

Draft Business Plan 2013/14

**Summary of consultation responses received and the
LSB's response to them**

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Acronyms used

BC - Bar Council

BSB - Bar Standards Board

BSI - British Standards Institute

CILEx - Chartered Institute of Legal Executives

IPS - ILEX Professional Standards Ltd

CLLS - City of London Law Society

CWHLS - City of Westminster and Holborn Law Society

CLSB - Cost Lawyers Standards Board

ICAEW - Institute of Chartered Accountants in England and Wales

LSB – Legal Services Board

LSC - Legal Services Commission

OISC - Office of the Immigration Services Commissioner

OLC – Office for Legal Complaints

SDT – Solicitors Disciplinary Tribunal

SRA - Solicitors Regulation Authority

TLS – The Law Society

Introduction

1. On 12 December 2012, the Board published its draft Business Plan for 2013/14. The document was news released and sent by email to regulators and representative bodies, consumer and citizen groups, professional groups, other regulators, the judiciary and a variety of other interested parties. Two consultation workshops were held during the course of the consultation. The consultation closed on 4 March 2013.
2. This paper summarises the responses received and the Board's response.

The responses

3. We asked for views on all aspects of the draft Plan and we received 17 responses to our consultation, some after the deadline for responses had passed. The consultation workshops were attended by 44 individuals from 38 organisations. The responses primarily included comments on the way in which the Board performs its statutory function, alongside commentary on specific aspects of the Plan.
4. Where respondents have consented, we have published their response on our [website](#), alongside this consultation response document. **Annex A** lists the 17 respondents and 44 individuals from 38 organisations represented at the workshops.
5. We are grateful for each organisation that took time to attend our workshops, consider our proposals and/or to respond. The Board considered all of the responses carefully and they provided an important contribution to the decision-making process on the final Business Plan for 2013/14.
6. In considering the responses, we have taken into account that the number we received is small and that they are primarily from bodies who either have an interest in representing professional interests or who are subject to the Board's oversight. We were again disappointed not to have received responses from consumer or citizen groups. As we have to date, however, we will continue to meet regularly with such groups outside of formal consultation exercises to ensure we understand their views and concerns so that we can weigh them in the balance. Our informal discussions with a number of consumer groups indicate that one reason for their lack of formal comment is broad contentment with the Board's plans and performance.

Summary of responses

7. Alongside some commentary on specific aspects of the LSB's proposed work programme, and some references to omissions, the broad thrust of the majority of responses related to concerns about the LSB's general approach to its remit and the scope of its research agenda. The following pages address both the general and specific points raised by respondents.

General themes

The role of the Legal Services Board

8. As in previous years, the substantive theme of a number of responses was concern about the way in which the Board interprets and proposes to exercise its statutory remit. The BC, BSB, CILEx/IPS, CWHLS, SRA and TLS all made comment on the way in which the Board exercises its statutory functions under the Legal Services Act 2007 (the Act). Specifically:

- **Micro-management** - BC and TLS challenged the LSB to avoid the micro-management it cautioned regulatory boards to guard against. It stated that the LSB should only become involved where there is a failure in regulation by an approved regulator, a risk of such failure or major barriers to be removed. CILEx/IPS and SRA echoed similar concerns. TLS noted that the LSB's role is to ensure that the regulators are doing an appropriate job of protecting consumers and monitoring the integrity of the profession. CILEx/IPS expressed concern that aspects of the Plan were more akin to a market regulator.
- **Duplication** - CWHLS expressed their view that the LSB has exceeded and wishes to further exceed its remit and proper role with a consequent danger of duplication of effort, cost and confusion. They questioned how the LSB justifies its stated goal.
- **Substitution of decision-making** - Regulators commented that they should be allowed to develop their own plans to address issues that they identify as requiring intervention. They reiterated that statute limits LSB intervention into areas where Parliament has entrusted regulators to decide. SRA characterised this as the LSB having a duty to assist but not to direct. BSB suggested that the LSB should adopt an outcomes-focused approach to any requirements it has of regulators.
- SRA expressed concern that the LSB's approach represented a risk to the SRA's ability to discharge its own functions as an independent public interest regulator. They suggested this risk arises because of:
 - a. An alleged approach by the LSB that focuses on a small subset of the regulatory objectives
 - b. Lack of capacity and capability in the LSB to make good frontline regulatory judgements
 - c. Risks of external pressures, particularly Governmental, being applied to the LSB that it then transmits to regulators.

