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Dear Richard

I am writing in response to Matthew Hill's letter of 21 February seeking views on the operation of the Internal Governance Rules (IGR) ahead of the Legal Services Board's review. I am sorry not to have written sooner.

### **The CLC's IGR**

As you know, the CLC was established as a wholly independent regulator. As such, our IGR are rather simpler than those of the Approved Regulator/Front Line Regulator pairs. We believe that our IGR operate well at present though we will of course review them in the light of any findings the LSB makes in relation to its wider review of IGR as we did when the IGR were last reviewed and which saw us make a minor update to our own arrangements in 2020.

### **IGR across the sector**

The CLC has always been an independent regulator and has no representative function. It was created as a pure regulator in 1985. Its executive is held to account by a lay-majority, non-executive Board that provides assurance onward to the Legal Services Board.

One intention of creating independent regulation was that the representative bodies would be able to represent their members robustly without needing to observe the imperatives of regulatory responsibilities.

The CLC remains of the view that public confidence in the independence of regulation in the legal sector could be significantly improved by taking steps to complete the process of separating regulation across the sector from the representation of professions' interests.

CILEx and The Law Society, in recent evidence to the Justice Select Committee, commented that the IGR prevent them holding their respective regulatory bodies to account publicly. This is plainly undesirable. The representative bodies should be able to comment freely and publicly on their view, good or bad, of the regulation of their members. This will help to improve regulation and ensure that there is useful and transparent debate about it.

It was surprising to hear from CILEx and the Law Society their belief that they are not able to comment on the regulatory performance of their delegated independent regulators.

If the statements made by CILEx and The Law Society are correct, it would seem they have only the nuclear option of de-delegation if they have concerns about the performance of their delegated regulator. This seems unsustainable because it risks disproportionate action in response to a regulatory failing or, on the other hand, that significant failings will not be addressed because de-delegation seems too drastic. It also creates the anomaly that the CLC is robustly examined by two representative bodies (to which it has never had any formal link) while the other front line regulators are apparently not scrutinised by their parent Approved Regulator.

In 2007 the Act enshrined the existing representative bodies as the Approved Regulators because the separate, independent regulatory arrangements (with the exception of the CLC and Faculty Office) did not exist. The ongoing regulatory responsibilities of the Approved Regulators can be seen as a manifestation of an incomplete transition to the new model of independent regulation that Sir David Clementi recommended.

Sir David's recommendations could present a different path now that the front line regulators are mature and could be established as wholly independent bodies.

It might therefore be worth considering whether the Approved Regulators that are representative bodies should give up their remaining powers over the front line regulators and hand them to the LSB. This was the original intention of Sir David Clementi when he published his recommendations. This would free up the representative bodies to operate robustly in the interest of their members without the risk of improper influence over truly independent regulators.

I am aware that this suggestion does not meet the intention for a limited, technical review of the IGR at this stage, but in view of the statements at the Justice Committee hearings, it needs to be added to the agenda for the sector.

I look forward to our meeting next week when I am sure we can discuss this.

Kind regards



**Chief Executive**