

LEGAL SERVICES BOARD

DRAFT BUSINESS PLAN 2009/10

Response of ILEX Professional Standards Ltd (IPS)

Introduction

IPS is the regulatory company established by the Institute of Legal Executives to take responsibility for the regulation of Legal Executives. The Institute is an approved regulator under the terms of the Legal Services Act and is also a qualifying regulator in respect of the provision of immigration advice and services. This response has been shared with the Institute, which has confirmed that it represents the views of both companies. Accordingly, the Institute does not intend to submit its own, separate response. However it wishes to emphasise certain aspects of the response and will do so through a separate letter from its Chief Executive.

IPS welcomes the publication by the LSB of its draft business plan for 2009/10. The plan encompasses the very broad range of duties it has under the Legal Services Act (LSA). It manages to unite the sometimes competing objectives set out for it and presents a credible vision of the changes in legal services which it intends to achieve through the legislation.

The draft sets out some challenging targets for 2009/10. IPS believes that both the targets for the current year and the longer term vision will be achieved only if the LSB is able to sustain its commitment to proportionate regulation. Ensuring the effective separation of regulation and representation by Approved Regulators is a key target for 2009/10. If that is achieved and the procedures for handling complaints about legal services are successfully implemented in the following year, achieving the vision will become more manageable and the central issue of restoring public confidence in the provision of legal services will be within sight.

The Board's commitment to operate with independence and integrity is welcomed by IPS, as are its commitments to learn by experience – hopefully the experience of others as well as the Board's – and to be open with regulators and accountable for the costs.

The LSA presents significant opportunities for Legal Executives. ILEX has welcomed the fact that the LSB recognises removing restrictions on new and innovative ways of meeting consumers' needs to be a key facet of its work. IPS will be working to ensure that the regulation of Legal Executives ensures they are competent and fit both to undertake the legal work which is reserved to them and to carry out their other legal functions.

The Work Programme

IPS does not seek to comment in any detail on the vision statements set out in each part of the draft business plan. Although inherently aspirational in their terms, they reflect the aims of the legislation and provide a helpful framework for the shorter term deliverables identified.

Putting Consumer and Public Interest at the Heart of Regulation

The Consumer Panel will bring an important perspective to the development of the LSB's workstreams. It is not clear what, if any, relationship or interaction there will be between the Consumer Panel and the Approved Regulators. For example will the Panel seek any input from them on its programmes of work? The costs of the Panel were not included in the analysis of implementation and running costs prepared for the Ministry of Justice so the role which is now set out by the LSB for the Panel is likely to add significantly to the ongoing cost of regulation. However, IPS recognises the value of the consumer perspective to both the LSB and the Approved Regulators. The smaller regulators, of which IPS is one, would particularly benefit from the availability of objective and balanced research into the consumer perspective on legal services issues.

Widening Access to the Legal Market

IPS welcomes the commitment of the LSB to ensuring the legal services market offers better value and choice for consumers: a key objective of the legislation. One of the benefits of the particular regulatory model it is built upon (model B+) is the promotion of a variety of regulatory and business models. It is important that the introduction of the LSB as an overarching regulator does not result in a single regulatory model designed around perceived best or excellent practice. It is IPS's view that consumers must be able to have access to a choice of providers offering distinctive service models. IPS is committed to ensuring Legal Executives are regulated in a way which will enable them to offer high quality services subject to appropriate and proportionate regulation.

The 2009/10 deliverables identified in respect of alternative business structures and licensing rules appear to IPS to be particularly challenging. This is especially so as regards development of the LSB's role as a direct regulator of alternative business structures.

Improving Service by Resolving Complaints Effectively

ILEX was an early supporter of a single point of entry for complaints about legal service. The work the LSB has committed to, with the OLC Chair and Board, is very important. The OLC will need to be able to recognise those complaints that are driven by disappointment with legitimate outcomes and must have procedures which facilitate seamless referral of conduct issues to

the relevant Approved Regulator. Ultimately the success of the OLC and this key aspect of the legislation will be determined by the extent to which practitioners can be brought to recognise that good service and client-centred complaints handling are essential for their business success.