- BSB suggested that the LSB conflates statutory and discretionary objectives and gives them equal weight.
- Inner Temple, BSB and others questioned the LSB's assertion that competition acts as the best guarantor of high standards, suggesting that if that were true, there would be no need for regulation, only a competition commission. They cautioned a view that competition and declining cost can come at the expense of high quality. CLLS picked up on the same phrase but wondered whether it would hold true for new ABS entrants, given that historically, standards have been contributed to/guaranteed, by the professionals who have managed law firms.

Response

9. We recognise that respondents feel strongly about these points – in many cases they are echoes of remarks we have heard in response to previous Business Plans and to the Triennial Review. For some respondents, the recent experience of regulatory self-assessment and other LSB activities designed to ensure the effective oversight that TLS succinctly described – “to ensure that the regulators are doing an appropriate job of protecting consumers and monitoring the integrity of the profession” – have no doubt informed the strength of feeling.
10. The Board has listened carefully to these concerns in the past and responded to them, for example, in its response to the Triennial Review. It now additionally notes the following:
 - Micro-management, duplication and substitution of decision-making – the Board rejects this allegation, as it has on previous occasions. We do not accept that oversight is a passive responsibility - although we continue to be clear that regulators have the primary responsibility for taking the decisions necessary to deliver appropriate regulation in their own sectors. It remains the case that we have issued only limited formal guidance (five occasions) and have not issued any formal directions or taken other action under our enforcement powers. We have not rejected a request for an alternation to regulatory arrangements. All of the outcomes we seek have been pursued primarily through robust challenge, agitation, influence and persuasion.
 - SRA concerns – The LSB does not accept that it should need the capacity and capability to make good frontline regulatory judgements when those judgements are rightly for the regulators to make. The LSB's remit is different in kind to that of the regulators and its Board and staff have been selected accordingly, with a range of regulatory experience from economic, professional and conduct of business regulators, as well as other backgrounds. It is also worth noting, that the Board itself contains members

with current professional disciplinary and regulatory experience within both legal and other professional sectors. As to the totally un-evidenced assertion that the LSB is at risk of influence prejudicial to its independence from external sources, and in particular, from Government, this is rejected utterly – as the Board’s recent evidence to the Justice Select Committee made clear.

- Conflation of objectives and regulatory philosophy – we do understand that some stakeholders believe our continuing emphasis on the importance of consumer interests and the potential benefits of competition means we are inappropriately creating a hierarchy where Parliament intended there to be none. As we acknowledged in our response to the Triennial Review, we know we still have work to do to convince stakeholders that that is not the case. We cannot emphasise enough that our strong focus on consumer interests does not mean that we omit consideration of the full suite of regulatory objectives. Indeed, as highlighted below, we remain unique in having explicitly defined our approach to the regulatory objectives, both individually and in their totality (as set out in our 2010 publication).
- As regards our regulatory philosophy, as we stated in our response to the 2012/13 Business Plan, we are quite clear that we are not an economic regulator: we have neither the remit nor the tools to perform that function in the way that utility regulators and competition authorities do. But the Legal Services Act does set regulators specific objectives regarding consumer interests and competition. This means they need to be regulators of professional conduct by both individuals and firms whilst also thinking about the market impact of those regulatory interventions. This appears to continue to be new territory - as both the lack of data and research to understand competition effects and the discomfort with the language of competition reveals. We do of course agree with commentators that unfettered competition is not a panacea for all ills in the legal services sector: that is precisely the reason why targeted regulation is required. But we will continue to talk about both competition and the interests of consumers because getting both of these right is essential to delivering access to justice.

Areas where the Board should seek Consumer Panel advice

11. In its draft Plan, the Board suggested that it did not propose to ask the Legal Services Consumer Panel for any specific advice at the outset of the year. No areas for Panel activity were suggested by respondents to the draft Plan. One workshop attendee suggested that the Panel might be able to assist regulators with ways to improve complaints handling at first-tier. We have discussed complaints handling recently with the Panel and know that it remains a key concern of theirs to which they will return as necessary in 2013/14. In the light of

responses, we do not propose to seek formal Panel advice on any issues at this point.

