



The Chief Executive's Office
Legal Services Board
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29 June 2009

Dear Chris,

Legal Services Board consultation on regulatory independence

Thank you for your invitation to respond to the Legal Services Board's consultation on regulatory independence. The Council for Healthcare Regulatory Excellence is an independent body accountable to Parliament. Our primary purpose is to promote the health, safety and well-being of patients and other members of the public. We scrutinise and oversee the health professionals regulatory bodies¹, work with them to identify and promote good practice in regulation, carry out research, develop policy and give advice.

We welcome the opportunity to respond to this consultation as we see a number of significant parallels between our role overseeing the health professional regulatory bodies and the LSB's role overseeing the regulatory bodies of legal services. Although we do not carry out front-line regulation, we both have the objective of ensuring that regulation takes place in the interests of service users and the public more widely.

We strongly agree with the LSB that effective regulation needs to have the trust and confidence of all parties with a stake in a profession's practice. This requires that the regulatory processes are, and are seen to be, independent of undue influence from any group with a particular interest. In 2007, the Department of Health published the UK White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century*. One of the key ways in which the White Paper sought to reform the regulation of health professionals was by moving from a system of professional self-regulation to regulation where responsibility is shared by professionals and the public and explicitly focussed on public protection. To implement the recommendations of the White Paper the Department set up a series of working groups, one of which chaired by Niall Dickson examined how trust and confidence in health professional regulatory bodies could best be enhanced.² Many of the working group's recommendations have application beyond the health sector and are principles applying to the regulation of professions in general. The

¹ General Chiropractic Council, General Dental Council, General Medical Council, General Optical Council, General Osteopathic Council, Health Professions Council, Nursing and Midwifery Council, Pharmaceutical Society of Northern Ireland, Royal Pharmaceutical Society of Great Britain

² Department of Health (2008) *Implementing the White Paper Trust, Assurance and Safety: Enhancing confidence in health professional regulators. Final Report*

working group's conclusions have informed developments in health professional regulation, in which all councils are moving to a parity of professional and public members all of whom are independently appointed against specific criteria. The purpose of this has been to ensure that, whilst councils' members may have a broad range of interests, members do not use their position to represent these, but to protect and promote the interests of service users and other members of the public effectively. The LSB may wish to note the following three principles which are broadly in line with the working group's recommendations and that we consider to be important to promoting effective and independent regulation:

- Council membership needs to be able to reflect the interests and concerns of all parties with a stake in a profession's practice, but all members must be clear that their overriding purpose is to protect service users and other members of the public. In no case should members be considered to represent any interest group, either by themselves or those by whom they are appointed. Members should be appointed because of their knowledge, skills and judgement and commitment to using these in the public, rather than any sectional, interest.
- Defined criteria should be set for the knowledge and skills required of councils' membership so that, as a whole, it possesses the necessary attributes to set the strategic goals for the organisation and effectively scrutinise the executive's delivery of these. The working group suggested that one way of achieving this is to ensure that councils have expertise in areas such as education, practice, service-user experience and employing professionals.
- Given fixed periods of office for council members, councils should aim to achieve a regular turnover of members that is managed in a staggered fashion to ensure a degree of stability and continuity. In the context of the professions the LSB will oversee – many of which have established professional bodies with high profiles, resources and expertise – this could be a useful way of ensuring that councils do not lack the stability, continuity and experience to help them effectively prioritise and promote the public interest.

Strong councils that are clear their overriding purpose is the public interest are essential to effective regulation, particularly if they operate alongside established professional representative bodies. Independent appointment of members against defined competences, robust appraisals of members and established complaints and disciplinary procedures are all important mechanisms for ensuring boards remain focussed on the public, and not sectional, interest. Regulatory bodies must focus on the public interest both in setting their strategic direction and in managing, controlling and discharging their functions, which also requires an executive with the capacity to regulate independently without a deficit in skills or resources to the professional body. Whilst it is important the opinions of all parties are heard by regulatory bodies, decisions must be taken in the public interest on the basis of the evidence before the regulatory body, not by professional bodies whose ultimate and legitimate focus is representing professionals' interests, rather than those of service users or the public as a whole.

We recognise that, as the LSB points out, in some cases regulation will be carried out by an arm of the professional representative body, which has formally been designated as the regulator under the Legal Services Act 2007. We believe there needs to be maximal

independence between this arm and the representative body across all aspects of regulation, both strategic and operational, in order to ensure that regulation always takes place in the public interest and that this can be recognised by all interested parties. The LSB highlights that there may be cases in which services, such as HR or IT infrastructure, are shared between the two bodies to reap economies of scale. However, whilst certain sharing of back-office functions may not jeopardise regulatory independence there should be no sharing of services that have any bearing on regulatory activity, such as standards-setting, registration decisions, complaints processes or advice services for the public. Nor should circumstances be allowed to arise in which staff members have direct or indirect conflicts of interest in their work. It may be worth the LSB contacting the Royal Pharmaceutical Society of Great Britain, which has recently begun splitting its representative and regulatory functions in anticipation of the establishment of a new independent regulatory body for the pharmacy profession, whilst still sharing office and other infrastructural services with the rest of the RPSGB which is to become the profession's representative body.

