

Strategy 2015 - 18

Business Plan 2015/16

Consultation response document

March 2015

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Acronyms for organisations used

AWS - Association of Women Solicitors

BC - Bar Council

BMIF - Bar Mutual Indemnity Fund Ltd

BSB - Bar Standards Board

CILEx - Chartered Institute of Legal Executives

CA - Citizens Advice

CLLS - City of London Law Society

CLSB - Costs Lawyer Standards Board

GIRES - Gender Identity Research and Education Society

IPS - ILEX Professional Standards Ltd

ICAEW - Institute of Chartered Accountants in England and Wales

JLD - Junior Lawyers Division of the Law Society of England and Wales

LeO - Legal Ombudsman

LSB - Legal Services Board

OLC - Office for Legal Complaints

SPG - Solicitor Sole Practitioners Group

SRA - Solicitors Regulation Authority

TLS - The Law Society

Introduction

1. On 10 December 2014, the Legal Services Board (LSB) published a consultation on its draft Strategic Plan for 2015 - 18 and Business Plan 2015/16. 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. The consultation closed on 20 February 2015.
2. We held two workshops with stakeholders during the consultation period.
3. This paper highlights keys points from the responses received to consultation and the major changes made to the Strategy and Business Plan since consultation.

The responses

4. We asked for comments and suggestions on any aspect of our draft Plans and we received 19 responses to our consultation. The overall tenor of responses was supportive of the outcomes LSB is looking to deliver for consumers, the public and the professions and there were degrees of support for almost all aspects of the work proposed in the Plans. Responses focused less than in previous years on the role of LSB and the structure of the regulatory system.
5. Along with high-level commentary on LSB's draft Plans and approach to its role, we received detailed 'single-issue' responses diving deep into work that we said we may do; commentary on the market context for legal services; and helpful descriptions of respondents' own activities. All this provides very helpful context as we consider the implementation of our Strategy and the Business Plan.
6. The consultation workshops were attended by 21 individuals from 14 organisations. Attendees were given an overview of our thinking up to that date and were asked to give their views on the work proposed.
7. All respondents have consented to their responses being published on our website and these have been published alongside this consultation response document. **Annex A** lists both the consultation respondents and the organisations represented at the workshops.
8. We are grateful for each organisation that took time to consider our proposals and to respond or to attend our workshops. All of the points made have been considered carefully and taken into account as we have finalised our Strategy for 2015 - 18 and Business Plan 2015/16. Both of these documents are now available on our website.
9. 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 a role in representing the profession or who are subject to LSB's oversight. Contributions

from outside of this group were limited and included the Welsh Government, the judiciary and from CA, which did help to provide a broader context.

Summary of key changes to the Plans

10. Since the draft Plans were published, we have reviewed and refined our proposals. As a result, and informed by consultation, the following significant changes have been made:

- **Strategic themes** – whilst there was broad support for the proposed strategic themes, some respondents found reference to Theme A and Theme B unhelpful and we understand that this may have generated a concern about respective priorities that was never intended. In light of these comments we have re-worded our Plan to more clearly illustrate the linkage between the three equally important areas of our programme.
- **Consumer Panel commissions** – few respondents commented on the commissions we proposed for the Panel for 2015/16. However, in recognition of the need for the Panel's advice to be available in good time to inform LSB's work we have reduced the number of commissions from three to two.
- **Structure and length** – both the Strategy 2015 - 18 and Business Plan 2015/16 have been re-edited and are much shorter as a consequence. Each is now a stand-alone document. Where material was included in the consultation draft to explain LSB's thinking in proposing its strategy or areas of work, this has been edited or removed entirely so that readers are more easily able to see at a glance what LSB is proposing to do. All such explanatory material remains available to view in the consultation document¹ as published on our website.

Summary of responses

11. In addition to responses on our broader Plans, we were also pleased to receive submissions that addressed, in detail, aspects of work we plan to do. These responses will be used to inform those areas of work as they develop.

