

## Nottingham Law School

### Response to Legal Services Board's proposed business plan for 2020/21 by the NLS Centre for Legal Education

#### Questions

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

It seems likely that the litigants in person/Mckenzie friends issue will become increasingly relevant, at least in the short to medium term. This has an impact for the regulated sector where they are in competition with a) litigants in person and b) unregulated advisors/advocates, their competence and ability to deal sensitively with unrepresented litigants.

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

See answer to question 1. In addition, the apparently increasing and troubling accounts of young lawyers penalised or struck off/disbarred/equivalent when working under extraordinary pressure and in highly toxic working environments, and even when they have come forward as whistleblowers, suggests that some investigation into how the regulators address:

- people management in the senior members of their regulated community (a matter perhaps for the assuring continuing competence investigation to the extent that it considers how the scope and quality of appropriate competence might change during the career); and
- whistleblowing (noting that the Public Interest Disclosure Act 1998 only protects whistleblowers from detriment and retaliation from the direct *employer* and not from their regulator).

As the LSB has recognised, “the time has come to start to focus on education and training across legal services more widely”. Our experience of investigating professional legal education in upwards of twenty jurisdictions suggests that there are common global concerns about matters such as cost, access to the professions, ethics, business and person management. It seems likely that those are mirrored in England and Wales on an intra-jurisdictional basis between the different professions but the competitive environment endorsed by the Legal Services Act occludes the extent to which professions can identify and reinforce commonalities that, for example, differentiate them from the unregulated sector.

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

The proposed public panel is a useful development. The LSB could consider extending this to, or convening separately, an expert panel of those with expertise in legal practice, legal professional education, regulation etc. who are not formally attached to the regulators or professional bodies, to act as a sounding board and means of triangulation.

#### ***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?***

A challenge in this respect is the vast array of legal services currently delivered outside the regulatory ambit of the Legal Service Act 2007 (s 24 of which allows for the list to be extended, but not for it to be reduced) by which the LSB is, on the face of it, constrained. The saga relating to will-writing is instructive, but the case for determining which activities, carried out by which people, should appropriately be regulated and if so by whom and in what way, seems critical for the future.

***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?***

None.

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

None.

***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 would be happy to work with you on issues relating to continuing competence/revalidation/re-accreditation in particular and on public legal education (we would be in a position to bid for the proposed literature review of research on public legal education mentioned in the business plan).

Members with specific experience, research and other experience in competence and CPD will be responding to the separate LSB call for evidence as we have a critical mass of national and international expertise in the topic.

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

None.

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