Observations on omissions from the draft Plan

12. The Lord Chief Justice, responding with the support of the Master of the Rolls and the President of the Queens's Bench Division, expressed regret and disappointment at the limited reference to the effective functioning of the Courts in the draft Plan. They noted that one of the primary reasons for legal professional regulation is to ensure that lawyers adhere to the highest standards, which in turn, are necessary to support the effective functioning of the courts and the work of the judiciary. They suggested that the lack of consideration given to how the Board's plans will affect the operation of the courts and the effective administration of justice raised concerns about the efficacy of the current regulatory structure.
13. CILEx/IPS, TLS, BC and BSB suggested that the LSB needed to show greater recognition of the impact of the current economic climate on access to justice and, in particular, the impact of legal aid funding decisions on publicly funded practitioners in its Plan.
14. CILEx/IPS expressed concern that the draft Plan contained no work to address the potential for consumer confusion that might arise from the emergence of ABS and different types of non-solicitor and barrister lawyers working together.
15. SRA expressed concern that the Plan contained no specific measures to address perceived professional regulation skills gaps within the LSB.
16. CLSB asked the LSB for assistance in dealing with a matter of concern to them, namely unregulated costs practitioners practising unregulated and in some cases apparently drafting Reserved Legal Instruments.

Response

17. The LSB seeks to reassure the judiciary that it does understand the critical importance of high standards of practice, in particular the conduct of litigation and advocacy, to the effective functioning of the courts. Such issues are core to the professional principles, the promotion and maintenance of which forms one of the eight regulatory objectives shared by the LSB, approved regulators and OLC. The Board notes that many aspects of its work, in particular reviewing specific requests for changes to regulatory arrangements and supporting the Joint Advocacy Group's work on the Quality Assurance Scheme for Advocates (QASA), are designed to maintain and improve standards of courtroom practice. We look forward to a continuing dialogue with the Judicial Office about areas of work where we can draw on the expertise and experience of the judiciary and where we can gain their views about emerging issues to inform future priorities.

18. The Board is also fully cognisant of the consequences of the global financial climate and Government spending decisions on both providers **and** consumers of legal services. A substantive reason for the emphasis the Board places on data collection and analysis is precisely to be able to evidence the changing conditions for providers and to help inform the decisions that they will have to make to adjust to the new environment in order to remain commercially viable. This is why we worked with the Law Society and the MoJ to co-fund and manage the largest ever survey of 'High Street' solicitors and why we want to understand the true cost regulation requires practitioners to bear. It is beyond question that consumers will still need legal services – indeed evidence shows there is already significant unmet demand even before funding changes – but providers have to be prepared to look radically at their business models. In tough economic conditions, it is even more important than normal for regulation to ensure strong consumer protection and open markets in order to encourage sustainable, ethical business models.
19. For the avoidance of doubt, however, the Board cannot take a stance on matters of broader Government policy beyond matters of regulation, as that is outside our statutory remit.
20. As regards the consequences for consumers of different types of lawyer working together and/or becoming more apparent to consumers, we note that this is not a new phenomenon. We would be happy to assist CILEx/IPS and others to develop the right regulatory response to the risks that they identify as arising to consumers as a consequence of changing practise.
21. As noted above, the skills that the LSB requires in its team are different to those of a regulator with responsibilities for directly regulating the profession. Indeed, there is an argument to suggest that were we to have a significant cadre of professional regulator staff, there might then be a real and genuine risk of the sort of behaviour of which we are often accused e.g. micromanagement and substitution of our decisions for the judgements of regulators.
22. In response to CLSB, our focus on general legal advice allows us to answer a range of questions about how non-reserved services are regulated. Some have called for an extension of regulation by title to cost lawyers, trade mark and patent attorneys and paralegals. We prefer to focus on the activities and risks consumers face: with sector specific regulation justified only where it meets the better regulation principles and cost benefit analysis.

Comments on the regulatory objectives

23. A small number of respondents made specific reference to the regulatory objectives.

24. CILEx/IPS stated that the draft Plan appeared to treat the interests of consumers as having a predominant position amongst the other objectives.

25. SRA expressed reservations about the LSB's assertion that all of the regulatory objectives underpin its approach. It stated that its experience was to the contrary and alleged that there is (by the LSB) a strong and often theoretical emphasis on economic liberalisation of the market at the expense of balanced consideration of all of the objectives. It went to say that it would resist being held to account against a set of objectives formulated by the LSB.

26. ICAEW welcomed the inclusion of the objectives and commended the LSB for the clear commitment throughout the Plan to ensuring regulators are delivering in accordance with better regulation principles.

Response

27. The LSB set out its views on the regulatory objectives and the way it would seek to apply them in a [paper](#) published in July 2010. We remain of the view that the Act obliges us not to apply any sort of hierarchy and so to do so would both be at odds with statute and might lead to an inflexible response to individual situations. Please also see above our responses at paragraphs 9 and 10 above.

