

From: Clark, Peter
Sent: 25 June 2009 17:31
To: Consultations
Cc: Clark, Peter; Roger Rose; john@[REDACTED].co.uk
Subject: FW: Draft Consultation Response from BB&O Inc. Law Society

Dear Sir,

I write on behalf of the Berks, Bucks and Oxfordshire Incorporated Law Society in my capacity as its President. My Committee has had detailed discussions in relation to this consultation exercise and has authorised me to respond on their behalf.

Good governance is an essential component of any organisation or profession. It is absolutely essential that accountability, roles and responsibilities are clear and that everyone concerned has confidence in the structures that are in place.

It is an essential component that these proposed changes are essential in the public and consumer interest. We do not believe that they are.

We would venture to suggest that the public have little interest in these proposals and with respect have little chance of understanding the complexities and consequences that flow from them.

What the public want is for the provision of legal services to be provided in a proper and timely manner with due compliance with all necessary Regulations. The public have the right to have the fullest confidence when they instruct Solicitors and other legal advisers. They also have the right to complain if the service provided has fallen short of these standards. That complaint should be dealt with quickly, either by the firm/provider itself, through informal mediation or by way of formal complaint by an independent body. We have that now and see no point in yet further separation and division within the regulatory framework. The public and the profession would have difficulty understanding the necessity and reasons for this.

The need for a wholly independent SRA is based on a false claim that in some way there is a direct conflict between the representational role of the Law Society and their regulatory function. We do not accept that this is the case nor see a clear business or governance case for change.

Indeed, we feel that the total separation of the SRA from the Law Society would undermine the confidence the profession has in the regulatory framework itself. This is of fundamental importance and is ignored at your peril. This point is wholly absent from the consultation exercise. It is absolutely essential that Solicitors commit to and own the standards set by the SRA.

Separation of powers and independence has a superficial attraction and resonance but the reality is that there is already separation of the regulatory functions from the representational role and anything further risks alienation and mistrust.

We repeat that the public interest is best served by a well regulated profession operating to high standards with access to an independent body to adjudicate when things go wrong. We have this now and would urge you to stop complicating matters and putting systems at risk.

Separate from all of this is the question of cost, which, again, your paper does not properly address. With a proposed totally independent SRA separated from the Law Society, free to charge whatever it likes, with members being required to fund any changes or innovation without reference or accountability is a recipe for disaster. It could not be said to be in the best public interest with costs having to be passed on to clients yet further diminishing a person's right to receive advice and representation.

Our response to the questions posed are as follows:

Question 1

This is the wrong question as it presupposes the very proposal that you are meant to be consulting on. The current Law Society/SRA model is fine in broad principle with the SRA retaining responsibility for strategic development subject only to overall scrutiny of high level budget/shared services. Therefore, there is already separation of the regulation and representational role. These proposed rules go way beyond the terms of the Act in terms of the relationship between the Law Society and the SRA as set out in the Act. Indeed, separation entirely loses the cost reduction of shared services functions.

Question 2

In broad terms we agree with a healthy mix of appointees based on merit but feel that there should be equal weighting between Lawyers and non-Lawyers so as to retain the confidence both of the legal profession as well as the public. Your proposals recognise the latter but not the former.

Question 3

There is nothing inherently wrong with a Senior Lawyer appointed on merit in accordance with the criteria for appointment as stipulated within your proposals from being eligible to that post. Indeed to stipulate that the Chairman cannot be a Lawyer makes the legal profession appear as second class and runs counter to the principles of appointment as set out in your proposal. Our clear view is that there should be an equal balance between Lawyers and non-Lawyers, Chaired by a Lawyer, because that person has direct professional responsibilities for ensuring the adequacy of the regulatory framework. A clear knowledge of the legal issues relating to conduct is not a bar from leading the regulatory agency, it is a requirement to ensure that that is done. To suggest in some way that a Lawyer will be partisan and not understand the importance of clear and robust regulation is an insult to our profession.

Question 4

What is being proposed here is potentially a bureaucratic nightmare with the potential for increased costs and creating conflict where currently none exists. The interests of the regulatory arm are not subordinate to those of the representative led organisation and nor have we recognised any suggestion that there is evidence to support this contention. The clear risk here is of massive duplication and increased cost with no effective material benefit to either the regulatory arm, the representational arm, the public or consumer. It is right that the Chief Executive Officer of the Law Society should be responsible for the delivery of major shared services projects as it is the Law Society that actually has to pay and fund for these.

Question 5

Difficult to respond to this on such sparse information. As a general rule, guidance is always welcome as it helps to make the key principles more understandable.

Question 6

Whilst we agree that the SRA should be independent in its own processes, however, we believe the proposal for oversight arrangements go too far. We have already set out our concerns in relation to this, particularly in relation to the impact on the profession. It is entirely reasonable that Senior Management of the Law Society and Council could and should be involved. The mere fact that they also deal with representational issues should not act as a means of debarring them and indeed their representational role is a key and important element in ensuring that arrangements are workable and appropriate. If there are any deficiencies in the regulations produced by the SRA then that would be a matter for your Board but in the absence of any concerns with regards to the robustness of the work of the SRA it is not a matter for the LSB to interfere yet further. As stated, we feel that your proposals fall outside of the requirements of the Act and go way beyond what was originally intended following the Clementi Review. On your proposals, the only role for the approved regulator (who is legally responsible and subject to penalty and default) would be to approve the final budget proposal with extremely limited idea of how it was constructed and whether it was actually reasonable or not. We state plainly that you are at risk of treating the Law Society as a cash cow. We urge you to rethink.

Question 7

We think the concept of dual self-certification is a good one because it is a useful means by which information is provided to you with regards to the operation of the regulatory framework. It is a model that is well-known, certainly in my area of Local Government whereby the Audit Commission set criteria for auditing but our own Internal Audit function operates in accordance with that framework and reports to the Audit Commission on matters. Internal Audit Reports are used as the basis of reliance, provided of course they are of an acceptable standard and there is confidence in the work that they undertake.

Question 8

No comment.

Question 9

We believe that the current mandatory permitted purposes should be reviewed and should allow for the proposed increasing public understanding of the Citizens Legal Rights and Duties. We, therefore, believe that there should be better and more informed consultation on the issue of what the practice certificate should cover. The risk is clear that with the practice certificate fees effectively funding only the SRA, there are real issues with regards to what might be permitted to go to the Law Society. That in itself has issues and implications for Local Law Societies who would then be potentially in direct conflict or competition with the national representative body. These matters need to be better thought out rather than ending up as a consequence of some internal governance rearrangements. There really needs to be more of a risk assessment with regards to the implications of these proposals, a matter entirely lacking from the information provided by your Board.

Question 10

See above.

Question 11

Not entirely sure what is being said here.

Question 12

Unable to answer.

Question 13

This requires some further detailed submissions.

Question 14

Again, there is a risk not explored in this document that actually many of the services currently provided by Solicitors in accordance with the practicing fee would potentially end and, therefore, increase in changes to Solicitors or alternatively significantly hinder the ability for the Law Society to represent its members. This cannot be right on the back of an internal governance consultation process.

Question 15

Under the new arrangements we have now gone from one Chief Executive to three Chief Executives for the LSB, SRA and Law Society with a general increase in costs all round. These proposals are not proportionate but actually would increase bureaucracy with little calculation with regards to risk nor indeed costing. This proposal is not just about the principles, it actually would have real cost implications and potential harm to the profession and to the services it provides to the public.

Question 16

See above.

Question 17 - 19

No further comments.

Regards

Peter G Clark

President

Berks, Bucks and Oxfordshire Incorporated Law Society

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