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Dear Sirs

**OFT Response to LSB consultation on Business Plan 2010-2011**

The OFT has had an interest in legal services reform since our 2001 report on Competition in the Professions.<sup>1</sup> Our focus is on ensuring markets are competitive and work well for consumers. In addition to our normal powers, we have particular responsibilities under the 2007 Legal Services Act including: being consulted on rule changes by approved regulators where the Legal Services Board sees fit; being consulted on approval of new regulators; and having investigatory powers if we are of the opinion that the regulatory arrangements of an approved regulator are, or are likely to, significantly restrict, distort or prevent competition.<sup>2</sup>

We welcome your proposed programme of work, your commitment to evidence and research, and your open and transparent working style. Our support for your work is wide ranging and well known. Rather than comment in detail on the whole of your work programme, I have concentrated on two areas: strong agreement with your interpretation of promoting Access to Justice, and support for a robust approach to quality monitoring and complaint handling.

The OFTs primary interest is promoting robust competition between legal service providers that benefits consumers. A core objective of legal services reform is increased competition between diverse business models of legal service provisions. If successful, this diversity

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<sup>1</sup> [www.oft.gov.uk/shared\\_oft/reports/professional\\_bodies/oft328.pdf](http://www.oft.gov.uk/shared_oft/reports/professional_bodies/oft328.pdf)

<sup>2</sup> Legal Services Act 2007: sch 10, 9, 4; sch 57.



will lead to greater provision of essential legal services to a wider cross-section of society through both lower prices, and innovations in customer identification and retention. You reflect this in your interpretation of promoting Access to Justice, which includes ensuring that providers are free to innovate and have incentives to do so. In placing not only the current consumer of legal services at the heart of your agenda, but also the future consumer, your Business Plan reflects the causal relationship between increased competition and increased access to justice.

Accordingly, we welcome work strand 2B – *widening access to the legal market* - set out in the Business Plan and consider this programme of work as an important step forward in ensuring the legal services market delivers for all consumers. Your work in this area will help facilitate the introduction of new forms of business practice that in turn will both promote the competitiveness of legal service providers and give consumers wider choice. Provided adequate safeguards for the consumer are in place, such developments should lead to lower prices through increased efficiency and innovation, higher quality of service, and increased access to justice.

As in all markets, consumer protection is necessary to prevent firms winning business through 'sharp practices', such as pressure selling or provision of poor quality legal advice. It is effective consumer protection that puts a barrier in the way of such practices, and channels competition into a search for beneficial efficiency and innovation.

In order to be effective, consumer protection must change the behaviour of legal services providers in addition to assisting consumers achieve redress when behaviour is substandard. Providers of legal services must be deterred from falling short of the requirements they are set. We would urge the Legal Services Board to work with the Solicitors Regulatory Authority and the Bar Standards Council to increase the robustness of the consumer protection regime to ensure that current standards of service are maintained while increased competitive pressures deliver increased efficiency and innovation in service delivery.

In this regard we particularly welcome your work strand 2C – *Improving service by resolving complaints effectively* - for the forthcoming year, and note your intention to work with the regulators to develop effective first tier complaints handling procedures and to review the progress made on implementation.

In our view, a robust consumer protection regime for Legal Services is likely to require at least the following three key features:

- **Broad discretion in complaints handling:** It should be relatively easy and costless for customers to complain, and their complaint should be dealt with sympathetically. Where the customer is at a disadvantage in the pursuit of their complaint – perhaps because of the ability of the service provider to defend themselves - the complaints handling body should be given a broad discretion to operate in the customers'

interest. This can help off-set any imbalance between the consumer's ability to complain effectively and the service provider's stronger ability to defend the complaint.

- **Pro-active monitoring:** where customers may find it hard to know whether their service provider has complied with requirements, spot-checks and pro-active risk-based monitoring by an oversight regulator may be required. In our experience of competition and consumer enforcement, relying solely on complaints is not sufficient. Monitoring can also help provide a strong deterrent effect if legal service providers are aware that checks will be made. Increased pro-active monitoring may therefore make it more likely that effective complaints handling procedures are put in place by individual firms.
- **Individual and firm sanction for violation:** without sometimes severe punishment and sanction against firms and individuals who have not met requirements, a consumer protection regime will find it hard to deter poor behaviour occurring in the first place, and will be little more than a redress mechanism for consumers confident enough to engage with the process in the first place.

In addition to our 2007 report on Deterrence<sup>3</sup>, the OFT is currently conducting research into Drivers of Compliance.<sup>4</sup> This research is expected to be completed in May 2010, and we would happily discuss the results with you and your team.

We look forward to working with you and your team over the next year. If you have any questions, please do not hesitate to contact me.

Yours sincerely

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Director – Markets & Projects - Services

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<sup>3</sup> [www.offt.gov.uk/shared\\_offt/reports/Evaluating-OFTs-work/oft963.pdf](http://www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft963.pdf)

<sup>4</sup> [http://www.offt.gov.uk/oft\\_at\\_work/current-cases/drivers/](http://www.offt.gov.uk/oft_at_work/current-cases/drivers/)