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### **Oral and Written Representations and Evidence and the alteration of reserved legal activity**

I am writing to let you have the Law Society's response to the Legal Services Board's consultation "Oral and Written Representations and Evidence and the alteration of reserved legal activities".

The Law Society was pleased that the Act enables the scope of reserved legal activities to be altered through secondary legislation, rather than – as hitherto – such changes being possible only through primary legislation. Given that the scope of reserved activities in England and Wales is much narrower than in most other jurisdictions, we believe the ability to make changes through secondary legislation is an important safeguard to reduce the risk of significant consumer detriment arising from the present situation. There are some areas – such as claims handling and immigration advice – where in recent years the requirement for primary legislation delayed necessary action. There are other – such as will writing – where Parliament recognised during the passage of the Legal Services Act that it would be important for the Legal Service Board to give consideration to bringing the activity within the scope of reserved activities as an early priority. As the Legal Services Board recognises, much of the procedure for considering these issues is set out in the Act. The rules which LSB are to make thus cover a comparatively narrow canvas.

The Law Society generally supports the approach taken in the draft rules. However, we are concerned by one aspect of the proposals on oral representations.

Draft Rule 9, will generally allow "affected practitioners" but not representing persons to make oral representations. The implication of such a provision is that "affected practitioners" have rather great status in the LSB's consultation of these matters than "representing persons".

In the Law Society's view, that is a mistaken approach. Affected practitioners – being those currently engaged in carrying out an activity - may have a strong vested interest against change. The Board should not give undue weight to those persons' view that the status quo should be preserved. The Board's task is rather to weigh the public interest arguments for and against bringing the activity concerned within, or removing it from, the ambit of reserved activities.

Consequently, the Law Society believes that the approach taken as between "representing persons" and "affected practitioners" should be even handed. We think that representations should generally be made in writing, but that the Board should retain discretion to allow – or request – oral representations either from representing persons or from affected practitioners, without any in-built assumption that such representations will be allowed only from affected practitioners. We recognise, however, that the provisions of paragraph 13 of Schedule 6 to the Act may limit the Board's freedom of manoeuvre on this issue.

We would be pleased to expand on this response if that would be helpful.

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