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20 September 2012

Dear Minister,

### **Responding to the Triennial Review**

In July 2012, your predecessor published the MoJ's report on its Triennial Reviews of the Legal Services Board (LSB) and Office for Legal Complaints (OLC). At the LSB, we welcome the conclusion that we should continue to deliver our functions in our present form and look forward to working with Government, regulators and our other partners in doing so.

We agree that there remains a challenging programme of work for all of us in ensuring that the legal services market in England and Wales delivers the maximum possible benefits to the public, to consumers and to the economy. A regulatory system that is fit for purpose – one that enables greater innovation and competition whilst also protecting the wider public interest and consumers - is crucial in delivering this. That is why we welcomed the scrutiny of our role and why we are similarly committed to assuring the performance of regulators as they seek to keep pace with a rapidly evolving market and finding ways to help them improve further.

The Review made five specific recommendations around our corporate governance. Our detailed response is at **Annex A** and we consider that we can meet all of them. We look forward to continuing to work with your officials on those issues which are more of a joint responsibility.

I also want to assure you and all who responded that the Board has considered carefully all of the published responses, rather than simply addressing the tightly focused, specific governance recommendations.

The 2007 Act will inevitably lead to some tensions between the LSB and the approved regulators. Indeed, it could be argued that it is designed to do so. Self-regulatory bodies are close to their own segment of the market and have a degree of knowledge about its

operation that it would be needless for us to duplicate. But, equally, Parliament has given us a role to bring challenge from the perspective of the entire market and the customer and competitor, as well as from best regulatory practice elsewhere. That will inevitably be uncomfortable on occasion. The common challenge for the LSB and regulators is to make that tension as creative a process as possible.

Our own submission to the Triennial Review, attached at **Annex B**, reiterates our operating principles and explains our overall approach to our role. But there are also important challenges for us emerging from the Review submissions, and we accept that there are things we need to do to address them. We will include more detail on these in our draft Business Plan for 2013/14. This will be published for consultation in December 2012 but we encourage anyone with early views on these ideas to discuss them with us now so we can build in informal feedback at this early stage. That is why I am publishing this letter on our website and copying it to the chairs of the approved regulators and their regulatory arms, Elizabeth France at the Office for Legal Complaints, Elisabeth Davies at the Legal Services Consumer Panel, Andrew Spooner at the Solicitors Disciplinary Tribunal and all those who responded publicly to the Review.

These ideas include:

- **Reviewing our approach to requests for changes to regulatory arrangements and other statutory approvals** - a number of stakeholders commented on the operation of our rule approval process. We will be considering how to improve this and our designation process in the coming months in the light of three years' experience, specific points made in the Review and our developing work on regulatory effectiveness. We will, of course, consult on any changes to our formal approach, but have already started to engage more with regulators in advance of formal submission and to involve them in identifying lessons emerging from the process of individual applications ahead of that.
- **Refining our approach to research funding** – our draft Business Plan will include our research priorities for 2013/14. As we have always made clear, we are keen to work with partners on research, especially through matched or co-funding, and, for 2013/14, if we are able to secure such arrangements in advance, we will reduce our proposed budget (and as a consequence, our call on the levy) accordingly. But we believe that it would be a false economy to materially reduce the overall investment in generating evidence about the effectiveness of the market, given the paucity of data currently available and the overall need to both reduce regulation and target it ever more effectively at the highest risk areas.
- **Increasing understanding of the costs of regulation** – we think the time is right for an open debate on the cost of regulation. We will continue to be rigorous in managing our own costs, but these are but one small component of the total costs that practitioners have to bear in order to be able to practice. So there needs to be better understanding of the costs of the LSB and OLC, the regulatory costs of front line regulators, the costs for 'permitted purposes' other than regulation which approved regulators can levy on individual lawyers and compensation and other related costs. We are also keen to understand the far less researched issue of the compliance costs of regulation with firms and Chambers and welcome ideas on how this can best be tackled.

