

Consultation on the Draft Business Plan 2011/2012

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

Contents

Introduction	3
The responses	3
Summary of responses	3
Next steps	16
Annex A	17

Introduction

1. On 8 December 2010, the Board published its draft Business Plan for 2011/12 for consultation. The document was news released and sent by email to all approved regulators (**ARs**), consumer and citizen groups, professional groups, other regulators, the judiciary, Ministers, Government departments and a variety of other interested parties (circa 900). As always, we wanted to hear the views of any and everyone with an interest in the work of the LSB and the effective functioning of the legal services market.

The responses

2. The consultation closed on 8 March 2011 by which time seven responses had been received. In addition to the written responses, we held three workshops with stakeholders, in which we discussed the draft Plan, the proposed evaluation framework and the proposed research plan. Attendees at the workshops represented 22 organisations – many more had been invited. **Annex A** lists the respondents and workshop attendees.
3. All of the responses and summaries of the workshops have been published on our website, alongside this consultation response document.
4. The Board considered all of the responses when finalising its Business Plan for 2011/12 and is grateful for all who took time to respond.
5. The consultation document sought views and comments on all aspects of the draft Plan. As in previous years, respondents tended to focus on areas of most relevance to their own organisation. The responses varied from remarks on specific aspects of the draft Plan and the LSB's approach to a detailed paragraph-by-paragraph critique. Given the limited spread of respondents, and the selective nature of the responses, a generalised "respondents were broadly supportive/against" assessment cannot reasonably be drawn.

Summary of responses

6. Two general themes emerged from the responses and the workshops:
 - The extent to which the LSB is acting within its statutory remit as an oversight regulator
 - Whether the LSB is delivering on its commitments to be proportionate, work in partnership and not duplicate work of approved regulators
7. In addition, other aspects of the business plan also elicited comment and are addressed below

The extent to which LSB is acting within its statutory remit as an oversight regulator

8. This theme also emerged in 2010/11.
9. The Law Society, Bar Council, BSB and an individual solicitor all raised points around the nature of the LSB's role as a regulator with oversight responsibilities. An individual solicitor noted that the Act requires the LSB to 'assist' not 'drive' and questioned whether the draft Plan suggested that the LSB was 'casting around

for what to do next'. The Law Society prefaced its detailed comments by stating that the LSB 'is intended to have a supervisory, rather than a front-line role'. It questioned whether the LSB, in emphasising the need to consider 'the skills, distribution and make-up of the legal sector' was incorrectly assuming the remit of an economic regulator rather than the more limited role of an oversight regulator.

10. The Law Society, Bar Council and BSB all, to varying degrees, argued that the decision on how best to regulate individual professions should be left in the hands of frontline regulators to do as they believe is appropriate, rather than in a single way prescribed by the LSB. The BSB went further in laying out their analysis of the LSB's duty in S.4 of the Act in which they stated their view that S.4 obligates the LSB to assist ARs if they ask for help or if a need is identified by the LSB and the ARs agree that assistance or action is necessary. As such, the BSB argued, the LSB should be acting only where ARs identify and agree that they require assistance and/or where the LSB identifies that unreasonable acts or omissions by ARs are adversely affecting the regulatory objectives. They therefore suggested that the draft Plan was not consistent with a limited oversight role and risked taking the initiative away from ARs. The Bar Council similarly suggested that the LSB was taking a 'rather broad' interpretation of S.4 of the Act.

Response

11. We do not agree with the suggestion that Parliament envisaged a model of passive regulatory oversight passing the Legal Services Act 2007, not least because of the range of intervention powers given to the Board. Section 4 of the Act also places a positive (not passive or purely responsive) responsibility on the LSB stating "The LSB **must** [emphasis added] assist in the maintenance and development of standards in relation to (a) the regulation by approved regulators of persons authorised..."
12. The regulatory objectives to further consumer interest and promote competition, shared with many competition and economic regulators, inevitably mean that we have to give weight to market dynamics in decision-making. But this does not remotely imply that our interventions should follow an economic regulator's toolkit in relation, for example, to price controls.

