



28 March 2013

Our ref: ICAEW Rep 45/13

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Dear Ms Jacobs

#### **Draft: Business Plan 2013/14**

1. ICAEW welcomes the opportunity to comment on the consultation paper *Draft: Business Plan 2013/14* published by Legal Services Board on 13 December 2012, a copy of which is available from this [link](#). We congratulate the Legal Services Board on their openness in the process of their consultation on their Business Plan, and the thoroughness with which this has been undertaken.

#### **Who we are**

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value. Members of ICAEW exercise their professional skills in all aspects of accountancy, finance, business and commerce, as is recognised in our Charter Objectives.
4. This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

#### **The Regulatory Principles and Economic Growth**

5. We note with approval the inclusion of the regulatory objectives and the professional principles on page 3 of the Plan. The regulatory principles set out in Section 3 (3) of the Legal Services Act (the Act) have also informed the making of this plan. The Board's commitment to ensuring that the front line legal services regulators carry out their activities in a way which is transparent, accountable,

proportionate consistent and targeted at cases where action is needed is clear throughout the draft plan and is explicitly stated in paragraph 10.

6. We are also pleased to see that the explicit recognition of the Board of the need for the legal profession and its regulators to support rather than impede economic growth. Legal services regulators need to guard against focusing on individuals to the exclusion of businesses in their capacity as consumers of legal services as well as the providers of them. Protection should be provided of the interests of businesses as consumers of legal services, including the provision of an open and competitive market in legal services for them, as well as for individuals. The provision of legal services to the market as a whole is essential to the economic well-being of the UK and all its citizens.
7. Recognition of this needs to flow through into many aspects of its business plan. The Board itself needs to recognise that those bodies whose members serve mainly business clients are subject to different regulatory risks than those serving mainly individual consumers. For the Board to apply similar regulatory oversight to dissimilar regulated populations and business models may lead to a misuse of regulatory resources, poorly targeted to regulatory need. Where there is little or no evidence that the interests of individual consumers have been prejudiced, then it is unlikely to be proportionate for regulators to be asked to amend their regulatory procedures for their better protection.

### **Role of Professional Bodies and their Representational Arms**

8. Regulators are appropriately required under section 30(1) of the Act to carry out their functions unprejudiced by their representative functions and to take decisions independently of them. This is not the same as saying that regulators should not be influenced by representatives where that is appropriate. Representative bodies generally have longer and deeper experience of the nature of the business of their members than more recently formed independent regulatory arms. Though the possibility of bias in favour of their own members needs to be taken into account, they can also provide unparalleled understanding of the reasons why historical or requested new rules are appropriate. This is the case particularly where their representations are made in full recognition of the regulatory objectives and the need to serve the public interest as well as the interests of a profession's own members.
9. We understand the need for the Board to emphasise the need for consistent standards of protection for the consumers of legal services. However, this should not be done at the cost of a reduction of standards among the best. The Board should allow professional bodies (as represented by both their representational and regulatory bodies) to compete on the basis of the high quality of the services provided by their members, backed by their regulatory procedures. The Board should not allow a levelling down of protections in any area of activity of the professions.

### **Special Bodies**

10. We are interested in the Board's work special bodies, and would be happy to deepen our constructive engagement with the Board in this area. ICAEW has many members working in the charitable and voluntary sector and firms providing professional services to them. We hope that our specialists in this area will have an opportunity to comment on the draft guidance for licensing authorities expected in Q1 2013/14. Even more important will be close engagement of the Board with the Charity Commission and representative bodies of charities. Our overall assessment of developments to date is that the danger of vulnerable consumers of the legal services provided by charities being denied the services they need (through increased costs of regulation on their suppliers) is greater than the danger of those services (as currently supplied) being of poor quality.

## Research

11. The Board is right to be proud of its determination to act on the basis of appropriately designed and extensive research. Evidence based policy making helps guard against unwarranted bias or poor decision making.
12. As with other elements of the Board's work, it will be necessary to ensure that work carried out in this area does not inadvertently introduce any biases, for example through research design. For example, sample selection should not inadvertently exclude economically important elements of legal services either through over-emphasis on individual (as opposed to business) consumers or to legal services provided by lawyers as opposed to other unreserved legal service providers. It is also important to make a clear distinction between reservation of legal services under the Act and regulation. Both statutory and professional regulation exists which is not regulation by the front line legal services regulators but which nevertheless includes within its remit the regulation of significant amounts of unreserved legal services. To ignore this factor in underlying research leads to a danger that decisions may be taken by the Board that lead to duplicate or unnecessary regulatory provisions for these services.
13. ICAEW is particularly interested in the Board's planned research projects on general legal advice and mapping the unregulated market. Our members themselves provide much foundation level legal advice to their clients, not just in the area of tax but also in areas of the law relating to other aspects of accountancy, finance, business and commerce. Our members, though regulated themselves in relation to all their professional work, also compete against unregulated accountants and book-keepers.
14. ICAEW administers some research funds donated to the accountancy profession, for the better understanding of its work. Through a programme of academic research funding from the ICAEW's charitable trusts, we aim to fund the highest quality accounting and finance academic research and events. Please let us know whether you would like us to recommend any research projects to the fund trustees relating to legal services as provided by members of the accountancy profession.

Yours sincerely

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