

Mr Chris Kenny
Chief Executive
Legal Services Board
7th Floor
Victoria House
Southampton Row
London
WC1B 4AD

12 March 2009

Dear Chris,

RE: Response to LSB Draft Business Plan 2009/2010

The CLC welcomes the opportunity to respond to the LSB's consultation on the draft business plan 2009/2010.

Partnership Approach

The CLC supports the direction and ambitious agenda in the plan and it welcomes the LSB's commitment to deliver its challenging ambitious work programme by working constructively in partnership with Approved Regulators (ARs) and other relevant partners.

Vision

The CLC supports the LSB's vision for the next five years and it is committed to playing its part to achieve a better experience for consumers in the legal services market. However, we are slightly concerned about the potential conflict between the LSB's aspiration to encourage ARs to achieve regulatory excellence and the duty of ARs to be proportionate in all its activities. It is unclear whether the use of the phrases like 'best regulatory practice', 'regulatory excellence', all have the same meaning and further clarity would be required in the coming months to ensure that pursuit of this aspiration does not place an unnecessary burden on the profession.

Common Agenda

The CLC notes that paragraph 29 of the plan indicates that ARs have a responsibility to maintain the highest possible levels of consumer protection and professional excellence. It is unclear whether professional excellence in this context relates to the achievement of the highest possible levels of consumer protection which seems acceptable. Otherwise, it could be argued that ARs by aiming to deliver professional excellence in its wider context may be duplicating the efforts of representative arms of respective ARs which invariably increase the regulatory burden on the profession.

Putting consumer and public interest at the heart of regulation

The CLC supports this aspect of the proposed work programme particularly the recognition that the perspective of the Consumer Panel will not be wholly representative of the diverse consumers of legal services. The CLC hopes that the segmentation of consumers will go beyond the traditional demarcation and embrace significant sectoral factors.

Widening access to the legal market

The CLC supports the aspiration to move as swiftly as possible to facilitate the introduction of Alternative Business Structures (ABS) and recognises that current market conditions add to the case for early action. However, some of the lessons emerging from the current market conditions highlight the impact when regulatory expertise and capability lags behind the rate of development in the market place. Consequently, the CLC questions whether the proposed timescale in the plan to address the structural/resource implications for LSB of the possibility of direct regulation of the ABS firms is realistic.

Improving service by resolving complaints effectively

The CLC supports the proposed activities to improve consumer experience of service provision and complaint handling in the legal services market. The proposal to audit ARs arrangements for ensuring their rules are enforced is a positive development. However, a key aspect of achieving the LSB's outcomes in this area is the quality of the education and development of authorised persons with regard to client care including complaint handling. There is currently no mention in the plan of the critical contribution that targeted education and professional development can play to achieve better outcomes for consumers and we would encourage the LSB to be more explicit about this factor and to consider including this aspect in its proposed audit of ARs' arrangements.

Developing excellence in legal services regulation

The CLC supports the aspiration of the plan to continuously improve the quality of regulation in the legal services market. However, the CLC is concerned that the proposed terminology in the plan implies a standard of regulation which exceeds what is necessary to deliver proportionate and effective regulation.

The CLC accepts that the LSB's use of the word 'excellence' in the plan may be synonymous with good practice in other contexts and aligned to the achievement of the regulatory objectives in the Legal Services Act. The CLC recognises it is critical to have a shared understating of 'excellence' in order to avoid the threshold which triggers powers of the LSB to intervene in an AR being set at a lower level than as prescribed in the Legal Services Act.

Securing independent regulation

The CLC supports the proposed activity to secure independent regulation even though in practice the work programme in this area will have minimal impact on the work of the CLC. In addition, the CLC welcomes the separation of this activity

as in the future it is hoped that the costs of delivery of this work stream can be properly allocated to those ARs largely impacted by it through the levy.

We note that this section of the plan seems to suggest that all ARs would be required to establish separation between regulatory and representative functions which is clearly not the case. The CLC suggests that the LSB should consider whether it is intentional that the plan gives the impression that this work stream applies to all ARs.

Promoting access to a diverse legal profession

The CLC supports the LSB's intention to give priority to its proposed work in this area. The CLC is of the view that this piece of work should be undertaken in parallel with the proposed work on ABS because it is possible that ABS could lead to a reduction in demand for authorised persons which invariably could have diversity implications for the future.

Developing research and public legal education strategies

The CLC supports the LSB's approach to utilise research proactively to shape policy proposals which is both welcome and refreshing in the legal services market. In particular the CLC welcomes the proposed approach to avoid unnecessary duplication of research. In addition, the CLC recognises the impact of the budgetary constraints on the programme of the research for the first year.

However, the CLC suggests that LSB should consider whether deferring research on certain issues until the second or third year of operation may have an impact on the implementation timetable for its other priorities. For example, the development of ABS is likely to be the result of vertical integration in some sub markets in the legal services market. If that assumption is correct, it seems reasonable that research should be undertaken on the existing relationships between suppliers and buyers particularly in those sub markets where ABS are likely to emerge.

The levy

The CLC supports the LSB's medium term aims and the proposed work in the first year in support of those aims. However, we are concerned that the expectation that savings will be generated in professional indemnity insurance charges may be difficult to deliver irrespective of increase in standards, primarily because of the current market conditions and the rippling effects over the coming years. In addition, the new forms of practice that will come into existence in the next five years will present insurers with different types of risks which would need to be rated accordingly. Furthermore, some of the smaller ARs have no choice but to operate Master Policy schemes which means that the savings alluded to in the LSB plan may not be universally realised.

Summary

We support the overall direction of the plan including the proposed approach to engage meaningfully with ARs and we look forward to continued engagement and partnership with the LSB. We recognise the plan would require us to make

significant changes in the way we operate as a regulator and we hope that the LSB will be supportive as we progressively adapt to the new regulatory landscape.

Yours sincerely,

Victor Olowe
Chief Executive