Whether the LSB is delivering on its commitments to be proportionate, work in partnership and not duplicate work of approved regulators

13. This theme also emerged in 2010/11.
14. The Law Society, Bar Council and BSB all cautioned that the LSB's work programme places an additional indirect cost on ARs ie to cope with LSB information requests, respond to consultations etc. The Law Society argued that, on research, the LSB should not be duplicating or usurping the role of frontline regulators: the LSB should be pooling and collating research rather than commissioning primary research itself. Specifically it argued that proposing £900,000 research spend over the coming three years was an indicator that the LSB was in danger of duplicating the work of others and / or expanding its remit. The Legal Services Commission (LSC) did however support the LSB's aim of improving the evidence base across the legal services sector and recommended that the LSB urge ARs to undertake research.

15. Both the Bar Council and BSB, to varying degrees, criticised the LSB for what they saw as either a lack of willingness to listen or lack of understanding of the operation of the Bar. Specifically, the Bar Council cited instances around quality assurance for advocates (QAA), referral fees, chambers complaints handling and equality and diversity issues – some of which were also raised by the BSB – where the LSB’s alleged lack of understanding ‘resulted in time-consuming remedial work’ from the ARs.

Response

16. The LSB has set out clearly its approach to regulation in the draft Plan – and indeed in all previous plans. It remains committed to better regulation principles, partnership working and avoiding duplication.

17. With regard to research in particular, the need to avoid duplication is the reason we established our Research Strategy Group and started to develop the Knowledge Bank through the Regulatory Information Review. This latter initiative seeks to identify the sources of data and information held by all of the ARs and others. So far, it has identified circa 500 studies. It is also why we have undertaken a variety of literature reviews, so that we understand the extent of available evidence before commissioning.

18. Throughout this, we have been surprised and somewhat disappointed by: a) the inability of some ARs to tell us of their forward research programme (in the majority of cases because there is no research programme to speak of); b) the lack of research evidence held across ARs about either their regulated communities or the consumers who use them; and c) the seeming willingness of some ARs to undertake regulation without substantive data or evidence on which to base decisions. We have also seen little or no evidence of any systematic programmes of engagement with the academic communities, within law, business and social sciences schools nationally and internationally, who focus on researching the legal services market, legal regulation and the sociology of legal professions.

19. We reiterate our commitment to partnership working and avoidance of duplication but this does not mean that we will be willing to abdicate responsibility to urgently filling important evidence gaps in the face of inertia.

Comments on resources and future planning

20. Three respondents referred to the LSB’s proposed resource levels and two respondents made reference to the LSB’s plans.

21. On proposed resource levels The Law Society noted that, whilst the LSB proposes to maintain its budget at 2010/11 levels, it should be looking to reduce its costs now that the Internal Governance Rules (IGRs) have been made. It made specific reference to the LSB’s plans for the next three years that show that £900,000 in total is due to be committed to research. This was felt to imply duplication and/or expansion of remit. An individual solicitor also suggested that the LSB should be considering its role over the medium to long term during the latter part of this Plan year.

22. The Law Society also commented on funding of legal actions to which the LSB is party. It recommended that Government should fund any legal action where the LSB was found to have misused its powers noting that it would not be fair for any AR to do so.
23. The BSB sought more information on how the LSB demonstrates 'value for money' and queried how transparency on where funds were spent was communicated to levy-payers.
24. The Bar Council stated that, whilst the proposed budget appeared on the face of it not to be unreasonable, in the current public sector climate they would expect to see some evidence of the how the LSB was considering how to restructure its activities to reduce costs. In addition, they highlighted three areas of concern: LSB becoming a Licensing Authority (LA); the hidden costs of LSB's functions on the regulated community; and LSB staff costs.
25. Regarding LSB LA costs, the Bar Council suggested that it would expect the LSB to refer to the potential costs of becoming an LA as part of an effective risk management strategy for ABS. The BSB also shared concerns raised over the impact of direct LA costs. Regarding the hidden costs of regulation, the Bar Council noted that every LSB initiative places a degree of cost on ARs over and above their own planned activity. They suggested that ARs should have some input into the development of the LSB's Business Plan at a much earlier stage to ensure that the costs of planned activities are reasonable and proportionate. On staff costs, they expressed surprise that costs were expected to rise over the next three years. It suggested a review that might look at undertaking fewer activities, re-prioritising planned activities or by looking to the regulated community to carry out functions in a 'Big Society' model.

