From the Chief Executive

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Dear Neil

Re: LSB Investigation into the Law Society: Undertakings report

Thank you for forwarding to us the Law Society's report of 30 November 2018 prepared in response to the June 2018 undertakings it agreed with the LSB and setting out how its governance arrangements with us have operated over the previous 12 months.

We agree with, and fully endorse, the description of the significant improvements introduced through the amendments to the General Regulations last October. These reflect the constructive joint working between our and TLS's executive teams.

We also welcome the Legal Service Board's consultation on changes to its Internal Governance Rules, and its aim to bring greater clarity to the nature of the residual role of the approved regulator, and assurance over delegated regulatory functions.

As highlighted in our response to that consultation, we believe that notwithstanding the improvements made over the past year, there are further steps that should be taken to maximise our ability to deliver truly independent and effective regulation.

We recognise the efforts made by TLS in terms of culture change and awareness raising. However, there is a risk of inadvertent scope creep by the governance committees over time. We have experienced requests for information from members of the Business and Oversight Board (BOB) and Group Audit Committee that go wider than the committees' terms of reference and consider that this needs to be continuously and proactively managed.

Further, BOB was set up primarily to enable the move of shared services from the direct line management of the Law Society Chief Executive to a "neutral" centre. However, following the review of Corporate Solutions, line management of any residual shared services sits with the respective Chief Executives.

Therefore, we consider that the time has come to remove BOB and for the residual assurance role to be carried out by the Law Society Council, through the mechanism of an annual SRA report to Council.

However, ultimately, as highlighted in our response to the consultation, we believe that it is time to move to complete separation within the current statutory framework – with the SRA being established as a corporate entity with a separate legal personality. In particular, this would facilitate:

a. Clear contractual mechanisms for delegation of authority, and the limits of that authority.
b. Our ability to undertake functions outside of those delegated by TLS.
c. The ability to enter into contracts without involvement of the Law Society, including the freedom to establish terms and conditions of employment appropriate for SRA staff, or to set remuneration levels for Board members without approval by the Law Society's Remuneration Committee.
d. Clearer distinction between the liability of TLS and SRA: including separate registration with the ICO and responsibility for data protection matters, separate liability in respect of contracts and the responsibilities placed on Directors of a separate corporate regulatory entity.
e. Complete autonomy for the regulatory body in the matter of resources - budget setting and managing its balance sheet and reserves - as well as complete control for both TLS and SRA over financial matters such as VAT registration and tax treatment – providing the opportunity for cost efficiencies which benefit both the public and profession.

I would take the opportunity to raise two examples in relation to underpin point b. in relation to the ability to decide the scope of our role, and to go beyond matters delegated by the Law Society.

One is in the area of anti-money laundering (AML). The recent fifth anti-money laundering directive (5MLD) requires EU Member States to "ensure effective and impartial supervision of all obliged entities…via a separate and independent national regulator or supervisor" and emphasises the importance of independent and impartial supervision of AML. Without a separate legal personality, we would not be able to continue our work in this area as the named entity supervising AML activities for the profession, should the Treasury seek to change the current professional body supervisor arrangements as a result of this development.

One other area relates to the fact that the scope of our regulation is limited by the Law Society's charter. For example, should we wish to introduce activity-based licenses to address particular areas of market risk – such as conveyancers or probate practitioners – we would be limited to solicitors or those working within SRA regulated firms. With an increasingly diverse market, with an ever growing unregulated and advice sector, we believe that these are the kinds of developments that we will need the freedom to address as a crucial element of future reform. The inability to do so restricts the SRA's capacity to respond to a changing legal market in a way that is consistent with both better regulation principles and the regulatory objectives.

We would be happy to discuss our comments should you find it useful to do so.

Yours sincerely

Paul Philip
Chief Executive
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