JUDICIARY OF
ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD JUDGE

Ms. Emily Lyn,
Legal Services Board,
7th Floor Victoria House,
Southampton Row,
London
WC1B 4AD

23 March 2011

Dear Emily Lyn,

**Application by the Council for Licensed Conveyancers to become a Licensing Authority**

Thank you for your letter of the 25th February 2011 attaching an application by the Council for Licensed Conveyancers ('CLC') to the Legal Services Board. I am in receipt of, and have read, the advice of both the Legal Services Consumer Panel ('LSCP') and the Office of Fair Trading ('OFT').

As statutory consultee I note that I am required to give such advice to you, the Legal Services Board, as I think fit regarding whether the application should be granted, having regard to the likely impact on the courts of England and Wales.

In considering this application I have had full regard to the regulatory objectives set out in section 1 of the Legal Services Act 2007 ('the Act'). In particular, I note that an approved regulator, when discharging its regulatory objectives, must act in such a way as is compatible with the eight regulatory objectives. Foremost amongst those objectives, to my mind, are the regulatory objectives of protecting and promoting the public interest and supporting the constitutional principle of the rule of law. Considering those objectives, I must register my firm opposition to the CLC being granted the status it seeks in this application.

First it is noted that the Act proposes one of the most fundamental changes ever introduced in respect of the provision of legal services. The introduction of 'alternative business structures' ('ABSs') has the potential to revolutionise the way in which legal services are provided in England and Wales. Whilst the CLC has some experience of regulating entities which are owned or managed by non-authorised persons, the numbers concerned are small and the types of activities undertaken by those entities is far narrower in scope than what is proposed ultimately by the

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CLC. It is my view that there is a limit to the number of regulators who should be permitted to operate in this area. The more established regulators, having the widest knowledge and experience of the regulation of legal services, ought to regulate ABSs in the first instance.

Second, and linked to the above point, I note that the application with which this response is concerned is merely a stepping stone towards the CLC's forthcoming application to extend the types of reserved activities it may regulate. I am strongly opposed to the CLC being entitled to regulate the reserved legal activities of litigation and advocacy in civil matters. Both lie far outside the scope of the recognised work of a conveyancer: neither bears any resemblance to the types of activities for which the creation of the CLC was conceived. I am unable to support any application which facilitates the attainment of such a goal.

Third, I fear that the protections offered by the CLC in respect of the protection of the public interest and the support of the constitutional rule of law lack substance. For example, signing up to a *Memorandum of Understanding* to ensure consistency of approach between regulators only emphasises the risk of inconsistency. There is a real risk that regulatory standards would differ across regulators operating in the same field, leading to confusion and inefficiency both for the administration of justice and the consumer. In addition, I note that in respect of access to justice, the CLC proposes to require licensable bodies to provide an 'Access to Justice Statement'. This will explain how the entity will respond to the needs of consumers and improve the public's access to justice opportunities. Only in the most exceptional circumstances, says the CLC's application, will an application be refused on the basis of access to justice. Such processes fail to offer the necessary assurances for the protection of the public interest and the administration of justice.

I close by endorsing some of the comments made by the LSCP and the OFT. The following comments are made if, notwithstanding the above comments, the CLC's application is successful. I agree that the CLC ought to regulate non-reserved legal activity and reserved legal activity to the same standard. This offers clarity in the regulatory environment and thus protection of the interests of the administration of justice. Second, I echo the concerns of the LSCP that the CLC could entertain an application which proposes that reserved and non-reserved activities be offered through different entities. To my mind, clarity in the regulatory environment will not be achieved by implementing such arrangements. Nor will the public interest be served by the multiplication of regulatory standards in an already crowded regulatory environment. Third and finally, I agree that it would seem appropriate for the CLC to move to a position commensurate with that of the other regulators in respect of the burden of proof in disciplinary proceedings. I have emphasised above the need for the CLC to put in place standards which are analogous to those applied by other regulators. The same considerations apply in respect of this point.

Yours sincerely,