12. The following pages address the range of points raised by respondents and our response to them where needed. There was, however, one common theme which we consider it useful to address at the outset.

Common theme – public sector funding environment

13. The nature of LSB's role in relation to decisions made by government was common to a number of responses and raised in the consultation workshops.

¹http://www.legalservicesboard.org.uk/what_we_do/consultations/Open/pdf/2014/20141209_Draft_Strategic_And_Business_Plans.pdf

Specifically, some respondents urged LSB to join voices protesting about legal aid funding changes or changes to court fees.

Response

14. The consultation document indicated in a number of places, LSB's awareness of the changing environment for publicly funded legal services. As a non-departmental public body, LSB is obliged to be politically impartial. We have, since our inception, been clear that decisions about funding for legal aid are outside of our remit as a body whose role is to oversee regulation of legal services.
15. We do, however, need to take into account the consequences of legal aid funding changes on the legal services market and our consultation document referenced this on a number of occasions. First, we understand that providers who have had a high dependence on publicly funded work will need to respond to the challenge of a declining flow of legal aid work. Secondly, certain citizens who might previously have had recourse to legal aid to help them resolve their legal needs, now will not. Given this context, the three themes of our Strategy 2015 - 18 are even more important in helping to promote access to justice.
16. We will continue to press regulators to ensure that they understand their respective regulated communities' ability to meet demand and any restrictions that either regulatory barriers or costs are imposing unnecessarily on providers' ability to adapt and change. The Bar's enthusiastic embracing of direct access is an excellent example of how adjustments in regulation and provider innovation can deliver wider access to services and we will continue to encourage open dialogue between those with ideas for new solutions and those who act as gatekeepers to the market.
17. LSB will also continue to shine a light on individual consumer and small business consumer legal needs, and the extent to which they are met, through our research programme. We encourage those who are concerned about improving access to justice to join us in funding this work and helping us to scope projects so that findings are as useful as possible to the widest range of bodies.
18. Additionally, we have reframed one of our commissions to the Legal Services Consumer Panel to consider explicitly which areas of law should be priorities for LSB's work in 2015/16 on enabling the demand for legal services to be met. LSB will be expecting the Panel's work to feed, in particular, into LSB's projects on understanding affordability, supporting increased accessibility and helping consumers make informed choices. The Panel could, however, consider both narrower and broader issues consistent with where it believes the priorities lie, and its available resources.

19. Finally, in an environment characterised by public spending restraint, it is vital that the legal services market adapts and innovates to help promote access to justice whilst maintaining standards. Our work in breaking down the regulatory barriers to competition, growth and innovation will contribute to this.
20. But for the avoidance of doubt, LSB will not deviate from its politically impartial stance that the size and distribution of the legal aid funding pot is a matter for government. What is important is that LSB continues to address the challenges of a market which, since 2009, has seen an 11% growth in the number of professionals, and a 12% rise in real turnover, and yet which remains unable to meet fully the needs of individual citizens and small businesses, in terms of affordability and diversity of services provided.

Responses to the Strategy 2015 – 18

General points of note

21. OLC, SRA, ICAEW and CA welcomed the overall approach of the strategy and the broad thrust of the document.
22. The Welsh Government urged LSB to keep both the needs and protections of consumers and the needs of providers to be able to prosper in Wales equally in mind.
23. BC, SPG and TLS were concerned that the strategy did not indicate a strong enough intention to engage with representative bodies or service providers (variously on specific areas of work or generally) and BC in particular were concerned that the strategy did not signal a clear trajectory of LSB scaling back its operations or phasing itself out. Additionally, SPG were concerned that the Plan's emphasis on consumers indicated a 'culture of consumerism' and a lack of focus on service provision.

