

Response of the Birmingham Law Society to the Call for Evidence by Lord Hunt of Wirral MBE

The Birmingham Law Society (BLS) welcomes the objective review being conducted by Lord Hunt. It has also read with considerable approval, the report of Nick Smedley into the regulation of large corporate firms.

The spirit of the Smedley report that there is much goodwill towards appropriate and helpful regulation not only applies to the largest corporate firms but generally throughout the profession.

A regulator should not be seen as having the primary role as a policeman to catch and punish offenders. That is an important but reactive role which if generally adopted, will in itself indicate a failure of the regulator to proactively manage and regulate good practice in the profession.

Evidence from BLS members suggests an aggressive approach by the SRA even when on routine visits. This approach is deprecated by a profession which generally has, aspires to and adheres to the highest standards. The regulator should be respected, have the duty to maintain and improve those standards and act when appropriate if there is a shortfall.

An example of the poor relationship which exists and the lack of trust and confidence which arises is that advice provided by the SRA's helpline cannot be relied upon in any subsequent investigation. It is apparently not bound by such advice which may have been relied on by a firm! This is a very poor base from which to begin a professional working relationship between the profession and its regulator. Whilst it is stated that the Consumer must be at the heart of the regulatory process, such words are merely soundbites. The purpose of regulation is to ensure that the consumer is adequately protected, having regard to the risk and type of matter, but it is the professional providers who must be at the heart of, and fully conversant with the regulatory processes for those purposes.

The observations in 2.13 & 2.14 on outcomes and risk based approaches are welcomed. Proportionality is a necessary measure of risk and unnecessary "gold plating" of regulations to avoid it is cumbersome.

Turning to the issues raised in section 4, many of the points are of course covered in the Smedley report and could be applied more generally as an approach.

4.1 The challenges are to produce a regulatory body with the strategic views and experience to regulate a profession that is already bound by Statute as well as professional rules. This must accommodate the changing requirements of the consumer client, the market place and the increasing speed with which responses are required today.

The characteristics of poor regulation to the consumer will be unsatisfactory responses to genuine concerns, and to the practitioner, an unhelpful, minutiae seeking over burdensome "interference" with proper practice.

Clementi's comments at 4.7 strike a sensible note. The regulator should be there, from the practitioners' point of view to help and to advise where possible and to be accountable for such advice where it relates to regulatory matters.

The role of a regulator is not to form a burgeoning bureaucracy but to have an experienced staff able to fulfill its functions. The fees charged must provide for such a structure but the regulator must be accountable to the members of the profession, through The Law Society for the level of expenditure. It is early days for the relative positions of The Law Society and the SRA to be clearly understood particularly by the smaller firms in the profession (s.10) but efforts which are being made must continue. The larger firms will understand the differences clearly.

At 4.11 there are always going to be tensions between consumer demands and professional values. It is in these areas that the SRA must be fully aware of the professional demands and help the practitioner maintain those standards. Consumer demand must not bring about a supported lowering of standards just because of its weight. The regulator must support the constitutional principle of the Rule of Law, for if it doesn't it will find itself head on with a refusal by the profession to be regulated by such a body. It must make it clear to the public at large and to the consumer that those principles apply first and foremost and must never be seen to be attempting to water down the principles because of expediency.

The question of independence of professional judgment (4.15) should not be an issue for a regulator save to emphasize that it supports the principle and would not interfere in any way unless there were allegations that such matters were being compromised. Here the issue of "Tesco Law" is of course highly topical with the arrival of external ownership of firms offering independent advice.

A regulator (4.16) should not permit practices that impede competition. That is not going as far as to say that it is its business to promote it. There are other bodies which have that specific responsibility.

The question of one frontline regulator (4.20) dealing with the whole profession was alluded to in Smedley and the SRA must ensure that it is prepared and equipped to do so if it is not to fail.

Parliamentary arrangements (4.26) should be a cross party House of Lords committee made up of members with appropriate experience.

Para 4.30 raises a spectre which is difficult to answer at the moment but it must be resolved. It is senseless to have competing regulators. Standards are there to be upheld, improved and adapted. Where interests are common there should be co operation not

competition. The dangers at the very least are more burdens on the profession, greater unnecessary cost and confusion

The representative body of The Law Society should have a clear understanding of the regulation and be there to provide representative advice. Its precise role in this respect needs to be defined and clearly understood by the profession.

Turning finally to the principles to be adhered to by members of an ABS, clearly all members should be expected to adhere to professional principles (4.51). The sanctions should be similar as far as is possible to those who are legally qualified.

The regulatory regime must work in a "joined up" way to satisfy the consumer (Clients) that the system is transparent and fair but also to protect the professional standards which lie at the root of an independent legal system.

Signed..... *M. Caroline Galt* (*M. Galt*)

Position..... *PRESIDENT*

On behalf of the Birmingham Law Society

9 April 2009