

PR&RC Response to the LSB Consultation on its Draft Business Plan 2013/14

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership including some 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 issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of LSB Consultation on its Draft Business Plan 2013/14 has been prepared by the CLLS Professional Rules & Regulation Committee (PR&RC).

The CLLS welcomes the opportunity to comment on the LSB’s proposed Business Plan for 2013/14 (http://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm). We are encouraged by the tone set in the Foreword by Chairman and Chief Executive, and in particular by the prospect that legal services regulation must get ‘the right balance between empowering firms and individuals to make compliance decisions themselves and referring decisions to the regulator for approval’. We agree with the challenge posed to you in the MoJ’s recent Triennial Review that ‘the current regulatory framework is unnecessarily complex and costly’. Some progress towards the right balance would enhance the competitiveness of the City firms in the inexorably more demanding international marketplace.

It might be helpful to put our regulatory concerns into the business context already identified by the LSB in the 2011 Discussion Paper entitled ‘Enhancing consumer protection, reducing regulatory restrictions’. It would be difficult to improve on the following discussion of the regulation of ‘corporate law, including banking and finance’:

‘We are often told that lawyer clients (e.g., the general counsels of corporate clients) and corporate law firms around the world value regulation. Robust and credible regulation may contribute to confidence and thereby to the commercial strength of this part of the sector (and so to the regulatory objective of a strong profession). However, disproportionate or misapplied regulation may prove positively harmful, in both commercial and policy terms.

When considering the economic case for regulation, we are struck by the greater symmetry of information and power between the client and the legal services provider in these transactions than in many other legal transactions. There is evidence of sophisticated decision making by purchasers and of competitive forces at

work. There is therefore a question about the relative balance of regulatory focus. Is the current balance of regulation right or are there areas where deregulation may be appropriate?’

So the ‘balance’ question has two strands: first, the balance between the firms and the regulator making the regulatory decisions; and second, the balance between whether there are, or are not, regulatory decisions to be made. However, there is another angle to this; while the ‘symmetry of power’ between City firms and their clients means the latter do not require regulatory protection necessary elsewhere in the market, the regulator still has a role to play in promoting the highest levels of ethical conduct within City firms to ensure that shortcomings in one firm do not undermine the international reputation of City legal services and, by association, damage the interests of all City firms.

Sadly, from the standpoint of the City firms, the LSB Business Plan for 2013/14 seems unlikely to answer, or at least to influence, either strand of the balance question for the foreseeable future. The Business Plan includes a hugely ambitious research programme, for which you evidently lack both the financial and human resources to deliver in the short term. There must be a real risk that your business performance will be characterised by the number and breadth of the research programmes you can start, rather than by pointing to the successful conclusion and consequent implementation of just a very few programmes. With that in mind, it is at least arguable that your parallel thematic approach to regulatory research means that you are likely to proceed at the pace of the slowest and/or most intractable theme.

There is a combination of issues in your research programmes that the CLLS would support, and perhaps could contribute to. Your programme to study the Cost and Complexity of Regulation would be usefully informed by your work on the risks of General Legal Advice, together with your Mapping of the Unregulated Market. Some of the linkages here are obvious, but some really would require a holistic treatment of the delivery of City law.

For example, it seems paradoxical that the only reason that City firms are regulated in giving un-Reserved General Legal Advice in an otherwise Unregulated Marketplace is by virtue of the City solicitors being Authorised Persons, whose largely un-Reserved activities require expensive statutory regulation regardless of the often non-existent risk to the public, or the public interest. We suggest that this paradox will never be solved by the tortuous aggregation of its thematic components.

Turning briefly to the topic of the LSB’s regulatory objectives, it does seem inconsistent that you promote (from para 11 et seq) the Equality objectives for early discussion ahead of the other regulatory objectives, and then you go to some length (from para 17) to avoid any suggestion that the Equality objectives are *primus inter pares*. Perhaps paras 17 and 18 might precede the text at paras 11 to 13, thereby finessing the point.

Picking up another statement in the draft business plan (in the Forward), viz: ‘it’s competition, rather than barriers to entry, that acts as the best guarantor of high standards and accessible services’, will that hold correct given that hitherto, high standards have been contributed to, if not guaranteed, by the ethical training and background of the professionals who have managed law firms, in the new and competitive world of ABS’s?

Finally, it is now clear that a revised timescale will be needed for your LETR follow-on workstream.

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**THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES AND REGULATION COMMITTEE**

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