City of London Law Society

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(By post and email: consultations@legalservicesboard.org.uk)

Dear Karen

Draft: Strategic Plan 2015-18 and Business Plan 2015/16

The City of London Law Society (CLLS) represents approximately 17000 City lawyers through individual and corporate membership including many of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal and business issues. The CLLS responds to a range of consultations on issues of importance to its members. This response in respect of the LSB's Draft: Strategic Plan 2015-18 and Business Plan for 2015/16 has been prepared by the Chief Executive of the CLLS.

Thank you for the opportunity to respond to your draft medium and short-term proposals. Two strands of activity strike us as relevant to our concerns.

First you note the distinction between regulated and unregulated services and your belief that the LSB must take an interest in unregulated services. From this you hope to understand what the LSB needs to do to help regulated firms compete fairly (with unregulated services), and to think about the case for new legislation in due course.

The only obvious way of encouraging fair competition is for all non-Reserved activities, including legal advice, to be taken out of regulatory scope, as only that change will create the level playing field with the unregulated sector. This would usefully prevent those firms with no other motive for restructuring having to set up separate businesses in order to provide their legal advice in the unregulated sector. Even then the playing field would not be fully levelled until all unregulated work in the recognised body is exempt from the turnover charge. As things stand at the moment, City firms can only work towards fair competition by employing more paralegals and overseas qualified

lawyers (subject to their local practising restrictions) in self-regulated separate businesses and by encouraging some or all of their solicitors to come off the Roll and work in them.

Notwithstanding Government's reluctance to review the boundary between Reserved and Unreserved activities, it is clear that some Reserved legal services pose a greater risk than others, either to professional clients, lay consumers, or both. Thus a risk assessment of Reserved legal activities should be an obvious pre-requisite to determining which of the Reserved activities require the greatest degree of regulatory attention (and hence, resources) to protect consumers. In isolated circumstances this has already occurred; for example in 2010/11, Charles River Associates was commissioned by the LSB to determine, amongst other things, the level of risk posed by City legal activities (this included non- Reserved as well as Reserved activities). But no such systematic risk analysis has been conducted across the full range of Reserved activities.

If it is difficult to understand why the contemporary Reserved sector has not been risk assessed, it is even less explicable why the non-Reserved sector has been similarly neglected. The non-Reserved sector makes up an estimated 85% of total legal services, by volume. No-one knows which non-Reserved activities pose the greatest risk to which clients, because no-one has done a thorough risk analysis. There is no obligation to regulate any non-Reserved activity (leaving aside anything too closely related to Reserved activity), unless it is carried out by an Authorised person, normally a qualified lawyer. It remains an extraordinary paradox that 85% of legal services can be conducted in a wholly unregulated fashion, but only if the services are provided by people in whom the clients can have no legal regulatory confidence. Absurdly, the greater an individual's legal qualification to deliver legal services, the greater is his need for formal legal regulatory supervision. In the context of non-Reserved activity, today's regulatory capture of solicitors is driven more by a desire to protect regulatory reputation and maximise regulatory funding, than by looking to protect the lay consumer in an uncertain unregulated sector. Solicitors should be allowed – nay, encouraged – fully to participate and practise in the developing unregulated sector, whilst retaining the solicitor brand. This would act as a 'professional' differentiator from unregulated competitors, whilst providing significant consumer protections and acting to drive up standards in that sector.

The second strand is the option you identify for a new review in 2015/16 of the regulatory treatment of under-spend of practising certificates, in the context of the 'permitted purposes' regulated by section 51 of LSA2007. It is not wholly clear whether your proposal covers only the under-spend of practising certificates – as suggested in the title of the proposal – or whether your proposal hints at a full review of the way that Section 51 operates.

These two strands are not unrelated, to the extent that 'permitted purposes' are funded compulsorily via the practising fee, but generally relate to the purchase of unreserved 'public interest' activities but for which there is no evident regulatory requirement. The CLLS firms pay some £25m annually towards the regulatory and 'permitted purposes' costs of the legal sector. This represents over 25% of the total regulatory costs of the legal sector and, in large part, is an incremental cost to the significant compliance and internal regulatory costs already borne by the firms to enhance their national and international reputation. The great majority of the work of City firms is unreserved activity that would require no regulation if was carried out either by non-lawyers operating from wherever they choose, or by lawyers operating outside this jurisdiction. Arguably, the majority of the City firms' legal regulatory costs are an unwarranted overhead, that bears no

evidenced relationship to the risks posed by the unreserved activities; indeed, the LSB's own research in 2011, mentioned above, suggests that the risk posed by City legal activities does not merit today's disproportionate regulatory costs.

If you would find it helpful, we would be happy to contribute to your future work on the unregulated sector. Likewise, we would be willing to assist your study of the merits of raising non-regulatory 'permitted purposes' funds by means of a regulatory practising fee.

Finally, we were horrified to read at para 97 that you will be considering a thematic review of education and training in 2015/16, or possibly 2016/17. We have not yet reached the apex of the workload prompted by the interminable LETR, and I do not expect any newly qualified entrants to appear before 2021 at the earliest. Thereafter we need some training stability to see how the new system works. Please let this exhausted dog sleep for a few years.

David Hobart

Chief Executive