Response

26. 2011/12 will only be the LSB's second year of full operation. We only attained near to our full staffing complement in May 2010 (we have not recruited to one post) and we only acquired statutory powers in January 2010. We will certainly be looking to review our model of operation but at present, we only have one full year of experience to reflect upon. As much as our own mode of operating we need to see more clearly how the ARs will respond to the new regulatory environment and the extent to which greater or lesser degrees of active oversight are required. In the meantime, we have stripped our support functions costs to a minimum, using competitively priced outsourcing arrangements wherever possible to minimum operating costs. This will be the second year of a self-imposed pay freeze on all LSB colleagues.
27. With regard to the indirect costs of LSB activity, we recognize that there will always be a trade-off between imposing direct costs on ARs by undertaking work directly ourselves – and thus recouping costs through the levy – or by generating indirect costs by having work done directly by ARs themselves. It seems to us that the latter is more preferable for a number of reasons. Firstly, it fits more appropriately with the role of an oversight regulator to see the bulk of regulatory activity undertaken by the frontline regulators and secondly, frontline regulators should be able to complete work in more cost-efficient ways because of their familiarity with the subject matter.

28. That said, we agree that we must be cognisant of the impact of our work on all who need to play a part and are always willing to discuss ways of minimising costs.
29. With regards to the costs of direct licensing, we believe that due to the progress made in recent months with the LA applications from two AR's it is less likely that we will have to use this power. However if this does become necessary then we will consult on our approach. As regards value for money, the Ministry of Justice (MoJ) will be undertaking its first review of the LSB in 2012, which will include value for money considerations. Participating in benchmarking surveys by HM Treasury (HMT) and MoJ the LSB compares very favourably with other organisations. We were challenged on some of our costs initially as these seemed 'too low' but were actually correct. However, as with other small organisations, our results have been excluded from publication in summary report "OEP (Operational Efficiency) Back Office Benchmarking 2009/10" issued by the Cabinet Office's Efficiency Reform Group. We also publish our finance report to the Board with other board papers on our website and we are subject to detailed audit scrutiny from both the National Audit Office (NAO) and KPMG, our internal auditors.
30. On the funding of legal costs, whilst we can understand the comments from the Law Society, this approach is necessitated by the provisions of the Act, which requires all costs of the LSB's operations to be recovered through the levy. It is also worth noting that this model is also applied by other regulators funded by a levy. It would be up to Government to determine whether they would fund these costs out of public monies.

Comments on LSB's stance on wider public policy issues

31. As in 2010/11, the Bar Council again expressed surprise that the LSB did not take a public stance on the Government's proposals in relation to legal aid funding. It also felt that the LSB should have had more public engagement in the reform of civil litigation costs and funding debates. It suggested that if LSB were serious about 'demonstrating its fidelity to the regulatory objectives' we would demonstrate our independence by entering the debate. They 'look forward' to our final Business Plan containing our response to the proposed legal aid reforms bearing in mind their impact on the environment in which the regulated community will be operating.

Response

32. Our position on this matter remains as in 2010/11. It is clearly right for the LSB to comment on wider public policy where it has an impact on the practice of legal regulation, but we do not think it right to comment as a matter of course on all aspects of Government policy which may or may not have an impact on the nature of the legal services market through, for example, the setting of legal aid rates. We continue to believe that the increasingly competitive market which our reforms is introducing may help to drive innovation and better value for money amongst suppliers of legal aid services, as it should in other segments of the market.

