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Legal Services Board
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Date 23 February 2010	Email	david.stallibrass@oft.gsi.gov.uk

Dear Emily,

CLC Licensing Authority Application

Thank you for sending us the Counsel for Licensed Conveyancers' (CLC) application to become a Licensing Authority.

As you are aware, the OFT has a statutory duty under the Legal Services Act 2007 (LSA07) to review applications for Licensing Authority and provide the Legal Services Board (LSB) with such advice as we 'think fit' regarding whether the application should be granted. In providing our advice we have to consider whether any given application, if granted, would, (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent¹.

The OFT's default position, in this regard, is that applications to become a Licensing Authority, unless there is compelling evidence to show a significant detriment to competition through foreclosure and/or a substantial degradation of consumer protection, is unlikely to raise any substantive concerns since it is likely to increase choice for consumers and professionals. However, where an application to become a Licensing Authority does include a provision that has the potential to restrict competition, the OFT would expect them to only be permissible when evidently justified by one of the objectives set out in the LSA07.

¹Schedule 4 Part 2 section 6(2) and Schedule 10 Part 1 section 4(2) LSA07



In this regard, we note that the CLC's application to become a licensing authority includes provisions that exclude the carrying out of unreserved legal activities unless they are performed within the licensed entity. Whilst we understand that the intention of these provisions may be to ensure regulation cannot be avoided by establishing a separate entity to conduct unreserved activities, the counterfactual may be the imposition of regulation that is not necessary to protect consumers, and creates a barrier to entry that limits competition. In addition, the application may afford the CLC undue discretion over what unreserved activities the licensed body can undertake (see paragraph 5.31.2 of the application).

The OFT is, therefore, of the view that a balance needs to be struck between providing consumers with the necessary levels of protection and ensuring that any protective measures do not restrict competition by lessening choice and flexibility of service. Accordingly, the LSB must be confident that the benefits of the CLC's provision outweigh any potential costs to consumer choice and competition. One way of mitigating concerns in this regard, could be the insertion of a "sunset clause" to the relevant provisions, allowing them to be reviewed, at a later date, for any evidence of a detrimental effect on competition.

Lastly, with reference to Professional Indemnity Insurance, we welcome CLC's proposal to allow opt out from the Master Policy as a positive move towards greater flexibility for the regulated entities. However, we note that the application is currently unclear on the meaning of "opt-out" and believe that it should specify that this refers to the open market.

We hope this advice helps.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Stallibrass', with a stylized flourish at the end.

David Stallibrass
Director – Services
Office of Fair Trading