



The Law Society

**The Legal Services Board's draft  
business plan 2014/15  
The Law Society's Response  
February 2014**



The Law Society welcomes the opportunity to respond to the Legal Services Board's (LSB) draft business plan for 2014/15. The Society represents the overwhelming bulk of lawyers regulated under the Legal Services Act and who contribute towards the costs of the LSB.

## **Introduction**

The Society is disappointed at the tone and approach of the introduction to the report. The expression of disappointment as to progress by the regulated community and dissatisfaction with its response to changes promoted by the LSB is unhelpful. Indeed, given the significant changes and reforms that have been introduced over the last three years, it may be that the LSB should consider how realistic their expectations were and, indeed, the extent to which proposals advanced by the Board may have made the profession more nervous about change.

The profession in England and Wales would not have developed since before 2007 to become one of the leading global legal professions, bringing in over £27bn in income to the UK economy if it was resistant to change. Well before the existence of the LSB had even been mooted, the Society had acted to ensure that the profession was able to compete: we abolished restrictions on advertising, business structures and referral fees so far as we could according to the statutory limitations. The Society supported in principle what were to become ABSs before Sir David Clementi was appointed to run his review. Our global firms are among the most successful in the world. In the consumer market, our conveyancing fees are the lowest in Europe and our firms are competing and innovating to address issues of access to justice. The Law Society had begun a major review of the training rules which has been heavily delayed first by the arrival of the SRA and then by the Legal Education and Training Review.

The plan refers to the LSB's "blueprint" published in response to the Lord Chancellor's call for evidence on regulation and suggests that there may be "quick wins" that it can achieve. It is disappointing that the plan does not identify what those "quick wins" might be. We query in any case whether it is for the LSB, as opposed to the Approved Regulators to achieve those "quick wins". The document was controversial and, understandably, issued without consultation as the LSB's own views. If they are to take any of its ideas forward it is essential that these should be subject to full and open-minded consultation.

We accept entirely that there are many areas where access to justice is limited. The reasons for this are not a lack of innovation among firms or the hurdles of regulation but to do with (a) reductions in legal aid expenditure by successive Governments and (b) the fact that there is a cost to ensure that proper professional standards and consumer protection is assured. There may also be an understandable cultural reluctance to litigate or seek redress. The Board's assessment of the reasons for lack of access to justice do not take these into account, nor the possibility that no amount of innovation may be able to address a basic problem of lack of money. It might also be thought that the sheer work involved in adjusting to a new regulatory regime, together with the challenges of the economic climate and the Government's approach to costs and legal aid may well have played their part.

Finally, it is deeply depressing that there is barely any mention of the need to maintain the professional principles that govern legal services and which, for good

reason, restrict the activities of some firms. These rules, including the duty to the court, the avoidance of conflicts of interest, the preservation of confidentiality and legal professional privilege, are crucial for the protection of consumers and of the public interest. These concepts do not provide an excuse to resist change: they are essential to the administration of justice and the maintenance of a balance between the parties – one of whom may well have significant resources and the other may be a consumer. If the LSB ignores these principles, not only will the administration of justice and the interests of consumers be prejudiced but the reputation of the legal profession in England and Wales will be damaged.

The Society is concerned that the plan extends beyond the appropriate remit of the Board and may well not assist in achieving the LSB's aims. We are also concerned that many of the proposals lack detail and are vague. There is also a need for the LSB to review the impact of its own actions objectively.

In this response we comment on the following aspects of the LSB's work:

- The role of the LSB vis a vis the Approved Regulators;
- Regulator performance and oversight;
- Strategy and Research
- Liberalising the workforce; and
- Cost

### **The Role of the LSB**

The Law Society remains concerned that the LSB is taking too pro-active a role in dealing with the Approved Regulators and is seeking too much to set its own agenda for regulation, rather than leaving the Regulators to carry forward their work in their own sectors. The role of the oversight board should be to concentrate on the performance of the approved regulators, stepping in only where there are failures of performance. It should not prescribe the approach to be taken by those regulators.

A particular example of this is the recent proposal to issue a Directive on the approach to Education and Training. As we indicated in our response, we consider that such an approach is unnecessary and inappropriate at this stage – when there is no evidence that the Regulators are not taking steps to reform training. We also believe that there were significant flaws in those proposals. We do not accept that it is for the LSB to interfere with the working of the Approved Regulators in the absence of significant evidence of regulatory failure and poor performance or of barriers that cannot be justified in the public interest.

The effect of the LSB's approach is likely to divert the resources of the Approved Regulators from the work that they are best placed to judge is necessary to responding and taking forward an agenda with which they may not agree or which may not be practical. This adds a burden and cost to the profession. There is a real danger that the LSB's well-intentioned work may, in fact, cause greater cost and impose greater complexity than is right.

