



Cardiff & District

Law Society

Cardiff & District law Society's Response to the Consultation on the Legal Service Board's Draft Business Plan 2019/20

Introduction

The Cardiff and District Law Society (CDLS) is the largest local law society in Wales. It has a membership of over 2,000 including solicitors, barristers, legal executives and academic lawyers. CDLS appoints a number of specialist committees, including a Regulatory Issues Sub-committee. Through these committees CDLS responds to a number of public consultations on matters which affect the professional lives of solicitors in the Cardiff and District area. CDLS welcomes the opportunity to respond to the Legal Services Board's Consultation on their] draft business plan 2019/20 and thanks the LSB for organising a telephone conference for our President to speak with Steve Brooker their Head of Research and Development.

Response

In answer to the particular questions posed at the conclusion of the Consultation, we respond as follows:

Q1 – Have we identified the most relevant developments in our external operating environment?

Yes it covers the main developments other than the changes to the SRA Handbook allowing solicitors to carry out non-reserved legal services from unregulated entities. It should also make reference to Apprenticeships in the legal sector.

Q2 – What are your views on our proposed five-year policy objectives?

Objective 1 - Promoting the public interest through ensuring independent, effective and proportionate regulation:

a) Para 12 - NDAs in harassment cases. We advise caution before deciding to intervene and to “beware the law of unintended consequences”. As by outlawing ‘cash for confidentiality’ future claimants may be required to take the case to Court/Tribunal and, as a consequence, be subjected to hostile cross examination, costs exposure and delay. The cash payment reflects the ‘guilt’ of the transgressor, gives the aggrieved party early closure and allows the defendant business to take early and effective action as part of a series of remedial measures.

b) Paras 13-15 – whilst we appreciate the need for the representative and regulatory functions to be independent of one another, there is a danger of the regulator becoming detached from the profession it regulates. Often law firms have ideas/initiatives which will benefit both the firm and its clients, but the compliance officer is uncertain as to how the regulatory position may be affected. Solicitors would benefit from certainty and whilst Objectives Focussed Regulation allows a more one size fits all regulation – it can lead to uncertainty which hampers innovation. It is important that firms acting in good faith should be able to seek a ‘safe harbour’ ruling from the regulator before introducing the proposed initiative. In this way the profession and the public are protected. In appropriate circumstances the regulator could impose review time limits to check that there are no adverse consequences if there is any uncertainty as to potential outcomes.

Objective 2 - Making it easier for all consumers to access the services they need and get redress –

This is a constant thorn (particularly with low value consumer complaints) because the cost of engaging in the legal process often outweighs the potential benefit. An example of this can be found in professional negligence cases brought by individuals/consumers where success fees and ATE premiums are no longer recoverable by the successful claimant. This now inhibit claims, because individuals simply cannot afford to pay the ATE premium.

We are also concerned at the standard of the Legal Choices website run by Legal services regulators, who actively sign post clients to use it. The information therein lacks depth and seems inaccurate in a number of areas.

Objective 3 Increasing innovation, growth and the diversity of services and providers –

As stated we are concerned that regulation can hamper growth and innovation. We will be very interested to see the development of the “regulatory sandboxes” referred to in the consultation. Once created, there will need to be a campaign to educate the profession about their existence and the benefits of utilising them.

Q3 – Do you have any comments on our proposed business plan and work for 2019/20? Are there any work streams that you disagree with? Is there any work that you think we should pursue that is not currently included?

The proposals seem to be comprehensive and prudent. However, specific reference should be made to the changes to the SRA Handbook allowing solicitors to carry out non-reserved legal services from unregulated entities. We would request a stronger focus on how consumers and solicitors will be protected before these changes comes into effect. We would encourage LSB to promote additional guidance would assist both the profession and consumers on such issues.

We also consider that the plan should make reference to Legal Apprenticeships in the legal sector leading to end point assessment of the new SQE. There are currently no existing legal apprenticeships at all in Wales, meaning that the same opportunities do not exist.

Also we believe that the price transparency Regulations were brought in rather hastily. Before any plans are made to expand the scope of services covered under the regulations, plans should be made to track their effectiveness.

Part of the business plan should be to work with the regulators to revamp the Legal Choices website as soon as possible.

Q4 – Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

We are in a time of great change in the legal market. Generally the LSB are often seen by the profession as “rubber stamping” applications from the SRA, when we consider that the SRA have not taken full consideration of consultation responses put to them prior to submitting the application. We have noticed that among our members that this can lead to a lack of engagement by the profession in proposed changes and their consultations. At a time of great change in the legal market, it is more important than ever that these changes are carefully scrutinised by the profession. This will only happen if they are engaged and their views are taken and seen to be valued. As a consequence we consider that the LSB should seek to educate the profession on their role, the statutory fetters that apply, and the process they adopt in considering applications and the surrounding consultations. We believe that this can be achieved by a greater dialogue and joint working with local law societies like our own.

The LSB state they have recently started a project to examine the regulatory implications of developments in technology. We believe that they should work closely with the Technology and the Law Policy Commission, chaired by the Law Society President Christina Blacklaws.

Q5: Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2019/20.

We cannot stress strongly enough the importance of ensuring that the regulators, particularly the SRA, have regard for the divergence of Welsh law and the requirement that regulators within Wales obey the law which applies to the Welsh language. The provision of the SQE in the Welsh language is very important: Welsh speakers can, currently, take all their assessments to qualify as a solicitor at degree level and the LPC in Welsh if they study in Wales. The SRA has not yet confirmed that they will retain that right when the SQE is implemented in 2021. A commercial reason (ie keeping down the cost of the SQE) does not justify what would be a breach of the law in Wales. It is a rule of law issue, and “supporting the constitutional principle of the rule of law” is one of the 8 regulatory principles contained in Legal Services Act 2007 s 1.