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Dear Neil

CLC's Response to the Consultation on the LSB's Business Plan 2017/18

Thank you for allowing an opportunity for comment on the LSB draft Business Plan 2017-2018.

I have the following comments:

Independence of Regulation

At paragraph 30 of Annex A: Draft LSB work programme it states 'A review of our IGRs may be necessary to consider whether in the light of our experience, we should introduce any changes to them to address any issues that have arisen'. It is not possible to identify from the detail given what resources the LSB intends to commit to this review, nor whether any provision is being made for any IGR or other enforcement activity.

When the LSB originally consulted on the IGRs, the definition of 'Applicable Approved Regulator' (AAR) (ie the type of regulator to which the IGRs applied) was 'an approved regulator that has responsibilities for the discharge of representative functions as well as for the discharge of regulatory functions'.

As made by the LSB, the definition of AAR reads 'an Approved Regulator that is responsible for the discharge of regulatory and representative functions **in relation to legal activities in respect of persons whose primary reason to be regulated by that Approved Regulator is those person's qualifications to practise a reserved legal activity that is regulated by that Approved Regulator**' (the CLC's emphasis).

The justification given for this change in the LSB's Response Document was:

- the need to allow, if and where required, additional flexibility where the scheme of the IGRs might conflict with, contradict or make much less practicable a new approved regulator's adherence to other oversight regulations when those other oversight regulations relate to the principal regulated activities of that new approved regulator;
- that the new approved regulators likely to fall into this category from early 2010 (exclusively from the accountancy sector at this stage) will have responsibility only for a very narrow range of reserved legal services (i.e. probate services); and

- at least at this stage, the new approved regulators will have very few authorised persons regulated by them – i.e. there will be very few accountants that also have authorisation from an accountancy sector approved regulator to perform probate services.

The only approved regulator from the accountancy sector is the ICAEW. The position has changed markedly since the Response Document in that:

- as an Approved Regulator the ICAEW is now authorised to license probate activities
- Legal Futures reported in September 2016 that ICAEW licensed 250 accountancy practices in the provision of probate services (this is of a scale comparable to a number of legal regulators)
- ICAEW has applied to be authorised to license accountancy practices in the provision of the remainder of the reserved legal activities (with the exception of notarial activities), though they are related to tax services
- in determining ICAEW's first designation application the LSB considered it was justified in taking a more relaxed view because it had concluded that the ICAEW was not an AAR and therefore did not have to comply fully with the IGRs (and was satisfied that the governance arrangements for the Probate Committee allowed sufficient independence from ICAEW's representative functions)
- ICAEW's current designation application to extend the scope of reserved legal activities which it regulates limits the proposed changes to its governance arrangements to a change of name of the Probate Committee to Legal Services Committee, and to increase its membership from 10-12

The LSB's decision document justified the change in definition of AAR 'principally on grounds of proportionality, the larger the regulator, the more authorised persons it regulates, the more reserved legal activities it oversees and the longer it has been operating as an approved regulator will be among the factors which the LSB will need to take into account when considering what arrangements would be appropriate in the given circumstances. In any event, the LSB will consider the operation of this specific definition when it first reviews the IGRs'.

In the CLC's view, each of the factors identified in the LSB's decision document is now applicable in justifying a review of IGRs, alternatively a review of the way in which the IGRs apply to ICAEW.

LSCP Budget

The Consumer Panel's proposed annual spend over a number of years has ranged from £41,000 to £210,000, though output does not appear significantly to have changed. This suggests the variation is attributable to changes in the policy applied for determining the allocation of the Consumer Panel's costs.

It is relevant to understand the cost to the legal profession of the Consumer Panel and suggests there is considerable merit in a clear separation between the Consumer Panel and its costs from the LSB and its costs. This seems to me to be entirely in line with the LSB's transparency agenda. It would also allow for a discussion about the scope and extent of the LSCP's outreach activities. Whilst these can be useful (such as participation in webinars) clarity about the cost would enable us to engage further in the discussions about their Business Plan 2017.

Research

In its Legal Services Market Study the CMA said 'we regard the research programmes of the LSB and LSCP as being crucial in providing evidence on changes in the sector. The output of these programmes will form a basis of future assessments of the need for further CMA or regulatory intervention'. Paragraph 44 of Annex A to the draft LSB Business Plan 2017/18 states that 'the LSB has made a sustained and significant investment in research that provides more evidence about the legal services market'. The CLC agrees the LSB has an important role to fulfill in carrying out research into the legal services sector.

Up to 2012/13 the budget for research was set at £300,000 before being reduced to £250,000 in the years 2013/14-2015/16. In 2016/17 it was reduced substantially to £100,000, and the proposal is that it should remain at £100,000 for 2017/18. We do not agree that the reduction in the budget for

research can be adequately mitigated by commissioning 'only the fieldwork for our major quantitative surveys externally and carry[ing] out survey design, data analysis and report writing in-house' (paragraph 46).

Given, in particular, the programme of work arising out of the CMA Report, the CLC believes that the research budget should be increased at least to its previous level of £300,000 with the in-house support as described, even if that means consequential reduction in other line items.

Yours sincerely

A handwritten signature in cursive script that reads "Sheila Kumar".

Sheila Kumar
Chief Executive