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The logo for the Legal Services Consumer Panel is located in the top right corner. It consists of a large blue circle on the left, and the text 'LEGAL SERVICES CONSUMER PANEL' in white, stacked vertically on the right. 'LEGAL' and 'SERVICES' are in a smaller font, while 'CONSUMER' and 'PANEL' are in a larger, bold font.

LEGAL  
SERVICES  
CONSUMER  
PANEL

24 October 2011

Dear Ms Shrimplin

### **Review of Continuing Professional Development**

I am writing in response to the Bar Standards Board's consultation on the proposed new system for Continuing Professional Development (CPD).

CPD can be an useful regulatory tool for helping to ensure legal professionals remain competent once qualified. The Panel's research shows that consumers assume that regulators are checking that professionals are competent, and support compulsory CPD as part of a quality assurance process.

The main thrust of the proposals is greater flexibility for the profession, alongside an increase in CPD hours and improved record keeping. However, although the number of required hours has been increased, the simultaneous removal of the need to undertake 'accredited hours' and the widening of permitted activities, makes it unclear whether it will be the actual activities undertaken by professionals that change, or only how they are reported. That is, it is not clear from the review that the changes in hourly requirements and content will necessarily deliver more competent professionals for consumers than exist at present. We would expect at least some CPD to involve client-related activities.

The most significant reform relates to reporting and monitoring, with the review proposing fewer, but more structured, checks on compliance. In many ways, the success of the other changes hinges on this process; the trust given to the profession to undertake and self-certify appropriate CPD must be backed-up by a genuine risk of sanction if it is abused. The Panel supports the reporting and checking changes on the basis that it is expected to provide more rigorous oversight of CPD compliance than occurs at present. However, to make this system effective, the Panel encourages the BSB to undertake both random and targeted, risk-based checks. The latter could focus on, for example, barristers who have been subject to competence-related complaints or barristers who practise in areas where consumers face significant risk of detriment if professionals are incompetent, or insufficiently up to date. The focus of compliance activity should be on improving the outcomes for clients, as set out in the

4-point purpose of CPD. This requires a qualitative assessment rather than a tick-box approach.

The Panel notes that the new CPD arrangements maintain the requirement that CPD activities are relevant to a professional's practice area, or proposed practice area. The keeping of this linkage is welcome; however it is unclear whether, to date, it has been subject to scrutiny. The Panel hopes the BSB will, again as part of its new compliance approach, look to verify not only hours and types of CPD activities, but how the activities undertaken are relevant to a professional's practice area. Such an approach would give greater teeth to the linkage requirement, and help ensure that consumer expectations about regulator checks are met.

Finally, the Panel has previously identified the need for diverse mechanisms to ensure the ongoing competence of legal professionals. The BSB's review of CPD has focused on CPD-alone, rather wider mechanisms for ensuring the ongoing competence of barristers. It is therefore essential that the proposed reforms are implemented in the context of the legal education and training review currently underway. There needs to be an open and flexible process in place that will ensure new CPD processes can be modified in line with any subsequent review findings and recommendations. The BSB must not restrict the Review's ability to explore further changes to barrister CPD.

Yours sincerely,

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

Elisabeth Davies  
Chair