Response

24. We welcome the broad statements of support for our work and are happy to confirm to the Welsh Government that the distinct needs of the legal sector in Wales will be factored into our work, including our research, wherever appropriate.
25. As stated in our consultation, we are firmly committed to engagement with as wide a variety of interested parties as is possible for an organisation of LSB's size. We have a regular schedule of executive and non-executive engagement with approved regulators (both representative and regulatory arms) and frequently engage with providers and provider groups. All were invited to respond to this consultation and to attend our workshops – an approach we adopt on all of

our areas of work. We will continue to have an open door policy and welcome insight, discussion and debate with all providers and consumer and citizen groups.

26. As regards LSB working itself out of existence, many of the challenges that were in existence when the Legal Services Act 2007 (the Act) was passed remain. LSB must continue to deliver its statutory duties and ensure that regulation is truly independent and that consumers are put at the heart of legal services. Following from the Ministerial summit of legal services regulators in summer 2014, we will continue to work with the regulators to identify options for the future of regulation recognising that, ultimately, the future direction of legal services regulation is not in LSB's gift.

Our role

27. CILEx/IPS expressed their shared view on the Growth Duty obligation currently under consideration as part of the Deregulation Bill, noting that it was not yet law.

28. BSB felt that the description of the regulatory framework did not accurately reflect the precision of the Act and could, as drafted in places, lead to misunderstanding.

Response

29. We acknowledge the status of the Growth Duty: we should have been clearer that the draft Plan was intended to indicate that this would form part of our consideration of better regulation principles if passed into law.

30. We accept the tenor of BSB's critique of the description of the regulatory framework and have made drafting adjustments to reflect this.

Context for the Plan

31. Very few respondents commented on the context for the Plan beyond those already discussed about legal aid above. There was some strong agreement to the proposition that the sector is changing rapidly, which for some respondents, such as SPG, meant that regulatory challenges were emerging at such a pace the current framework would be unable to keep up with them.

32. In support of one aspect of change, the Lord Chief Justice observed that the judiciary has over recent years actively encouraged the use of alternative dispute resolution (ADR) in appropriate cases.

Response

33. We were pleased that there was general agreement with the broad thrust of our assessment of the context for our Plans. This section has been compressed in the final version of our Strategy, although the full text remains available in the

consultation document. We agree entirely with respondents that we must all be alive to the risk of unintended consequences of changes to regulation.

Strategic priorities

34. Where comments relate to the detail of work to be undertaken in 2015/16, these are addressed in paragraphs 45 – 101.

Breaking down the regulatory barriers to competition, growth and innovation

35. BC warned of a danger in overstating the extent of changes taking place and were worried that LSB felt that traditional boundaries and distinctions in the sector were blurring or disappearing. It urged LSB to recognise that traditional ways of working may not be a backward looking philosophy, but a reflection that current ways of working bring benefits. BSB felt that much had already been done in this area and that time was needed for the market to adjust to new opportunities on offer as a consequence.

36. The Welsh Government welcomed proposals to enable the sector to react positively to a rapidly changing environment, but urged that care be taken not to erode essential consumer protections.

37. CILEx/IPS welcomed proposals to simplify legislative burdens and to streamline the regulatory process and offered support for work to explore barriers hindering existing regulators.

38. CA were pleased to see a clear focus on access to justice issues.

39. TLS felt that any breaking down of regulatory barriers needed to be balanced with ensuring that clients and the public interest are protected – not least to maintain the standing of the legal system in England and Wales.

Response

40. The need to ensure an appropriate balance is maintained between new freedoms for providers on one hand and protections for consumers and the public on the other is clear to LSB and will remain so as we deliver the activities proposed in this area. We note BC's concerns that change should not be an objective in and of itself and that there must be an eye to benefit realisation. We agree.

Enabling need for legal services to be met more effectively

41. CA welcomed this theme and BSB emphasised the importance of it, urging that the majority of LSB resources be dedicated to it. SRA stressed that any work in this area must take into account the diversity of consumers.

