

Regulation of costs lawyers and the costs profession

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Presentation to Association of Costs Lawyers Conference, 10 May 2013

Agenda

- The regulatory landscape
- LSB strategy and business plan for 2013
- The regulation of costs lawyers
- The regulation of trainee costs lawyers
- External challenges
 - Jackson and related
 - Unregulated providers
- Specific LSB projects
 - Cost and complexity of regulation
 - Legal advice
- The future

The regulatory landscape

The Legal Services Act 2007 in numbers

- 147,000 authorised persons (Lawyers)
- 411 costs lawyers
- 10 approved regulators
- 8 regulatory objectives
- 6 reserved legal activities
- 5 independent regulators (for those approved regulators with representative functions)
- 5 better regulatory principles
- 2 licensing authorities
- 1 oversight regulator and 1 legal ombudsman

LSB strategy 2012 - 2015

Three strategic priorities

- assuring and improving the performance of approved regulators
- helping consumers to choose and use legal services
- helping the changing legal sector to flourish by delivering proportionate regulation to address risks

LSB strategy 2012 - 2015

To deliver our vision of

- greater competition and innovation in service delivery
- access to justice for all
- empowered consumers, able to choose and use a quality service at an affordable price
- an improved customer experience with swift and effective redress when things go wrong
- constantly improving and consistently ethical legal professions, as diverse as the communities they serve
- clear and proportionate regulation, that protects fundamental principles, removes barriers to entry, targets market failure and commands wide confidence in the public and the market.

LSB business plan 2013/14

- Continues some activities already started in 2012/13
 - Work to end the transitional arrangements for licensable bodies and the regulation of “special bodies”
 - Will-writing and general legal advice
 - Complaints handling
 - Workforce (e.g. LETR, Diversity, etc.)
 - Quality
- We have shifted our focus on ensuring that regulators deliver on promises of improvement
- We also have our statutory decision making role. Which includes:
 - Licensing authority and approved regulator applications
 - Applications for the extension of reserved legal activities a regulator can regulate
- Our one new project is on the cost and complexity of regulation

The regulation of costs lawyers

- We published our review of the regulatory self assessment of the *Cost Lawyers Standards Board* in December
- CLSB has achieved a lot in a short time
 - It is compliant with the regulatory independence requirements
 - Has developed regulatory arrangements for costs lawyers
 - Has developed clear procedures and process for regulation
- However...

The regulation of costs lawyers

- CLSB needs to understand the market it regulates more deeply and the needs of consumers of services from costs lawyers
- The CLSB need to consider entity regulation and ABS regulation before the transitional provisions end (around 2015). End of transition will mean:
 - Firms of costs lawyers will need to be regulated as entities
 - Firms of costs lawyers where managers or owners are non-lawyers will need to be authorised by a licensing authority as an ABS.

The regulation of trainee costs lawyers

- The LSB must approve all changes to regulators' regulatory arrangements
- The CLSB applied to the LSB to regulate trainee costs lawyers.
- The LSB issued a warning notice as required by the Act because:
 - it appeared that the CLSB did not have the authority to regulate trainees
 - the case for imposing regulation on trainees was not made out sufficiently
- The application remains live until December 2013
- We expect the CLSB to resolve these issues before we can reconsider the application.

External challenges – Jackson and all that

- Significant external pressures for all legal providers:
 - Economic challenges
 - Changes to Legal Aid
 - Implementation of the Jackson reforms.
- Regulators have an important role to play in the face of such pressures.
- Regulators must enable innovation in the face of change but ensure consumers are protected.
- We have highlighted the introduction of DBAs (Damages Based Agreements) with regulators.
- We support the innovation but are conscious of risks in relation to disclosure and in other aspects of their operation.
- We expect regulators to manage these risks appropriately.

External challenges – unregulated costs practitioners

- There are only six reserved legal activities.
- If an individual is not offering any of the reserved legal activities as a service then they do not have to be regulated by an approved regulator.
- Judges can also grant an audience to those that are not authorised to exercise a right of audience.
- This is the case in all areas of legal services as well as legal costs. For example; patent and trade mark agents, employment law advisers and benefits advisers.
- We are conducting work on general legal advice
- But the ACL may wish to raise awareness of the profession and the rights costs lawyers have with Judges and with potential clients.

LSB projects – costs and complexity of regulation

A project to answer the following questions:

- What are the costs and benefits of individual aspects of legal regulation?
- What are the regulatory barriers to market entry, exit or merger?
- What are the regulatory barriers to innovation in the provision of legal services?
How competitive is the market for innovative legal services?
- What are the risks to consumers from general legal advice?
- What are the direct costs of regulation imposed on lawyers?
- What legislation and structures underpin the regulatory requirements?
- What are the risks that justify the current regulatory requirements?

Our work programme for this project will be published soon and a progress report in Q4 2013/14

LSB projects – general legal advice

- The LSB is allowed to recommend that new reserved legal activities be created.
- We have recommended to the Lord Chancellor that Will Writing should become a reserved legal activity. We should know next week!
- The process of reserving individual activities is lengthy and the evidence required significant.
- Therefore we have decided not to look at discrete legal activities but instead look at general legal advice for individual consumers.
- Our priority for this work is to understand:
 - what are the risks arising from the provision of legal services to individuals
 - what constitutes general legal advice
 - And so what is the appropriate regulatory response.

The future

The challenges of change

- Entity regulation
- Economic challenges
- Legislative change

But also opportunities

- ABS:
 - **Just Costs** employs 12 Costs Lawyers
 - **Irwin Mitchell** over 20both are SRA regulated ABS firms
- In costs budgeting
 - costs lawyers have been the pioneers of something that is now a requirement

The future

Our request...

- Engage in the debate to educate public, media and regulators alike
- Report bad behaviour
- Seize the opportunity.