Solicitors Regulation Authority

SRA response

Strategy 2018-21 and Business Plan 2018/19 Legal Services Board

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Introduction

- 1. This response is submitted on behalf of the Solicitors Regulation Authority (SRA).
- 2. The SRA is the regulator of solicitors and law firms in England and Wales. We protect consumers and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. Further information is available at www.sra.org.uk.

Consultation response

Overview

- 3. We welcome the opportunity to work together with you and other regulators to develop and improve public protection and consumer access to legal services. The opportunity to comment formally on the LSB's 2018-21 strategy and 2018/19 business plan will help with that.
- 4. We believe that maximising the independence of regulation within the current framework should be your key priority over the next three years.
- 5. As we said in our response to your consultation on reviewing the Internal Governance Rules, independence is key to securing public confidence in the legal services sector. In our view, the best way to achieve independence within the current framework is to establish the SRA as a separate legal entity within the wider Law Society Group. This would allow us to deliver our functions efficiently and cost-effectively as well as, for the first time, allowing real transparency on the cost of regulation.
- 6. We have set out below our response to your consultation questions. In summary:
    - The overall strategy reflects the areas that are priorities for all the legal regulators. We believe that delivering greater independence should be a key priority over the next three years.
    - We broadly agree with your analysis of market trends and drivers.

- We welcome your proposed equality objectives. It might be helpful to include something on how you will share information with your stakeholders.
- We are looking forward to working with you on the new regulatory performance assessment process and are keen to make the process as straightforward and non-bureaucratic as possible. Ultimately, we would like to see the work on equalities included in the overall assessment, to demonstrate that equalities are at the heart of our shared work. We welcome your ongoing work to review the Internal Governance Rules and see this as an important step in delivering greater independence of regulators within the current framework.
- In determining how to review regulators' enforcement strategies, we would welcome discussion on the work that we are already doing in this area. In particular, we would like to explore whether there may be more cost-effective ways to review performance than a detailed end-to-end review.
- Given its importance in terms of how we enforce the professional standards we expect, we would welcome a mention of the anticipated Solicitors' Disciplinary Tribunal consultation on its standard of proof within your strategy and business plan.
- In particular, we would also welcome dialogue on the Review of Internal Governance Rules and your role in delivering greater independence of regulation.

Consultation questions - draft strategy 2018-21

Are there any significant market trends or drivers for change that you are aware of that we should also take into account?

- 7. We broadly agree with your analysis of the market trends and drivers for change that will influence the sector over the next three years. As you rightly say, it is not just the range of political, economic, social and technological factors that will act as levers for change. There are also a number of authoritative recommendations for change from influential stakeholders (for example, the Brady Review of claims management, HM Treasury's Insurance Task Force and government reforms in areas such as anti-money laundering and data protection regulation) which will influence the sector over the next three years. It would be helpful to include these explicitly in your analysis.
- 8. We agree that big data is a key technology driver and Artificial intelligence (AI) systems are most powerful when they can draw directly on the databases maintained for other systems. Open data and open systems will permit greater personalisation of services, enhance predictive litigation analysis and power systems to automate many aspects of legal services. They will also encourage change in market behaviour for the benefit of consumers.

Do you have any comments on our proposed strategic objectives?

- 9. We agree that your overall strategy reflects the areas that are priorities for all the legal regulators. We are pleased that you have highlighted the importance of ensuring independent regulation expressly within the strategic objectives. As the Ministry of Justice emphasised in its tailored review, safeguarding independence is one of the LSB's key statutory roles.
- 10. We also warmly welcome the focus in the objectives on making it easier for consumers to access the services they need. It lies at the heart of our own regulatory reform programme. For example, our proposed changes to the SRA Handbook aim to get rid of unnecessary bureaucracy that drives up costs or restricts access to solicitors. And our proposals to require firms to publish more information on the services they provide aim to ensure that consumers have access to accurate, reliable and comparative information about firms and solicitors to inform their choice of legal provider.

Do you have any comments on our proposed equality objectives?

- 11. We welcome your equality objectives. We also value the additional information which you publish about the actions you are undertaking to achieve these objectives.
- 12. It might also be useful to include a commitment to this, perhaps in similar terms to the regulators' diversity outcome which "accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse workforce".

Do you have any comments on our proposed approach to market intelligence within our strategy?