42. Many respondents took an interest in LSB's proposals to include consideration of the unregulated sector in its work going forward. Whilst there was widespread recognition of the importance of full market understanding, there were some words of caution from the workshops and TLS about the use of funds from the regulated community to assist potential competitors to regulated providers.
43. The Welsh Government advised that it offers a range of funding and services to help the legal services sector in Wales take advantage of new opportunities to encourage innovation and creativity in order to provide more competitive and flexible services.

Response

44. We welcome the strong support for this area of our work. We will take into account the diversity of consumers as we take projects forward and are very much alive to the need for caution in making sure our funds are spent in accordance with our statutory remit and in line with the Managing Public Money framework. We are required by the Act to have regard to the regulatory objectives and we consider that it is only possible to do this properly by taking into account both regulated and unregulated service providers in our work.

Responses to Business Plan 2015/16

General points of note

45. BSB sought greater clarity in relation to work proposed in the Business Plan. CILEx/IPS and BC hoped that there would be a clear commitment to engaging with all of the approved regulators (both representative and regulatory arms) within the Plan.
46. ICAEW expressed concern that the ambitious programme set out did not make clear any degree of prioritisation, particularly where no increase in resources was proposed.

Response

47. Now that LSB has confirmed the work it intends to do in 2015/16 we have been able to provide greater specificity on the timing and nature of that work. In some areas, detailed scoping will be required and more detail will be provided on the timetable indicated.
48. As indicated in paragraph 25 above, we are resolutely committed to the widest possible engagement: only with this will our work be credible.
49. With regard to prioritisation, the draft Plan did indeed set out an ambitious agenda and this has been refined post-consultation to more appropriately reflect

the work we expect to be able to carry out with the resources we have available. This means that some work has been taken out of our Plan for 2015/16.

Equality objectives

50. AWS and GIRES expressed disappointment that the Plan only appeared to contain three paragraphs in relation to equality and diversity matters. They also added that they hoped LSB would engage with specialist groups to ensure all decisions take into account all relevant equality and diversity information and that practises and procedures focus on such issues. A similar point was raised in the consultation workshops.

51. BC supported all attempts to encourage and promote equality and diversity across the Bar but did not believe any engagement with approved regulators was currently taking place.

52. CILEx/IPS shared LSB's commitment to diversity within the legal profession.

Response

53. We were grateful to AWS and GIRES for their thoughtful responses and would like to stress that the 'equality objectives' relate specifically to work LSB will do to in relation to its public sector equality duty. In parallel, we remain committed to ensuring that our ground-breaking work to shine a light on equality and diversity issues within the professions is reinforced, not least in relation to diversity monitoring – the results of which must inform regulators' own plans to address equality and diversity challenges.

Draft work programme by strategic theme

Breaking down regulatory barriers to competition, growth and innovation - general

54. JLD noted positive reforms to business ownership restrictions, but were concerned about some elements of recent SRA proposals. They urged LSB to maintain oversight of these reforms.

55. CA stressed that transitional periods should only be ended if there is clear evidence that the regulatory regime could be administered in a proportionate, cost-effective manner which would not drive special bodies out of the market.

Response

56. Both of these points are noted for when work in these areas progresses.

Reviewing and removing regulatory obligations

57. This section proposed four possible areas for thematic review, making clear that final decisions would be informed by consultation and our prioritisation.

Review of barriers to firms moving between legal regulators

58. BSB felt that this was the only review that LSB should take forward in this area, stressing that the focus of LSB must be to balance removing constraints to regulatory competition with preventing regulatory arbitrage. SPG stated that it would welcome a review of this kind, focusing in particular on differing professional indemnity insurance (PII) requirements. This contrasted with the view of TLS, which felt that there were no grounds to support such a review. JLD were keen to see LSB engage with providers of legal services to understand how they view their regulators.