- **Building greater consensus about the way in which the regulatory objectives underpin our work** – in July 2010, we published our approach<sup>1</sup> to addressing the regulatory objectives into our work. At that time, we were clear that we would balance each objective appropriately according to the particular circumstances of the issue being addressed. We still think that is the right way to approach the objectives. They are not ranked or in any sort of hierarchy. But the submissions suggest that we need to be better at explaining why we speak so frequently about access to justice, competition and consumer interests (which we see as being intimately related and very often calling for the same policy interventions), compared to other issues, such as citizens' legal rights and duties. We will continue to focus on those of the objectives which have historically been neglected by self-regulation (although less so in the recent past) and are most tractable to regulatory action. That is not the same as prioritising pursuit of one regulatory objective over another and, where stakeholders perceive a deficit in our activity, we are open to suggestions for cost effective activity by the LSB to help underpin progress on the same issues by the front-line regulators.
- **Continuing our work on evaluation and regulatory effectiveness to provide a robust evidence base for the next Triennial Review** – we agree with the MoJ's conclusion that a Review in three years' time will have a far wider evidence base and may reach justifiably different conclusions. Those conclusions need to be driven by how the market develops in the intervening period, as well as judgements on how well the LSB and, importantly, the front-line regulators have responded to the challenge of maintaining momentum in reforming the supply side and protecting the public interest. We have said before "that how big the LSB is, what we need to do and how long we need to exist for, depends ultimately on the performance of the approved regulators in delivering regulation that is fit for purpose". We are here to help them rise to that challenge and to hold them to account for so doing.

We believe that this sets out a significant agenda, but one in which we hope our regulatory partners will perceive common opportunities. We look forward to continuing to work together with them and with Government on their achievement.

Yours sincerely



**David Edmonds**  
Chairman

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<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)

## ANNEX A

### Response to recommendations on LSB corporate governance

The Review contained five recommendations for the Legal Services Board (LSB) and Office for Legal Complaints (OLC). These are listed below with the LSB's responses:

#### ***Recommendation 1: Review Framework Agreements (by end 2012)***

*Both the LSB and the OLC need to have their Framework Agreements with the MoJ updated to reflect changes which have occurred since they were drafted. In the case of the OLC, this will need to specify that it is a statutory body under Cabinet Office classification, rather than an NDPB. The review process will allow for reflection of the wider findings from the Triennial Review.*

#### LSB response

1. We accept this recommendation and await sight of the changes that the Ministry of Justice (MoJ) believe need to be made. We would hope to expedite this recommendation with speed.
2. The MoJ may wish to give consideration to the idea of a tri-partite Framework Document between MoJ, LSB and OLC. Many of the Framework Document's provisions are common to both organisations and it would present an opportunity to confirm the unusual nature of the financial and performance management relationships between the three bodies.

#### ***Recommendation 2: Diversity of Boards (by April 2013, and ongoing)***

*The LSB is due to appoint two new members by April 2013. Equality and diversity must be considerations in this appointment process, but also for any future appointments to the Board of either the LSB or the OLC.*

#### LSB response

3. It is the Lord Chancellor and Lord Chief Justice who take decisions regarding the appointment of LSB members, with MoJ officials leading the appointment process. In all submissions from the Board to the MoJ, the LSB has stressed the need for MoJ to adopt a process that encourages and secures applications from the widest possible range of candidates so that diversity considerations are addressed.
4. These are considerations that will also be at the front of our mind in future OLC and Consumer Panel appointments, which are the responsibility of the LSB.

#### ***Recommendation 3: Open board meetings (by end 2012)***

*Although the OLC has an annual event which the Board attends to launch its annual report, neither the LSB nor the OLC has an open board meeting. Each body should give further consideration of whether this is appropriate to its work in order to improve the openness and transparency of the boards.*

#### LSB response

5. The Board has considered the question of holding open Board meetings on a number of occasions and understands the arguments for them. However, the Board has concluded that the free and frank provision of advice to Board members, the need for

confidential and unfettered exchanges of views between Board members and the Board's commitment to cabinet responsibility for Board decisions necessitates private session.

