



The Law Society

The Law Society's response to the Legal Services Board's Strategic and Business Plan

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SUPPORTING
solicitors



The Law Society

The Law Society's response to the Legal Services Board's draft Strategic Plan (2012–15) and draft Business Plan (2012-13)

1. The Law Society supported most of the reforms contained in the Legal Services Act, and we are pleased they are coming to fruition. From the time of Sir David Clementi's report we have supported the spirit of the proposed reforms, and have worked with all stakeholders to ensure that the correct balance was struck between liberalising the market and maintaining consumer protections.
2. During its first three years the LSB had three primary targets:
 - Setting up the Office for Legal Complaints;
 - Creating and enforcing internal governance rules; and
 - Ensuring that Alternative Business Structures (ABS) were introduced.
3. The work involved in establishing these three goals has almost been completed. The Legal Ombudsman has been operational for over a year, the SRA are ready and able to regulate a wide range of ABS, and clear separation of regulatory and representative functions has taken place in all major approved regulators (ARs). LSB need now to establish what should constitute 'business as usual' activity for the oversight regulator of the legal profession.
4. The Chief Executive concludes his overview by saying: "It also reinforces our oft delivered message that how big the LSB is, what we need to do and how long we need to exist for, depends ultimately on the performance of the approved regulators in delivering regulation that is fit for purpose." While there is some truth in this, it is important for LSB itself to initiate downsizing. It has been known for organisations to allow the work they do to expand and fill the resources available. The Strategic Plan offers no clear path towards downsizing the LSB.
5. Now that the pillars of the new regulatory system are in place it is important that the new arrangements should be allowed a period of stability to become embedded. The LSB wants to understand the nature of the risks contained within the system. It is important to remember that LSB is not the lead regulator, and that in any event the regulatory risks posed by legal services

are not of direct national economic importance, in the way that applies to risks in financial services. The LSB's proper task is to ensure that the ARs address the issues of risk, rather than to carry out its own assessments.

6. The draft plans refer to helping to mitigate risks and ensuring that appropriate redress mechanisms are in place. It is the responsibility of front line regulators to ensure that risks are mitigated and that there is appropriate redress for any eventuality, including unexpected disasters. There may sometimes be role for the LSB to suggest improvements to such risk management systems, but the primary responsibility for risk management remains with the front line regulators.

Sector Research

7. The LSB devotes considerable resources to monitoring and assessing the legal services market, with a particular emphasis on the economic rationales for regulation, and on economic regulatory objectives. This includes conducting the LSB's own research and liaising with others to undertake research which LSB perceive to be useful for their purposes. The LSB allocate around £300,000 a year to this activity.
8. However, the LSB's interest in acting as an economic or market regulator, in a similar way to the utility regulators or OFCOM, goes well beyond the purposes intended for the LSB. The Legal Services Act envisaged the primary roles of the LSB in this area as being to ensure that approved regulators effectively separated regulatory from representative functions, and to ensure that the regulatory functions were carried out to an adequate standard. It was not the intention that the LSB should seek to regulate the market. To the extent that LSB research activity is directed at those issues, the Law Society considers it misguided, and a waste of the resources available to the Board.
9. There is of course much research activity around legal services regulation which is entirely appropriate. For example, information about the regulated community's experience of and attitude to regulation, and information about consumer experience of legal services which might have regulatory consequences, are highly relevant.
10. Nevertheless the lead responsibility for carrying out the necessary research on those areas should rest with the approved regulators and their regulatory arms. Both the Law Society and the SRA have a substantial research function. The principle for the LSB should be that it conducts or commissions its own research only where it is impractical or unduly expensive for the lead to be taken by approved regulators, and only where there is a clear regulatory justification for the research concerned. The Law Society welcomed the approach which the Legal Services Board has taken to the current survey of high street solicitors firms. Although the LSB originally envisaged carrying out the research itself, it has now agreed that the research should be led by the

Law Society, and carried out in partnership between the Law Society, the Legal Services Board, and the Ministry of Justice.

Approach of the LSB

11. Some of the language used in the plans suggest an inappropriately proactive approach for an oversight regulator. It is not for LSB to make sure that new opportunities are “seized”, only that there are no unnecessary barriers. When the Government introduced the concept of ABS they did so because they believed that liberalising the legal services market would benefit consumers by allowing different business models to emerge, rather than because one model was to be favoured over others.
12. The purpose of regulation in the legal sector is to ensure that appropriate standards are upheld across all business structures by appropriate regulation in the public interest, and that unnecessary restrictions are removed. Ultimately it is for the market, made up of individual businesses reacting to demand, to adopt the structure and offer the services they wish, within the regulatory framework. Front line regulators should be aware of any specific barriers that may defer potential external entrants at regular intervals and reassess whether certain restrictions are necessary. But it is not for front line regulators, nor for an oversight regulator, to actively promote business particular models.

Programme of self-assessment

13. The LSB requires approved regulators to carry out a self-assessment of their own regulatory arrangements against what they have defined to be four constituent parts of legal regulation. The proposed programme seems unnecessarily intrusive and the templates for assessment rigidly mechanistic. The LSB needs to take action where there is a reason to believe an approved regulator is failing to regulate effectively in accordance with the regulatory objectives. However, LSB need to consider carefully the need for and proportionality of any extra burden they seek to place on the front line regulators.
14. We recognise that it is good practice for approved regulators, and their independent regulatory arms, to publish performance data and periodically take a more fundamental review of their effectiveness, with outside support where appropriate. We will encourage SRA to do so. Nevertheless, it is not appropriate for the LSB to require regulators to carry out such an exercise in the absence of evidence of regulatory failure. It is particularly inappropriate for LSB to require this on a strict timetable, when regulators may have many more pressing priorities.
15. If front line regulators meet this good practice then it is not appropriate for the LSB to require that more forms are completed – unless there is an extremely compelling reason for doing so. The SRA publishes its performance data once a quarter with a full summary at the end of each year. Little value is

added by forcing approved regulators to take part in an extra assessment exercise, in the absence of any evidence of regulatory failure.

Proposed budget

16. While the decrease in operating costs which LSB envisage is naturally welcome, the Society believes that there is considerably more scope for achieving economies at the LSB, especially as the Board has already completed all of its assigned major structural tasks.

17. The original assessment by Parliament of what the LSB's operational costs should be was based on the need to achieve these reforms of the legal regulatory system. Instead of working out this year's resource-needs by reference to what has happened over the last three years, the Business Plan should have started by assessing the resources which will be required to deliver oversight regulatory services on a 'business as usual' basis going forwards from 2012. The cost of the oversight regulator, and the cost which its requirements impose on the approved regulators, need to be minimised.