Response of Birmingham Law Society ("BLS") to Legal Services Board Consultation on an amendment to the Internal Governance Rules entitled "Chairs of regulatory bodies"

The BLS has carefully considered the proposal contained in the consultation paper together with other material including the LSB's paper '*Developing Regulatory Standards,* and its response '*A Blueprint for Reforming Legal Services Regulation*'. It is acknowledged that the time has come for a review of the regulatory framework of the legal profession following the implementation of the Legal Services Act 2007. However, this paper is the wrong consultation at the wrong time: the wrong consultation because it focuses on a very narrow, and we would say, contentious issue and the wrong time, bearing in mind the MOJ's own review the results of which are likely to be announced fairly early in the New Year. It is only sensible for any action to be taken on the issue of who should chair the regulatory bodies to form part of an overall action plan resulting from the wider review.

This Society is the largest provincial law society in the country having some 4,200 members (111 solicitors' practices and the largest sets of barristers' chambers in the provinces). The membership comprises in-house solicitors as well as those in all areas of private practice, the majority of the bar practising in Birmingham as well as legal executives. Of necessity this Society's experience of the regulatory framework is largely, although not exclusively, derived from the SRA and the BSB.

In the last five years the regulatory landscape for lawyers has changed very substantially in line with the LSB's strategy and with its express approval. The SRA has played its full part in the process in:-

- the regulation of ABSs: a complex exercise with multiple risks involved;
- the introduction of a new handbook in 2011 – outcome focused linked to
- the introduction in 2012 of the key positions of Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) to ensure public confidence in firms complying with regulations;
- far more stringent reporting requirements and
- the introduction of the Quality Assurance Scheme for Advocates (QASA) with a handbook in September 2013

All are innovative and not a product of history. It is not accepted that there has been any undue delay or reluctance displayed in these matters. They had to be got right and, certainly so far as ABSs are concerned. This was new ground with untold potential problems for the regulator. They demonstrate that the profession and the regulator are prepared to fully embrace change.

The BSB, SRA and the other regulators operate within the strategy laid down by the LSB. Effective protection against the profession exerting too great an influence over the regulator already exists, namely:-

- in-built majority of lay members on boards;
- senior executives of the regulators often have non-legal backgrounds, many of whom are specialists in the regulation of professions e.g. the CEO of the SRA and
- their separation from the representative bodies.

Turning to the issue of who should chair the boards, there is **only one criterion**. It should be the best person for the task whether that person is a layman or a lawyer. Experience to date (see above) does not support the contention appearing at paragraph 26 of the paper that a professional chair will inevitably be drawn to favour "*their profession and it traditions*". Indeed there is a complete absence of any evidence in support of this in the paper, a point conceded at paragraph 5 ("*a matter of judgment*") and repeated at paragraph 26. In fact, the LSB's entire argument in support of "lay chairs" is based upon assumption and speculation and not upon empirical evidence.

There are potential dangers were a lay chair restriction to be imposed:

- a lay chair being over-ambitious/lacking technical knowledge/having insufficient regard to the profession's representations;
- the profession is more diverse than any other having a wide variety of 'consumers' of legal services. It embraces the top ten firms ('magic circle') who are world players to the high street practice with whom the general public is probably more familiar. Accordingly the risks for, say, a probate client will be very different from a foreign multi-national litigating in the Commercial Court. It is acknowledged that this may well be one of the issues that needs to be explored but as things stand the SRA has to regulate a 'broad church'. Similar diversity is to be found at the bar;
- there is the knowledge of practice that the professional chair will have acquired which is not easily assimilated or appreciated by the layman. We would contend that to date this insight into the profession has enabled rapid progress to be made (see above);
- the risk of disenchantment of the regulated community. The regulator must carry the confidence and respect of those it regulates.

It is recognised that there are already lay chairs doing a good job on their boards. We observe that these boards regulate significantly fewer practitioners. It is not inconceivable that a lay-person with the appropriate skills could chair the SRA or BSB. However, these regulators account for the vast majority of suppliers of legal services. It is the skill set possessed by the chair which is all-important. By dint of their knowledge and training lawyers are adept at identifying and assessing risks and finding solutions. Many of the most skilled lawyers progress to taking judicial appointments. No one seriously suggests that the judiciary lacks objectivity and the same recognition should be given to the

chairs of the regulatory bodies where they are lawyers: indeed at paragraph 25 this seems to be recognised where it is stated, "*In proposing this change we are acknowledging the crucial role played by chairs in leading their boards".* No criticism of them or their boards' performance is expressed in the paper.

Further should the proposal be adopted it becomes restrictive to a point where there could be unintended results. It is commonplace for lawyers move through the ranks of organisations to become senior executives. Is a CEO of a Plc. or, say, a high profile public interest charity going to be disqualified from acting as a chair simply because he is a lawyer? Notably, some have become very effective regulators, indeed pre-eminent in the field, whilst still retaining their professional credentials[1]. Under the proposed restrictive regulation they would be prevented from taking up the position. It is also worth noting that high profile regulators are often appointed from within their industry without any suggestion that they might favour the interests of the industry over the public.[2]

Were there to be a serious lingering perception concerning the independence of the chairs (in particular the BSB and the SRA) and their ability or willingness to undertake the requisite changes or to deliver the LSB's strategy we would have expected this to have been evidence based. There is not a scintilla of evidence to support this suspicion here. It is not unreasonable to expect the justification for a change in the regulations to be made on more robust grounds than those being presented in this consultation. In so far as the composition of boards is concerned the consumers of legal services and the wider interests of the public are adequately protected by the existing regulations through the structure of the LSB and the in-built lay majority of board members (see above). This is not to say that improvements in the broad area of regulation cannot be made. This proposal is not one of them.

[1] Tom Winsor whilst a partner in a firm held the position of Rail Regulator and, in most people's opinion, this was a successful appointment at a time when the rail industry was undergoing great change. Now of course, the Home Secretary has appointed him as Chief Inspector of Constabulary.

[2] In his opening paragraph dealing with the Press Charter Peter Preston (former editor of The Guardian) in *The Observer* 03 November 2013 wrote: *One name that hasn't floated into the post-Leveson debate these past few days is Jonson Cox which is not, of course, at all surprising. Cox is the new-ish supremo of OFWAT….He has no relevance to newspaper regulation in this country – except in one crucial respect. Ask anyone in the water world whether Cox is an effective chairman of OFWAT and you'll see a shiver of apprehension. Cox is relishing his job and he seems to know what he is doing – unsurprisingly, since he comes to it after a spell as boss of Anglian Water. In short he knows the questions, gambits and pressures as No10 demands bill-freeze action. Classic poacher/gamekeeper stuff.*

We deal, as best we can, with the specific questions raised:-

1. **Do you agree with the proposed change to the IGRs in order to deliver lay chairs?**

   No. (see above)

2. **Do you think the proposed change should take immediate effect or only be applicable to future appointments?**

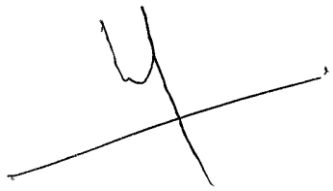
   This would be absurd in view of the disruption that would result.

3. **Do you agree that the requirement for lay chairs to apply only to the AARs?**

   No comment.

4. **Do you agree with the proposed exclusion of the Master of Faculties from the proposed change?**

   No comment.



…….

Martin Allsopp

President