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(By post and email: consultation@sra.org.uk)

Dear Sir/Madam

Re: Response of the CLLS Committee to the SRA's consultation on policy changes aimed at achieving a proportionate regulatory framework for the authorisation and supervision of multi-disciplinary alternative business structures (MDPs) providing legal and non-legal services (the Consultation).

The City of London Law Society (CLLS) represents some 15000 City lawyers through individual and corporate membership, including some of the world's largest law firms. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to consultations on issues of importance to its members through its 19 specialist committees. This response has been prepared by the Chief Executive of the CLLS, on behalf of the CLLS main Committee.

General Comments on the Consultation

1. We have had the benefit of seeing the detailed response of the national Law Society to this consultation. We support the main thrust of the concerns raised by the Law Society, namely that the SRA's proposals will do nothing to level the existing imbalance between regulatory burdens shouldered by law firms, and by other non-law firm providers; indeed, the SRA's proposals seem likely to tilt the imbalance still further. In particular, we share the Law Society's belief that there is

no evidence to support the view, or any reason to believe, that non-SRA regulation of non-Reserved legal services will automatically lead to the proportionate regulation of standards. Indeed, it is questionable whether the regulation of non-Reserved legal services, by regulators who are not versed in the common law tradition and history and mechanics of the English legal system, will be appropriately informed: either the standards will be too high for the delivery of low- or no-risk non-Reserved activity, or will be too low for the few areas of non-Reserved activity that may merit higher regulatory standards. The starting point to getting the right balance between too much, and too little, regulation is, of course, a consistent risk assessment across the breadth of non-reserved legal services.

2. Our concerns about risk go beyond the points made by the Law Society.

3. Notwithstanding Government's reluctance to review the boundaries of Reserved legal activities, it is clear that some Reserved legal services pose a greater risk than others, either to professional clients, lay consumers, or both. One might expect the regulator to have conducted a risk assessment of Reserved legal activities, as an obvious pre-requisite to determining which of the Reserved activities require the greatest degree of regulatory attention (and hence, resources) to protect consumers. In isolated circumstances this has occurred; for example in 2010/11, Charles River Associates was commissioned by the LSB to determine, amongst other things, the level of risk posed by City legal activities (this included non- Reserved as well as Reserved activities). But no such systematic risk analysis has been conducted across the full range of Reserved activities.

4. If it is difficult to understand why the Reserved sector has not been risk assessed, it is even less explicable why the non-Reserved sector has been similarly neglected. First, the non-Reserved sector makes up an estimated 85% of total legal services, by volume. Second, there is no obligation to regulate any non-Reserved activity (leaving aside anything too closely related to Reserved activity), unless it is carried out by an Authorised person, normally a qualified lawyer. In the absence of any risk analysis it remains an extraordinary paradox that 85% of legal services can be conducted in a wholly unregulated fashion, but only if the services are provided by people in whom the clients can have no legal regulatory confidence. Absurdly, it seems that the greater an individual's legal qualification to deliver legal services, the greater is his need for formal legal regulatory supervision. No-one knows which non-Reserved activities pose the greatest risk to which clients, because no-one has yet done the analysis. Once again, we need a systematic risk analysis of the non-Reserved sector to inform the future balance of effort of the regulators.

5. The four pre-conditions, that will enable an MDP to escape the SRA regulation of the MDP's non-reserved activities, illustrate the pressing need for some risk analysis to precede the SRA's proposals for change.

6. First, the SRA proposes not to delegate to another regulator the MDP's non-Reserved activity if the activity is conducted by a person that the SRA currently authorises to do the work. This is counter-intuitive. If the SRA is content that its qualified person can do the work satisfactorily, why would the SRA not simply delegate the regulation of the activity to the MDP's 'suitable external regulator'? The SRA would retain *ad hominem* regulation, and the external regulator would deal with the activity, one aspect of which would be to confirm that a suitable SRA –regulated person continues to

do the work. One of the answers to the question is, of course, that the SRA has no analysis of the regulatory risk posed by the activity, and hence no useful idea of what constitutes 'suitable external regulation' for particular activities. However, where the activity is legal advice, a consumer might hope that 'suitable external regulation' will comprise a degree of knowledge of the English legal system on the part of the regulator; this point matters hugely to the large City firms because their non-Reserved legal advice is by far and away the pre-eminent and largest contribution to their global reputation. Compounding the lack of SRA risk analysis perhaps, the MDP's 'suitable external regulator' would have no idea that the SRA had never tried to match the (unknown) risk of the activity with the (known) skills of the authorised person. The blind following the blind, as it were.

7. Second, the type of activity being subject to suitable external regulation. The SRA proposes that the rules set by the external regulator need not be identical to the SRA's, and must have certain minima to displace the SRA's regulation. This brings us back to the thought (above, in the context of the Law Society response) that, in practice, the external regulation may be significantly lower or higher than the prevailing SRA regulation. The MDP would probably wish for a lower level of still-acceptable regulation, for commercial reasons. Conversely, if the SRA insists on the application of its 10 mandatory principles as a pre-requisite for delegation, that could encourage a higher level of external regulation. In the absence of the risk analysis, of course, neither regulator will have a sound basis for setting a level.