6. The Board's position remains not to hold open formal Board meetings, but to re-energise its ongoing commitment to engaging at both member and staff level with as wide a range of people with an interest in legal services regulation as possible. This includes continuing to consult widely and openly, holding workshops and seminars on our developing thinking, and to meet, and speak frankly to, all who have interest in our work. We will keep our approach under review and act on practical opportunities. We have recently held events in Wales and outside London on the education and training review and will look at the scope to re-energise broader engagement outside London.

***Recommendation 4: Consider publication of spend over £500 (by end 2012)***

*Neither body publishes spend data over £500, although they do report other spend over £25,000 or credit card spend over £500. Further consideration should be given to whether publication of spend data over £500 should be published as best practice on transparency.*

LSB response

7. The LSB complies with all transparency of spend requirements currently asked of it by Cabinet Office and the Ministry of Justice. As regards spend data, we provide two formal returns at present:
  - a monthly return detailing all transactions over £25,000 (published on [www.justice.gov.uk](http://www.justice.gov.uk)).
  - a return detailing all transactions over £500 paid for by Government Procurement Card (GPC) (<http://www.justice.gov.uk/information-access-rights/transparency-data/gov-procurement-card>) (although we rarely have any transactions over £500).
8. We have no objection in principle to publishing all transactions over £500, but this will place an additional administrative burden on our team and would mean a separate publication of these items on our own website. The Ministry of Justice does not publish transaction data lower than £25,000 (other than by virtue of GPC spend over £500 – in line with the Government's Transparency agenda and the procedure adopted by LSB already). We suggest that it would be both more satisfactory for stakeholders, and administratively more straight-forward, to collate all of our transaction spend data into a single data return to MoJ for publishing in a central location. We will discuss this further with the Ministry of Justice.

***Recommendation 5: Update staff guidance on political activity and appointments or employment after resignation or retirement (by end 2012)***

*The need to prevent conflicts of interest and protect the interests of the ALB is very important, and the guidance should be updated when a suitable opportunity arises.*

LSB response

9. LSB colleagues are not civil servants and therefore not all provisions of the civil service code of conduct are applicable.
10. The LSB's terms and conditions of employment contain a degree of guidance on political activity and confidentiality (both during and after employment). The Executive Service Agreements of senior staff include explicit reference to activity which might risk being seen to compromise impartiality including political activity. For other

colleagues, similar conditions around professional standards and confidentiality also apply - although these are not explicit on political activity they do make clear that professional conduct and independence are paramount.

11. The Board considers that these are appropriate contractual provisions for colleagues, bearing in mind the non-Crown status of the LSB, and that they allow adequate management flexibility to determine appropriate responses in any particular instance. It does not consider, for instance, that any posts beyond senior management should be classed as 'politically restricted' as a matter of course but will consider providing some further guidance on how the LSB might react to a colleague being nominated as a Prospective Parliamentary Candidate or Local Authority Councillor. The Board will also consider the extent to which prevailing guidance for OLC non-executives and Consumer Panel members also needs to be reviewed. Requirements on Board members are, of course, a matter for the Ministry of Justice itself.

# Triennial Review

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Legal Services Board response

March 2012

## Introduction

1. The Legal Services Board (LSB) is a non-executive departmental body (NDPB), established by the Legal Services Act 2007 (the Act). The Board came into being on 1 January 2009 and became operational, with the majority of our statutory powers, on 1 January 2010.
2. We are responsible for overseeing the regulation of legal services in England and Wales, and do so independently of Government and of the legal profession. Ten separate bodies, the approved regulators, come within the Board's remit, which themselves regulate the circa 130,000 lawyers practising throughout the jurisdiction. The Board also oversees the Office for Legal Complaints (OLC), which administers the Legal Ombudsman scheme and which resolves consumers' complaints about lawyers.
3. The Board's establishment was just one element of a major programme of regulatory reform for the legal services sector that had been many years in gestation. **Annex A** provides a summary of the reform programme.