Comments on specific aspects of the draft Business Plan

33. A number of comments related to specific aspects of the draft Plan and these are summarised below.

Plan title – “Putting consumers and the public at the heart of regulation”

34. The LSC agreed with the LSB’s approach of embedding consumer and public interests across the full draft Plan rather than a stand-alone work-stream. They suggested that in future years, the Plan could be improved if each work-stream made explicit how the activity would contribute to that objective.

35. The BSB expressed concern about this approach and argued that by seemingly equating the public and consumer interest objectives and then ‘prioritising’ them by having them underpin the full Plan, the LSB risked producing results at odds with the Act. That is, by a seeming focus on the ‘consumer’ and ‘public interest’ objectives, the LSB risked making decision that inadequately weighed in the balance all of the other regulatory objectives eg rule of law.

Response

36. The introduction to the draft Plan explained that, whilst the majority of the workstreams remained consistent with previous years, an exception was the deletion of a specific work-stream on consumer and public interests. We explained that this did not diminish its importance but recognised that, to some degree, all of our work contained this dimension. To reinforce this, and to reflect the aspirations of the legal services reform programme, we signalled our continuing commitment to re-balancing regulation by entitling our Plan “*Putting consumer and public interests at the heart of legal services regulation*”.

37. This does not equate to our ‘prioritising’ any particular regulatory objectives or creating some kind of ‘hybrid’ out of two objectives. As this and our previous Plans make clear, our starting point in regulation is the Act and the full range of regulatory objectives. In our decision-making, we will always need to balance them in the particular circumstances of the issue that is under consideration because no single course of action is likely to deliver each objective.

Section 1: The regulatory context

38. IPS recognised that the LSB would be maintaining a focus on three core priorities: independence in regulation; better consumer redress; and opening up the market.

Evaluating LSB performance

39. IPS stated that it agreed with the approach the LSB would be taking to evaluating its overall performance but noted that it would need further detail before being able to comment on the approach proposed for reviewing the effectiveness of regulatory independence. IPS also welcomed the LSB’s proposal to find ways to link its activities to changes in the legal services market experienced by consumers.

40. The BSB requested greater detail on how overall performance is to be measured and communicated. It suggested that this was an area where the LSB could provide leadership and assistance to the AR and noted that would welcome

additional activity by the LSB. It suggested that the Plan did not seem to contemplate any overarching or overall evaluation of performance.

Response

41. The LSB proposed a three-pronged evaluation framework in the draft Business Plan. In addition to specific operational performance indicators set-out in the Plan eg around performance in approving changes to regulatory arrangements and applications, the LSB will also undertake implementation reviews to assess whether regulatory interventions have delivered anticipated outcomes. The LSB has also, in a document published alongside the final Business Plan for 2011/12, set out its Evaluation Framework for long-term market change. An earlier version of this document was the subject of discussion at the three stakeholder workshops where the overall approach was broadly welcomed. The final proposals, however, are significantly more detailed in terms of the key data to be tracked and the signalled intention of instituting major triennial market reviews.

Section 2A: Developing regulatory excellence

Four pillars of regulation

42. The LSC suggested that the four pillars be re-cast to show how each contributes to protecting the interests of consumers. They commented that they agreed that regulation must be assessed on how well it delivers outcomes and that it would therefore be critical for ARs to understand the outcomes they were seeking to achieve.

43. The Law Society suggested that the LSB did not need to introduce 'four pillars of regulation' and disagreed with the appropriateness of having an outcomes-driven approach to regulation querying what the LSB meant by this phrase. They suggested that it would be perfectly possible for an AR to meet its obligations under the Act by adopting alternative regulatory approaches. This point was echoed by the BSB and, to a degree, The Bar Council. Conversely, IPS welcomed outcomes focused regulation and noted that their code has always been of that nature.