Developing Excellence in legal services regulation

IPS welcomes the recognition in the draft plan that excellence in regulation stems from ownership by the Approved Regulators. There is a risk of over-elaboration in the LSB's approach to this. It is correct that the LSB will need criteria against which the effectiveness of regulation by the Approved Regulators can be measured. It is not clear whether the LSB takes the view that this can be achieved by a single, common methodology. It appears to IPS that a single methodology is unlikely to be appropriate for a wide range of regulatory organisations with different types of members undertaking different types of work.

It will be important for the LSB to have rules and processes in place by the end of 2009 so that it is able smoothly to take over the process of dealing with changes to the Approved Regulators' rules from the LSCP. The new landscape for legal services inspired by the legislation means that the need to revise rules will not reduce. We look forward with interest to discussions on monitoring of Approved Regulator's activities. The mark of a modern regulator is to target its efforts according to risk. We similarly hope that the LSB's monitoring is sufficiently focussed to enable risk to be identified. The LSB has a legitimate role in identifying and disseminating good practice but should not be seeking to enforce generic practice as a matter of course.

Securing independent regulation

It is essential that the rules governing separation of regulation and representation are principle-based and at a high level. A raft of detailed rules is unlikely to be effective for the range of ARs and regulatory models they adopt. In particular, rules must not be so geared to the circumstances of one or other regulator as to restrict other regulators from developing their own efficient and proportionate arrangements for independent regulation.

The LSB's rules for approving regulatory fees will need to be simple and to facilitate timely decision making, as they will need to fit in with Approved Regulators' budgetary programmes. IPS welcomes the idea of dual certification of Approved Regulators and their regulatory bodies as a means of establishing that the requirements as to separation and funding have been met.

Promoting access to a diverse legal profession

IPS particularly welcomes the assurance that the LSB will not seek to duplicate work already done or under way in the area of equality and

diversity. Approved Regulators already have a legal obligation to promote equality and diversity, both in the services they provide and access to qualifications. There are a number of significant government initiatives under way in relation to equality and diversity which impact not just on the legal profession but on educational opportunities generally. Legal Executives are already the most socially diverse of the legal professional groups. However development work which the LSB can do to promote equal opportunities for employment and progression within employment will be particularly welcomed by IPS.

Research and public legal education strategies

A key issue for the LSB in the medium term will be to ensure greater understanding of who is entitled to provide which legal services and the position of those who contribute to providing legal services without themselves being authorised. The Act has made matters more complicated than they were. Consumers have a right to know that those who provide legal services are competent and fit to do so. The LSB has the opportunity to make consistent and impartial information available to the public regarding this and to promote understanding of the roles of all providers.

The Levy

It is particularly vital to the smaller regulatory bodies that the levy is apportioned in accordance with principles which are demonstrably fair and which command the respect and the support of the individual practitioners whose fees will increase in order to pay it. The IPS Board is already aware how important it is that Legal Executives perceive the regulatory cost of the LSB and OLC which falls on them to be worthwhile. Research by Price Waterhouse Cooper in 2006 for the Ministry of Justice showed that ILEX's costs constituted 0.5% of the total regulatory cost and 0.3% of the the complaints handling costs within the sector. Legal Executives constitute approximately 5% of regulated persons but, in terms of the risk they present in the regulated work they are able to undertake and the call IPS will make at this stage on the regulatory machinery, a fair contribution would be substantially lower than that. Whilst these proportions may change in the future, and there are particular issues around the setup costs of the LSB and the OLC, the apportionment of the levy needs to have regard to fairness and what the individual practitioner areas will bear. The formulae adopted may change in the future and the levy rules need to be flexible enough to adapt as the roles of the regulators develop and the calls they make on the regulatory and complaints machinery change.

ILEX Professional Standards Ltd
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