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Consultations Section
Legal Services Board
7th Floor, Victoria House
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Consultation Paper
Enhancing Consumer Protection, Reducing Regulatory Restrictions

Dear Sirs,

We write further to the above discussion paper and request for views by Friday 4 November 2011.

We note that the LSB is looking at reserved legal activities and whether it should recommend to the Lord Chancellor, based on appropriateness, whether current protections are insufficient or the un-reserving of activities where the level of risk means that consumers can be protected by less burdensome restrictions.

In response to the consultation document we have noted and kept in mind that *“liberalisation needs to be underpinned by the right consumer protections and oversight.”*

Question 1

Theme 1: *“Consumer protection and redress should be appropriate for the particular market”.*

Response: We would suggest *appropriate for the particular market and the risks posed therein.*

Theme 2: *“Regulatory obligations should be at the minimum level to deliver regulatory objectives”.*

Response: In our view, regulatory obligations should be at a level appropriate to risks within the approved regulator profession rather than set objectives across the whole approved regulator community.

Theme 3: *“Regulation should live up to the better regulation principles in practice”.*

Response: Agreed.

Question 2

We have no issue with the description of *“the purpose of regulation”*.

Question 3

We do not believe that increasing the remit of the Legal Ombudsman to include more *“legal services activities”* would affect the Costs Lawyer profession, on that basis we have no comment to make.

Question 4

Please see 1, 2(ii), 3(i) and 3(ii) below.

Question 5

CLSB believes in the principle of protected title.

Question 6

Yes. Under proposed new CLSB rules (expected to come into force on 31 October 2011) a Costs Lawyer may only use that title Costs Lawyer if they hold a current practising certificate issued by CLSB as Approved Regulator under delegated authority.

Question 7

Please see 1 below.

Question 8

Please see 3 below.

Question 9

We have no comment to make on professional privilege as it does not affect the Costs Lawyer profession.

Question 10

Please see 1 and 2(i) below.

Question 11

We are pleased that the LSB favours non-statutory and voluntary schemes and that the *“regulatory menu”* is flexible.

Question 12

Please see 1 and 2(i) below.

Question 13

No comments to make.

1. LSB Future Programme 2012-2015: Plugging the holes

We feel the LSB should look to “plug the holes” that currently exist within regulation and on that basis we support the view that will writing should become a reserved legal activity and note this has rightly been given an early priority.

We are aware the LSB has identified other potential “holes” such as residential conveyancing, general legal advice, corporate law (including banking & finance) and immigration on which we have no comment to make.

We would however request that the LSB also gives due consideration to defining the drafting of a Bill of Costs as a reserve legal activity, as set out below under 2(i).

2. Enhancing Consumer Protection

(i) Bill drafting by Costs Lawyers to be made a reserve legal activity

For greater consistency and consumer protection we respectfully submit that the preparation of a Bill of Costs be deemed a reserved legal activity, thus bringing those who undertake such a practice under regulation.

It is our view that a Bill of Costs is effectively a pleading, insofar as it sets out (not unlike a schedule of loss accompanying particulars of claim) the quantum of the costs claim and written submissions to support the recovery of those costs. A Bill of Costs cannot be properly prepared without the technical expertise and legal knowledge of what can and cannot be claimed, which must be established only after a thorough understanding of the client’s papers. Such knowledge extends to the full variety of cases in which costs can be recovered. The disputed Bill of Costs must be justified at Detailed Assessment before the court, which requires a thorough understanding of the subject matter of the case and regularly involves issues of law and practice. In addition to each party’s written submissions by way of Points of Dispute and Replies, it is very common now in larger and more complex Detailed Assessments for the parties to prepare skeleton arguments, in the same way that these are prepared in the substantive litigation in preparation for a hearing. Such work is all part of the Detailed Assessment process and flows directly from the Bill of Costs prepared. The importance of the drafting of a Bill of Costs should not be undervalued in terms of the implications to a client should this result in significant costs being disallowed at Detailed Assessment. Detailed Assessment is of course argued under a Costs Lawyer’s, Solicitor’s or Barrister’s right of audience and extends all the way to the Supreme Court

When a Costs Lawyer seeks to recover costs between the parties, it is the client’s money they seek to recover, not the Solicitors. A lay client’s costs need to be protected in the same way a lay client’s damages are protected. The damages element of the claim is reserved however costs are not, despite costs often (even in very high value damages cases) exceeding the damages recovered.

The fact that anyone can establish themselves as a Law Costs Draftsman, as a will writer can currently do (which LSB is addressing) without regulation, qualification, training, continuing professional development and insurance is a huge concern to the Costs Lawyer profession as it puts both the consumer and the Solicitor who signs the bill, at risk.

(ii) A generic seal of regulation

During 2012, CLSB will be working on a seal of regulation. A Costs Lawyer Practising Certificate will allow the Costs Lawyer to use that seal on their letterheads, compliment slips and business cards to enhance consumer confidence in that they are knowingly contracting with a regulated professional, clearly distinguishing a Costs Lawyer (regulated) from a Law Costs Draftsmen (un-regulated).

Solicitors are obliged to state on their letterhead that they are regulated, yet it appears at the bottom in such tiny letters the average person would need a magnifying glass to read it. In our view, this is unsatisfactory.

Ideally, we would like to have seen a generic seal of regulation in place across the whole of the legal approved regulator group, duly approved and endorsed by the LSB. This would have served to improved consumer awareness, thus consumer protection and would have publically joined the regulated community together in its common goal.

(iii) Informed choice

We noted at your presentation you used a five point star to identify what you were looking to achieve: Accessibility, Affordability, Quality, Confidence & Choice. In respect of “choice” we feel this should read “informed choice” as this is very much lacking at present. Regulation can be quite introspective. We feel that to improve consumer protection there should be more information in the public domain to enable the consumer to make an informed choice as to whom they contract with for the provision of legal services.

Banks, hospitals even hotels have star ratings. You can even access a website which gives you the hygiene standards of restaurants to enable you to make an informed choice on whether to eat there, yet no such rating or information system exists within the legal community where a great deal of money can be lost should an instruction not be successful.

3. Reducing Regulatory Restrictions

(i) Grading risks

At present the regulated community is differentiated by size, we feel this is totally misleading and it should, in our view, be differentiated by risk. This would provide a very different landscape for regulation.

(ii) Costs v Benefit

It would be fair to say the public do not appreciate costly and unnecessary bureaucracy, the cost of which filters back to them to pay through fees charged. The consumer should be afforded some form of protection and reassurance against overly burdensome and

expensive expectations being placed on those in the regulated community, when a real benefit cannot be justified. Job justification needs to be considered as a factor in this.

We hope the above assists, should you require any further information or clarification on anything contained herein, please do not hesitate in contacting me.

Yours faithfully,

Lynn Plumbley
Chief Executive