44. The BSB suggested that the second pillar, understanding risk, should relate to an understanding of all risks not simply risks to consumers arising from legal practice. IPS cautioned that the fourth pillar, compliance and enforcement, would need to recognise the implications for individual ARs arising from the way they were set-up. The BSB suggested that the fourth pillar merged compliance and enforcement in an unsatisfactory way, preferring instead to see a focus on compliance activities delivering preferred outcomes with enforcement being the option if compliance does not deliver the desired result. They commented that they foresaw practical difficulties if the LSB "expects non-compliance to translate into enforcement action".

Response

45. We recognise there is a need for more debate and discussion on this topic. We will be issuing a discussion paper shortly on this area, which will allow detailed consideration of the points raised in response to the proposal in the draft Business Plan 2011/12.

Regulatory scrutiny exercises (including views on priority areas for investigation.

46. The Law Society stressed that it would be important that the LSB did not carry out reviews without a clear sense of the benefits that they would deliver so as not to place a disproportionate burden on frontline regulators. The BSB suggested that the scope of reviews should be widened to consider areas where there might be risks to objectives other than the consumer and/or public interest and asked that their milestones be included in the milestone annex. The LSC asked that the results of scrutiny exercises be made available to consumers, the regulated community and procurers of legal services.

Response

47. The draft Plan explained that the areas proposed for scrutiny exercises was indicative and asked for views for prioritisation. As such, milestones were not plotted as no decision had been reached on which exercises to undertake. The LSB agrees that the results of any review must be made public. It also agrees that reviews should only be undertaken where there appears to be risk – of whatever kind – that needs to be addressed. However, we consider it both unrealistic and potentially misleading to assume that all potential benefits can be identified before work has been undertaken. We believe that there should be a focus on the costs and benefits to the actual and potential users of legal service, with the impact on approved regulators, whilst a legitimate issue, rightly being of secondary importance.

Disciplinary rules, enforcement and appeals

48. IPS commented that their process might not align with other ARs' because of the non-statutory nature of their set-up. The Law Society rejected any suggestion that there should be a 'greater alignment of processes'. The BSB requested further detail about such a review and pointed out that their own arrangements had been the subject of significant change over recent years. They suggested that it might be prudent to complete the LSB's proposed work on first-tier complaints handling before commencing a review into disciplinary arrangements.

Response

49. Our experience in developing rules for ABS Licensing Authorities suggests that there is scope for comparative and collaborative work to identify best practice in this area. In particular, we believe that there is scope for exploring greater alignment of appellate bodies. We will explore this during 2011/12 and expect to build on this work as we move towards 2012/13 by extending the review to consider wider disciplinary and enforcement processes across the approved regulators. We recognise that the impact of the establishment of the Legal Ombudsman on approved regulators' processes needs to be understood before we commence this work.

Referral fees

50. The BSB expressed support for the LSB's active involvement in investigating referral fees and encouraged the LSB to consider 'intra-market' activity such as the interactions between solicitors and barristers. It also considered that the work should be extended to consider how such fees might impact upon or potentially distort the post-ABS market.

Response

51. The LSB issued a discussion document on referral arrangements in September 2010. We will be publishing our response to the discussion this generated in Quarter One of 2011/12. This will outline the next steps we intend to take on this matter.

Conveyancing

52. IPS stated that it recognises conveyancing as a high-risk area and suggested that it should be investigated provided there is evidence that it is causing the highest consumer detriment. The BSB commented that it was not likely to have much involvement in an examination of conveyancing.

Response

53. We expect to issue a call for evidence to help establish the need and likely scope of any more detailed review into this area in the first six months of 2011/12.

Smaller approved regulators

54. The BSB commented that it was not likely to have much involvement in an examination of small approved regulators. No other comments were received.

Response

55. We will be publishing a study into the challenges facing smaller ARs in the first quarter of 2011/12. In the light of the outcome of debate on the results of this study, we will consider whether and how we need to adjust our regulatory approach to smaller ARs. In many respects, this is work that will be factored across our programme of activity rather than being the focus of a specific review exercise.

