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13 March 2009

Dear David and Chris

### **Legal Services Board Draft Business Plan 2009/10**

Thank you for your letter of 28 January.

On behalf of our Board we are pleased to enclose the SRA's comments on the LSB's draft Business Plan. We look forward to discussing these with you, and hope that they assist your Board in finalising your plan.

In our introduction to the SRA's strategic plan 2009-12 we said that the SRA exists for one overriding reason: to protect the public by ensuring that the legal services they receive from solicitors' firms are of a high standard. We therefore welcome your business plan's emphasis on putting consumer and public interest at the heart of regulation. We look forward to working with you and your Consumer Panel to develop our consumer engagement strategy.

Increasing choice and offering better value to consumers though widening access to the legal market is a central purpose of the Legal Services Act. We support the LSB's aim that by 2013 the legal services market will be significantly more diverse and vibrant than it is today. The draft plan acknowledges the significant steps already taken by the SRA to implement new structures for delivering legal services to the consumer, and we look forward to working with you on the development of Alternative Business Structures during 2009 and beyond. The discussions which we have already held with you have encouraged us to believe that we can make good progress on the development of the ABS regime this year.

The draft plan notes that independent and transparent regulation is an essential hallmark of a publicly credible regulatory system. The SRA agrees with you that robust governance arrangements for Approved Regulators, which clearly separate representative and regulatory functions, are vital to the aim of producing world-leading, public interest legal services regulation in England and Wales. We shall contribute to the LSB's important work on this issue during 2009, and will share with you our proposals for enhancing and reporting on our performance to enable you,

and our stakeholders, to judge our progress. We also wish to discuss with you our Equality and Diversity Strategy, which is a priority for the Board this year.

Yours sincerely

Handwritten signature of Peter J Williamson in black ink.

**PETER J WILLIAMSON**  
**Chair of the SRA Board**

Handwritten signature of Antony Townsend in black ink.

**ANTONY TOWNSEND**  
**Chief Executive, SRA**

**Legal Services Board Draft Business Plan 2009/10**  
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**SRA'S COMMENTS**

1. The Solicitors Regulation Authority (SRA) is grateful to have the opportunity to comment on the Draft Business Plan 2009/10 of the Legal Services Board (LSB)
2. This is – rightly and necessarily in the SRA's view - an ambitious and challenging plan, and we support its objectives and the direction of travel which it maps out. There is undoubtedly a tension between the simultaneous introduction of large scale change and the achievement of excellence. That tension will need to be managed through the development of a genuine partnership between the LSB and the regulators (individually and collectively), through dialogue and the development of shared approaches.
3. We would make two general points. First, the plan might perhaps place greater emphasis on the fact that frameworks for the regulation of the legal professions in England and Wales are already well-established, and many examples of high quality regulatory practice are in place. In taking forward its work the LSB will have the advantage of building on strong foundations in many areas. Second, the plan could emphasise the importance of developing a culture in which best practice and research are shared within the community of legal regulators. The LSB has a vital role to play in supporting the growth of such a culture.
4. We comment below on some key points from individual chapters in the plan:

**2: Our vision**

5. We welcome the LSB's statement of its vision:

*To reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales.*

6. The chapter could refer to the role and influence of third parties, such as the Legal Services Commission and referrers of consumers to lawyers. It is important to ensure that the LSB's strategy takes appropriate account of the influence on the market and on its regulation of bodies and individuals which sit outside the direct lawyer/client relationship, and which often play a key role in access to justice. Research on how most consumers access legal services might be an early priority for the LSB.

**4: Our role in the future of regulation**

7. There might be more emphasis (Paragraph 29) on managing the risks which will come with the opportunities for consumer access and choice provided by innovations such as external ownership of law firms. The plan might usefully underline the need to protect consumers through the development of proportionate but robust regulatory mechanisms for innovative forms of legal service delivery.
8. Moving from a rules- to a principles-based approach to regulation (Paragraph 30) as the SRA has done to some extent will, in the longer term, prove more cost effective and reflective of professional accountability. However, the significant cultural change within the profession and regulators required for its successful implementation will need to be well managed.

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9. The suggestion (Paragraph 32) that the vast majority of complaints to the OLC are unlikely to raise any issues of professional conduct does not accord entirely with the experience of the SRA. The Legal Complaints Service (LCS) frequently deals with matters under its consumer redress powers which include an element of professional misconduct. Those cases which meet a clear test of potential seriousness and are referred to the SRA give us valuable information which is not readily available from other sources.
10. In 2009 LCS referrals are likely to represent around 40% of all regulatory actions arising out of complaints received by the SRA and some 50% of SDT referrals.

<b>2008</b>	From LCS%	OTHER %
Not Upheld	71%	86%
Upheld	17%	11%
Referred to SDT	12%	2%

Even information received from LCS which does not lead to specific and immediate action can often provide useful background data and lead to the identification of patterns of misconduct, which leads to regulatory action being taken in due course.

11. This relationship works effectively in the public sources of early warning intelligence. It may indeed offer a model to other sectors of how a complaints handling body and its associated regulator should work together. We look forward to discussing these issues in more detail with the OLC.
12. We welcome the recognition (Paragraph 36) that notwithstanding significant market developments, there will continue to be an emphasis on the individual's obligation to maintain the highest professional standards. It is essential that individual professional responsibility and accountability should not be lost in the development of new forms of legal practice and regulation.