## Functions of the LSB

4. The Act provides the LSB with its statutory role and remit, including our duty to act in accordance with the regulatory objectives, to maintain appropriate standards in the profession and to apply general principles of better regulation. It also provides for the establishment of a Consumer Panel to advise the LSB, including arrangements for the Panel to establish committees and to provide advice to the LSB (including the carrying out of research).
5. In its preparation for the Triennial Review, the Ministry of Justice (MoJ), our sponsoring department, prepared a clear summary of our functions, which was comprehensive and which we re-state below. This summary derives from the Act and all of the Board's activity can be tracked to it:

"The role of the LSB is to promote and ensure adherence to the regulatory objectives set out in the Act. The aim of the objectives is to ensure that regulators support the rule of law, improve access to justice, protect and promote consumers' interests and the public interest, promote competition, encourage a strong and effective legal profession, increase public understanding of their legal rights and maintain the professional principles of those providing legal services.

The LSB has a number of powers and sanctions available to it to ensure that approved regulators are fulfilling these objectives.

The **ongoing statutory responsibilities** of the LSB include:



- **approval and recognition** - considering a range of applications from both existing approved regulators (including applications to become a licensing authority) and those seeking to regulate a reserved legal activity
- **monitoring and investigating activities** - monitoring approved regulators to ensure compliance with the regulatory requirements and monitoring the OLC's performance. It also examines the wider market place to identify trends, gaps in regulation, competition issues and how both its own rules and those of approved regulators are working in practice.
- **enforcement and disciplinary activities** - ensuring approved regulators and licensing authorities perform their duties in a way which meets the regulatory objectives and, where necessary, exercising the powers at its disposal to ensure that this happens. These powers include the power to set targets, give directions, publicly censure a body, impose a fine, intervene in the running of the body and ultimately cancel a body's designation as an approved regulator and a licensing authority.
- **regulation, education and training** - a duty to assist in the maintenance and development of standards of the regulation by approved regulators and also in the education and training of persons carrying out reserved legal activities.

The LSB is also required to make rules concerning the imposition **of a levy on leviable** bodies. These may be subject to change year-on-year.

6. In addition to the above analysis by MoJ, we also note that in relation to:

- **approval and recognition** – we also consider applications from those seeking to become an approved regulator; and
- **monitoring and investigating activities** – we also have duties in relation to the Solicitor's Disciplinary Tribunal.

We would also add:

- **scope of regulation** – powers to make recommendations to the Lord Chancellor on the designation of new activities as reserved and the removal of existing designations.

7. We consider that all of these functions continue to remain valid and continue to be discharged, most appropriately, by a body independent of both Government and the profession. Informing this view, we take account of the need for:

- Government to receive advice from an expert, but disinterested, body on matters to do with the scope of regulation and the acceptability of individual

bodies to discharge regularity responsibility. For Government to seek to duplicate the role of the Board would both increase public expenditure and raise major public interest questions about the balance of responsibility between state and profession;

- Manifest but proportionate assurance to legislature, executive and public that regulation is truly being discharged both effectively and in the public interest – we consider that this assurance has to be provided at arms' length from the bodies discharging the front-line regulatory functions if it is to be credible;
- Clear processes for intervention, which, need to be at arms' length from Government in order to remove any doubt that they are being driven through proper regulatory process rather than by political concerns.

### **How we operate**

8. We set out our approach to delivering our statutory remit in our Business Plan each year. This is always the subject of public consultation. Our approach has remained constant since our inception. Our efforts will focus on ensuring that regulation is proportionate – reduced where possible to remove unnecessary barriers to delivering the regulatory objectives and only imposed where necessary to support consumer and/or public interest outcomes, including to support the rule of law. We will seek to encourage competition while ensuring that regulation reacts and develops to protect against and mitigate for emerging risks. Regulation should support innovation, incentivise a strong consumer focus and restrict the ability of providers to penalise consumers for their lack of knowledge or power.
9. Indeed, our approach to the way we perform our role remains little changed from when we started and is as follows:
  - The Act sets out clear regulatory objectives. These objectives underpin all of the work of the LSB and we will always map our proposals back to them.
  - The better regulation principles are enshrined within the Act – so our activities will always be transparent, accountable, proportionate, consistent and targeted.
  - We expect that the approved regulators will work with us in a relationship of openness and trust and act in accordance with the regulatory objectives, as required by the Act, and reducing to a minimum any requirement for us to duplicate work undertaken competently by others. However, we will not hesitate to do what is necessary, should the need arise.