Equality objectives

28. Lawyers with Disabilities wrote to note the Board's continuing commitment to diversity needs and issues, stressing in particular the challenges that people with disabilities are currently facing. It urged the LSB to remain vigilant. TLS similarly supported the Board's objectives although it expressed reservations on diversity data collection (see below)

29. Whilst supporting the three objectives, SRA expressed concerns about the LSB approach to implementation of objective one (see below).

30. BSI wrote to reiterate its view that British Standard 18477 on inclusive service provision should be part of the LSB's toolkit to identify and respond to consumer vulnerability.

31. CILEx/IPS strongly supported the continued emphasis on equality and diversity citing their own strong record in this area. They asked if the consumer toolkit could be made publicly available

Response

32. The LSB will continue to focus on its equality responsibilities and to pursue its three specific equality objectives.

33. The LSB is reviewing its consumer toolkit to ensure that relevant aspects of British Standard 18477:2010 are integrated into the LSB's analysis. Once that review is complete, we will happily share the toolkit with regulators.

Strategic priorities

34. Inner Temple welcomed the focus on helping consumers choose and use, noting that markets only function properly well when consumers are well versed in the types of products and services available to them. They also affirmed the importance of consumer protection, referencing the hard work done by the Inns to ensure ethics training is embedded into its educational programmes.

35. ICAEW cautioned that, as regards consumers, both the LSB and regulators need to be aware of the needs of businesses as consumers as well as individuals and to guard against regulation that focuses on the interests of individual consumers to the exclusion of businesses as consumers.

Other matters

36. The BC and CLSB expressed a wish to see and apply quantifiable performance indicators to the LSB so that they and the wider public can assess achievements.

37. CILEx/IPS suggested that the LSB should conduct an access to justice impact assessment, a cost benefit analysis and an equality assessment on any measure which proposes to increase regulation, views echoed by BC. SRA also suggested that the LSB should take greater account of the cumulative impact of its work on regulators. BSB suggested that the LSB should apply its own methods to itself, including undertaking a self-assessment against the regulatory standards framework.

38. Inner Temple and CWHLS warned the LSB not to underestimate the importance of professional titles with Inner Temple stating that they have long been a useful mechanism to shore up professional principles, responsibilities and ethics.

39. CWHLS expressed regret that the LSB gives the impression not to be interested in and is suspicious of the experience of legal practitioners. They suggested this was the reason the LSB has formed a very jaundiced and misleading view of the legal profession with the consequence that the LSB adopts a flawed and outdated view as to how to regulate the profession.

40. CILEx/IPS noted concerns over terminology used by the LSB in the draft Plan eg varying uses of regulator, approved regulator, frontline regulator. Both they, and ICAEW, reminded the LSB that the Act requires that the exercise of an approved regulator's regulatory functions is not **prejudiced** by representative functions: not that they are not influenced by them at all.

Response

41. The LSB has published its approach to evaluating the impact of its work in its Evaluation Framework. The next report will be prepared in 2014/15 and can be used by all parties to hold the LSB to account for its impact in ensuring the regulatory system as a whole works to deliver the regulatory objectives. The LSB also publishes KPIs for its work in approving requests for alternations to regulatory arrangements – a significant and core part of the LSB’s work – and operational indicators.
42. The LSB does prepare regulatory and equality impact assessments for its statutory recommendations and, where appropriate, for other issues. However, given that in many cases, our practice is to invite regulators to make what they see as a proportionate response to the issues we identify, to insist on detailed data to inform an impact assessment would both be a burden in itself and leave us open to the charge of imposing a single model of operation.
43. The LSB reassures both Inner Temple and CWHLS that it has always recognised the importance role professional titles play in the current regulatory framework; but we are equally mindful of the risks to access to justice if such titles have the effect, whether by design or accident, of excluding equally competent new entrants to the market or obstructing innovative and effective models of service delivery.
44. We would like to reassure CWHLS that we are in no way suspicious or dismissive of the experience of practitioners. As noted above, in 2012/13, we worked with TLS and MoJ to conduct the biggest ever survey of high street practitioners, precisely so we could understand the experience of practice in England Wales today and so that regulators would have greater information on which to base their interventions. We meet practitioners frequently, both individually and through their representative bodies, and have had a number of insightful presentations to our colleagues from practitioners through our ‘lunch and learn’ programme.
45. We agree with CILEx/IPS that we should review the use of terminology in the Business Plan and confirm that we are aware of the requirement of the Act as regards independence noted by both CILX/IPS and ICAEW.

