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20<sup>th</sup> December 2010

Dear Chris

**SRA's response to the LSB's consultation paper under section 70 of the Legal Services Act 2007 on proposals to modify the functions of two approved regulators**

As you are aware, the SRA has engaged in an extensive and ongoing dialogue for some time with the LSB in developing these proposals, and we are grateful for the opportunity to comment formally on the proposed section 69 Order to vary our statutory powers. We will limit our response to deal with the questions in the consultation relating to the SRA.

Overall we welcome the proposals which are aimed at achieving a common standard of consumer protection through necessary harmonisation of our powers in the public interest.

1) What are your views on the proposal to enable the SRA and CLC to obtain information from third parties about ABS by application to the High Court? Do you have any comments about the drafting of the SI on this issue?

We support this proposal. It strikes the right balance between ensuring that we can take steps necessary to protect consumers' interests, but at the same time provides third parties with appropriate protection because of the necessity for judicial oversight. We have no comments about the drafting of the SI on this issue.

2) What are your views on the proposal to enable the SRA and CLC to recover the cost of investigations that lead to disciplinary action against ABS from those parties that are the subject of the investigation? Do you have any comments about the drafting of the SI on this issue?

We support this proposal. We aim to be a proportionate regulator and believe in the principle of "polluter pays". We, therefore, welcome the proposal to ensure that we have similar powers to recover the costs of investigations in the case of ABSs as we

have in respect of other firms which we regulate. We have no comments about the drafting of the SI on this issue.

3) What are your views on the proposal to extend the protection of client money to ABS for the SRA and CLC? Do you have any comments about the drafting of the SI on this issue?

We support this proposal. Proper protection of client money against claims by third parties is a key client protection which should be enjoyed by clients of ABSs in the same way as clients of all other firms which we regulate. We have no comments about the drafting of the SI on this issue.

4) What are your views on the proposal to enable the SRA to operate a single compensation fund for ABS and non-ABS? Do you have any comments about the drafting of the SI on this issue?

We support this proposal since we consider that clients of ABSs should receive the same level of protection as clients of other firms in relation to the activities that we regulate. A single fund provides clarity for consumers; avoids complex disputes about which compensation fund should deal with particular losses (especially where a firm may have changed its status from e.g. ABS to traditional law firm); and makes sense administratively. Moreover, we believe that the single fund approach is justified, since the overall risk profile for ABSs is not obviously different from that of recognised bodies; and it avoids the creation of a bar to new entrants, including traditional law firms wanting to be ABSs, since the levy required to establish a separate fund would be disproportionately high.

We have the following additional concerns which we consider should be addressed by amendment to the draft Order (see Annex 1 for our proposed draft amendments).

Owners who are not managers or employees

Our concern is that the draft section 69 Order would not allow us to make provision in the SRA Compensation Fund Rules (the Rules) to cover loss caused by an act or omission of an owner (or former owner) of a licensed body (or former licensed body) who is neither a manager nor an employee ("a bare owner"). We believe that this is a fairly remote contingency since from our analysis it is unlikely that a bare owner would be able to misappropriate without the knowledge of employees and managers within the firm (and other owners who are actively involved in the firm). We would also emphasise that this would only relate to client money as defined by the draft SRA Accounts Rules. We have endeavoured to mitigate this risk by preventing a bare owner from being the sole signatory for withdrawal of client account funds. However, it is possible to imagine a scenario where a bare owner causes clients to suffer financial loss, and there is no other person connected with the ABS who can be implicated, apart from the bare owner. We believe that it is in the public interest that clients are properly protected in this scenario. It could be addressed by a minor amendment to paragraph 3(2) of Schedule 1 to the draft section 69 Order.

Sunset and transitional period

Under the current draft section 69 Order any default or regulatory action which

triggers the claim on the Fund must “occur” in the transitional period. We take the view that the occurrence is the default, rather than the date of the claim. For example, there may not be a shortfall on client account which actually arises in the period, but the default itself may have occurred in the period. Further there may be defaults in the transitional period which cause an intervention to take place after the period. These issues could, and in our view should, be clarified by a minor amendment to paragraph 2(b) of Schedule 1 to the draft Order.

We are also concerned about whether:

the draft Order would allow us to recover unpaid contributions after the Transitional Period in respect of the transitional period; and

whether the draft Order would be wide enough to enable us to make Rules which permit us to raise contributions after the transitional period has ended but in respect of matters which occurred during it both of which we consider to be in the public interest. An amendment to paragraph 4(2) of Schedule 1 to the draft Order would put this matter beyond doubt.

5) What are your views on the proposal to enable the SRA to collect periodic fees without an annual renewal process? Do you have any comments about the drafting of the SI on this issue?

We support this proposal. We have no comments about the drafting of the SI on this issue.

Additional matters

We would make the following additional points.

## **1 Definition of “reserved legal activities”**

We have previously raised our concerns about the gaps in public protection caused by the current definition of “reserved legal services” (for further details, please see our consultation paper “The Architecture of Change Part 2 – the new SRA Handbook” <http://www.sra.org.uk/solicitors/freedom-in-ractice/consultations.page> paragraphs 34 and 35). We propose that the definition be extended, by amendment of the draft section 69 Order, to cover all “solicitor activities”.

## **2 Alignment of provisions on periodic fees for all types of firm**

Section 86A of the Solicitors Act (SA) provides that the SRA’s rules (including rules as to fees – section 86A(2)) may “make different provision for different cases or circumstances or for different purposes”. Section 86A is then applied by section 9(2J) of the Administration of Justice Act (AJA) to rules made under the AJA in relation to recognised bodies. The express ability to exercise this power in relation to different “circumstances” as well as to different categories of firm provides us with the necessary flexibility when setting fees.

In contrast, paragraph 21 of Part 4 of Schedule 11 to the Legal Services Act (LSA) states that licensing rules “may provide for the payment of different fees by different descriptions of licensed body”. We believe that it would be simpler and neater to align the LSA with the provision in the SA.

### **3 Charges for applications to change authorised role holders**

As you know, there are authorised role holders (e.g., the Compliance Officer for Legal Practice and the Compliance Officer for Finance and Administration) who will need to be approved by the SRA as meeting our Suitability Test before they can take on that role in any type of firm. When we are dealing with an application for a new ABS, we can factor the approval cost(s) into the ABS fee. However, these role holders can change over time and this will involve a new application for approval. We will need to recover the costs of this, just as at present we charge LDPs for approving their non-lawyer managers.

For the sake of clarity, we believe it would be beneficial to insert an express power in the LSA to collect fees in such circumstances. This wording could follow the wording of section 9(2)(aa) of the AJA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Barrass', with a long horizontal flourish extending to the right.

**Samantha Barrass**  
**Executive Director – Supervision, Risk and Standards**  
**Solicitors Regulation Authority**

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