

Graham Russell  
Chief Executive  
Better Regulation Delivery Office  
Lower Ground Floor  
Victoria Square House  
Victoria Square  
Birmingham B2 4AJ



**LEGAL SERVICES  
BOARD**

The Chief Executive's Office  
Legal Services Board  
7<sup>th</sup> Floor  
Victoria House  
Southampton Row  
London WC1B 4AD

T 020 7271 0043  
F 020 7271 0051

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

4 September 2013

Dear Mr Russell,

**Re: non-economic regulators: duty to have regard to growth**

The Legal Services Board (LSB) has read with interest the Government's response to consultation published in early July. We have noted in particular your referencing the LSB's support in principle for the idea of a growth duty being applied to regulators in the legal sector.

We are pleased to have been able to support his initiative however I feel it is necessary to take this opportunity to reiterate and reemphasise some of the detail of what we said in response to the consultation itself (see our 18 April 2013 submission to the consultation).

In particular I'd like to underline and highlight the caveat that was included with that support.

Our view, as stated already, is that in order to make a growth duty work in the legal sector, the LSB and all approved regulators should be subject to it. In addition to the LSB and the Solicitors Regulation Authority (SRA) there are eight other regulators active in the legal sector and further new approved regulators may be designated in future. It is our view that all nine approved regulators plus the LSB should be included under the remit of the growth duty proposals as opposed to merely the LSB and SRA as implied by Annex A of the consultation response document. This would appear to be in line with your broader intention as stated at 6.9 of the consultation response ie that the measure should apply to all bodies that have had regulatory functions conferred on them by Parliament. All approved regulators in the legal sector derive their regulatory functions from the Legal Services Act 2007.

Otherwise I believe it will be impossible to enforce if it applies to some regulators and not others. It will also be inconsistent with the better regulation principle as it will neither be targeted nor consistent. Indeed, failure to apply the growth duty to all regulators will see the legal services regulatory objective<sup>1</sup> of promoting competition being undermined as it can be plausibly argued that it needs to be applied to those not subject in a different way to its application to the LSB and the SRA.

This also speaks to the broader point made in our original submission: this measure can be made to work most effectively in the legal sector by amending the Legal Services Act 2007, rather than introducing the duty as a separate provision in stand-alone legislation.

The second point I would like to reiterate is that it remains necessary to make clear what "growth" means in the context of the legal sector as well as how that duty might be balanced against the various regulators other statutory duties. As already alluded to legal regulators have eight specific duties which are equally ranked in terms of priority. Promoting one statutory duty above all others for only two of the many legal regulators will lead to bureaucratic and regulatory tensions in the legal sector.

The final point I'd like to reiterate is that it is essential that a growth duty does not prevent regulators taking action against individuals or businesses that have contravened their rules and which may need to be closed down. Neither must the duty mean that regulators cannot prevent undesirable individuals or businesses entering the market in the first place.

I feel that it is necessary to write to you like this to restate our support for this initiative. However I also feel that I need to also reiterate and highlight the fact that this support is conditional on the above and afore mentioned points.

Given our mandate to ensure that regulation in the legal sector is carried out both in the public's interest and that the interest of consumers are placed at the heart of the system, it would be remiss of us if we did not point out what we see to be fundamental flaws with the parts of the draft bill relating to the legal sector.

As stated in our earlier submission we believe that the most effective way in practice to introduce a growth duty for legal sector regulators would be an amendment to the Legal Services Act 2007. However, should a growth duty be introduced by way of the proposed draft bill it is imperative that it apply to all of the regulators in the legal sector equally (both those currently designated as approved regulators and those who may become so designated). Anything other than this will introduce uncertainty into legal sector regulation. We cannot overstate this point strongly enough.

---

<sup>1</sup> [http://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/regulatory\\_objectives.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf)

We would be happy to discuss these issues in further detail. I have copied this letter to our sponsor team in the Ministry of Justice and to the Department for Business, Innovation and Skills.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Kenny', with a long horizontal flourish extending to the right and a small checkmark below it.

**Chris Kenny**  
Chief Executive  
E [chris.kenny@legalservicesboard.org.uk](mailto:chris.kenny@legalservicesboard.org.uk)

Cc: Dr Elizabeth Gibby, Deputy Director, Legal Aid and Legal Services Policy, MoJ  
Amanda Rowlett, Director General for Strategy, Analysis and Better Regulation, BIS  
Graham Turnock, Chief Executive, Better Regulation Executive, BIS