

LSB STRATEGIC PLAN 2012-15 AND BUSINESS PLAN 2012-13

Comments of the Chartered Institute of Patent Attorneys

The LSB's proposals in its Strategic Plan and its shorter-term Business Plan are, of course, subject to the wide-ranging review which the Ministry of Justice is carrying out as part of the government's triennial reviews of the functions and scope of all Non-Departmental Public Bodies. Consequently, the proposals will need to be considered in the light of the conclusions of the LSB's triennial review.

In its response to the LSB's triennial review, CIPA will be urging that the range of functions and research undertaken by the LSB should be cut back to those which are required to meet specific identified risks and to provide continuing oversight and proportionate regulation. CIPA believes that the LSB's budget should be subject to the same 20-25% cuts as government departments have to achieve. This will mean that the proposals in the two plans will have to be reassessed in the light of a reduced budget. CIPA believes that the LSB should also take into account the government's Red Tape Challenge and ensure that it takes all appropriate steps to reduce disproportionate regulation which adds to the red tape burden, especially for the innovative industries which the IP professions primarily serve.

CIPA notes the three strands proposed in the Strategic Plan:

- assuring and improving the performance of approved regulators;
- helping consumers to choose and use legal services with confidence;
- helping the changing legal sector to flourish by delivering appropriate regulation to address risks.

The first and third of these objectives are valid and appropriate, provided that the regulation is proportionate and targeted at the risks.

CIPA believes that the second objective will follow automatically from the first and third objectives but CIPA is convinced that the LSB should not be undertaking activities or research relating solely to this objective. The public will be confident in using the services of the legal professions if it believes that they are subject to robust outcomes-based regulation, with appropriate forms of redress when things go wrong. CIPA believes that this is an issue more for the Office for Legal Complaints than for the LSB and that the public can have the confidence which comes from the success of the LeO system. The professions now have in place appropriate Codes of Conduct and LeO provides the oversight regulation of the provision of services to the public. The LeO system is widely recognised as providing good results for consumers and the professions. The requirement to have in place a first-tier complaints handling procedure gives the public confidence that, if the level of service provided falls below that which is to be expected, the matter will be put right either by the firm concerned or by LeO.

CIPA therefore takes the view that most, if not all, of the work anticipated under the second heading should be excluded from the Plans. The LSB should not be seeking to micro-manage or duplicate the work of LeO, as appears to be the case. CIPA recognises that the Act gives the LSB oversight of LeO, but believes that this should be the same sort of oversight role as the LSB should be exercising for the Approved Regulators.

Thus, in the three strands which are identified for the Business Plan for 2012-13, CIPA believes that most activities under heading B (Strategy Development and Research) are not appropriate for a slimmed-down LSB operating strictly to provide oversight regulation.

CIPA believes that the Approved Regulators are in a better position than the LSB to determine what is required to satisfy the regulatory objectives for each individual profession. Consequently, work under this heading should be limited to providing support and guidance for the ARs. In the case of research, if the LSB is able to undertake research which is applicable across the board and the research can be provided more cheaply through the LSB, then it would be appropriate for the LSB to undertake it.

However, CIPA has seen that the LSB is duplicating work which has been or is being done by the ARs, which is an unnecessary waste of resources.

With regard to heading A (Regulator Oversight & Performance), CIPA believes that the regulatory framework has moved from the start-up phase to the steady-state phase, with all the regulatory arrangements having been approved by the LSB and with the LSB having confirmed that all the ARs have complied with the Internal Governance Rules, or that processes are under way to ensure that compliance is achieved very soon. Consequently, CIPA believes that the self-certification by the Approved Regulators going forward need be no more than providing assurances that the arrangements continue to be compliant with the IGR.

The only area where we see that the steady state has not been reached yet is in the licensing of Alternative Business Structures, where some time will be required for the new systems to bed down and to be evaluated for effectiveness. Clearly, there is a need for continuing oversight by the LSB but again, the LSB activities must be seen to be proportionate and targeted at the areas of high risk.

CIPA
9th March 2012