- We will set out the anticipated impact on consumers and the professions of alternative regulatory options in our consultation papers and seek views from others about whether we have made the right assessment.
  - We will work with approved regulators to identify risks and manage them as we open up the legal services market. This means less of a focus on prescriptive rules that apply to everyone and greater supervision of lawyers and businesses that present risks to specified outcomes. We expect that approach to apply both to our activities and to the approach of the approved regulators.
  - We will develop strong working relationships with key stakeholders including the MoJ, the Welsh Government, the approved regulators, citizen and consumer groups, the professions, firms and partnerships across the sector, potential new entrants to the market, other regulators and redress providers and the academic community.
  - Above all, the public and consumer interest will guide us in our work.
10. At the risk of repetition, all that we do is driven by the regulatory objectives and the need to operate in accordance with better regulation principles. We are obligated to do so and it is right to do so. This obligation extends to the approved regulators also. This mutual underpinning, far from binding those obliged to have due regard to an identical agenda, allows each organisation to develop an appropriate approach to meeting the unique challenges faced. The flexibility though does not extend to what the regulatory objectives mean: they bind approved regulators and the LSB to working to deliver a shared set of outcomes. In July 2010, alongside our Annual Report for 2009/10, we published our analysis of the regulatory objectives<sup>1</sup> (after consultation) so that approved regulators and others could see how we would apply them in the joint endeavours ahead.
11. How far the delivery of the regulatory objectives decided upon by Parliament, and the objectives of the legislation, can be left to the approved regulators alone is what we are working to determine. We have certainly come a long way but few of the approved regulators have a tradition of the kind of approach to regulation that the Act anticipates and requires. This is not surprising given the history of most as professional bodies delivering self-regulation and where, historically at least, the full range of regulatory objectives have not been core to a professional body's approach. Progress under challenging conditions is being made, perhaps inconsistently, but the need for assistance and co-ordination remains. Our current initiative on regulatory effectiveness is the next step in enabling a clear assessment to be made on how effectively regulators are using this freedom.

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<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)

12. We note also that many of the “burdens” we place on approved regulators are designed to increase the professional standard of their regulation and hence lead to a reduction in the burden placed on the sector itself.

## Observations on delivering our functions

### Approval and recognition

13. The prevailing need for oversight in delivery of the regulatory objectives is perhaps most evident in our work to consider applications from regulators to make **amendments to their regulatory arrangements**. Our role under the powers provided to us is to assess such applications against the criteria in the Act (Sch. 4, 25 (3)), which support the duties set out in section 28. The Act places the onus on us to approve applications unless one or more of the criteria have not been met. It is therefore our role to consider whether the changes proposed are compatible with the regulatory objectives and have been made in a way which is transparent, accountable, proportionate, consistent and targeted.
14. We have received numerous requests for changes to alternations to regulatory arrangements. We have, as permitted by the Act, provided Rules to govern the process. To date we have issued only one Warning Notice that we are minded to reject an application. But, on a significant number of occasions, we have found weaknesses in the material provided to support the application by regulators in terms of process, substances or sometimes both. In such situations, we have provided guidance and challenge to ensure regulators understand where their applications fall short of the statutory criteria so that we may make approval decisions that are sound and legally robust.
15. We believe that to see such an approach as ‘micro-managing’ is misguided. . We want to see regulation that is fit for purpose and to disregard our statutory obligations when performing our functions to facilitate changes to regulatory arrangements at odds with the Act would both be remiss and, in the medium-term, increase the risk of more extensive and expensive intervention, potentially even necessitating legislative reform. Ultimately, our approach is guided by the quality of the submissions we receive and their compliance with statutory requirements – there have been minimal occasions where submissions have ultimately been rejected, and one statutory Warning Notice. In the majority of cases, applications have either been satisfactory on receipt, or our team has worked hard with regulators to ensure full understanding of the process’s requirements so that submissions can be improved to satisfactory levels.
16. We expect, and hope, that over time we will need to do less of the latter as regulators become more familiar with the regime and improve their regulatory performance. It is in their hands to determine, but it is not improbable that in time the need for a statutory check and balance on such changes is no longer required. But experience shows that we are not there yet.

