

# The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

**Independent. Impartial. Transparent.**

## **RESPONSE BY THE SOLICITORS DISCIPLINARY TRIBUNAL** **LEGAL SERVICES BOARD CONSULTATION** **DRAFT BUSINESS PLAN 2016/2017 (JANUARY 2016)**

### **INTRODUCTION**

1. The Solicitors Disciplinary Tribunal ("the Tribunal") was created by the Solicitors Act 1974 (as amended) as a statutory tribunal. The Tribunal has two specific duties: to protect the public from harm (to include protection of the public interest) and to maintain public confidence in the reputation of providers of legal services (in particular the solicitors' profession). The Tribunal fulfils its public duties by adjudicating on alleged disciplinary breaches of the profession's rules and regulations and deciding certain appeals. The Tribunal is made up of Solicitor and Lay Members appointed by the Master of the Rolls. Solicitor Members must be practising solicitors of not less than 10 years' standing. Lay Members are individuals drawn from a wide and diverse range of personal and professional backgrounds who are neither solicitors nor barristers. Their task is to represent the views of the public in the Tribunal's decisions. In order to ensure that the Tribunal is both independent of, and perceived to be independent of, The Law Society (the approved regulator of the solicitors' profession), and the Solicitors Regulation Authority (its independent regulatory arm), individuals who are either employed by, or serve as Council or Board members of, either body cannot be appointed as Solicitor or Lay Members. Tribunal Members are selected for appointment following an open and transparent selection process conducted in accordance with the published Appointment Protocol. Further information about the Tribunal, its Constitution and its User Group Committee can be obtained from the Tribunal's website at [www.solicitortribunal.org.uk](http://www.solicitortribunal.org.uk).
2. When responding to this and all other Consultation documents, the Tribunal has in mind that it must not make public statements (even in the context of consultation) which might give rise to a complaint of apparent bias against the Tribunal at a future date from those appearing before it. The Tribunal is able to respond to a Consultation highlighting difficulties or issues that have been encountered while sitting to determine cases. That is an appropriate function enabling the Tribunal to pass on knowledge and experience to policy makers. However the Tribunal must not stray outside that parameter. The observations in this response pay due regard to the Tribunal's overriding objective when

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managing cases, as expressed in its Practice Direction No. 6, namely to ensure that they are dealt with justly, as well as to the applicable regulatory objectives.

3. The Tribunal responds to this Consultation in general terms, informed by the four questions posed by the LSB.

## **RESPONSE**

4. Within the section “Why Our Work Matters” [page 6, para. 3] the Tribunal agrees with the LSB’s statement that “legal services underpin our civil society, our economy and our democracy” but would change the hierarchy of these key foundations to place “democracy” before “economy”. The purpose of our economy is to “manage the household”; to produce and distribute food, water and other needs and goods primarily to preserve and protect every citizen. “Other needs” include the development and maintenance of our civil society and our democracy. The LSB’s emphasis is on innovation and increasing choice, as if both were ends in themselves, which they are not. They are just two of many possible means by which a purpose can be fulfilled.
5. The basic and vital purpose of regulation is to protect consumers. There is value in finding innovative means to achieve that purpose (such as increased use of technology in which the Tribunal has invested appropriately and effectively with great success). However the purpose itself must never be lost in the excitement of innovation, which of necessity involves the taking of risks.
6. The LSB’s vision [page 6, para. 4] is of a legal services market characterised by well-informed consumers. The Tribunal is struck by the fact that there is no reference as part of that vision to those citizens (and businesses made up of citizens) who need the protection provided by effective and efficient regulation precisely because they are less well-informed. The same issue can be raised in respect of the LSB’s 2015-2018 Strategy [page 9]. The Tribunal notes that the draft Business Plan does specifically mention vulnerable consumers [page 11, para. 16], but only in relation to improving market conditions and offering innovative services. The LSB’s strategic approach is clearly emphasised: **“Regulators must make sure that regulation does not hinder market developments or restrict innovation”** [page 12, para. 19]. It is evident from this robust statement that “our economy” is close to the heart of the business plan and that market

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developments and innovation are in danger of becoming the end rather than the means to the end. Disproportionate focus on market developments and innovation without focus on effective regulation is the equivalent of running a country without effective governance – potentially damaging to civil society, democracy and the economy of all citizens.

7. The examples above, read alongside the repeated use of the words “breaking down regulatory barriers” throughout the document, leave the overriding impression that innovation is viewed entirely positively and regulation entirely negatively. There is an important, indeed essential, place for realistic optimism when innovating. A requisite of realistic optimism in this context is the maintenance and development of efficient and effective regulation to manage the inevitable failures arising as the price for every innovative success. As stated above, innovation of necessity involves the taking of risks with positive and negative consequences and a mixture of both; for all citizens in a civil society (and, in particular, the vulnerable) protection against the negative consequences must be a requirement.
8. There is an interesting comparison to be made with the reference to consumer protection for those using unregulated providers and redress to cover unregulated legal services [page 16, para. 34]. The LSB’s focus on risk in the unregulated arena highlights the apparent lack of focus in its approach to regulated legal services referred to above. This strengthens the impression that the LSB values innovation and market development above the necessary protective role of regulation.

## **CONCLUSION**

9. In the Tribunal’s view, there is no particular hierarchy of regulatory objectives. It would be unfortunate and potentially damaging to the achievement of those objectives within the legal regulatory market if the LSB left commentators with the impression that innovation is invariably positive and regulation invariably negative.
10. Based on the Tribunal’s own substantial experience in adjudicating regularly upon alleged, often serious, breaches of conduct, it is the Tribunal’s belief that everyone working in regulation owes a special responsibility towards consumers of legal services and particularly those who are vulnerable.

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11. The Tribunal is willing to share with the LSB helpful examples of consumer detriment from its concluded cases, to demonstrate how vital a shield professional sanction such as strike off, suspension and substantial fine is in such cases.
12. The LSB's work towards considering appropriate protection for consumers, particularly the vulnerable, exactly chimes and is aligned with the Tribunal's own role and responsibilities. Further, the Tribunal shares with the LSB the desire to remain a cost effective, independent and robust regulatory control on the provision of legal services through its own work.
13. The Tribunal trusts that the LSB will find the comments above to be constructive, informative, and supportive of the LSB's work and ambitions for the legal market.

*Susan Humble*

Susan Humble  
Clerk and CEO of the Solicitors Disciplinary Tribunal  
**On behalf of the Tribunal and its Policy Committee**

18 February 2016