

Shailesh Vara MP
Parliamentary Under Secretary of State
Ministry of Justice
102 Petty France
London SW1H 9AJ

3 July 2015

Dear Minister,

Deregulation in the legal services sector to better support innovation and growth

We made a commitment in July last year to you and the then Lord Chancellor to work together to identify opportunities for deregulation, with the aim of reducing burdens on practitioners and freeing up the market to deliver economic growth.

In the last few weeks, many of us have individually written to you to renew our contact with you and to raise some specific issues. We are now writing to you jointly to update you on our progress in meeting our deregulatory challenge. In doing so, we want to emphasise that we understand and appreciate the context in which we are working. In particular, we recognise the need to seek new ways of delivering access to justice in an environment of on-going pressure on public spending, while ensuring that the rule of law is upheld. We also understand that it is vital that the legal sector delivers its full potential for economic growth, and that it supports an environment in which all businesses – including small and medium-sized ones – can thrive. We believe our work on deregulation makes a direct contribution to achieving these goals.

Since the meeting in July last year, we have been collaborating in three key areas where we believe we can respond collectively to the deregulatory challenge now:

- reporting jointly on our progress on deregulation so far reflecting the fact that the individual regulators have all taken steps that others can learn from;
- agreeing proposals for minor changes to the legislative framework to reduce regulatory burdens and improve the efficiency of regulatory processes; and
- sharing our knowledge and ideas on alternatives to the handling of client money. This is a key area of policy where there is scope for introducing more choice for practitioners, reducing consumer harm and lowering regulatory administrative and cost burdens.

We set out below the development of our thinking in these three areas in more detail.

1. Report on progress on deregulation and market liberalisation

Since 2007 significant progress has been made to deregulate and remove unnecessary burdens. We have attached at Annex A a copy of the report that all regulators have approved which sets out the key achievements in the liberalisation of the legal services market since the introduction of the Legal Services Act 2007 (the Act). These achievements have together had a big impact in terms of reducing the regulatory burdens on the market. While there is still much more to be done and we are all keen to press

ahead with further changes, the successes have been significant and have driven widespread cultural change and supported growth and innovation in services, while consumer and public interest protections have been maintained. These successes include:

- The launch of over 400 alternative business structures (ABS), bringing new capital, expertise and business models into the legal sector – developments that would not have been possible within the traditional law firm partnership structure;
- The ongoing re-writing of rulebooks so these are now more principles-based rather than over-detailed and prescriptive; and
- Regulation increasingly targeted at areas of greatest risk, to improve value for money and significantly reduce the regulatory burden.

While our report demonstrates our significant track record in implementing more proportionate regulation since the Act gave us the power to do so, it also shows that there are limits in some circumstances to what can be achieved under the current regulatory framework. This has been one of the drivers of our joint discussions about what options there may be for more fundamental legislative change.

2. Proposals for changes to the current legislative framework

We have all agreed a list of proposals for relatively minor changes to the current legislative framework that will – by reducing burdens on practitioners and improving the efficiency of regulatory processes – help deliver growth in the legal services market. This list is attached at Annex B.

To be clear, this list does not necessarily represent the most important or pressing changes that we would like to see as individual regulators (and about which we may contact you separately), but importantly it is a list agreed between all of us, and we are mindful of the commitment we made to build consensus where we could. We are also aware of the drive across government to reduce red tape – these changes would make a modest but meaningful contribution to that goal.

We strongly recommend these changes to you. We think they could be achieved for example by means of a Legislative Reform Order, or attached to another suitable legislative vehicle such as a forthcoming Justice Bill.

3. Alternatives to the handling of client money

Not all legal practitioners are allowed to handle client money – barristers and costs lawyers for example are prohibited from doing so. But where practitioners do handle client money, this is a significant source of risk to consumers – including the risk of theft, failure to account and insolvency. As a consequence, the handling of client money also attracts a significant volume of prescriptive regulation, the costs of which are ultimately passed on to consumers.

Some practitioners tell us that they would prefer not to handle client money, particularly if choosing not to do so led to reduced compliance burdens and reduced regulatory fees (for example, lower compensation fund contributions).

We have therefore collectively developed an overview report on what options there might be for practitioners who no longer want to handle client money. We have explored what commercial alternatives are already available, and – following discussions with the Financial Conduct Authority, banks and other stakeholders – what assurances we as regulators might want if practitioners seek to use third party payment service providers instead. We now have a report that pools our knowledge and learning in this area to date

and which serves as a resource for any of us wishing to bring forward detailed proposals. Your officials have a copy of this paper. A number of us are already working on specific changes in this area, aimed at reducing regulatory burdens on practitioners while maintaining consumer protections.

Next steps

We hope an opportunity can be found for us to discuss our collaborative work with you in more detail, including our specific request in relation to the minor legislative changes. In the meantime, we trust this letter has made clear that we continue to be fully committed to deregulation and removing unnecessary costs and burdens.

We intend to continue our collaborative working on other areas of shared interest. In particular Professor Stephen Mayson has been leading a collaborative process, facilitated by the LSB, to explore what options there might be for more fundamental reform if we had the opportunity of a new legislative framework. We will continue to engage with your officials and wider stakeholders - including the representative and consumer bodies - as we do so. We believe that this type of thought leadership is one of the ways in which we can be most effective in further reducing regulatory burdens and liberalising the market.

Yours sincerely,

Sir Andrew Burns
Chair, Bar Standards Board

Michael Heap
Chair, Intellectual Property Regulation
Board

Patrick Bligh-Cheesman
Chair, CILEx Regulation

Sir Michael Pitt
Chair, Legal Services Board

Steve Winfield
Chair, Costs Lawyer Standards Board

Charles George QC
Master of the Faculties

Dame Janet Paraskeva
Chair, Council for Licensed
Conveyancers

Enid Rowlands
Chair, Solicitors Regulation Authority

Vernon Soare
Executive Director, Professional
Standards, Institute of Chartered
Accountants in England and Wales

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Progress on deregulation and market liberalisation in legal services (Annex A)

Proposals for minor changes to the Legal Services Act 2007 (Annex B)