Review of restrictions on choice of insurer

59. This proposal drew three dedicated responses, one from BMIF and two from individual barristers. One individual barrister wished to make clear that they would object firmly to any LSB plan to open up the PII market for the Bar to other insurers. The other individual barrister only supported opening the market if BMIF failed to meet certain criteria. BSB and BC suggested that this work was outside of LSB's remit and that there was no evidence that the requirement to insure with BMIF was stifling innovation.

60. TLS noted that solicitors already have a wide choice of insurer.

Review approved regulators' treatment of under-spend of practising certificate fees

61. BSB felt that this should be a very low priority as responsibility for appropriate treatment of funds should lie with approved regulators and their auditors. BC felt unconvinced there was evidence to support the need for such a review as did TLS.

62. CILEx/IPS suggested that LSB should focus on those approved regulators showing reserves of unused practising fee income and whether underspend is being used in accordance with the Act – as opposed to looking at all regulators.

63. CLLS offered their assistance with this work, noting the quantum of funds that their members pay towards 'public interest' permitted purposes for which there is no evidence of a regulatory requirement.

Regulatory inconsistency

64. No specific proposals were included under this heading although some were mooted including: how regulators deal with firms in financial difficulty; regulatory

barriers to exit; options for sharing ‘back office’ functions or creative delivery of regulatory arrangements.

65. SRA noted that variations in these areas may reflect differences between the particular parts of the market regulated and the risks faced. TLS suggested that work in this area should focus on interventions. Whilst supportive in principle of looking at options for improving efficiency, CILEx/IPS, SRA and TLS all had individual takes on work to explore ‘back office’ provision. Whilst being firmly against this specific work, BC did, however, support the principle of regulatory consistency and reiterated its opposition to referral fees.

Response

66. LSB has taken all of these points into account when considering which thematic reviews to take forward into 2015/16 and has also undertaken a prioritisation exercise of the list of potential thematic reviews. The results of this exercise are reflected in the final Business Plan.

67. We have concluded that three of the proposals had a greater priority and so should be undertaken during 2015/16. Six others were judged as not an immediate priority. A table showing the priority of each thematic review is shown next.

To be undertaken during 2015/16	Work not taken forward
<p>Review of restrictions on choice of insurer</p> <p>Review approved regulators’ treatment of under-spend of practising certificate fees</p> <p>Effectiveness of the current requirements under section 112 of the Act</p>	<p>Review of barriers to firms moving between legal regulators</p> <p>Thematic review about how regulators identify and deal with firms in financial difficulty.</p> <p>Develop an “ideal” set of regulatory arrangements based on outcomes and use them as a benchmark to help in assessing rule change applications against the statutory criteria.</p> <p>Thematic review into regulators’ approaches to consumer engagement.</p> <p>Thematic review of education and training during 2015/16.</p> <p>Evaluate the effectiveness of frameworks for quality comparisons</p>

Reviewing LSB's statutory decision making process

68. CILEx/IPS and SRA welcomed LSB's ongoing commitment to reviewing and improving its statutory decision making. TLS sought more detail and expressed a hope that simplification would not be at the expense of quality.
69. TLS, SRA and ICAEW expressed reservations at the idea of an ideal set of regulatory arrangements with ICAEW noting that a 'one size fits all' approach was inappropriate. BC urged LSB to remember that any new regulatory arrangements must take into account the inherent differences between the different parts of the profession.

Response

70. We will look to engage with all parties as we take forward work to review our statutory decision making process. We have decided not to proceed with work to develop ideal regulatory arrangements.

Developing options for legislative change

71. TLS and BC both stated that they expected to see LSB committing to collaboration with bodies named in the Act as approved regulators before work is presented to Ministers. SRA stated that much more can be done within the current legislative framework and that LSB should not focus too heavily on this work. CILEx/IPS both looked forward to working closely with LSB to explore options for change.