17. The process represents a significant change from pre-Act arrangements, where only a smaller sub-set of changes to regulatory arrangements required approval – and indeed where approval was at Ministerial level on the advice of the Legal Services Consultative Panel. Aside from the improvements in speed that the new process has brought about, it also more clearly ensures separation of regulation of the legal profession from Government.
18. This need for separation from Government is also relevant to our function in relation to recommending **designation of new approved regulators or licensing authorities for alternative business structures**. It is clear that permitting access to the regulatory sphere is an important decision requiring careful consideration of the proposed body's organisational competence and capacity. Regardless of who takes the decision, currently the Lord Chancellor, it needs to be done on the basis of solid and robust advice. Building up expertise within a body independent of Government ensures that such advice can be prepared on a consistent, expert basis. This is likely to be more effective, particularly in terms of cost, than requiring ad hoc external advice on individual applications as they arise.

#### **Monitoring and investigating activities**

19. As regards the Board's responsibilities in relation to the OLC, the Act provides for a governance model that prevents any accusation of influence of either Government or the profession by giving Board member appointment responsibility to the LSB. It also allows for independent challenge on performance, and indeed scope for more prescriptive performance target intervention, by the LSB. This does not duplicate the rightful role of the OLC but does ensure a degree of check and balance. It is perhaps not surprising that Parliament introduced a degree of 'belt and braces' into the oversight of the new redress system in light of the past history of poor performance in this area. It is in line with best practice in other sectors, where, for example, the Financial Services Authority has similar powers in relation to the Financial Ombudsman Service and Ofgem and Ofcom have powers to recognise Ombudsman and other ADR services and to intervene in relation to their performance.
20. In relation to the approved regulators, it is clear that this is core to the role of oversight – are regulators performing at the level society demands? The Act effectively 'passport' pre-existing bodies with regulatory functions into the new regulatory regime with no formal assessment of their competence. New bodies seeking to enter the regulatory regime – quite rightly - face a far higher threshold – and it is the latter that is the standard to which all should aspire. In order to ensure a consistent approach to delivering our oversight role, we have developed a framework to assess whether the approved regulators are acting in accordance with the regulatory objectives and the better regulation principles. Important considerations, such as the appropriateness of their interventions, ensuring

effective risk management, supervision and enforcement and acting out an outcomes-focused approach, will all be priorities – whilst recognising that what is appropriate for a body regulating several thousand professionals may be delivered in a different way to that of a body regulating some hundreds.

### **Enforcement and disciplinary activities**

21. The Board has not had to use its disciplinary or enforcement powers to date. The Board does not consider its occasional use of its S55 powers to gather data as enforcement, but rather as a means to ensure it has all appropriate evidence to underpin its judgements. As stated above, its preferred approach is to work in partnership with approved regulators to deliver shared outcomes. This means ensuring that there is a shared and accepted understanding of what is required. In the Board's view, and in light of its particular role, this is likely to deliver more effective results in the long-term, particularly as much of the Act's ambition is about 'hearts and minds' change. Whilst robust enforcement action has its place – and is certainly essential in any regulator's armoury – deployment must be appropriate to the circumstances.

### **Regulation, education and training**

22. It seems clear from our own understanding of, in particular, representative bodies' perceptions of the Board, that this is the area that generates most confusion and consternation. Whether it be the amount of research we as a Board carry out, the extent to which we seek to influence activity on important cross-sector initiatives such as the Quality Assurance Scheme for Advocates, education and training or the promotion of diversity – there seems reluctance to accept that it is part of our role to assist with these activities and that such assistance can – and indeed should – be undertaken on our own initiative where justified.

