



The Law Society

Legal Services Board's draft Business Plan (2013-14)

The Law Society response

4 March 2013



The Law Society's response to the Legal Services Board's draft Business Plan (2013-14)

The Law Society is pleased to have the opportunity to respond to the Legal Services Board's (LSB) draft business plan. The Society continues to support the overall structure for the regulation of legal services as originally envisaged by Sir David Clementi and believes that it remains appropriate for the LSB to continue to oversee the work of the approved regulators. However, it needs to be recognised that the legal services sector is facing rapid and significant challenges. Further, the country is likely to remain in a state of austerity in the immediate future and the much of the legal services sector, particularly that part of it offering services to the most vulnerable sectors of the community, is facing a significant decline in its income and unprecedented turbulence and uncertainty. The LSB adds to the regulatory burden through its own direct costs to the profession; through its directions to and interaction with the approved regulators and through the resulting costs of compliance that fall directly on the profession.

At a time when the Government and others are seeking to reduce costs and burdens, it would be appropriate to consider whether the LSB can cut its own costs. The LSB should assess the urgency of the initiatives that it seeks to move forward and justify that urgency. The LSB has recently introduced significant change in the form of ABS and outcomes focussed regulation. The regulators and the profession are still adjusting to this and there remain long-term pieces of work to be carried out by the regulators. We do not agree that it is necessary at this stage to add to the burden already placed upon the profession and its regulator.

Introduction

We agree with the LSB's assertion that regulation of legal services is essential to ensure a healthy legal services market. However, we consider that the responsibility for robust regulation lies with approved regulators. We note that the LSB recognises the challenge for regulatory boards to avoid micro-management. A similar challenge exists for the LSB. The LSB should only become involved where there is a failure in regulation by an approved regulator, a significant risk of failure or where there are major barriers that need to be removed. It is not the LSB's role to drive regulatory change because it holds a philosophical belief in a particular form of regulation. Rather, it is to ensure that the regulators are doing an appropriate job of protecting consumers and monitoring the integrity of the profession.

We are pleased to note, that in response to the Triennial review, the LSB is reviewing its priorities. We recognise that the LSB must fulfil its statutory duties but we do not believe that these encompass continuous change and micro-management where there is no urgency or where the front line regulators may legitimately take a different view of priorities.

The LSB business plan promises an intensive programme of work for regulators. We question whether that is appropriate or necessary in the light of the capacity of the regulators and the need to ensure that core functions are carried out. We believe that it is essential that there should be a frank dialogue between the LSB, the regulators and the profession about the priority of and urgency for change.

Equality objectives

We continue to support the LSB's objectives on equality and diversity. However, whilst the Law Society agrees that firms should be required to conduct surveys about the diversity of their workforce as a regulatory obligation, we remain opposed to the requirement that diversity data is to be published at firm/entity level. We believe that this will, in fact, deter employees in smaller firms from providing the information and that a significantly more nuanced approach is needed. The SRA is currently carrying out important work on equality and diversity and it is not clear to us that further work is needed by the LSB now.

Developing standards and performance

There has been significant change in this area already and we are pleased that the LSB does not plan any additional work in this area beyond continuing to monitor progress against action plans by approved regulators.

Referral fees

We note that the LSB's approach is designed to ensure consistency between regulators on regulating referral fees. We look for reassurance that this will be the case, as inconsistency in approach could lead to unfair competition between those regulated by different approved regulators.

We were disappointed that the government's referral fee ban will not be extended more widely - for example into the area of conveyancing. Referral fees are not in the public interest. All approved regulators should consider whether authorised persons should be permitted to pay these fees.

Review of regulatory sanctions and appeals process

We note the LSB's comments on the inconsistencies between the standard of proof used by the Solicitors Regulatory Authority (SRA) and Solicitors Disciplinary Tribunal (SDT). We wrote to the LSB on this matter sometime ago, highlighting that the changes proposed by the SRA in its disciplinary rules would lead to this inconsistency and requesting the LSB reconsider their approval. The SDT must apply the criminal standard of proof as a matter of law.

We do not accept that the SDT creates inefficiencies. The SDT has built up a wealth of experience in handling disciplinary cases against solicitors, their firms, and appeals against SRA decisions. To create a new separate body to handle disciplinary cases against a small percentage of firms, who in most cases do not differ significantly in structure or activity from non-ABS, would appear to create a greater inefficiency and disparity.

Completing the regulatory framework

We are unclear as to why the LSB is to begin work on commencing parts of the Legal Services Act 2007 so it can become a licensing authority. It states that this is an unlikely event and there is no indication that the LSB is likely to need to take on this role in the near future. We believe that this piece of work could be dropped.

Reviewing the scope of regulation

We have supported the LSB's work in relation to the reservation of will writing and estate administration and agree that there may be scope for reviewing the reserved areas generally. However, it is not clear to us that there is major urgency about this and we strongly doubt that it is practical to regulate general legal advice. It may be more useful to identify individual areas where there is evidence for reservation.

Developing a changing workforce for a changing market

We believe it is for the approved regulators to take forward any recommendations from the LETR in consultation with those they regulate and other stakeholders. As noted above, we have supported the LSB's call for data on diversity in the workforce to be collected. We expect that, given the breadth of data collected and the cost to the profession and regulators of doing so, any additional research will be limited.

Cost and complexity of regulation

We have highlighted the need to ensure that the regulatory burden on firms is minimised. We believe that all regulators could do more to assess the impact of proposed changes to regulation and whether they can be linked to any real cost benefit.

We note that the LSB plans to commission a substantial price of research on the cost of regulation to the legal sector. We find it ironic that this is likely to add to costs and we are sceptical that it will provide information that can usefully be taken forward. In our view, it is for individual regulators to consider the impact of their regulation on those they regulate and it is not clear to us why the LSB needs to do this work now. We would expect the LSB to be provided with a full impact assessment when an approved regulator proposes a rule change to allow it to make an informed decision on the proportionality of a change.

Parliament recognised the important role of the representative arm of approved regulators. The Legal Services Act 2007 provides that a portion of the practising certificate fee can be used for permitted purposes. The costs to solicitors are already published and we, the Society, are transparent about what the money is spent on. We do not see what LSB research can add, other than additional cost to our members.

The LSB also plans to analyse the gaps and inconsistencies in the current legislative and regulatory system and the present barriers to better regulation. We are unsure what the LSB intends to achieve with this research. The current Act creates multiple regulators and thus inevitably leads to inconsistencies. We are unclear what further research will provide and do not believe that it is urgent.

Research and evaluation

The LSB's role is to Act as an oversight regulator. The research suggested in the paper seems to go beyond this role and move the LSB into the role of overseeing the legal market and usurping the role of the approved regulators. We do not believe that this is appropriate.

Research and evidence

The LSB plans to undertake a range of research projects from looking at the type of communications clients prefer to equal pay in the legal sector. It is not clear from the business plan why these research projects have been chosen or what the LSB intends to do with the results. We would welcome further information on this.