A: Regulatory performance and oversight

Developing standards and performance

46. CILEx/IPS stated their belief that the work proposed in this section of the draft Plan is inappropriately intrusive for an oversight regulator. It said that the LSB should also embrace better regulation principles when carrying out its responsibilities instead of proposing an approach wholly inconsistent with oversight regulation. They urged the LSB to be consistent in its approach,

suggesting that greater leeway on timetables had been given to certain regulators. They also asked that the LSB take into consideration the length of time elapsed between regulatory self-assessments and progress made by the regulator since then when considering designation applications.

47. TLS said that it was pleased that no additional work beyond continuing to monitor approved regulators' progress against their action plans was proposed.
48. SRA rejected the term "action plan" and did not consider that it has agreed one with the LSB.
49. CLLS noted that they were encouraged by the LSB's recognition that regulation must get the right balance between empowering firms and individuals to make compliance decisions themselves and referring decisions to the regulator for approval. They felt that progress in this direction would enhance the competitiveness of City firms in the more demanding international marketplace.
50. ICAEW urged the LSB to be aware that bodies whose members primarily serve business clients are prone to different regulatory risks than those serving mainly individuals. Applying similar regulatory oversight to such bodies may result in misuse of regulatory resources: they suggested that where there is little or no evidence that individual consumers' interests have been prejudiced then it would be unlikely to be proportionate for regulators to be asked to amend their procedures.

Response

51. The LSB adopted a self-assessment approach to this area of work as opposed to a more onerous inspection methodology. The LSB has not inserted any defined actions into regulators' improvement plans, all of which included areas for development.
52. No regulator has responded to the regulatory standards self-assessment by giving itself a clean bill of health. In all cases so far assessed, the LSB's assessment has broadly concurred with that of the regulator. We therefore expect that the main drivers for action will come from regulatory boards keen to address the issues they have themselves identified for improvement.

Referral fees, referral arrangements and fee sharing and response

53. TLS expressed hope that the LSB's approach would be to ensure consistency between regulators in this area as they feared differences in approaches could lead to unfair competition. BSB also urged consistency suggesting that its current approach – to seek evidence to justify a ban- was leading to inconsistency. SRA expressed concern about the reporting burden.

54. We expect that regulators' delivery on the guidance issued by the LSB should be a step towards the consistency sought by TLS and BSB – although each regulator needs to respond to the particular needs of the sector it regulates appropriately. There should be no new reporting burden for this area of work beyond that already expected by regulatory boards as a consequence of holding their executive to account for compliance with statutory guidance.

Regulation of immigration advice by qualifying regulators and response

55. OISC expressed interest in the results of this work. SRA expressed concern about the reporting burden.

56. Our work in this area found some significant performance flaws by regulators within our remit operating in this sector. Given the vulnerability of many clients in this sector, the LSB would be remiss in its duty if its past recommendations were not followed up. There should be no new reporting burden for this area of work beyond that already expected by regulatory boards as a consequence of holding their executive to account for performance improvement delivery. To the extent that there is a new requirement, then regulatory boards will need to consider the adequacy and targeting of their own management information.

Complaints handling by legal services providers and response

57. CILEx/IPS stated that the LSB's approach in this area had not been proportionate to the needs of each regulator but did not expand. They also requested more detail on the process LSB uses to oversee OLC assurance of Legal Ombudsman performance. SRA expressed concern about the reporting burden.

58. We would welcome hearing directly from CILEx/IPS as to why they consider the LSB approach disproportionate. There should be no new reporting burden for this area of work beyond that already expected by regulatory boards as a consequence of holding their executive to account, both for compliance with statutory guidance and with progress in delivering the action plans agreed with the LSB in mid 2012, which reflected the need for continuing focus on an area which survey evidence, the Legal Ombudsman's comments on failings in first tier complaints handling and the advice of the Legal Services Consumer Panel continue to highlight as needing continuing regulatory grip.

Review of regulatory sanctions and appeals processes

59. BSB was concerned to see LSB referencing the meeting of the Administrative Justice and Tribunals Council (AJTC) criteria, which they said had not been consulted upon. They also noted current proposals to abolish the AJTC. They welcomed the LSB taking the lead in coordinating a single agreed approach to standard of proof.

60. CILEx/IPS took issue with the LSB's assertions around inconsistency, citing lack of detail and evidence to support it.

61. TLS re-stated their concerns about the differences in standards of proof and noted that the SDT must use the criminal standard as a matter of law. They rejected any suggestion that the SDT creates inefficiencies citing its wealth of experience in handling disciplinary cases.
62. CHWLS stated that the SDT has a good reputation and should be preserved and indeed be perhaps built upon by expanding its jurisdiction. They stated that the criminal standard of proof should always be required in the SDT.

