

By email only

Matthew Hill

Chief Executive

Legal Services Board

24 January 2020

Dear Matthew

Thank you for the opportunity to contribute to the development of the LSB's 2020/21 Business Plan.

A key issue for IPReg is the need to plan our activities throughout the year. To do this effectively, we need to know when key LSB consultations and decisions are planned. We therefore request that the LSB puts timings on each of the proposed areas of work in its final version of the Business Plan.

In response to your specific questions:

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

The draft Plan seems to have identified the main issues in the external operating environment.

Q2 – What do you see as the key priorities/issues to be addressed by legal services regulation?

Regulation should be focused on those areas of highest risk to individual consumers and small businesses. It should be reduced or removed where the level of risk does not justify the current level of regulation.

Q3 – What are your views on our current approach to market intelligence and how would you like us to develop this function going forward?

The research that the LSB has carried out (and proposes to conduct in the future) is very comprehensive and extensive. However, there is now so much information in the research section of its website that – unless a regulatory body itself has specific research personnel – finding useful/relevant information is exceptionally difficult. Perhaps the LSB could explore whether there is any AI that could be deployed to deal with queries about what research/information there is on a particular topic.

Q4 – What are your views on our plans to move away from a strategy for the LSB towards a strategy for legal services and their regulation, highlighting gaps and opportunities across the market?

We do not consider that there should be a difference between these two issues. The LSB should only be focused on legal services and their regulation within the framework of the Legal Services Act 2007.

In terms of the LSB's strategy going forward, it is not clear how the LSB's proposal to highlight "gaps and opportunities across the market" fits with the recently published Mayson review and care will need to be taken not to duplicate the work that has already been done by that review.

Q5 – Do you have any comments on our proposed business plan and work for 2020/21? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

## *General*

We suggest that it would be useful if the LSB focused some of its work on identifying opportunities for greater consistency between the regulatory arrangements of the different regulatory bodies. This could help to reduce the complex regulatory maze that exists across the sector and could lower the cost of switching between regulators. In addition, the review could identify opportunities for reducing/removing regulation. A recent example of greater consistency is the change to the civil standard of proof, albeit that this took a significant amount of time to implement. An example of an issue that could be examined in future is to try to introduce more consistency in the process by which regulators consider complaints and perhaps the establishment of a single pool of lawyers and lay people from which regulators could draw their disciplinary panels.

## *Review of rule change applications*

We welcome the LSB's recognition that it needs to undertake a "wholesale review" of that way it considers rule change applications. However, we are concerned that a review that is conducted wholly by the LSB runs the risk of introducing more bureaucracy (and therefore cost) than the current system. We would prefer that the review is conducted independently of the LSB but, at the very least, a panel that includes a majority of non-LSB members should be established to oversee the review. We suggest that any review should start with a blank piece of paper rather than taking the current arrangements as the starting point. A useful starting point for any review would be to understand the views of the regulators about what an ideal process would look like and to understand fully their concerns about the current application process.

## *Regulatory performance*

In terms of regulatory performance, while it is appropriate for the LSB to focus on areas where it considers that improved performance is needed, it must accept that "OK is OK" and avoid any tendency to push for gold-plated performance. In addition, it is not clear what the LSB envisages by looking at the "visibility of how the Board is holding the executive to account" – the LSB must take care to ensure that it does not encroach on regulatory Boards' judgements about how best to hold their Executives to account.

## *IGRs*

On IGR implementation, we are extremely concerned that the LSB intends to consult in February/March 2020 about how it will monitor compliance with the IGRs. This date cuts right across the deadline for submission of all the changes to regulatory arrangements that are required to comply with the IGRs. Even if the LSB has the capacity to consider these requests and consult on proposals for monitoring compliance, it seems unlikely that all regulatory bodies and ARs will also be able to do so. We therefore suggest that the LSB postpones this area of work until it has completed consideration of all the proposed rule changes. By doing so, proposals for monitoring IGR compliance can be informed by the rule changes that have been required to implement them.

Notwithstanding that, it would be helpful if the LSB provided a standard template for what it expects to receive from regulatory bodies and ARs in terms of certification of compliance with the IGRs in the same

way that it has done for PCF applications. This would help to streamline the process and may prevent the type of issues that arise with the rule change process where it is not always clear what the LSB requires initially and follow-up requests increase costs for regulatory bodies.

## *Public Legal Education*

In terms of the LSB's proposed work on PLE, we suggest that the final Business Plan should make clear how this work sits with the work that the regulatory bodies are doing on Legal Choices. The CMA recommended that the Legal Choices should be developed to:

- *present a comprehensive whole of market overview of different types of provider including those not regulated by frontline regulators;*
- *provide information and practical guides on comparing and choosing a legal services provider; and*
- *provide guidance on what information consumers and small businesses should reasonably expect from legal services providers on engagement and during the course of ongoing cases.*<sup>1</sup>

Our view is that this area of work should be the priority for the legal regulators in terms of PLE and that any expectations from the LSB of regulatory bodies being able to expand the work they do on PLE risks diverting resources from the work being carried out on Legal Choices. In any event, the LSB should take care to recognise that a "one size fits all" approach is not appropriate to its review of PLE or any recommendations that come out of it.

## Q6 – Do you have any comments on our proposed budget for 2020/21?

The LSB states that:

- *Since the budget is set at a level required to deliver the business plan, persistent budget underspends risk adversely impacting achievement of our objectives*
- *This year, increased transparency on how resources are deployed and a more robust approach to budgeting overall should enable us to maximise the effective use of resources.*<sup>2</sup>

However, the draft Business Plan and accompanying consultation document do not provide any detail as to what is meant by this. Nor is there any information about the sort of "short term or longer-term savings" or the "efficiencies identified in other parts of the organisation" that the LSB anticipates the "major IT transformation" and office move will deliver.<sup>3</sup> These should be set out transparently in the final Business Plan.

As a result of the way that the LSB manages its budget and in particular any over/under-spend, IPReg's share of the levy increased unexpectedly by 9.1% in 2018/19 and 10.7% in 2019/20. The LSB is proposing what it considers to be a "modest" increase of 3.3% in its budget. However, this is not the whole picture. The LSB has not provided any analysis of its budget over/under-spend and how this will impact on the

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<sup>1</sup> See paragraph 126 of the market study

<sup>2</sup> LSB slide pack final page

<sup>3</sup> See paragraph 46 of the draft Business Plan

levy. Without this analysis, there is insufficient transparency as to the impact on practising fees of the LSB (and OLC) in the coming year.<sup>4</sup> We also suggest that the LSB should publish a projected 3-year budget which includes an estimate of the levy for each regulator. This would provide more transparency for regulatory bodies (whose registrants' fees pay for the LSB) which have to provide estimated 3-year budgets to the LSB as part of their PCF applications. Going forward, it is imperative that in future the LSB manages its budget in a way that removes these enormous and unpredictable changes in IPReg's levy.

Q7 – 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 happy to work with the LSB on any aspect of its Business Plan.

Q8 – Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2020/21.

We have not identified any such issues.

Yours sincerely



Fran Gillon

**Chief Executive**

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<sup>4</sup> Although the LSB bases its levy estimate on registrant figures on 1 April each year and we receive the estimate in May, it could give an indicative amount each year when it consults on the Business Plan. This would be a significant increase in transparency over the current approach.