Immigration

56. IPS advised that it would require more details of the LSB's plans in this area before being able to comment. The BSB expressed support for a review into this area bearing in mind the transfer of responsibility to LSB. The LSC asked that the LSB looked closely at how the protection given to immigration clients, especially in non-solicitor organisations, can be improved citing the difficulties experienced following the collapse of Refugee and Migrant Justice.

Response

57. As the LSB will be taking on responsibilities in this area, we will be reviewing activity throughout 2011/12. It is likely that we will issue a call for evidence in quarter one of 2011/12 to understand the scope of a specific review exercise.

Additional areas for scrutiny exercises

58. The LSC suggested that the LSB should consider investigating competence of services in areas such as family law, which might include consideration of quality assurance and the roles of regulatory and representative functions. They also suggested that the LSB might monitor ARs oversight of practitioners who provide Welsh language services and to ensure that the needs of Welsh clients are being addressed.

59. The BSB suggested that the LSB might usefully look to develop a programme of work around increasing public understanding of citizen's legal rights and duties noting that it was a difficult area for ARs and the LSB's unique central position would be helpful.

Response

60. We agree that all three of these areas have merit. With regard to additional reviews on different areas of law, however, we do not have any current plans to extend our investigations in 2011/12 but will of course be considering the implications of our and the Consumer Panel's work on quality assurance across the entire legal services sector. We will also revisit the need for any specific regulatory initiatives in both areas of law and legal services once we have the results of our market segmentation research.

61. On the question of services provided in Wales and in Welsh, we will, over the next 12 months, be looking to work with the Consumer Panel as they start to see the results of their tracker survey, which has booster samples for Wales. We will continue to seek the views of Welsh stakeholders, including the National Assembly for Wales, on our work. We will also continue to comply with our responsibilities under the Welsh Language Act 1993 and any future duties as they arise.

62. On public legal education, there is no question that this is a complex and wide-ranging area that is difficult for any one AR to tackle individually. We agree that this is an area where the LSB could usefully co-ordinate initiatives with ARs, and other actors in this field, to develop a cross-sector approach. We will consider this as an area of work for 2012/13 onwards where we will be helped by the outcomes of the Consumer Panel's investigation into comparison websites.

Section 2B: Developing our evidence-base

63. The LSC urged the LSB to encourage ARs to undertake relevant research and strongly supported the LSB's aim to increase the range of quality of information available about the market. They welcomed the research already undertaken by the Legal Services Consumer Panel.

64. The Law Society expressed concern that the LSB appeared to be leading research into the legal services sector rather than pooling and reviewing the research of ARs. They commented that the LSB's desire to map out the market might lead us to go beyond the boundaries of our oversight role.

Response

65. Response contained within paragraphs 16 - 19 above.

Section 3A: Ensuring effective redress for consumers

66. The BSB suggested that satisfaction ratings should be sought for both complainants and barristers when considering the performance of the Legal Ombudsman (**LeO**). It also offered to work with LSB to ensure that the proposed research into consumers' experience of first-tier complaints handling adequately captured information relating to the Bar.

67. IPS cautioned that it received so few complaints that any data extracted was unlikely to be useful but that it would embrace the LSB scheme as far as it could.

Response

68. We do expect the data from LeO on satisfaction ratings to include data on provider satisfaction as well as complainant satisfaction. We welcome the BSB's offer of assistance with regard to the research.

Section 3B: Widening access to the legal services market

69. IPS remarked that ILEX was working on an application to become a LA and that IPS was committed to involvement in this area. Both the LSC and Law Society reiterated their support for widening access to the market subject to appropriate regulation. LCS and IPS also welcomed moves to address the position of special bodies.

70. LSC urged the LSB to proceed with care and to continue to research the area to understand the impact of developments. The BSB suggested that issues such as financial risk to clients and conflicts of interests should also be researched.

71. The Law Society urged caution around the timetable for ABS implementation, noting that the LSB should respect ARs desire to 'get things right' rather than to meet an arbitrary timetable.

72. The BSB suggested that the LSB should acknowledge that some areas of the market were already working well and were open to change.