Response

63. We will take these views into account as the work is developed over 2013/14.

Completing the regulatory framework and response

64. BSB questioned whether LSB has relevant staff to set up a licensing authority and whether such work was required, a view echoed by TLS.
65. CILEx/IPS agreed with the LSB's approach but sought more detail on how the LSB would propose to ensure appropriate separation between its core functions and any licensing authority functions.
66. For the avoidance of doubt, our intention is to do only the minimum work required by the Ministry of Justice (MoJ) to allow the relevant statutory provisions to be 'switched on'. No other work is intended.

Ending the transitional arrangements for licensable bodies and the regulation of special bodies and response

67. CILEx/IPS welcomed the decision to revise the timescale but were concerned to note that the LSB assumes that the SRA will be the only approved regulator able to regulate the sector appropriately as a licensing authority.
68. ICAEW expressed interest in this area of work, noting their many members working in this field. They stated that their overall assessment of this area was the danger of vulnerable consumers being denied the services they need (as a consequence of increased costs of regulation) is greater than the danger of those services being of poor quality.
69. We will take these views into account as the work is developed over 2013/14. For the avoidance of doubt, we do not assume that the SRA will be the only body able to regulate the sector: indeed, bearing in mind the variety of special bodies, we welcome the fact that a number of other bodies have expressed an interest. All applications will be considered in line with the statutory criteria in due course.

B: Strategy development and research

Reviewing the scope of regulation

70. CILEx/IPS expressed strong views that the decision to investigate general legal advice should not be taken in isolation from the ending of the transitional protections for special bodies and felt that the lack of reference to this was a major omission.
71. Whilst agreeing that there may be scope for reviewing the reserved areas more generally, TLS said that it was not clear that there is any major urgency for this work and strongly doubted whether it would be practical to regulate general legal advice.
72. CWHLS said that the draft Plan highlighted that the LSB has a flawed approach to regulation noting that the current approach of the SRA, to regulate all activities undertaken by a solicitor regardless of whether or not they are reserved, exposes no extra regulatory burden on low risk activities. To regulate solely by activity, as they believed the LSB proposes, carried, they suggested, the inevitable work that as lawyers' work changes, gaps emerge in consumer protection. They suggested that the LSB should work on the principle that all seeking authorisation to practice should be subject to the jurisdiction of an approved regulator in respect of all of their activities unless they can show good reason why they should not be. Adopting this approach would remove the need for much of the LSB's programme and research.

Response

73. In finalising the decision on the regulation of will-writing activities, we have taken the opportunity to narrow the approach to our investigation into general legal advice. The LSB's proposed work in this area is now to be closely linked to the cost and complexity of regulation in recognition of how the current list of reserved and unreserved activities has grown up over time. We will identify what should and should not be regulated given the importance of the better regulation duties set out in Section 3 of the Act. We know that aspects of regulation apply to unreserved activity and will consider the extent to which this constitutes necessary protection or an unnecessary and potentially market distorting burden.

Developing a changing workforce for a changing market

Education and training

74. CILEx/IPS, TLS, Inner Temple all expressed a view along the lines of it being for the approved regulators to take forward any LETR recommendations.

Response

75. The LSB agrees and looks forward to learning of the regulators' plans for implementation. We also encourage those regulators not within the scope of the LETR to consider whether their own training and education arrangements require any adjustment to ensure they remain fit for purpose.

Diversity

76. CILEx/IPS stressed that it was essential that any new initiatives be coordinated with existing groups and bodies, a view echoed by BC. Inner Temple welcomed proposals to carry our research into best practice by legal entities to promote a positive approach to diversity. They referenced a PhD currently being co-funded on professional intervention in social mobility and expressed enthusiasm for working with the LSB on research of this nature going forward.

77. SRA suggested that the LSB needs to step back from defining in detail the approach that approved regulators should take in this area and expressed concern at any suggestion that the information requirements might be changed in future years.

78. TLS stated that, while they have supported the LSB's call for data on diversity to be collected, they remained opposed to publishing diversity data at firm level. They suggested that no further work, including research, was required by the LSB at this point.

79. BC expressed surprise that the LSB continues to make no reference to legal aid funding impacts on diversity.

80. CWHLS suggested that the LSB interprets its regulatory objective on diversity as meaning that it has to micro-manage the diversity of the profession. It interpreted the draft Plan as meaning the LSB intended to 'virtually impose quotas'.

