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| <b>To:</b>              | Legal Services Board |                            |
| <b>Date of Meeting:</b> | 7 July 2015          | <b>Item:</b> Paper (15) 39 |

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| <b>Title:</b>                  | <b>Thematic review: are regulatory restrictions in practising rules for in-house lawyers justified? Summary of responses</b>  |
| <b>Workstream(s):</b>          | Reviewing and removing regulatory obligations   |
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| <b>Status:</b>                 | Unclassified  |

### Summary:

Concerns have been expressed over a number of years about the impact regulatory restrictions on in-house lawyers may have on competition in the legal services market.

The Legal Services Board (LSB) is undertaking a thematic review of such restrictions and the extent to which these are consistent with section 15 of the Legal Services Act 2007 (the Act), which outlines the circumstances in which an employer would need to be authorised for provision of reserved legal activities by its employees.

In January the Board discussed the first output from the review: a discussion paper that presented initial analysis of the differences between the provisions of section 15 and the current regulatory arrangements of the legal services regulators. The discussion paper was published in February and sought views from regulators and interested parties on the rationale for and impact of practising restrictions and what options may be explored to improve arrangements in the interests of a more competitive legal services market.

This paper provides the Board with an update on the responses we received and seeks the Board's approval to publish a summary of responses.

### Recommendation(s):

The Board is invited:

- 1) Discuss and note the summary of responses (Annex A), and
- 2) Delegate approval of publication of the summary of responses to the Chief Executive.

### Risks and mitigations

**Financial:** N/A

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|----------------------|---|
| <b>Legal:</b>        | N/A   |
| <b>Reputational:</b> | The work is at an exploratory stage and this paper summarises the views that have been expressed to us. There was no disagreement with our initial analysis of the issues in the discussion paper published in February 2015. |
| <b>Resource:</b>     | N/A   |

| <b>Consultation</b>    | <b>Yes</b> | <b>No</b> | <b>Who / why?</b>                                    |
|------------------------|------------|-----------|--|
| <b>Board Members:</b>  |            | <b>x</b>  |  |
| <b>Consumer Panel:</b> |            | <b>x</b>  | The Consumer Panel responded to our discussion paper |
| <b>Others:</b>         |            |           |  |

| <b>Freedom of Information Act 2000 (Fol)</b> |   |                |
|--|---|----------------|
| <b>Para ref</b>                              | <b>Fol exemption and summary</b>                        | <b>Expires</b> |
| Annex A                                      | Section 22: information intended for future publication |                |

## LEGAL SERVICES BOARD

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| <b>Date of Meeting:</b> | 7 July 2015          | <b>Item:</b> Paper (15) 39 |

### **Thematic review: are regulatory restrictions in practising rules for in-house lawyers justified? Summary of responses**

#### **RECOMMENDATION**

1. The Board is invited to:
  - a. Discuss and note the summary of responses (Annex A),and
  - b. Delegate approval of publication of the summary of responses to the Chief Executive.

#### **BACKGROUND**

2. In 2013, in response to the Ministry of Justice's call for evidence, we argued that fewer restrictions on in-house solicitors acting directly for the public could create more competition and diversity in the legal services market.<sup>1</sup> Current restrictions may have consequences for membership organisations, charities and local authorities, preventing them from providing legal advice to consumers at an affordable price.
3. At its January 2015 meeting, the Board considered a discussion paper on regulatory restrictions on in-house practitioners (paper 15(03)). This was produced as part of the LSB's thematic review focused on section 15 of the Act.
4. Section 15 the Act outlines the circumstances in which an employer would need to be authorised for provision of reserved legal activities by its employees. The key provision is section 15(4). This requires an employer to be authorised if, through its authorised employees, it is providing services including reserved legal activities to the public (with or without a view to profit). Therefore, the legislation does not require an employer to be authorised if it is offering unreserved legal activities to the public, and it does not require authorisation if the employer is offering services including reserved legal activities to those consumers not defined as the public, or a section of the public.
5. The LSB discussion paper considered the impact of section 15(4) of the Act on the provision of legal services and reviewed regulators' current regulatory arrangements in this area. Three regulators place specific practising restrictions on in-house lawyers – the Bar Standards Board (BSB), the Intellectual Property Regulation Board and the Solicitors Regulation Authority (SRA). Our findings indicated that these practising rules may not be completely aligned with the provisions of section 15(4) and in places go beyond the minimum restrictions

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<sup>1</sup> LSB. 2013. *A blueprint for reforming legal services regulation*. Available at: [http://www.legalservicesboard.org.uk/what\\_we\\_do/responses\\_to\\_consultations/pdf/a\\_blueprint\\_for\\_reforming\\_legal\\_services\\_regulation\\_lsb\\_09092013.pdf](http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/a_blueprint_for_reforming_legal_services_regulation_lsb_09092013.pdf)

required to give effect to the Act, both in terms of the groups of consumers who may access services and the types of activities that in-house lawyers may carry on. Other regulators do not make specific provisions for in-house practice or, due to transitional protections in the Act, are not required to have arrangements.

6. The discussion paper asked all regulators to explain their approaches and the evidence for any in-house restrictions. We also sought feedback from all interested parties on the impact of current approaches to help to identify any areas for improvement.

## **SUMMARY OF RESPONSES**

7. The paper was published for comment in February 2015 and responses were invited from regulators and interested parties over a twelve-week period. We received a total of 18 responses to the discussion paper, including five from legal services regulators. We also received responses from approved regulators, groups representing in-house lawyers and organisations employing in-house lawyers. Annex A presents a summary of the responses received.
8. In their responses, the BSB and SRA told us they are both currently reviewing their regulatory arrangements in this area. Given the analysis set out in our discussion paper, we consider this to be encouraging.
9. The responses also indicated:
  - Support for reviewing current arrangements for in-house lawyers that go beyond those required by the Act
  - A range of positive, neutral and negative experiences under the current arrangements
  - An interest in greater consistency across regulatory arrangements, in the interests of economic growth and consumer understanding
  - That conflicting views on how risks associated with the provision of unreserved legal activities by those working in-house should be managed
  - Concerns that any alterations to in-house practice rules could work against the provision of pro bono services
  - Any proposal to removing unjustifiable limits on competition must be balanced against the promoting and protecting consumers' interests, in particular consumer protection arrangements and any risk of consumer confusion if arrangements are altered.
10. More generally, the responses helpfully show the interconnectedness of regulatory arrangements. It is clear that any review of specific rules around the practice of in-house lawyers will need to reflect on regulatory arrangements that may apply more generally to a profession, rather than attempting to address issues with a simple, isolated change to a definition or rule.

## **NEXT STEPS**

11. The responses we received to the discussion paper will inform and complement further analysis of the issues around in-house practice and to identify whether action is needed, and if so, what form that action should take. As well as considering the appropriateness of issuing guidance or using other powers in the Act, or making a recommendation to the Lord Chancellor,<sup>2</sup> we will consider more informal options may deliver better regulatory arrangements for in-house lawyers. We will explore the merits of these different options before making recommendations to the Board later in the year.

29 June 2015

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<sup>2</sup> LSB may, under section 15(10), make recommendations to Lord Chancellor around the scope of 'excepted membership services', what constitutes (or does not) a section of the public, and when provision of services to public does not form part of employer's business.