Response

73. The LSB acknowledges that the timetable for implementation of ABS is challenging and the need to ensure quality is paramount. However, with the support of the Ministry of Justice, are committed to an October 2011 launch date and considerable work has been achieved progressing the necessary Statutory instruments required for the commencement of Part Five of the Legal Services Act. During the course of this work, we have also undertaken an exercise to assess of the impact that ABS will have on the market, this information will be used for benchmarking exercises to measure the impact of developments brought on by the introduction of ABS.

Section 3C: Securing independent regulation

74. IPS stated that it would embrace the new approach to be taken to the IGR assessment. The LSC said that it was pleased that the LSB would now be looking at independence in practice rather than simply structural matters, noting that independent regulation is key to public confidence.

75. The Law Society doubted whether it was proportionate for the LSB to expect ARs to submit a dual self-certificate each year now that the IGRs have been agreed. They suggested that the LSB would hear soon enough if there was any threat to independence in practice.

Response

76. The LSB notes The Law Society's view but maintains that it is too early to judge whether new governance structures are yet operating as well in practice as they

are on paper. The central importance of independence to consumer, public and professional confidence in regulation argues for a sustained focus. Our approach in focussing on areas of outstanding concern from the 2010 exercise, rather than a complete rerunning of the exercise, is a sign of our determination to maintain this focus, whilst ensuring that interventions are proportionate.

Section 3D: Developing a changing workforce for a changing market

Education and training

77. LSC welcomed the proposed review into education and training (now being led by the IPS, BSB and SRA). They pointed out there is currently very little information about post-qualification quality assurance outside the field of legal aid. The Law Society expressed its support for the SRA in carrying out this work and cautioned that the LSB must ensure that any monitoring of AR activity in this area should be proportionate. It noted that it was for ARs to determine how best to meet expected standards.

78. The Bar Council shared this view, suggesting that the LSB's interpretation of the relevant regulatory objective has led it into an area more properly the domain of the BSB. It suggested that the role of the LSB was to 'direct and monitor' ARs work, not to undertake it directly. As such, any required research should be the responsibility of the AR. The Bar Council also pointed out that the BSB had undertaken a root and branch review of training for the Bar over previous years. It urged the LSB to use research already completed by the Bar rather than to commission more.

79. Both the Law Society and Bar Council made reference to the draft Plan's reference to the current mismatch of students and practicing opportunities available. The Law Society said that this situation might not be ongoing whilst the Bar Council said that any perceived oversupply falls to the remit of the BSB not the LSB.

80. The LSC welcomed the clear timetable set out for QAA in criminal law and reiterated its support for such a scheme.

81. The BSB noted that the Plan did not contain a timetable for consultation or discussion of 'the key principles for education and training'.

Response

82. It is worth pointing out that the SRA, BSB and IPS have been working to develop their approach to the review of education and training during the life of the draft Plan consultation which has altered the approach that the LSB intends to take. The review is much more clearly owned by the ARs than the drafting of the draft Plan implied and this has been adjusted.

83. With regards to research, where the LSB perceives a need for research to inform its oversight activity the LSB will always assess the quality and quantity of data already available to it.

84. The question of whether or not consult on 'key principles' will be considered as part of the development of this work programme. However, the LSB notes that it

has promulgated such principles in the past, for example in relation to QAA, as a means of giving guidance to ARs on how it would approach evaluation of proposals. It does not believe that principles promulgated for such limited purposes necessarily call for full public consultation.

