is comprised of members all of whom have considerable expertise and professional experience in regulatory matters.

The Society represents Solicitors and other lawyers who practise or live in the counties of Kent and East Sussex. The law firms to which the Society's members belong advise a variety of clients including individuals, multi-national companies, trustees, financial institutions, microenterprises, small and medium sized enterprises, and consumers of legal services of many kinds in all manner of civil and criminal legal and regulatory issues.

The Committee regularly responds to consultations issued by the Legal Services Board (**LSB**), the Solicitors Regulation Authority (**SRA**), the Legal Ombudsman, and other bodies.

1. The work of the LSB

- 1.1 The LSB is the oversight regulator of Approved Regulators, including the Law Society of England and Wales (**the Law Society**), which through the SRA, regulates practicing Solicitors and providers of legal services authorised as 'alternative business structures' in England and Wales.
- 1.2 Of the approximately 168,000 authorised lawyers in England and Wales the vast majority are admitted as Solicitors by the Law Society and authorised by the SRA. Only 17.5% of authorised lawyers are not regulated by the SRA.
- 1.3 The Consultation states that the LSB is also the oversight regulator of the following Authorised Regulators:
 - 1.3.1 The General Council of the Bar, which through the Bar Standards Board, regulates around 15,300 practicing barristers;

- 1.3.2 The Chartered Institute of Legal Executives, which through ILEX Professional Standards Limited, regulate around 7,900 practicing fellows;
 - 1.3.3 The Council for Licensed Conveyancers, the regulator of over 1,170 practicing licensed conveyancers and 38 alternative business structures;
 - 1.3.4 The Chartered Institute of Patent Attorneys, which through the Intellectual Property Regulation Board, regulate around 1,980 practicing chartered patent attorneys;
 - 1.3.5 The Institute of Trade Mark Attorneys, which through the Intellectual Property Regulation Board, regulate around 820 practicing trade mark attorneys;
 - 1.3.6 The Association of Costs Lawyers, which through the Costs Lawyer Standards Board, regulate over 560 practising costs lawyers;
 - 1.3.7 The Master of the Faculties who regulates over 800 notaries;.
 - 1.3.8 The Association of Chartered Certified Accountants (ACCA); and
 - 1.3.9 The Institute of Chartered Accountants of Scotland (ICAS).
- 1.4 The Consultation notes ACCA nor ICAS are designated as approved regulators for probate activities only, and that neither ACCA nor ICAS has any members offering those services at present.
 - 1.5 The LSB does not have an oversight function in relation to either the Law Society of Scotland nor the Law Society of Northern Ireland.
 - 1.6 The LSB has a statutory relationship with the OLC, the Board of the Legal Ombudsman. This includes a responsibility to review its performance in administering the Legal Ombudsman scheme.
- 2. Consultation on the Draft Business Plan**
- 2.1 The Consultation outlines the work the LSB proposes to carry out in 2014/15.
 - 2.2 The Consultation was published by the LSB on 5 December 2013, and can be found at http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/lbsb_2014_15_business_plan.pdf.
 - 2.3 The LSB proposes a budget of £4,298,000 for 2014/15.
 - 2.4 The running costs of the LSB are levied on Approved Regulators and passed on to members of the legal profession as a business overhead as part of the practising certificate fee.
 - 2.5 The Consultation says that based on the LSB's planning assumptions it proposes to reduce its budget by £150,000 from that of 2013/14. Further, that the bulk of the proposed £150,000 budget reduction comes from reductions in accommodation costs and OLC Board budgets.
 - 2.6 The Consultation indicates that the LSB has three strategic priorities for 2012-15:

- 2.6.1 assuring and improving the performance of Approved Regulators;
 - 2.6.2 helping consumers to choose and use legal services;
 - 2.6.3 helping the changing legal sector to flourish by delivering proportionate regulation to address risks.
- 2.7 In that context, the LSB have chosen primarily *to promote equality and diversity, including developing a diverse workforce across the legal sector.*

3. **Our response to the Consultation**

- 3.1 The Committee is of the view that much of what the LSB proposes to do in the Draft Business Plan goes beyond what our members would expect and like to see from an oversight regulator. With all respect, many of the areas contained in the Draft Business Plan appear to be matters that the Approved Regulators are best placed to deal with themselves. In particular, we are concerned about the proposals of the LSB to liberalise the legal workforce.
- 3.2 It is the view of the Committee that the LSB should assess the activities of Approved Regulators in the context of its statutory remit. The Committee is of the view that it was not the intention of Parliament to grant powers to make policy for Approved Regulators unless those Approved Regulators are in breach of their statutory obligations. The Draft Business Plan suggests the LSB is once again creating an additional role for itself.
- 3.3 It is the view of the Committee that professional standards should be established and maintained by the Approved Regulators as independent regulators of firms providing distinct legal services. We would be very concerned to see the imposition of guidelines which would compel the Approved Regulators to have a 'one size fits all' approach.
- 3.4 Experience of the financial services industry demonstrates that where there are grades of permission to undertake certain tasks integrity and ethics may not be embedded. We also have concerns that in the effort to make legal services cheaper that the reputation of the World class UK legal services industry will be fatally damaged.
- 3.5 The Committee is of the view that it is for the Approved Regulators to make their proposals known to the LSB and for them to be assessed as to whether they meet the requirements of the legislation. In this respect we view paragraph 38 of the Draft Business Plan with concern. This appears to be the LSB, as an oversight regulator, wishing to impose its views regarding professional competence on the professions on the spurious basis of increasing diversity.

38 The way that legal businesses recruit and train their workforce is fundamental to the delivery of the regulatory objectives. In our view, a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market than exists now. We believe this can happen without compromising professional standards. In any market, it is also essential that consumers have access to the information they need to make decisions regarding the services they are buying; be that the cost or quality of legal services and who is providing them (including the diversity of the workforce). Regulators should

therefore play a more active role to ensure transparency of information in all of these areas.

3.6 This paragraph should be read in conjunction with the LSB's view that:

a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market. We consider that greater flexibility can be achieved through more effective targeting of regulation according to the risks posed. We suspect that there are areas where existing regulation may not be proportionate and is having an impact on access, cost and flexibility (Paragraph 21, the LSB's "consultation on proposals for draft statutory guidance to be issued under section 162 of the Legal Services Act 2007, Increasing flexibility in legal education and training").

3.7 The Committee considers the LSB's outcome, *that Education and training regulations place no direct or indirect restrictions on the numbers entering the profession*, is an impossible one for the Approved Regulators to achieve. Professional education and training have a cost. Such a cost is inevitably an indirect restriction on the numbers entering the profession, by whatever means it is paid

I trust this is helpful as an indication of the concerns of the local profession that imposing changes to professional education and training which are essentially driven by cost will inevitably lead to a deterioration in professional standards and increase risk to the consumer.

Yours sincerely

Martin Varley

Martin Varley
Chairman