Response

72. The work proposed for 2015/16 continues the activity prompted by the Ministerial summit of legal services regulators held in July 2014, at which the challenge was laid down to seek further deregulation in the sector. Clearly this is something that cannot be done in isolation from the representative bodies, but it is a regulatory challenge and it is therefore appropriate that the majority of our activity is with the regulatory arms. As the work progresses, we and the individual regulators will be keep the representative bodies informed. Of course, while our work with the regulators may identify options, any decision on legislative change is a matter for Ministers and Parliament.

Enabling need for legal services to be met more effectively – general

73. The Lord Chief Justice expressed broad support for the outcomes LSB seeks from this work. CILEx/IPS stressed that LSB must be mindful of too narrow a definition of consumer. ICAEW hoped that LSB would not make an assumption that informed consumers would only use legal services regulated under the Act or that regulation under the Act was the only way to protect consumers and the public interest.

Response

74. We thank those respondents who offered broad support for the outcomes of work in this area. There is a clear and shared desire to make sure that people are able to find suitable ways to meet their legal needs at prices they are able to afford. The variety of solutions people might use extends far beyond the narrow option of using the services of a provider of services regulated under the Act. We note the Lord Chief Justice's response which explains how the judiciary actively encourage people to use various forms of ADR services. LSB wishes to be clear that when it uses the term 'unregulated' provider, it is not meant pejoratively. It is intended to indicate those providers not regulated by virtue of the Act.

Understanding consumer choices and decisions across the regulated and unregulated legal services sector

75. The proposals to conduct work in this area generated a high degree of comment and there was broad support for LSB's interest. An example of the comments received include those from CILEx/IPS, which felt that the consultation suggested the two sectors found it hard to co-exist which CILEx/IPS felt not to be the case. They sought greater clarity on the definition of 'unregulated'. OLC strongly endorsed the need for work in this area and noted the particular impact on the sector's growth for LeO and its aspiration to be a single point of access for redress across all legal services.

76. BC highlighted what it saw as grave risks in permitting unregulated providers to undertake work in the Courts in place of regulated and insured professionals. They suggested that there are already a sufficient number of regulated providers of these services in the market to meet demand. SPG agreed that there was a real risk of confusion about whether someone was regulated or not and expressed concern at the growth of the unregulated sector at the expense of the sole practitioner community. SPG also agreed that LSB should do work to build on its existing knowledge and evidence base to fill gaps in understanding how legal needs are met.

77. BSB were supportive of the work and advised that it was likely to feature in its own forthcoming plans.

78. ICAEW suggested that LSB should encourage greater use of civil and criminal law remedies to address detriment caused by unregulated providers to their clients.

79. CLLS expressed the view that the only way to encourage fair competition is for all non-reserved activities – including legal advice – to be taken outside of regulatory scope, suggesting that this would usefully prevent those firms with no other motive for restructuring having to set up a separate business in order to provide their legal advice in the unregulated sector.

80. CA commented that codes of conduct in the unregulated sphere can and do provide robust protections for consumers, based on its experience of operating a comprehensive membership scheme.
81. JLD also welcomed the focus and suggested areas where research might usefully be focused.
82. TLS recognised concerns around the unregulated sector but expressed a view that unless LSB was considering whether or not to recommend that work be reserved, it should use funds raised via the levy from approved regulators with caution, ie the regulated sector should not fund work connected to the unregulated sector. TLS considered that work to ensure consumers were educated about the nature of financial protections they receive from different providers was missing from the Plan.

Response

83. It is clear that there are strong views about LSB's interest in the unregulated sector. We have considered responses carefully and concluded that we would be remiss in our duties to both consumers and providers of legal services if we did not take steps to understand the legal services market in its entirety. The specific points raised by respondents will be taken forward as we scope this work in more detail (see also paragraph 42).