**5A: Putting consumer and public interest at the heart of regulation**

13. This objective is essential and represents one of the biggest challenges to the LSB and regulators - particularly in relation to individual consumers who are infrequent purchasers of legal services. This is an area which is likely to benefit from research.
14. The Consumer Panel ought to prove a valuable resource for the LSB. It would be helpful if the plan could state more explicitly that in determining the structure and scope of the panel the LSB will look closely at how consumer panels have worked in other sectors. The plan might also emphasise the importance of the panel once established reviewing the consumer-related research and other initiatives focused on consumer needs already undertaken by ARs. The SRA would welcome the opportunity to work with the Consumer Panel on initiatives. In this and other areas there is a risk of duplication of effort and cost, and there is an important role for the LSB in facilitating the sharing of work.

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***5B: Widening access to the legal market***

15. We welcome this aim, which is highly desirable and at the core of the reforms introduced by the Legal Services Act. It might be helpful for the plan to reflect the importance of a rigorous assessment of the balance between advantages and risk in this area. Regulators will need to work with the LSB on the proportionate management of those risks.
16. It is possible that the market response to LDPs and the effect on consumers will be influenced by the recession. ABSs are likely to make a more significant impact on consumers than LDPs. Possible implications of the recent difficulties in the financial services market for implementation of ABSs should be carefully assessed. The LSB and regulators will need to work together to ensure that a proper focus on the best interests of the client and other professional principles is embedded in the delivery of legal services through ABSs.

***5C: Improving service by resolving complaints effectively***

17. Regulators must have access to information and statistics about consumer complaints in order to improve regulation generally and to help them in their risk assessment and targeting of regulatory resources and activities. The ability of regulators to set and to monitor and enforce compliance with complaints handling requirements (Paragraph 82) will be closely bound up with the receipt of information from the OLC.

***5D: Developing excellence in legal services regulation***

18. The SRA welcomes this strand of the LSB's work, which is consistent with its own initiatives.
19. The achievement of a shared understanding (Paragraph 90) is the right approach, and will require the development of partnership between the LSB and the regulators. The SRA would welcome sharing the approaches it is developing with the LSB and other regulators (Paragraph 94).
20. Setting an overall standard of excellence applicable across the sector may be a longer term aim. It may be that the best approach during the first year will be to concentrate on developing a limited number of common measures across all the regulators, and then build up measures on an incremental basis. Early priority measures should include measures on embedding equality and diversity in regulators' work.
21. We note that you intend to consult on the on the draft rules for the approval of ARs' rules. Schedule 4 Part 2 is widely drawn in that all changes in all "regulatory arrangements" need the approval of the LSB unless they are exempt. The definition of regulatory arrangements is very wide and could include, for example, changes to application forms prescribed by rules, minor changes in fees or delegated powers. If the LSB is not to be swamped, and if ARs are to be able to be flexible, as suggested in the Business Plan, then we would urge that it concentrates when looking at what has to be approved in advance, at significant changes in policy, as would normally be involved in a rule changes and makes other regulatory arrangements exempt from the need for prior approval.

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***5E: Securing independent regulation***

22. The SRA supports the statement that *independent and transparent regulation is an essential hallmark of a publicly credible regulatory system.*
23. The SRA has already shared its thoughts on the principles required to underpin independent regulation with the LSB and other regulators. Consumers need to be satisfied that regulation of legal services is undertaken in the consumer and public interest. The legal professions have an essential contribution to make to effective regulation, but it is vital that that contribution is wholly transparent and that – as the Legal Services Act requires – the regulatory functions of ARs are not prejudiced by their representative functions.
24. In the SRA's view if the opportunity is not taken to address these issues comprehensively at the outset through the internal governance rules which the LSB will make under s30 LSA, the credibility and effectiveness of the new regulatory framework will be seriously, and perhaps irreparably, damaged. Although the LSB proposes that rules requiring ARs to establish separation of regulatory and representative functions will be in place by the end of 2009/10, it is important that the LSB provides clear leadership on this issue during 2009, actively engaging with individual ARs where necessary to avoid the implementation of inadequate arrangements which will have to be changed when the rules are in place.
25. We welcome the proposal for dual self-certification by the regulatory and representative arms of each AR, which has the potential to be a powerful tool for securing understanding and compliance.
26. The SRA will be moving to firm based rather than individual fees (Paragraph 101) and asking for approval of a budget and formula rather than a particular fee level. It should be possible to make rules fit for both small and large regulators (Paragraph 104) by assessing the proportionate impact in the legal services market of the different legal professions.

***5F: Promoting access to a diverse legal profession***

27. This is a critical area, not only because of the intrinsic importance of ensuring fairness and equality of opportunity for people of all backgrounds who are in, or aspire to enter the legal professions, but also because consumer confidence in the provision of legal services requires lawyers who reflect the diversity of the community which they serve.
28. The SRA welcomes the plan's emphasis on the importance of building on valuable work already started. It would be helpful if the plan could emphasise that this is one area where the sharing of ideas and development of a joined-up approach across the legal professions would be particularly fruitful.

***5G: Developing research and public legal education strategies***

29. Although we note the reference (Paragraph 131) to budgetary constraint for research in the first year of operation of the LSB, consumers' knowledge about how to access legal advice is in our view an area which would benefit from further research.

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30. One specific matter which ought to be reflected in the plan is the need to look at consumers' understanding of which service providers and activities fall within the legal regulatory framework, and what consumers can expect from different kinds and combinations of lawyer. The use of the term lawyer to cover a number of legal professions, the development of new structures for the delivery of legal services, and the existence of providers of related services (e.g. will writers) outside the regulated framework, raise potentially confusing issues for the consumer.

The SRA's belief is that the provision of consumer information and education about choice of and access to legal services is an underdeveloped area of activity so far as legal regulators are concerned. It is, however, closely aligned with the objective of opening up the legal services market and offering better value and choice to consumers.