Where the LSB does have a role, however, is in holding the Approved Regulators to account for their performance. Here we are disappointed in the way in which the LSB is carrying out its work. There are significant concerns about the way in which the SRA has handled certain areas of its work, with large backlogs arising in some

areas and concern about its management of major projects. The Internal Governance Arrangements make it almost impossible for the Law Society to meaningfully carry out any performance management of the SRA. We believe that the LSB could do more to look at the way in which the Approved Regulators' administrative capacity and performance affects the competitiveness of the profession and the interests of consumers.

### **Regulator performance and oversight**

Bearing in mind our comments above, while we welcome the LSB's appreciation that it has a role here, we are disappointed by its approach to monitoring regulator performance. It appears to believe that this is best undertaken through monitoring action plans, reviewing standards against best practice and conducting thematic reviews.

We consider that this approach is too cumbersome and intrusive and likely to cause costs to the Approved Regulators. In our view, the LSB should concentrate on:

- The measurable performance of the regulators in key areas of their work;
- Assessing the Regulators' qualitative performance through research amongst consumers and the regulated community; and
- Monitoring the Regulators' performance in delivering projects effectively, efficiently and economically.

The proposals in the LSB's plan suggest rather that the LSB wishes to drive a particular agenda to achieve change rather than to concentrate on ensuring that the regulator does its job properly.

This point is particularly relevant in respect to its approach to new designations where the LSB's own Internal Governance Regulations provide an in-built inconsistency of approach which is hard to reconcile with the third bullet point of paragraph 18.

Thematic reviews may or may not be an appropriate and cost-effective approach but it is unfortunate that the report does not specify what they are, why they might be required or the planned outcome and expenditure.

We obviously welcome the LSB's wish to ensure that regulatory burdens are targeted and efficient for practitioners. Unfortunately, the business plan is not clear about what the LSB has in mind or how it will achieve this. In our experience, many of the requirements imposed by the LSB have not had this effect. In particular, many firms regard Outcomes Focused Regulation as having a chilling effect which stifles innovation, rather than the effect intended by the LSB.

### **Strategy and Research**

We note that the LSB wishes to do more research into the barriers which have prevented many players in the legal services market from adopting new business models and enabling new players to enter the market. If the LSB is concerned about this, we think that it is wrong to jump to the conclusion that it is regulation that is causes this perceived problem.

There may well be cumbersome processes which may discourage some from taking advantage of liberalisation. It may also be that, in fact, the market is already highly competitive and liberal and there are limited opportunities for new firms in fact to enter the market. It may also be that Outcomes Focused Regulation itself may be a deterrent in that it involves firms taking risks without any assurance that the regulator will not second-guess those risks after the money has been spent. We recognise that these views may not fit with the prevailing political views of the LSB but we believe that the Board should consider them before attacking what may well be legitimate public protection.

We agree that it is important that disproportionate cost and complexity should be removed from the authorisation process. Equally, however, we believe that the LSB should have regard to its own statement at paragraph 21 that a market cannot operate effectively without regulatory boundaries. The Schedule 13 process, for example, was a careful attempt to set the boundaries to ensure that the public was adequately protected and that professional principle were promoted. It may be that there are ways in which that process is implemented which cause disproportionate cost, but it is important that these should be evidenced and that changes to them should be fully consulted upon.

We welcome the review of the costs of regulation. We believe that the approach of the LSB has been to impose significant additional burdens on the market without any obvious countervailing benefits. We hope that the work will be carried out by suitably independent researchers and that there will be full consultation over methodology and the substance of the research. The Law Society will be happy to help with these discussions.

### **Liberalising the workforce**

The Society supports attempts to increase the number of routes to qualification and to ensure that law firms remain competitive and responsive to their clients' needs.

We have set out our views on the draft guidance already but we would make some further points:

- This jurisdiction is among the most liberal in the world with respect to the legal workforce – the relatively limited scope of reserved work is a particular example.
- Firms have considerable flexibility about who they can employ already as is demonstrated by the growing number of paralegals;
- It remains, however, essential that there should be properly qualified supervision of legal work.

The SRA's plans for Training for Tomorrow are radical and may well achieve much that the Board is seeking to do. In our view, the Board should not seek to interfere in what the SRA is doing or take further work which might second-guess that.

As suggested in the introduction, the list of reasons why individuals do not seek help is selective. It also needs to be recognised that there are limits to which regulation can address many of the concerns. The fact is that many legal processes are unpredictable and at the mercy of external factors.

The Society supports measures to sustain and improve quality and we agree that consumers need appropriate information. However, consideration will need to be given as to the extent that regulatory interventions will in fact prove helpful.

### **Cost**

While the continued reduction in the LSB's costs is welcome, we cannot but observe that this will amount to a saving of less than £1 per regulated individual and that the accumulated savings have yet to reach £5. It is the profession that pays for the LSB and, at present, it is hard to see that the LSB has done anything other than add cost, uncertainty and regulatory burdens for its members.

We believe that the LSB could significantly reduce its research work further and could further reduce costs by avoiding duplication of work being done by the Approved Regulators.