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Dear Michael,

**Enhancing consumer protection, reducing regulatory restrictions**

Thank you for providing us with the opportunity to respond to the Legal Services Board's (LSB) discussion document 'Enhancing consumer protection, reducing regulatory restrictions'.

In general, although not looking to comment on all the points raised, the OFT would like to express its support for the LSB's proposed approach to assessing the boundaries of legal services regulation and connected regulatory decisions in line with its obligations under the Legal Services Act 2007. Indeed, in light of the recent introduction of Alternative Business Structures (ABS), we consider that such an assessment is important to ensure that the market can take advantage of the increased liberalisation that ABS brings.

**The OFT's role in legal services markets**

As you are aware, the OFT has a longstanding interest in legal services reform which manifested itself in a number of reports and studies, including 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 Legal Services Act 2007 including:

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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)



being consulted on rule changes by approved regulators where the LSB 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>

Complimentary to fulfilling this statutory role, the OFT's principle interest in the legal services market is promoting consumer choice and robust competition between legal service providers for the benefit of consumers.

### **Consideration of reserved/ unreserved activities**

Part of the OFT's principle interest in the legal services market concerns the impact of regulation on competition. The OFT, therefore, considers the LSB's consideration of whether the legal services market has the right pattern of reserved and unreserved services as highly important. As you are aware, unnecessarily regulating a profession can raise costs, limit entry and restrict competition and consumer choice, while potentially having very little benefit to consumers.

We also support the LSB's view that the threshold to be met for extending regulation should be a high one and be backed up by a compelling case underpinned by appropriate evidence. For example, the OFT would have concerns regarding the introduction of any new regulation without an evidenced analysis of likely costs and benefits.

Indeed, the OFT report 'Government in markets'<sup>3</sup>, recognised that one of the biggest challenges for policy makers is to identify unintended consequences of regulations. From a competition perspective, therefore, the aim should be to impose the minimum regulation required to achieve any policy aim, and we are pleased that the LSB have acknowledged that fact in its discussion document. In this regard, the OFT are in favour of an evidenced impact assessment to analyse the potential impact of new and existing regulation on competition in the market (in terms of affect on price, quantity, and incentives for quality) and on

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

<sup>3</sup> [http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/general/OFT11113.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/general/OFT11113.pdf)

consumer welfare (in terms of both increased quality, but also decreased accessibility). In addition, the OFT also supports a consideration of any title or legal privilege that confers on selected individuals a title or legal privilege that unjustly enhances their earning power and competitive position relative to others.

Where evidence is found that any regulation, title or legal privilege is adversely affecting competition, the OFT would expect it to only be permissible when evidently justified by public interest considerations.

### **Consumer protection and redress**

We agree with the LSB's views that consumer protection and redress should be appropriate to the particular market in question. The OFT considers that part of this consideration should include, where possible, a consideration of alternative solutions to regulation such as the use of consumer codes and consumer education campaigns. In addition, the OFT considers more generally that there may be instances where ex post consumer enforcement action on the basis of consumer protection legislation may be just as effective, and possibly more efficient and less onerous on market participants, than ex ante regulation.

### **Regulatory obligations to be kept at a minimum**

As mentioned, the OFT agrees with the LSB's stance that any regulatory obligations should be the minimum level necessary to deliver regulatory objectives. We consider this especially important following the introduction of Alternative Business Structures. For example, the current regulatory framework, if not flexible in its approach to the increased liberalisation that ABS brings the market, may have the effect of stymieing innovation, in particular where there are several layers of regulation, or several regulators sharing concurrent and/or overlapping jurisdictions. This may be regarded as unnecessarily burdensome on the entities concerned and, from a redress perspective, confusing to consumers.

### **Better regulation principles**

Lastly, if it is apparent that problems exist in the legal services market, and that current consumer protection tools are not sufficient to address the detriment

found, consideration should then be given to what form of targeted and proportional regulation is necessary. In this respect, the OFT fully supports the better regulation principles of regulation being transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

If you wish to discuss any of these issues further, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Mark Pratt". The signature is written in a cursive style with a large, stylized 'M' and 'P'.

Mark Pratt

Office of Fair Trading