Helping consumers make informed choices

84. Linking to the comments made in relation to unregulated providers, respondents such as SPG and CLLS drew attention to the risk that consumers do not know if they are choosing regulated or unregulated providers or the consequences of doing so. A similar point was made by TLS in the context of a lack of understanding of financial protections. SRA also commented that LSB should undertake more work to educate consumers on the role of the regulators and LSB.
85. CILEx/IPS noted that all consumers are potentially vulnerable when seeking legal advice and suggested that LSB and LSCP should help regulators to reach and understand consumers who are difficult to identify or hard to contact.
86. OLC hoped that work in this area would include consideration of how effective complaints handling and access to redress helps to underpin consumer confidence.
87. SPG were supportive of work in this area as were CA who were pleased that LSB intended to examine consumer choices in legal services. CA suggested that an increased understanding of the choices clients make should drive concerted work

to improve consumer understanding and promote more informed decision making when they choose a service to meet their needs.

88. JLD strongly supported LSB's proposal to conduct a review into regulators' approaches to consumer engagement and requested that such a review considered the extent to which consumers are listened to as part of the decision making process and the extent to which their views are weighed against those of the profession and other stakeholders.

Response

89. It is clear from the responses that there is a shared appetite for work in this area. As our recent report into regulators' progress against meeting regulatory standards showed, there remains a gap between our expectations and their delivery in understanding the needs of consumers². Until that gap is filled, it will be difficult for regulators to decide how they can help consumers make informed choices. The work we propose to do is not a substitute for regulators' own action in this area. The findings of our reviews will help us to encourage and inform that action.

Protecting consumers and the public interest

90. This area of work contained a number of proposals for LSB activity. As such, responses were varied and tended to focus on specific projects proposed. We have considered all of these carefully in deciding which projects to take forward into the Plan for 2015/16. Key points made included:

- SPG and BC queries over further work into quality schemes
- SPG and CILEx/IPS queries over funding any extension of LeO's remit into the unregulated sector
- CLLS and TLS firmly rejecting the idea of further work on education and training and JLD urging work to take place in 2015/16
- JLD supportive of proactive monitoring of regulators' work on diversity
- OLC keen to be a partner in greater gathering of knowledge and insight across the sector.

² Page 4, paragraph 2.10 (outcomes focused regulation), LSB (February 2015), Regulatory standards 2014/15: http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2015/20150225_Regulatory_Standards_FINAL.pdf

Response

91. We are grateful for these detailed comments all of which we have either taken into account in firming up our plans for 2015/16 or which will be an important contribution to work as it progresses. In some areas, eg the way in which any extension of LeO's remit might be funded, we do not yet have clear answers: these are questions that will be need to be addressed properly in due course and in consultation with all interested parties.

Performance, evaluation and insight

Delivering our regulatory oversight function

92. ICAEW queried why such a comprehensive review of all regulators was required. It felt that the exercise should be a measured and targeted review, adjusted as appropriate to each regulator. BSB were concerned that the phrasing of the Plan meant LSB would be substantially changing or further reviewing the regulatory standards against which regulators were assessed. CILEx/IPS stressed that LSB should avoid adopting an unduly detailed approach to these reviews.

93. JLD was pleased to see that the views of third parties would be taken into account in the reviews of performance.

94. TLS believed LSB should take a more active role in reviewing the governance of regulators and suggested benchmarking such arrangements might be a useful exercise.

Response

95. We have already announced plans for reviewing regulators' performance against regulatory standards in 2015/16. We hope this has clarified for ICAEW and CILEx/IPS that the process will be targeted for each regulator and for BSB that the standards themselves remain the same.

96. The suggestion from TLS is interesting and we will consider it as part of our ongoing activities in this area.

Research and evaluation

97. CILEx/IPS expressed reservations about whether the comprehensive programme of research could be completed within 2015/16. BC, whilst supportive of the need for evidence to support policy decisions, urged that proper consideration be given to research priorities and their findings and suggested that the research commissioned into the cab rank rule in 2013 was unnecessary and roundly criticised. The BC response also suggested that it might be difficult to gain accurate evidence on consumer needs during a period of flux.