Response

81. We welcome notice of all of the initiatives already underway in this important area but continue to urge regulators to set clear success criteria, conduct rigorous evaluation and share both successes and failures transparently. No work beyond that already proposed within the Plan is planned. For the avoidance of doubt, the LSB has neither plans nor the remit to identify or propose any form of quota.

Quality

82. The Lord Chief Justice, responding with the support of the Master of the Rolls and the President of the Queens's Bench Division, expressed appreciation of all of the work the LSB has done in connection with QASA and noted the contribution that will make to the administration of justice in the courts. The LSC remarked that it believed the introduction of QASA will play a vital role in supporting the market and professions and enabling consumers and procurers to have confidence.

83. BSI advised the LSB that it is currently exploring the potential need and feasibility for developing standards for online price comparison sites. OISC also expressed interest in the outcome of this work.

Cost and complexity of regulation

84. BSB agreed that this project should, in principle, be valuable work but requested some clarification of scope and methodology before it commences.

85. TLS and CLSB were pleased to see the LSB acknowledge concerns that the current regulatory framework is unnecessarily complex and costly. CLSB looked forward to sight of a detailed plan on how the LSB will address this.

86. BC were pleased to see the LSB respond to concerns about cost and complexity of regulation, particularly in the context of declining remuneration of publicly funded practitioners. They looked forward to hearing more about the LSB's plans and cautioned the LSB to bear in mind the total burden of compliance.

87. TLS expressed scepticism at LSB's plans to commission "costly" research in this area, doubting it would provide information that could usefully be taken forward. They expressed a view that it was for individual regulators to consider the impact of their own regulation. They queried why the LSB needs to do this work now. CILEx/IPS also considered that there was a real risk of duplication of effort which will add to regulatory costs. BC shared these concerns, querying what value research would bring to what approved regulators could contribute, before the LSB decides to undertake the work.

88. TLS and CILEx/IPS expressed concern about the basis on which the LSB proposed to investigate 'permitted purposes' expenditure. BC looked forward to being given a full opportunity to participate in any LSB inquiry.

Response

89. Our intention is to explore how regulation affects individuals and firms across the legal services sector. We make a firm commitment to collaborative working so that we can ensure there is a collective and informed understanding of how primary legislation, LSB impacts, regulators' requirements and, possibly, the over-engineering of regulatees' response to regulation adds costs to the practitioner and thus consumers. Costs for permitted purposes are just one component of that comprehensive approach.

Research plan

90. TLS suggested that the research proposed exceeds the LSB's role as an oversight regulator.

91. BC warned that it was essential that any research commissioned by LSB is relevant, not duplicative and delivers value for money.

92. BC and TLS questioned why specific projects had been chosen and what the LSB planned to do with the results. CILEx/IPS suggested that the absence of any prioritisation, together with the lack of any real evidence showing the need for such an ambitious programme, brought into question why the research was needed at all. They stressed that there must be a clear regulatory need cited for any research and suggested that previous LSB research had been duplicative. SRA also noted the lack of prioritisation. BC noted the existence of the LSB's Research Strategy Group and looked forward to being involved in its work.
93. BSB suggested that there might be more enthusiasm from the regulators if research were uniformly high quality and independent. They also expressed concern about being expected to use findings when research was predominantly geared towards understanding the solicitor's profession, when findings might not be directly transferable. Bearing in mind the BSB's proposed work on public access, they suggested that LSB work on public access would be premature. Work on "Do It Yourself" law could however be a useful joint initiative.
94. ICAEW cautioned that the LSB needed to guard against inadvertently introducing any biases into research such as through an over-emphasis on individual versus business consumers or to legal services provided by lawyers as opposed to unreserved legal services providers. ICAEW also highlighted that LSB could ask for research projects related to legal services provided by members of the accountancy profession to be recommended to the ICAEW research fund trustees.
95. OISC explained that they were unable to assist with funding but expressed interest in proposed projects on public access to the Bar and client communications. SRA reported that they chosen to reduce significantly its research budget in 2013 and was therefore not in a position to fund anything other than that to which it was already committed.
96. Inner Temple expressed enthusiasm for working with LSB on diversity research.
97. CLLS, whilst noting that the research plan seemed hugely ambitious, suggested that there were a combination of issues in the programme that would support and could perhaps contribute to and noted the linkages between a number of the topics. They also cautioned that there was a real risk that the LSB's performance might be characterised by the number and breadth of programmes that we can start, rather than by pointing to the successful conclusion and implementation of just a very few.

