

Draft Strategic Plan 2012-15, Business Plan 2012/13

The Society of Trust and Estate Practitioners (STEP) is the worldwide professional body for practitioners in the fields of trusts and estates, executorship, administration and related issues. STEP members help families secure their financial future and protect the interests of vulnerable relatives. STEP promotes the highest professional standards through education and training leading to widely recognised and respected professional qualifications. STEP internationally has over 17,000 members, with over 6,500 members in the UK. Over 4,500 students worldwide are currently studying for STEP qualifications and in the UK STEP supports an extensive regional network providing training and professional development.

STEP is pleased to be given the opportunity to comment on the Legal Services Board's Draft Strategic and Business Plans. STEP is in a distinctive position with respect to legal services regulation. STEP members provide a wide range of legal and other services to families. Some of these services are reserved activities and others are not. STEP itself is not an approved regulator and the majority of STEP's UK members are already regulated by one or other of the ten currently approved regulators – most frequently the Solicitors Regulation Authority or the Bar Standards Board. Even so, a significant and growing minority of our UK members are not regulated by any of the currently approved regulators. Such members often offer the public specialised services in non-reserved areas such as will-writing, trust administration or Inheritance Tax planning.

STEP's goal is to promote high professional standards among all its members via education and training. STEP also has a Code of Professional Conduct that applies equally to all STEP members. We fully recognise, however, that this is not equivalent to independent regulatory oversight. STEP has therefore argued strongly that in some areas, most notably will writing, current regulatory boundaries are not appropriate and should be extended in a way that supports a competitive market place. We note the work that the Legal Services Board has done in this area and believe it provides some valuable insights into priorities for both the LSB's Strategic Plan for 2012-2015 and the Business Plan for 2012-2013.

Strategic Priorities for 2012-15

STEP supports the core regulatory objectives laid down for the Legal Services Board (LSB) and others by the Legal Services Act 2007. We agree that this provides a sensible framework within which the LSB should establish its strategic plans. Moreover in context of the LSB's core regulatory objectives, the three strategic priorities laid out for 2012-2015, focusing on the performance of approved regulators, consumer confidence in the market and ensuring that regulation is not an undue obstacle to market change, are broadly appropriate.

We welcome the LSB's stated determination to ensure that, as it considers the extension of regulation into new areas, regulation in itself does not act as a barrier to entry. We are not convinced, however, that this aspiration can be met without further significant changes to existing regulatory structures. Effective regulation requires a fixed cost base that in practice leads to substantial economies of scale. STEP therefore concurs with the broad conclusion of the Smedley Report commissioned by the LSB about the potential unsustainability of the current multiple regulator arrangements.

A simple analysis of the ten current approved regulators suggest that only one (The Cost Lawyers Standards Board) has fewer than 800 regulated practitioners. In the long term, moreover, the economically viable minimum scale for an effective regulator which does not impose undue costs on both regulated entities and, ultimately consumers, could be much higher than the current apparent base of 800 practitioners. The economics of regulation underlying these figures could pose real problems if the legal services market continues to see innovation in terms of specialist practitioners offering services narrowly focussed on particular areas. If such practitioners have qualifications similarly focussed on particular relatively narrow areas they may well find it inappropriate to be regulated by one of the current approved regulators (as currently constituted) and have acute difficulties establishing a viable regulatory function that is relevant to their limited range of activities.

It is therefore not just important to ensure that "regulation does not act as a barrier to entry" but also to ensure that regulatory *structures*, in terms of the approved regulators and those that they are prepared to regulate, do not also act as a barrier to entry or prevent the legal services market developing in a way that best serves consumers. This may require ensuring that all those offering appropriate standards of training and competence in a discrete area of legal services activity have the opportunity to opt, at proportionate cost, into regulation for those activities by approved regulators which currently regulate practitioners with a much wider offering within legal services.

Our concerns in this area highlight the importance of the work the LSB is doing as part of its Legal Education and Training Review. To ensure the legal services market evolves in a way that is competitive it may well be necessary to break the link between approved regulators and the qualifications set by the branches of the profession they have hitherto had close links with. An activity focused approach, with approved regulators standing ready to accept any professional who meets the relevant standards of training and competence in a specified activity, would seem to be an essential requirement if the legal services market is to meet fully the aspirations of the better regulation initiative.

It is notable, however, that few of the proposed 17 measures to assess the outcome of the LSB's programme in terms of improvements in the legal services market will measure directly if the necessary changes to legal services education and regulatory structures are working effectively. For example, a successful programme of reform to regulatory structures might well be an important part of the process of delivering greater plurality and innovation in legal services, but so are many other issues – not least the state of the economy and its impact on demand for legal services.

The LSB's 2012-13 work programme

We highlighted in our discussion of the LSB's strategy the importance of ensuring that education and regulatory structural reforms move forward in parallel. We are disappointed to note, therefore, that while the business plans for the coming year place considerable emphasis on the work the LSB will be doing with "the SRA, BSB and IPS in carrying out their education and training review", there is no equivalent priority in terms of involving those active in the promotion and provision of specialist legal services training and competence, such as STEP, in the education and training review. We think the LSB has a potentially crucial role in facilitating a greater dialogue between the approved regulator and those working in the education and professional standards fields.

We also feel a more open dialogue than is currently sketched out in the 2012-13 Business Plan would be useful in the area of ensuring the legal services sector fully adopts the principles of better regulation. The LSB is undertaking a significant work programme reviewing the scope of regulation and examining the regulatory boundaries. The work undertaken in the past year on will writing has been an important example of how this process can be implemented in practice, with one of the key issues to emerge being how any modifications to the current regulatory boundaries judged desirable can be best accomplished within the better regulation agenda.

The programme sketched out for the LSB's work in 2012-13 on developing standards and performance regulation focuses on assuring that the better regulation principles are embedded across the existing and any new approved regulators and licensing authorities. In the context of the discussion above, however, it would be useful to secure a much broader dialogue with all market participants (in both regulated areas and in areas of potential regulation) about how the legal services market might best meet the principles laid out in the better regulation agenda.

One possible issue to be explored in these discussions is the extent to which industry-led solutions can address issues of regulatory concern. STEP's view is that such an approach has many significant implicit challenges without reinforcement by clear regulation, particularly in a market as diverse as, for example, will writing. We have nevertheless been an active participant in initial exploratory discussions on this issue with the Legal Ombudsman Service in the context of ensuring that there are effective redress mechanisms for consumers. While we continue to see significant problems with such an approach, we would suggest that the LSB should have a central role in this and wider discussions. The issue of how the legal services market can be best equipped to meet the better regulation standards - with industry-led solutions one among a range of possible options - is not a debate that should simply be confined to bodies with current regulatory status or from which the LSB can be absent.

STEP

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