



Response to LSB Business Plan Consultation

30th January 2014

Summary of Response

1. This document sets out the Council for Licensed Conveyancers' (CLC) response to the LSB's 'Business Plan 2014/15' consultation.
2. The response gives an account of the CLC's main considerations in relation to the Business Plan's proposed commitments, including:
 - our view that the LSB should carry out a review of compensation arrangements across the legal sector to enhance consumer protection and bring greater consistency of approach;
 - our hope that the LSB can take a more facilitative role, particularly in relation to education and training and comparison websites, where coherent cross-sector approaches would be helpful; and
 - our view that the LSB should take a more measured approach in overseeing change in the regulation of the legal services market.

Introduction

3. The CLC continues to be supportive of the Legal Services Board as the oversight regulator and we share the Board's agenda for driving positive change in the legal sector to support growth and improve services to consumers. In our response to the Ministry of Justice's review of legal services regulation in September 2013, we suggested key actions that would support the achievement of that agenda. In most cases, the government or Legal Services Board needs to take a role to enable a coherent, cross-sector approach, ensuring that all of the relevant organisations are at the table and moving forward together - the legal sector regulators and in some cases other players such as the FCA. We believe that a refocusing of LSB resources onto such strategic work would pay dividends.
4. The Council for Licensed Conveyancers has established its business plan for 2014. Below we set out how those planned activities meet the expectations of the LSB's business plan. The CLC's own business plan has committed its resources for the year. Our planned work reflects our priorities - which are closely aligned with the LSB's own. That work fully commits our available resources for the year and so we hope that the LSB will accept the limitations that places on the work that the CLC is able to do in support of the LSB's objectives beyond what we have already planned.

Details of Response

5. We set out below comments on detailed provisions, most of which we have already made to the LSB.
6. **Regulatory Costs & Complexities Work:** the regulatory costs work will need to take into account the costs of compliance by regulated entities and individuals, not simply the upfront costs of licensing and mandatory insurance. Whilst this may be difficult to assess, we believe it is essential to a rounded understanding of the regulatory burden.
7. *Planned CLC work: we will review, and consult on, our regulatory fees framework. This should be seen in the context of our unique and valued approach to regulation.*

We support the regulated community to achieve compliance so that problems can be avoided. Though we also act quickly where there is risk of serious consumer detriment.

8. **Compensation Arrangements Review:** we consider a review of compensation arrangements by the LSB - and within this, a scoping study of a centralised Compensation Fund – to be not only complementary to the regulatory costs work above, but an integral component of its regulatory arrangements overhaul and business model/risk work commitments.
9. We are disappointed that the Business Plan does not include a commitment to carry out a thematic review of compensation arrangements. The Consumer Panel has suggested that the review should be undertaken by SRA and the CLC. We do not think this is appropriate, since a review of this nature needs participation of all of the regulators as well as other stakeholders and is a strategic issue on which the LSB's leadership would be invaluable.
10. *Planned CLC work: active participation in the LSB's compensation arrangements review, should it look to undertake such (as per our proposal).*
11. **Developing Regulatory Standards:** we understand the need for regulators to report on progress of implementation of their action plans for Developing Regulatory Standards. We hope the format taken will be proportionate, given the commitment to carry out full reviews in 2015/16. We consider that an update on progress against commitments made in that document would be appropriate at this time.
12. *Planned CLC work: the CLC engaged fully in the 2012 Developing Regulatory Standards work, submitting a critical, objective assessment of its own effectiveness and setting out a number of commitments to continue its journey of continuous improvement. We are committed to keeping our own standards under review and will examine progress made against those commitments, critically appraising the CLC's regulatory approach and determining any additional areas which would benefit from targeted risk-based action. The review will be submitted to the LSB for its own evaluation.*
13. **Performance Information:** clear and accessible information can be an important enabler for consumers in making informed choices and we acknowledge that comparison websites can be a useful comparison tool for would-be consumers. However, we consider it essential for either the Legal Services Consumer Panel or the Legal Services Board to lead on this, bringing together all those in the sector to agree a way forward so that the quality of information shared truly enables an informed choice.
14. Without this collective work, we will be depending – as has been the case up till now - on a series of bilateral conversations with other regulators, with all the risks of inconsistency that could arise. . A facilitated roundtable of all regulators could help address concerns around liability, risk, data protection, consistency, comparability of information, and delivery of the standards websites need to meet in order to deliver genuinely useful information to the consumer.
15. *Planned CLC work: later this year we will be launching a new website which will make it easier for consumers to access relevant performance information and which*

will apply the performance publication commitments in the CLC's revised Publication Policy. As part of this work, we will undertake a consultation regarding the publication of formal determinations to assess whether the current parameters applied provide consumers (and other stakeholders) with the information they need. Should the LSB and/or LSCP facilitate, as requested, a roundtable with the other regulators regarding comparison websites, we will actively participate in this collective work.