Response

98. The final research plan for 2013/14 is considerably slimmed down as a consequence of resource availability and the discussions held with stakeholders

in consultation workshops. However, noting the SRA's similar reduction, the LSB does not believe that further cuts can be justified if regulation is to remain informed by best evidence. The final research plan can be found in the Business Plan for 2013/14.

C: Statutory decision making

99. SRA queried whether a discussion document on the LSB's approach to independence was something to which the LSB should be committing resources in 2013/14.

Response

100. We agree and have removed this work from our Business Plan for 2013/14. We will, however, keep the need for further work under review in the light of this year's round of dual self-certification and whether we see evidence of regulators' behaviour giving disproportionate weight to professional interests to the detriment of the consumer and wider public interest.

Reviewing the levy

101. CILEx/IPS welcomed the intention to review the levy.

Corporate governance and response

102. CILEx/IPS queried the remit of the LSB's Remuneration and Nomination Committee (RNC) and requested further clarification on costs of the Committee. The LSB can confirm that the RNC comprises three members of the current Board and meets no more than three times a year. It incurs no direct costs as the associated duties forms part of a Board members' role description.

Budget

103. The LSB has proposed a reduction of 1% in its budget for 2013/14.

104. CLSB referred to MoJ cost reductions of 5.2% and asked why the LSB was not making similar levels of reduction in such times of austerity. The Law Society also asked the LSB to consider whether it could cut its costs, as did CILEx/IPS. CILEx/IPS also expressed concern at a lack of external scrutiny and feared that the LSB saw its budget as a target rather than a maxima.

105. CWHLs stated its belief that the LSB had ambitions beyond its budget and that to offer budget reductions based on possible contributions by the approved regulators to research projects simply caused the same cost burden to fall differently.

106. SRA and BSB requested sight of where the LSB intends to focus its resources.

Response

107. The table below shows our proposed budget for 2013/14 and shows where the reductions from 2012/13 are delivered. We are proposing a budget of £4,458k to deliver our Business Plan for the year ahead. This is a reduction of 1% from the 2012/13 budget.

	2013/14	2012/13	(Reduction) / Increase
Staff	2,585	2,650	(65)
Accommodation	610	565	45
Research and Professional Services	250	300	(50)
IT/Facilities/Finance	245	251	(6)
LSB Board	194	194	-
Consumer Panel	41	44	(3)
Office Costs	101	122	(21)
Depreciation	90	16	74
Governance and Support Services	72	96	(24)
Legal Reference/Support	84	84	-
TOTAL excl OLC Board	4,272	4,322	50
OLC Board	176	176	-
Total inc OLC Board	4,448	4,498	50

Next steps

108. The Business Plan for 2013/14 has now been updated to reflect the comments and decisions above and has been published on the LSB's website.

Annex A

List of respondents

(in alphabetical order)

Bar Council

Bar Standards Board

BDRC-continental (research company)

British Standards Institute

Chartered Institute of Legal Executives and ILEX Professional Standards Ltd (joint response)

City of London Law Society

City of Westminster and Holborn Law Society

Cost Lawyers Standards Board

Honourable Society of the Inner Temple

Institute of Chartered Accountants in England and Wales

Judiciary of England and Wales (the Lord Chief Justice, the Master of the Rolls and the President of the Queen's Bench Division)

Lawyers with Disabilities

Law Society

Legal Services Commission

Office of the Immigration Services Commissioner

Solicitors Regulation Authority

List of workshop attendees

Citizens Advice

Office of the Immigration Services Commissioner

Legal Ombudsman

Solicitors Disciplinary Tribunal

Society of Scrivener Notaries

Advice Services Alliance

Bar Council
Law Society
Chartered Institute of Patent Attorneys
Bar Standards Board
Association of Chartered Certified Accountants
Costs Lawyers Standards Board
Oxera
Professor A Sherr, School of Advanced Legal Studies
Archer Associates Limited
Law Society Gazette
Solicitors Regulation Authority
Office of Fair Trading
IFF Research
Free Representation Unit
Louise Ashley, University of Kent
Michael Blackwell, London School of Economics
Professor Richard Moorhead, University College London
Ministry of Justice
Forum of Insurance Lawyers
City of London Law Society
Institute of Chartered Accountants of Scotland
Honourable Society of the Inner Temple
Chartered Institute of Legal Executives
Institute of Chartered Accountants in England and Wales
Professor John Flood, University...
Professor Hilary Sommerland, University of Leicester
Professor Stephen Mayson, Legal Services Institute

BDRC-continental

Economic Insight

Access to Justice Analytical Services

Vanilla Research

Legal Services Consumer Panel