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18 June, 2009

Craig Robb Esq.  
Legal Services Board  
7th Floor, Victoria House  
Southampton Row  
London WC1B 4AD

Dear Mr. Robb,

Regulatory Independence

I refer to the consultation paper for rules to be made under Sections 30 and 51 of the Legal Services Act.

It is not my intention to answer each of the separate questions. The reason for this will become apparent, but put simply is that the Legal Services Board seems to have misconstrued its powers and duties under the Legal Services Act. I am extremely unwilling to comment in detail on proposals which seem to go far beyond any powers that the Legal Services Board might have.

By way of background, I am a senior corporate partner at Skadden, Arps, Slate, Meagher & Flom (UK) LLP. This is a SRA approved body which is affiliated to the wider Skadden, Arps, Slate, Meagher & Flom firm ("Big Skadden"). Big Skadden is one of the largest firms in the United States and indeed in the world and has experience with regulators in a number of jurisdictions, and applying with rules in the United States itself where there is a less of a regulatory regime but more of a court approved set of rules that have to be complied with, the failure to comply with gives rise to sanctions by the courts which may in extreme cases include disbarment.

The regulatory framework of the Legal Services Act is one of self regulation, subject to appropriate protections. One of the protections is the existence of the Legal Services Board, which has power to intervene when authorised regulators are failing in their functions.

It seems to me that what the LSB is proposing is a set of rules which effectively prevent the authorised regulators (in our case, The Law Society) carrying out their functions. From time to time the paper recognises that this is what the LSB is doing (such as paragraphs 3.8 and 3.28). If I may say so, that is so self-evidently a breach of the provisions of the Act that I wonder whether you have actually taken any legal advice on this paper.

But more generally, Parliament legislated for self regulation. It is not for the Legal Services Board to overturn that intention. The SRA, whilst on the whole doing an excellent job, is already so far removed from the reality of legal practice that some of its requirements impose huge burdens on firms for little benefit to consumers. By trying to undermine self regulation you will only compound those problems. Unfortunately, it is the whole community which will suffer.

I might say, although it is not the subject of this letter and nor are we likely to make a submission on it, that there would appear to be errors about the Legal Services Board's role and powers in its paper on alternative business structures (although we entirely understand and support its desire not to permit the individual regulators to frustrate something which Parliament has so clearly mandated).

That being our view, there are no individual questions that we wish to answer, although we might say that requiring the majority of the regulatory board not to understand the profession they are regulating seems extremely unlikely to promote the public good.

Yours faithfully,



Allan Murray-Jones