The LSB highlights the need for accountability in regulation. We believe this is highly important. Transparency is central to ensuring accountability. Publicly accessible information and open procedures force a regulatory body to ensure that it is always acting in the public interest as they facilitate the regulatory body being held to account by interested parties for the actions it takes. Our experience suggests that the greater the transparency with which regulatory bodies operate, the more proportionate and effective the regulation. We note that a representative body may have certain responsibilities as the designated statutory regulatory body under the Legal Services Act. However, we believe that it is important that the regulatory arm is also fully accountable to all with an interest in effective regulation, both in principle and practice. It is important that the regulatory independence of the regulatory arm is not unduly influenced by its accountability to the representative body, as the designated regulator, but only by its responsibility to regulate in the public interest. There is an expectation that the LSB will ensure that regulatory arms are effectively held to account in the interests of service users and the public as a whole and that the regulatory arm's processes are accessible to all those with an interest in the regulation of legal services.

Regulatory bodies and professional representative bodies need to be aware of each others' separate roles and work together where appropriate. The regulatory arm should seek to reach a shared view with members of the profession on the standards for the profession's good practice. However, it will also need to engage the users of legal services and the public more widely independently of the professional body on this topic. The purpose of standards is to ensure that the profession is practised effectively and in the interests of service users. It must ensure that, as the regulator, it understands the needs and expectations of those whose interests it exists to promote and protect, and must assure them that it is carrying out its regulatory functions effectively in their interest. It must also ensure that those using legal services are aware of its existence and role and know how to contact it should they wish to do so, and have effective and responsive procedures for dealing with service users and others where they contact it with concerns about the services they have received or other issues relating to the profession's practice.³

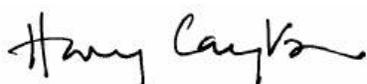
³ The points in this paragraph were highlighted as key factors in the final report of the Enhancing confidence in health professional regulators working group

In thinking about regulatory independence, there is a need to consider not just who is regulating and how they are independent from sectional interests, but also how they can demonstrate clearly that they are setting their priorities and carrying out their functions in the public interest. Transparency in all regulatory activities is central to this. It is essential for establishing trust and confidence in the regulation that is taking place and demonstrating that the regulatory body is fulfilling its function of protecting the public interest. Transparency facilitates increased answerability of a regulatory body to interested parties – across service users, the public, professionals, educators, employers. In our experience, the greater the likelihood the regulatory body can be asked to justify its actions, the greater the likelihood that it will seek to make its regulation fair, proportionate, consistent and targeted.

There have been significant developments in the regulation of the health professions over recent years. One of the major drivers for this has been to establish full regulatory independence from undue influence by any sectional interests in order to enhance public trust, confidence and assurance in the regulation of the health professions. A key milestone has been the reconstitution of governing councils so that their members are all independently appointed on the basis of their knowledge, skills and judgement, and their commitment to using these solely in the public interest. Full independence from professional representative bodies has also been an important principle and has led to the responsibility for regulating pharmacy being passed from the RPSGB to a new independent body, the General Pharmaceutical Council. Other notable developments include the increasing transparency with which the regulatory bodies operate, which are moving to make information from their regulatory activities more accessible to the public and other interested parties – across their standards, fitness to practise, registration, quality assurance of education functions, and on their own governance. As the body overseeing the health professional regulatory bodies, CHRE have sought to be a driver for increasing independence, transparency and accountability through our annual performance review of the regulatory bodies and our role in promoting good practice. The LSB may wish to consider the other mechanisms available to it to promote these values in the practice of regulating legal services in addition to the formal rules and provisions that may it seek to introduce.

In conclusion, we strongly agree with the LSB that effective regulation requires the trust and confidence of all parties with an interest that a profession is well practised. Regulatory processes must be, and be seen to be, independent of undue influence from any group that has a sectional interest. We see a number of parallels between the regulation of health professionals and the regulation of the legal sector and thank the LSB for the opportunity to share these with it. We hope that by drawing on our experience overseeing health professional regulatory bodies we have raised some issues that may be of use to the LSB in taking forward its proposals following this consultation. If you have any questions or would like further information regarding any of the issues raised in this submission, please do not hesitate to contact us.

Yours sincerely,



Harry Cayton, Chief Executive