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By email only to: consultation@brdo.bis.gsi.gov.uk

18 April 2013

Dear Ms Youngberg

Re: non-economic regulators: duty to have regard to growth

Thank you for the opportunity to respond to this consultation. We also found the workshop organised to discuss the proposed duty very helpful.

About the Legal Services Board

The Legal Services Board (LSB) was created by the Legal Services Act 2007 (the LSA). The Board came into being on 1 January 2009 and became fully operational on 1 January 2010. Its overriding mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The Board itself is responsible for overseeing legal regulators in England and Wales. It is independent of Government and of the legal profession. It oversees ten separate bodies, the [approved regulators](#),¹ which themselves directly regulate practising lawyers. The Board also oversees the organisation that handles consumer complaints about lawyers, the Office for Legal Complaints.

Both the LSB and the approved regulators have a duty to promote eight regulatory objectives, set out in the LSA. These are:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services in the legal sector;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of citizens' legal rights and duties; and

¹ http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/

- promoting and maintaining adherence to the professional principles of independence and integrity, proper standards of work, acting in the best interests of the client, complying with duties to the court, and maintaining client confidentiality.

How we interpret and balance these regulatory objectives is set out in a [publication](#)² available on our website. We and the approved regulators are also required to have regard to the better regulation principles and other best regulatory practice.

Our views on the consultation proposals

The legal sector in the UK is estimated to have a value of £26.8bn. It is a highly regulated sector that was only liberalised in October 2011. We welcome the important clarification that a duty to have regard to growth would bring; we have been working for some time to try to ensure that the approved regulators take into account consideration of economic issues in their approach to regulation.

In order to make such a duty work in practice, we consider that the following issues should be taken into account as BIS further develops this proposal:

1. It seems that our locus in terms of a growth duty would be most obviously exercised when considering whether to approve changes to the regulators' various codes and handbooks, and also in considering the acceptability of new regulators and licensing authorities. However, currently the consultation only lists the LSB and the Solicitors Regulation Authority (SRA) (although technically it is the Law Society that is the statutory regulator) in its preliminary list of those who would be subject to the duty. There are nine other approved regulators and new approved regulators may be designated in future. Given the clarification at the workshop that non-economic regulators must have a strong case for an exemption from the proposed duty, it is not clear why the other regulators have not been included. As the LSB is one step removed from the direct regulation of individuals and entities providing legal services, our view is that in order to make a growth duty work, the LSB and all approved regulators should be subject to it. Hence we think that it would both aid transparency, but also make any new duty more effective in practice, were a change in relation to legal services regulation achieved by an amendment to the LSA, rather than as a separate duty. It may also be necessary to amend the LSA to make clear that the growth duty is a factor that the LSB can take into account when considering whether to allow changes to regulators' rules and recommending approval of new regulatory bodies. However, as we have said, we welcome the clarity that a growth duty would bring, whatever the mechanism for its introduction;
2. It will be important for BIS to make clear what "growth" means as well as how the duty might be balanced against regulators' other statutory duties; as stated above, legal regulators currently have eight specific duties and these can be in tension with each other. The LSB has done considerable work to improve the availability, amount and quality of data about the legal services market(s), but regulators still do not necessarily have the type of data that would easily lend itself to analysis of an impact on growth;

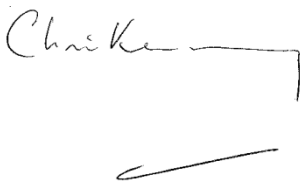
² http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

3. It is essential that a duty to have regard to growth does not prevent regulators taking action against individuals or businesses that have contravened their rules and which may need to be closed down. Neither must the duty mean that regulators cannot prevent undesirable individuals or businesses entering the market in the first place. We do see the proposed duty as a useful regulatory tool to ensure that regulators' authorisation processes and supervision arrangements are not disproportionately onerous. However, it will be equally important to ensure that regulators do not interpret the duty as a requirement to scrutinise new entrants' business plans to try to identify precise "growth" impacts, or use it to prevent entry of more risky types of business model that may not succeed.

We would be happy to discuss these issues further as BIS develops its approach.

I am copying this letter to Elizabeth Gibby at MoJ, as they would need to be involved in any decision about whether and, if so, how, to amend the LSA.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Chris Kenny", followed by a horizontal line and a small vertical tick at the end.

Chris Kenny
Chief Executive

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