8. Third, the ABS needs procedures in place to ensure clients are aware that the activity is not SRA regulated. This reads like regulatory escape and evasion, more interested in regulatory reputation protection than in protecting the consumer. If the SRA has formally accepted the MDP's 'suitable external regulation' for a non-Reserved activity, then the SRA has given a clearly implied assurance that either the SRA, or the external regulator with the SRA's approval, has underwritten the match between the suitable regulator and the risk of the activity; which brings us back to the missing risk analysis.

9. Fourth, we note the complexities of seeking to bring together Reserved activities with their adjacent non-Reserved activities, particularly involving more than two regulators. We agree that in some circumstances some non-Reserved activities are functionally so close to Reserved as to be indistinguishable.

10. In that context, but in that context alone, we agree with your statement (**Para 22**) that 'the fundamental point is that a risk based approach to regulation means that we consider that a blanket approach of removing regulatory protection for non-Reserved legal activities would fail to meet our regulatory objectives.' We do not call for a blanket approach. However in almost every other context other than the occasional propinquity of Reserved and non-Reserved activities, we believe that you could easily have made a much stronger case to restrict SRA regulation within an MDP to Reserved activities only. For example, you point out that 'we accept that, as a matter of statute, non-Reserved activities are not generally required to be regulated, and indeed there is nothing to stop anyone opening up a business providing advice in a non-Reserved area such as employment disputes or providing a will writing service without any regulation at all.' We agree, and suggest that probably 95% of the 85% non-Reserved activities could be safely deregulated. In the absence of any statutory compulsion , and if risk is truly your key variable, it would seem more logical for you to

make the case for retaining the higher risk 5% of the 85% within regulatory scope, rather than for us to argue to deregulate the low-or no-risk 95% of the 85% of all legal activity, in relation to which market forces and client demands may continue, even in an unregulated environment, to promote advisor competence, conflicts management, confidentiality and procurement of sufficient insurance cover.

11. In conclusion on the theme of risk, it is a pity that you chose not to put forward (**Para 22**) an option for consultation that restricts SRA regulation within an MDP (and beyond?) to Reserved activities. Such an option would have had the incidental benefit of scoping precisely which areas need your risk analysis.

12. The SRA may have good grounds for believing that potential new entrants to the legal market place are discouraged by the effective regulation that the SRA has sought to deliver. Likewise, the SRA may be correct in thinking that consumers and SMEs, for example, would welcome a wider range of integrated providers to provide 'one-stop-shops'. But it does seem that the SRA is putting rather more effort into promoting tomorrow's MDPs than it is into solving the systemic problems faced by today's law firms. So many of the questions you raise in this Consultation about regulation beyond the SRA's existing boundaries will become easier to answer when the differences between Reserved and non-Reserved activities will shift from a top-down definition of legal responsibilities driven by historic anomalies to a bottom -up measurement of relative risk.

Turning to your specific Consultation questions:

13. The Law Society response provides a detailed and thorough analysis of the specific Consultation questions that includes, but goes somewhat beyond, the concerns and interests of the CLLS. At first sight, there appear to be some distinct differences of view between the Law Society and the CLLS, but in the main this stems from the different analytical approaches taken by each of them. For example, the Law Society argues that all legal services provided by an SRA-authorised firm should be regulated by the SRA. The CLLS argues that SRA should regulate all Reserved activity and only that proportion of non-Reserved Activity that poses a material regulatory risk. The Law Society and CLLS positions would of course come closer if, regardless of activity risk, the SRA continued to regulate all non-Reserved activity conducted by SRA-authorised persons.

14. The CLLS has the following additional comments on the first three Consultation questions:

Q1 Do you agree with our analysis of the problems facing MDP applicants and the need to make changes?

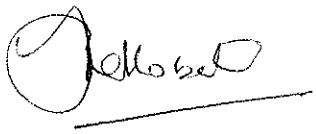
A1 The cart has overtaken the horse. Many of the demands on the SRA would be eased by a clearer informed analysis of the regulatory needs of the non-Reserved sector. That should clarify the practicalities of the 'suitable external regulation' concept; at one extreme, given the risk mitigatory impact of market forces, there might be no regulatory need for anything beyond Reserved activity; at the other, there might be a very complex relationship between the SRA and the external regulator, involving several different levels of non-Reserved regulatory activity.

Q2 Do you agree with the proposed external regulation exception?

A2 Not yet. The relative risk ownership of the SRA and the external regulator will lead to endless confusion between the regulators; the clients and the regulators; and the clients, regulators and ombudsmen, creating additional unnecessary costs burdens.

Q3 Do you agree with the way we propose to consider the suitability of external regulation?

A3 No. Your choice of using the mandatory SRA principles is no more principled than using the 8 Regulatory Objectives and 3 Principles in the LSA 2007. There is a clear policy conflict between (a) encouraging MDP entrants by offering a lower acceptable level of required non-Reserved regulation, and (b) maintaining a regulatory burden proportionate to the outcome of a dispassionate risk analysis.



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