Diversity and social mobility

85. An individual solicitor expressed a concern that the LSB may have already made up its mind about the answer before the investigation by having a 'strong initial view'. He cautioned that the LSB should obtain the evidence and consider what it suggests rather than making initial assumptions. He also questioned whether it necessarily followed that consumers would have greater confidence in rule of law and access to justice because of greater diversity.
86. The BSB rejected one of the medium-term outcomes highlighted by the LSB as resulting from its education and training work, namely that the legal workforce should go beyond its statutory objectives with regard to overcoming discrimination and disadvantage. They also suggested that the LSB might wish to consider appointing its own specialist equality and diversity advisors to amplify its contribution to its cross-sector work. Whilst it recognised the usefulness of a cohort study it remarked on the expense usually associated with such an initiative.
87. The Bar Council expressed regret that the LSB appeared not to understand the full range of initiatives that the Bar both led and contributed to in the area of social mobility. It alerted the LSB to work that its new Research Section is doing in gathering data and analysis on the demographics of the profession. In doing so, it reinforced points referred to elsewhere in this summary that the LSB should consult with ARs and professional bodies before commissioning research that may duplicate that already underway. It questioned whether it was appropriate for the LSB to prescribe to ARs exactly how to promote transparency and noted that there may be alternative, better ways for the Bar in particular.

Response

88. The LSB regrets any inference that its mind is made up on any particular matter: we do believe that having a strong initial view or hypothesis to be tested is not inconsistent with keeping an open mind. We will clarify the drafting regarding statutory objectives picked up by the BSB; the intention was to remind readers that, in addition to statutory duties under equalities legislation, ARs have an additional duty by virtue of the regulatory objectives to promote diversity in the profession.
89. The LSB acknowledges the efforts being made by the Bar Council and looks forward to seeing evaluation of the outcomes, so that the relative success of different interventions can be reflected in plans to make further progress.

Section 3E: Improving access to justice; rationalising the scope of regulation

90. IPS, CLSB and LSC stated that they welcomed the initiatives to look at the scope of reservation and regulation. The Law Society also welcomed the initiative, particularly the LSB's investigation of how best to regulate will-writing. The BSB noted that the work looked to be significant but felt that there was insufficient

information for it to be able to make an assessment. It noted that the need to consider all regulatory objectives must be built in to any such framework.

91. The Law Society stated that it believed the LSB's approach to access to justice was flawed. It cautioned that the LSB's focus on data collection about the market should not be a substitute for ensuring – in ABS – that LAs are aware of possible risks and have plans to mitigate them. After-the-event research would be inadequate.

Response

92. In developing the approach, the LSB will be entering into full consultation and will ensure that the full range of regulatory objectives are considered. As regards, access to justice implications of ABS, the LSB will continue to work with Approved Regulators to ensure that these questions are considered fully as ABS develops. We stress, however, that it will never be possible to predict with perfect certainty the effects of market developments – what is important is that risks are anticipated and mitigated for as far as is possible and that swift and robust action is taken should any evidence of detriment emerge. Likewise, we continue to believe that considering access to justice should not be reduced to considerations of the viability of any individual law firm, or indeed classes of law firm. What is crucial is the ability of consumers to access the advice they need in a cost-effective way at the time that they need it.

Budget and governance

93. Comments about the LSB resource level have been addressed above. No respondent made any comment on our governance arrangements or the proposed KPIs for either regulatory decision-making, finance process performance or Freedom of Information and Data Protection Act performance.

Next steps

94. The Business Plan has now been updated to reflect the comments and decisions above and published on the [Legal Services Board's website](#).

Annex A

List of respondents and workshop attendees

Written responses received from:

John Weaver (solicitor)

Costs Lawyer Standards Board

Legal Services Commission

ILEX Professional Standards

The Law Society

Bar Standards Board

The Bar Council

Justices Clerks Society (acknowledgement only – no comments)

Workshop attendees:

John Flood (University of Westminster)

The Law Society

Legal Services Research Centre

Advice Services Alliance

Association of Women Solicitors

Legal Services Consumer Panel

Stephen Mayson (College of Law)

Society of Willwriters

The Bar Council

Lynne Livesey (University of Central Lancashire)

Catherine Waddams (University of East Anglia)

Morten Havid (University of East Anglia)

Solicitors Regulation Authority

Cosmo Graham (University of Leicester)

Sara Chandler (College of Law)

Institute of Paralegals

The Law Society

Nigel Duncan (City University)

Intellectual Property Regulation Board

Inner Temple

Bar Standards Board

Ministry of Justice