



**LEGAL SERVICES
BOARD**

The Chief Executive's Office
Legal Services Board
7th Floor
Victoria House
Southampton Row
London WC1B 4AD

T 020 7271 0043
F 020 7271 0051

www.legalservicesboard.org.uk

By email only to: consultation@brdo.bis.gsi.gov.uk

Stewart Gibbon
Better Regulation Delivery Office
5th Floor, Abbey 1
1 Victoria Street
London SW1H 0ET

5 May 2013

Dear Mr Gibbon

Thank you for the opportunity to respond to this consultation. We also found the workshop organised to discuss the requirement to set, publish and monitor performance against service standards very helpful.

About the Legal Services Board

The Legal Services Board (LSB) was created by the Legal Services Act 2007 (the LSA). The Board came into being on 1 January 2009 and became fully operational on 1 January 2010. Its overriding mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The Board itself is responsible for overseeing legal regulators in England and Wales. It is independent of Government and of the legal profession. It oversees ten separate bodies, the approved regulators, which themselves directly regulate practising lawyers. The Board also oversees the organisation that handles consumer complaints about lawyers, the Office for Legal Complaints.

Both the LSB and the approved regulators have a duty to promote eight regulatory objectives, set out in the LSA. These are:

- protecting and promoting the public interest
- supporting the constitutional principle of the rule of law
- improving access to justice
- protecting and promoting the interests of consumers
- promoting competition in the provision of services in the legal sector
- encouraging an independent, strong, diverse and effective legal profession
- increasing public understanding of citizens legal rights and duties

- promoting and maintaining adherence to the professional principles of independence and integrity, proper standards of work, observing the best interests of the client and the duty to the court, and maintaining client confidentiality.

We and the approved regulators are also required to have regard to the better regulation principles and other best regulatory practice.

Our views on the consultation proposals

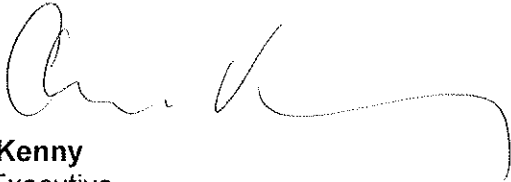
In order to ensure that the revised Code has the desired effect, we consider that the following issues should be taken into account as BIS finalises the Code:

1. Currently the consultation only lists the LSB and the Solicitors Regulation Authority (SRA) (although technically it is the Law Society that is the statutory regulator) in its preliminary list of those who would be subject to the Code. There are nine other approved regulators and new approved regulators may be designated in future. It is not clear why the other regulators have not been included. As the LSB is one step removed from the direct regulation of individuals and entities providing legal services, our view is that the LSB and all approved regulators should be subject to the revised Code. While we have no objection to the LSB being included, the case for the bodies we oversee being in scope is far stronger and it would be illogical in the extreme for the LSB to be included and the approved regulators excluded;
2. It is essential that BIS makes clear which activities the revised Code applies to. The term “enforcement” is often used in the relatively narrow context of the exercise of powers once a breach of rules or licence conditions has been established. For the LSB, these powers are set out in Part 4 of the LSA and include the power to impose financial penalties, censure, etc. We welcome the statement at the workshop that the Code is meant to apply to a much wider range of activities and is about “how regulators deliver regulation”. It will nevertheless be important to clarify that the Code therefore applies to the activities that legal regulators often call “disciplinary” arrangements, but are in reality regulatory sanctions as well;
3. We welcome the requirement to publish service standards for regulators’ activities. We consider it important that those regulated should know what they can expect from their regulator. It is essential that the service standards and regulators’ performance against them are published so that regulators can be held to account for their performance;
4. Although we support the principle of regulators providing advice and guidance, we consider that such a commitment should only operate at a high level. It must not impose a requirement on regulators to provide “safe harbour” guidance. Nor must be seen as restricting regulators’ ability to take action against non-compliant firms. The

Code also needs to recognise the fact that increasing the amount or detail of guidance can have the same chilling effect on innovation as increasing direct regulation.

We would be happy to discuss these issues further if that would be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Kenny', with a long, sweeping horizontal stroke extending to the right.

Chris Kenny
Chief Executive

E chris.kenny@legalservicesboard.org.uk

A small, handwritten mark or flourish in black ink, consisting of a short horizontal line with a small upward curve at the end.