98. OLC concurred with the importance of effective gathering and sharing of knowledge and insight across the legal services sector, especially in relation to new and emerging business models.
99. SRA noted its current work with LSB to establish an online research hub whilst SPG expressed concerns about the cost of such an exercise falling on the profession. SRA also suggested LSB could benefit from exploring how better to work with regulators on research already underway to monitor the impacts of regulation on the legal services market and a full market evaluation.
100. The Welsh Government suggested that it would be helpful if LSB's research priorities could capture recent and future reforms and their impacts on the justice system, including users and the judiciary, across England and Wales. In addition, it suggested one research priority could be to consider the impacts of changes to legal aid funding and court fees.

Response

101. Respondents will see final proposals for research activity in our published Business Plan for 2015/16. We agree that this is a challenging programme but are confident that it can be delivered subject to changing priorities in-year. The legal sector remains under-researched and data light. Whilst some regulators and representative bodies have taken some admirable steps to fill these gaps, and in some cases to work with us (for which we are very grateful), this is not the time to step back from qualitative and quantitative research into this sector.

Delivering our Business Plan

Budget

102. Only a small number of responses commented on our budget proposals. Specifically, CILEx/IPS sought greater clarity on the way our budget line related to research was distributed across our strategic themes to enable greater scrutiny of costs. BC welcomed our efforts to keep direct costs down, but urged LSB to reflect that often it generated indirect costs for BSB and thus the Bar. CLSB suggested that they would have expected to see a predicted three-year budget reflecting anticipated costs savings as a result of the current deregulation agenda.

Response

103. We have weighed carefully the public sector spending environment, and the financial pressures that come with austerity, with our need to properly discharge our statutory obligations to the regulation of this vital sector. We are grateful for the recognition that LSB works hard to keep its costs down. We will freeze our budget for 2015/16 at 2014/15 budget levels ie £4,298k.

104. Our proposed annual budget equates to around £26 per year for each authorised person, which is down 24% in cash terms from over £34 since 2009/10.
105. Any underspend against our budget will be passed back to the approved regulators by a reduction in the following year's levy. That we have been able to do this in past years is a visible sign of our commitment to delivering value for money and economies where we can.
106. We are currently looking at the costs of the regulators, including LSB, and we anticipate being able to be clearer about future budget assumptions once those results are known. Whilst we understand the appetite for a more detailed cost allocation across areas of activity – we believe this would result in a degree of spurious precision which would be artificial as much of our activity supports cross-cutting themes.

Next steps

107. The Strategy for 2015 - 18 and Business Plan for 2015/16 have now been updated to reflect the comments and decisions above and have been published on LSB's website.

Annex A

List of respondents

(in alphabetical order)

Association of Women Solicitors

Bar Council

Bar Mutual Indemnity Fund

Bar Standards Board

Mark Beaumont (barrister)

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

Citizens Advice

City of London Law Society

Cost Lawyers Standards Board

Gender Identity Research and Education Society

Kristin Heimark (barrister)

Institute of Chartered Accountants in England and Wales

The Right Honourable The Lord Thomas of Cwmgiedd

Junior Lawyers Division of The Law Society of England and Wales

The Law Society

Office for Legal Complaints

Solicitor Sole Practitioners Group

Solicitors Regulation Authority

Welsh Government

List of workshop attendees

Chartered Institute of Legal Executives

Chartered Institute of Patent Attorneys

Gender Identity Research and Education Society
The Honourable Society of the Middle Temple
The Honourable Society of Lincoln's Inn
Institute of Chartered Accountants in England and Wales
ILEX Professional Standards Ltd
Law for Life
The Law Society
Legal Services Consumer Panel
Legal Ombudsman
Queen's Counsel Appointments
Solicitor Sole Practitioners Group
Solicitor's Disciplinary Tribunal
Solicitors Association of Higher Court Advocates
Welsh Government