23. The Board remains convinced that this proactive role is necessary and that it does not duplicate the role of front-line regulators. To take the areas referred to above

- Despite the scale of the market and its vital importance to the public interest, research of the legal services market before the advent of the Board was undertaken only on an "advocacy" basis by professional bodies, as part of formal Government processes by MoJ and its predecessors or the LSC, as a corporate social responsibility issue by bodies such as the College of Law and by a very small cadre of academics and consultants. The sum total of this work was rarely, if ever, sufficient to meet the evidential standards expected in other sectors. The Board's targeted investment in this area has therefore been widely welcomed by stakeholders outside the professions, both nationally and internationally, and been a crucial input into our own practice. We regard the gradual but welcome increase in such activity by some of the approved regulators as a

vital shift in regulatory practice that would not have occurred without the Board's influence. As this activity increases and is sustained, there may be scope for the Board to invest less in future years.

- The sum total of the Board's activity on education and training has been the delivery of two speeches in 2010, which developed the case for a wide-ranging review, agreement to a proposition from three regulators that they, rather than the LSB, should undertake that review, the commissioning of one research report at a cost of £5,000 and the management, at no cost other than travelling expenses to the LSB, of a series of five seminars in support of the regulators' review. We find it hard to see that this can be described as duplication. But we equally find it hard to see how a challenge to undertake a cross-sectoral review of a kind not undertaken for 40 years at a time of the most considerable change in the legal market and workforce can be seen as an illegitimate activity for an oversight regulator to undertake
- In relation to diversity, we note that a Department for Constitutional Affairs consultation on diversity in the legal profession recommended that firms conduct surveys and published data on their website. However, in the absence of a body with the power to force this onto the regulatory agenda, no progress was made, with the issue being seen as one for professional bodies and a minority of enlightened firms. The role of the LSB has therefore been crucial in building momentum in this area in general and in relation to social mobility in particular.
- In relation to QASA, the Board's intervention has been crucial in the maintenance of any momentum behind delivery of the project. We note that the project is an object demonstration of the difficulties faced by the front-line regulators in seeking to cooperate across professional boundaries in the absence of forceful facilitation.

24. We return to the basis for our existence as described by the MoJ "*The role of the LSB is to promote and ensure adherence to the regulatory objectives set out in the Act. The aim of the objectives is to ensure that regulators support the rule of law, improve access to justice, protect and promote consumers' interests and the public interest, promote competition, encourage a strong and effective legal profession, increase public understanding of their legal rights and maintain the professional principles of those providing legal services.*"

25. Ultimately, it is indeed for the regulators to devise, develop and implement the reforms required to guarantee the legal profession in England and Wales maintains its undeniable reputation for excellence into the coming century. The role of the LSB is to make sure that they do and that they do so in a way that meets the will of Parliament. We take this active responsibility seriously. In many

respects, it is odd that in doing so we face fierce criticism. Surely even our fiercest critics do not dispute the central importance of legal services to society and to the rule of law? No. Where we differ is on how best to maintain and improve the legal services environment for all who rely on it – whether that is in a personal, commercial or societal context.

26. We remain committed to delivering our statutory responsibilities and guard our independence from Government, the profession and other interests well. It is our objectivity that allows us to see what those embedded in the sector may not and which leaves us well-placed to mitigate the risks faced.

### **The Legal Services Consumer Panel**

27. The Panel has commented itself on the Triennial Review and we take this opportunity to indicate our broad agreement with the thrust of its submission.

28. The Board has already argued, in the context of debate around the consumer landscape, that it considers the retention of expert, independent consumer advice to be essential if it is to meet its obligations to pursue the consumer interest. In reaching that view, it took account of:

- The relative inability of national consumer bodies to engage with the legal services agenda on an ongoing basis in the light of their other priorities;
- As a consequence, the danger of professional interests having – or being perceived to have – excessive “voice” in regulatory decision-making;
- The failure to date of any of the approved regulators to maintain and sustain their own arrangements to ensure independent consumer input into their activities;
- The quality of work produced by the Panel at significantly less cost than would have been involved in its external commissioning.

