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Mr Chris Kenny  
Chief Executive  
Legal Services Board  
7<sup>th</sup> Floor  
Victoria House  
Southampton Row  
London  
WC1B 4AD

5 March 2012

Dear Chris,

**RE: Response to LSB Draft Business Plan 2012-2013 and draft Strategy**

The CLC welcomes the opportunity to respond to the LSB's consultation on the draft business plan 2012-2013 and draft Strategy. We also use this as an opportunity to make more general comments.

Structural Difficulties with the current regulatory framework

There appear to us to be two significant difficulties with the current regulatory framework:

1. **Regulatory Objectives:** The Legal Services Act 2007 requires the Legal Services Board, the Approved Regulators and (by implication) their respective regulated communities to act in a way which is compatible with the eight regulatory objectives. There are obvious difficulties in complying with the regulatory objectives simultaneously. The CLC does not agree with the LSB's statement in its paper "Regulatory Objectives" published in July 2010 that the (new) status quo should be accepted, namely:

The regulatory objectives are not set out in any hierarchy in the Act. Indeed, any attempt to weight or rank them would be doomed to failure by the significant overlap and interplay between them. Rather we look at them as a collective whole - as both framework and limits for the delivery of effective regulation by the ARs, redress by the OLC and oversight regulation by the LSB., and no way of resolving the difficulties because they are not ranked.

There may be overlap between the different regulatory objectives, but we submit that the shared experience of the LSB and the Approved Regulators over the last two years makes it now much easier to reach a common understanding as to the effect of the individual regulatory objectives. It follows that it would be much easier to develop an agreed hierarchy. This would enable the Approved Regulators in turn to predict with a greater degree of certainty the approach they should take in order to comply with their statutory duty under the Legal Services Act 2007.

2. **Reserved Legal Activities:** rather than looking at will writing in isolation (which is its current approach), the LSB should review the scope of reserved legal activities as a whole and determine from first principles which, if any legal services, should continue to be regulated and the level of safeguards appropriate for regulated and non-regulated legal services. We appreciate that this must be a medium term objective. The Government was satisfied in 2006<sup>1</sup> that there did not appear to be a compelling argument for the statutory regulation of will writing, although it stated it would expect the LSB to consider whether there was a regulatory failure in respect of will writing, or any other legal activity, and whether the activity should be brought under its regulatory control. We are not aware that any compelling evidence has been produced which makes it imperative that will writing is made a reserved legal activity in advance of a more wide ranging review of the case for continued reservation of legal activities.

### Policy Issues

There are policy issues which we believe need to be resolved:

1. **Risk based approach:** The LSB appears now to be insisting on a risk based and outcomes focused approach to regulation, though there is not a shared understanding across the sector as to what is meant by these terms, nor of the degree of risk which the consumer should be prepared to accept.
2. **Measuring performance:** The LSB's assumption appears to be that all outcomes are capable of being measured. Yet, there are persuasive arguments that it is the qualitative outcomes, which are of more value to the consumer, rather than the quantitative outcomes, which are more easily measured. Qualitative outcomes tend to have proxy measures reliant on perceptions which are not in themselves always objective and reliable measures.
3. **Measuring the quality of service:** There are compelling arguments that it is the courts, rather than the regulators, which should make judgments about the quality of legal services. These need to be satisfactorily resolved before the LSB starts inquiring how this should be implemented.
4. **The Legal Ombudsman:** Historically, data about the incidence and nature of service complaints has been a very important information source for the regulation of the CLC regulated practices. To date, the only entirely reliable data we have received from the Legal Ombudsman is the number of complaints received per practice. Whilst we understand that the Legal Ombudsman has experienced teething difficulties in the generation of reports and that there are issues relating to data confidentiality, we remain disappointed at the current lack of progress.
5. We have alluded elsewhere<sup>2</sup> to the disproportionate contribution the CLC has to make to the costs of the Legal Ombudsman. In the CLC's view, the review scheduled for 2013-2014 should be brought forward to 2012-2013.
6. The LSB should have an important role in breaking down barriers between different sectors of the profession (such as switching costs – especially the cost of run off cover). These were identified by the LSB in the preparation for ABS, but have yet to be addressed, and there is no suggestion in the Business Plan that this is an area which is to be considered in 2012-2013, or in the medium term.

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<sup>1</sup> Government Response to the Report by the Joint Committee on the Draft Legal Services Bill, Session 2005-2006, September 2006 (Cm 6090)

<sup>2</sup> CLC response to the LSB's Consultation Paper 'The Levy: funding legal services oversight regulation' September 2010

## Research into education of consumers

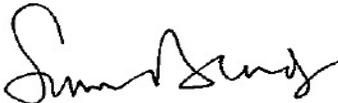
The LSB has asked us to comment on the proposed commissions from Legal Services Consumer Panel<sup>3</sup> and, in particular, 'how far do approved regulators help consumers choose and use legal services'. In this commission there is an implicit assumption that this is a role for each Approved Regulator to undertake separately. We suggest at this early stage that, rather than the Panel undertaking this research, the LSB should take the lead in investigating the steps which could be taken across the sector. We fully accept that all Approved Regulators have an important part to play. However, we believe that what might result in a series of separate initiatives may well result in disproportionate expectations and burdens on the smaller regulators and uncoordinated information and advice for consumers. We suggest that the Panel should be invited to assess how far the LSB could help consumers and what part the separate regulators might play in this.

## Summary

Whilst we agree that the LSB has important statutory functions to perform, there is a perception that, as an oversight regulator, the LSB is not itself taking a risk based and outcomes focused approach. For example, the LSB has set a demanding timetable for the regulators to obtain diversity data from the profession apparently before it has itself fully understood and satisfactorily resolved all the legal issues surrounding the collection of personal data. We believe that the LSB is making too many demands on Approved Regulators, without discriminating sufficiently between them leading to a 'one size fits all' approach which in turn makes unnecessary claims on their resources. Further, we do not believe that the LSB is responding by appropriate prioritisation of the concerns identified by Approved Regulators and other stakeholders in its own work plan.

The risk in the approach taken by the LSB is more, not less, regulation, without commensurate benefit for the interests of consumers (or for the other regulatory objectives).

Yours sincerely,



Simon Blandy  
Director of Policy and Standards

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<sup>3</sup> Pages 10-11 of the LSB Consultation