



JUDICIARY OF  
ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD JUDGE

Ms. Emily Lyn,  
Regulatory Associate,  
Legal Services Board,  
7<sup>th</sup> Floor Victoria House,  
Southampton Row,  
WC1B 4AD

16 May 2011

*Dear Emily Lyn,*

**Application by the Law Society / Solicitors' Regulation Authority to become a Licensing Authority under the Legal Services Act 2007**

Thank you for your letter of the 28<sup>th</sup> of March 2011 enclosing the Solicitors' Regulation Authority's ("SRA") application to become a Licensing Authority under the Legal Services Act 2007 ("the Act"). I note my status as a statutory consultee and the requirement that I give such advice as I think fit regarding whether the application should be granted. In giving that advice I am required, in particular, to have regard to the likely impact on the courts of England and Wales should the application be granted.

In December of last year I was consulted on the SRA's proposed application to the Legal Services Board. A copy of my response is attached. The points made in that letter remain valid: this letter sets out my views on the merit of the application, gives emphasis to certain of the points made in my previous letter and responds to some of the points made by the Legal Services Consumer Panel ("LSCP") and the Office of Fair Trading ("OFT").

First, I note that the SRA is one of several legal services regulators which intend to submit an application for designation as a Licensing Authority for alternative business structures. I have doubted previously the premise on which the Act proceeds, namely that regulatory competition will improve regulatory standards and thereby further the public and consumer interest. I continue to be concerned that increased complexity in regulation will serve only to reduce transparency and stand in the way of the public's access to legal services. In my view the number of Licensing Authorities should be kept to the bare minimum in order to mitigate any risk of applicants "shopping around" for the regulator offering the least stringent regulatory regime.

**Royal Courts of Justice** The Strand London WC2A 2LL  
**Telephone** 0207 947 6776 **Fax** 0207 947 7512 **Email** thelordchiefjustice@judiciary.gsi.gov.uk  
**Website** www.judiciary.gov.uk



In light of this concern it is of the utmost importance that only the most able regulators are designated to authorise alternative business structures. The application submitted by the SRA would appear to be a strong one vis-à-vis potential alternative regulators. I note that the SRA has an established track-record of regulating a broad spectrum of legal service providers over a sustained period, and that it has regulated some 344 Legal Disciplinary Practices since December of last year. I agree that this is appropriate previous experience on which to found an application for the right to licence alternative business structures.

Second, I turn to those points in my previous letter which require reiteration. I remain concerned about the following aspects of the SRA's application:

(a) The Public Interest

First, I note that the application demonstrates a clear commitment to regulating in the public interest. I welcome paragraph 4.25 of the application, in which the SRA indicates an intention to broaden the remit of its Consumer Affairs function so as to include collaboration with consumer representative bodies in the not-for-profit and third sectors. It is right that the SRA places public protection "*squarely and explicitly at the centre of [its] approach.*" This is welcomed but, it is suggested, the SRA will need to give careful thought to the practical implication of these general principles.

Furthermore, I remain concerned that the application fails to recognise the clear distinction drawn by Parliament between the regulatory objectives of protecting and promoting the public interest on the one hand and the protection and promotion of the interests of the consumer on the other. The SRA's application continues to risk emphasising the consumer interest at the detriment of broader public interest in access to justice and the protection of the constitutional principle of the rule of law. The SRA's regulatory regime must acknowledge that different approaches may be needed in order to support the various regulatory objectives set out in the Act.

(b) Improving Access to Justice

I have emphasised previously the importance of ensuring that regulatory regimes facilitate access to justice and not merely legal services. In this respect it is disappointing to see the definition of 'access to justice' which is set out in paragraph 5.5 of the SRA's application. In my view access to justice is more than access to legal advice and services from law firms and ABSs; it includes access to ADR and to legal advice which does not or does not intend to lead to litigation.

(c) Working with stakeholders

It is disappointing to note that suggestions in my previous letter have not been adopted in respect of engagement with all relevant stakeholders. It is noted, and welcomed, that the SRA proposes to work more closely with consumer representative bodies in the not-for-profit and third sectors. However, it remains important and appropriate for the SRA to engage with the judiciary, insofar as is permitted by constitutional principles, and with regulatory bodies in other sectors. The proposal to consult with the Association of Women Solicitors, the Society of Asian Lawyers and the Sole Practitioners' Group, set out in the ABS Equality Impact Assessment, is welcomed. It remains my view that constructive engagement with the Equality and Human Rights Commission would be valuable.

Third I turn to the responses received from other statutory consultees. I echo the views of the LSCP in respect of the desirability of implementing a 'separate business' rule. It is essential that any regulator is able to regulate reserved and non-reserved legal activity to the same standard. This offers clarity in the regulatory environment and protection of the interests of the administration of justice. In this respect I must differ from the position taken by the OFT:

clarity in the regulatory environment will not be achieved by making arrangements subject to a 'sunset clause'.

Yours sincerely,

John Judge