Given these factors, it is probable that the Board would seek to appoint a panel with a similar role and function to the current body were a decision made to remove its statutory status.

### **Conclusion**

29. To conclude, we consider that the conclusion of the Triennial Review has to be informed by objective judgement on delivery, rather than simply against abstract criteria. In the period since the Chairman was appointed in April 2008, the Board has consistently delivered:



- **Early** – both its initial establishment and its largest project to date, the delivery of alternative business structures, happened considerably ahead of the time initially set out by Government;
- **On or below budget** – set up was achieved below budget and in its three years of operation, the Board has both lived within the initial cost estimate in the PA and PWC reports and never sought a cash increase in its running costs;
- **Comprehensively** – we have delivered a challenging three-year plan for the period 2009-12 in full, transforming the governance of regulation in England and Wales, establishing more independent dispute resolution than ever before and putting in place the framework for a radically transformed market for the benefit of the public, as both citizen and consumer.

30. While the time will come for a comprehensive review of the 2007 Act – and the related unreformed statutes which sit alongside it – that should happen only after a full evaluation of both the medium-term impact of the changes which the Board has led in terms of the maturity and capability of the front-line regulators and, above all, on the state of the legal services market after a further three years of progress on reform. Any significant change to the current settlement in advance of such a review will divert effort unnecessarily from the current challenging delivery agenda.

## **Annex A**

### **History of the reforms**

1. The Legal Services Act 2007 – and the creation of the Legal Services Board marked the culmination of almost a decade of work.

### **Background to reform**

2. In March 2001 the OFT produced a report, 'Competition in Professions', which recommended that unjustified restriction on competition should be removed. The government responded with a consultation paper and report into competition and regulation in the legal services market.
3. The Government's report concluded that "the current framework is out-dated, inflexible, over-complex and insufficiently accountable or transparent... Government has therefore decided that a thorough and independent investigation without reservation is needed".

### **Regulatory review of legal services**

4. In July 2003, Sir David Clementi was appointed to carry out an independent review of the regulatory framework for legal services in England and Wales. The terms of reference were:
5. To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector; and
6. To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.
7. In December 2004, Sir David published 'Review of the Regulatory Framework for Legal Services in England and Wales'. His recommendations included:
  - Setting up a Legal Services Board - a new legal services regulator to provide consistent oversight regulation of front-line bodies such as the Law Society and the Bar Council.
  - Statutory objectives for the Legal Services Board, including promotion of the public and consumer interest.
  - Regulatory powers to be vested in the Legal Services Board, with powers to devolve regulatory functions to front-line bodies, now called Approved Regulators, subject to their competence and governance arrangements.
  - Front-line bodies to be required to make governance arrangements to separate their regulatory and representative functions.
  - The Office for Legal Complaints - a single independent body to handle consumer complaints in respect of all members of front-line bodies, subject to oversight by the Legal Services Board.

- The establishment of alternative business structures that could see different types of lawyers and non-lawyers managing and owning legal practises.

### **The reform programme**

8. The Government broadly accepted Sir David's report, and in October 2005 it issued a White Paper, 'The Future of Legal Services: Putting Consumers First'. In that document, the Government announced its intention to publish a draft Legal Services Bill which would include proposals to implement the key Clementi recommendations. The three planks upon which reforms were to be built were the new, independent and robust oversight regulator, the Legal Services Board; the single complaints-handling and consumer redress body, the Office for Legal Complaints; and the facilitation of the innovative Alternative Business Structures, helping the legal sector to become more responsive to consumer needs.
9. In May 2006, the draft Bill was published. It underwent Pre Legislative Scrutiny before a Joint Committee of MPs and Peers. That Joint Committee was chaired by Lord Hunt of Wirral, and it published a report in July 2006, making several recommendations about improvements that could be made by the Government but accepting the broad thrust of the reform package.
10. In that spirit of broad consensus, the Government introduced the full Legal Services Bill to Parliament in October 2006. Parliamentary passage was lengthy and scrutiny was thorough, with the Bill receiving Royal Assent over a year later, on 30 October 2007.