- 13. We value the role you have in providing insights across the legal market, given your oversight role. We believe your proposed approach to market intelligence is valid and robust.
- 14. We look forward to your triennial evaluation. We support open data and have an active analytical unit so the continued publication of raw data from quantitative surveys will be very helpful to us.

Do you have any other comments about the presentation or content of our strategy?

- 15. The presentation of the strategy is clear and easy to follow, and the overall strategy reflects the areas that are priorities for all the legal regulators. The draft strategy notes that you oversee the Solicitors Disciplinary Tribunal and the draft business plan sets out your plans to review the enforcement activities of the SRA and the BSB.

- 16. It might be helpful to add in something on the anticipated Solicitors Disciplinary Tribunal consultation on its standard of proof, subsequent to the BSB decision to move to the civil standard of proof for its disciplinary tribunals. We would like to see this reflected in your strategy and business plan.

Consultation questions - draft business plan 2018/19

Do you have any comments on our proposed business plan and work for 2018/19? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

- 17. We have the following comments on the proposed business plan and work for 2018/19:

Regulatory performance

- 18. We are looking forward to working with you on the new regulatory performance assessment process and are keen to make the process as straightforward and non-bureaucratic as possible. Ultimately, we would like to see the work on equalities included in the overall assessment, to demonstrate that equalities are at the heart of our shared work.

Review of Internal Governance Rules

- 19. We welcome your ongoing work to review the Internal Governance Rules and see this as an important step in ensuring the maximum degree of independence of regulation within the current framework.
- 20. In our view, the best way to achieve independence within the current framework is to establish the SRA as a separate legal entity within the wider Law Society Group. The separate entity would have complete separation in terms of governance, operations and resources. This would allow us to deliver our functions efficiently and cost-effectively, as well as for the first time allowing real transparency on the cost of regulation. We have provided more detail on this in our response to your consultation on the Internal Governance Rules, which we submitted on 2 February 2018.

Enforcement end to end review

- 21. We note your plans to conduct an end-to-end review of the enforcement processes of the SRA and BSB during 2018.
- 22. We are aware of the importance of a rigorous disciplinary procedure and have already made some progress to improve our approach to enforcement. We have revised our decision-making criteria, re-tendered our external legal panel and recently consulted

on a revised enforcement strategy as part of the phase two review of our rules and Handbook.

- 23. Our revised enforcement strategy moves away from enforcing compliance with prescriptive rules towards a model which provides those we regulate with clarity about how, and when, we will (or will not) enforce. It also facilitates proportionate action by outlining the aim behind different outcomes. Together with the new Codes of Conduct, it aims to provide the clarity and assurance that solicitors and firms have been asking for.
- 24. In determining how to review regulators' enforcement strategies, we would welcome discussion on the work that we are already doing in this area. In particular, we would like to explore whether there may be more cost-effective ways to review performance than a detailed end-to-end review. That might include identifying suitable benchmarks or hallmarks of success against which regulators could measure themselves and develop their enforcement strategies.

CMA action plans

- 25. We welcome the opportunity to share progress with our CMA action plan. Delivering improved market transparency to consumers of legal services is an important objective for us. We are pleased that you have already welcomed the ambition we have shown in moving forward with this objective. Our consultation on measures to implement the CMA recommendations has now closed and we are considering the responses. In the meantime, we are committed to working jointly with you and other regulators on this important area.

Diversity guidance

- 26. We note your plans to review our progress against the revised guidance for regulators on encouraging a diverse workforce. As you will be aware, we are looking to mainstream our commitment to equality, diversity and inclusion into all our work rather than addressing it as a separate activity.

Consumer segmentation

- 27. We welcome your plans to work with regulators to encourage the development and use of consumer segmentation. We recognise the importance of this and have already engaged with you on this issue. For example, we attended both the launch of your research into mental health problems and the Consumer Panel's workshop on segmentation frameworks last year. We are looking at consumer segmentation in our policy work. For example, in our recent policy impact assessments we considered the impact on different types of consumers and, in particular, vulnerable consumers. We will also

include this type of segmentation in our work to develop a framework for evaluating the impact of our reforms, once implemented.

Please identify any elements of our strategy or business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

- 28. We welcome the opportunity to work together with you and other regulators to bring improvements in the legal market.