16. **Education and Training:** as mentioned in our response to the LSB's Education and Training Guidance consultation, we are very supportive of the LSB setting out goals and ambitions which all regulators should seek to achieve. However, given that not all regulators were invited to participate in the Legal Education and Training Review and the Guidance's need for "universal requirements", it is important for the LSB to take a more active, facilitative, working role than that which the Guidance's bilateral action plans suggest. Without this collective work in certain necessary areas – especially in relation to universal requirements there is a risk that the sector will not behave the coherent approach that is needed to underpin future education and a diversity of entry points and career routes.

17. *Planned CLC work:* we are already undertaking an extensive review of the paths to Licensed Conveyancer qualification including exploring the establishment of an apprenticeship under the BIS Trailblazer scheme. Within this project we are considering both the recommendations from the LETR and the draft LSB Guidance. We will submit an action plan to the LSB as required.

18. **Schedule 13:** as a Licensing Authority of Alternative Business Structures we look forward to the LSB sharing with us the examples it mentions in its Business Plan regarding any perceived disproportionality of the licensing process.

19. *Planned CLC work:* we shall respond to the LSB's Schedule 13 survey. As part of our risk work we will be looking at key regulatory processes, likely to include licensing, and the results of the LSB's survey will be a helpful first step. Should the LSB's overall evidence base confirm its hypothesis that elements of Schedule 13 are disproportionate, we will look to include ABS licensing processes as one of our priority areas.

20. **Regulatory arrangements overhaul:** the CLC is working to ensure the same regulatory powers are available in relation to ABS and non-ABS entities (for example the powers to fine are now the same). However, we are conscious that the CLC does not have the same powers/sanctions as other regulators. For example, despite the amounts of monies which can be involved in a conveyancing (or probate) transaction, Licensed Conveyancers are not listed on the Rehabilitation of Offenders Act Exception Order, while solicitors, barristers and legal executives are.

21. Before determining whether the regulatory arrangements "overhaul" and "thematic review" proposals would be an appropriate allocation of resources at this time, we ask that more information is provided about these proposals and their consequent impact upon the resources of regulators. We hope that the LSB will consider the priorities of the front line regulators as part of this work.

22. *Planned CLC work: we have committed to a comprehensive review of the CLC's regulatory arrangements by 2016. We actively review the arrangements on an ongoing basis to ensure they are appropriate (resulting in a number of Exemption Directions applications to the LSB in 2013 and a Schedule 4 application regarding the transparency of referral arrangement provisions). The findings of the CLC thematic reviews of acting for both sides and complaints-handling, the current regulated community and students survey, and the planned determinations publication consultation will all inform any proposed amendments to the CLC's regulatory arrangements.*

Conclusion

- 23. We have reviewed our Business Plan in light of the LSB's declared priorities, as set out in its draft Business Plan. There is very considerable overlap indicating a largely shared set of priorities. However, we are unlikely to be able to make further adjustments within the current year since we are already committed to our Business Plan. The LSB would need to advise the CLC as a matter of urgency if it considers that any substantial adjustments need to be made to align with the LSB's priorities.
- 24. The LSB has specifically asked if there are any areas which it considers would benefit from thematic review. As already raised with you, we consider that compensation arrangements, and particularly the scope for a centralised fund, should be central to the LSB's resource and strategic oversight agenda. As the oversight regulator, the LSB should concentrate on the broad, strategic issues, such as this, and education and training, rather than applying the higher-level through lower-level prescription.
- 25. We acknowledge that regulators have more work to do to achieve truly outcomes-focused regulation, and that consideration should also inform the LSB's own approach to its work so that we do not add unnecessarily to the regulatory burden on the businesses we regulate or their consumers.

Thank you for giving the CLC the opportunity to respond to the LSB's consultation.

Yours sincerely

Sheila Kumar
Chief Executive Officer
