

Responses to LSB's Developing Regulatory Standards Consultation

SOLCITOR REGULATION AUTHORITY (SRA)

- Timeline short and ambitious.
- ARs themselves set measurable objectives which seek to improve standards
- The indicators prepared in Annex A might restrict ARs to concentrating on them and not on developing performance objectives specific for these regulators aimed to improving performance objectives for consumers
- The focus on core functions (OFR, risk identification, supervision, enforcement), may not be sufficiently flexible to provide the improvement for consumers.
- Mechanisms to review and improve for consumers should already exist in ARs. By specifying an overall framework it might restrict the delivery of the improvement process.

THE LAW SOCIETY

- LSB's role is becoming 'too activist' and that the LSB's main rationale has been delivered (ABS, regulatory independence) and it should scale back its activities.
- LSB was created to facilitate the Act to happen, not to play a 'hyper active' role in delivering market reforms.
- Law Society does not want a lessening of the separate business rule.
- That LSB can only require that regulators can show that they are meeting all the regulatory objectives in the Act – but we can't prescribe how ARs should do it (our framework risk being 'one-size-fits-all'). Especially in terms of OFR in that the LSB says that we don't want to be prescriptive but that AR's must nonetheless follow OFR.
- Insofar as the LSA 2007 charges the LSB with a role in the maintenance and development of standards, it does not imply the LSB is to have a leading role, or to impose preferred systems.
- It is misguided for the LSB to think that its role is to take a direct approach to implementation of objectives and transform the market, rather than its principal role as oversight of ARs
- Law Society believes that the detail of how to deliver the most effective regulation is a matter for ARs/LAs.
- The Law Society considers it right that the LSB develops a mechanism to assess whether ARs are acting in the way consistent with the regulatory objectives. The LSB should focus on outcomes for ARs and not prescribe preferred solutions.

BAR STANDARDS BOARD (BSB)

- A blend of principles, rules and guidance is going to be necessary. Frontline regulators are well placed to judge what blend is right for the problems their regulated communities face.
- That risk should not be limited to different businesses, but are more properly addressed towards the risk that types of businesses pose to the regulatory objectives.
- BSB disagrees with LSB's interpretation of LSA 2007 section 4. In view of the BSB, the board is to offer only advice and assistance – not to take a primary role.
- There are risks in transferring the initiative from front line regulators to the LSB in setting the regulatory agenda.
- BSB considers that as a front line regulator it has the ability to set its own agenda.
- The OFR change should happen incrementally as regulators introduce modifications, guided by the regulatory objectives and principles.
- The LSB's focus in the document is strongly about solicitors and private practice.
- Changes in Legal Aid will have an effect on the diversity and access to justice elements of the regulatory objectives.
- The BSB queries whether the LSB means to say that 'legal service providers' are responsible for securing the regulatory outcomes and deciding how their firm will do so. There are no statutory obligations for firms to pursue the regulatory objectives. Does the LSB mean to say, in this context, 'ARs' instead of firms?
- Not appropriate for LSB to have 'one-size-fits-all' approach. Supervision at entity level and supervision at individual level will vary as between different practice structures.
- There exists a danger that if this work is done with haste then an unacceptable level of risk may materialise.
- Concern over short timeframe for the self-assessment and actions plans that are scheduled for December 2011 completion. The BSB wants to see what evidence the LSB holds which demonstrates that there is an adverse impact which justifies insisting upon a 12 month timeframe.

ILEX & IPS [joint response]

- ILEX & IPS concerned that the LSB states that it expects ARs to develop an outcomes focused approach but that the Act does not impose a duty to adopt an outcomes focused regime.
- ILEX & IPS are pleased that the LSB recognises that AR's have freedom to design their own regulatory approaches.

- Clarification is needed on the point about whether the LSB expects the ARs to be explicit about how their regulatory regimes meet the requisite standards only as a starting point, with greater flexibility and freedom thereafter.
- Risk that the LSB's desire to impose consistency over freedom and flexibility may result in disproportionate regulation by the LSB of some ARs.
- LSB's analysis of the changing legal services market should mention opportunities for Legal Executives in niche practices and their participation in that change.
- We could learn from the financial services sector over the 20 years about the use of principles-based regulation. Follow the FSA's 'evidence based' approach to regulation.
- Each AR may have a different opinion and approach to OFR which may result in inconsistencies between regulators when they all move to such a regime.
- Unclear how much variance will be allowed between different approaches to OFR and whether inconsistencies will be viewed by the LSB as not meeting the regulatory objectives.
- Proposed OFR model may not be the only way to embrace the regulatory objectives and Better Regulation Principles.
- OFR is not a requirement of the Act, but the LSB is nonetheless expecting it.
- The LSB should not lose sight of the need for good entry requirements to equip the regulated community to meet outcomes.
- It would be useful to know whether the LSB considered other approaches to regulation before it settled on OFR and what was the full rationale for this approach
- Allowing greater flexibility in the development of regulatory structures will enable ARs to develop a regulatory approach that is consistent and proportionate.
- Self assessments are more in-line with the LSB's OFR approach.
- LSB, in engaging in supervisory discussions with ARs, and developing their regulatory model, appears intrusive and burdensome.
- The Act appears to provide ARs with the freedom to decide how they will promote the regulatory objectives. The LSB does not appear to provide ARs with the same freedom.
- ILEX & IPS have no objections to the criteria for regulatory standards in Annex A as long as there remains an element of flexibility and proportionality.

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WLAES (ICAEW)

- ICAEW considers that it is important for the LSB to consider the integration of non law professionals, their clients and their regulators and to prepare regulatory standards that will work for them too.
- ICAEW welcomes the LSB's comment about avoiding a two-tiered regime to avoid inconsistency amongst ARs.

- Where such ‘third category’ regulators approach the LSB with a view to becoming an AR or licensing authority, existing regulatory provisions should be fully taken into account.
- ICAEW thinks that any new regime developed by the LSB needs to specifically accommodate existing regulated professionals who have been successfully regulated for many years to ensure that the regulatory objectives are not breached inadvertently as a result of disregarding the relatively low risk presented by these entities.

COUNCIL FOR LICENSED CONVEYANCERS (CLC)

- ABS is likely to speed up plurality in the legal services market.
- CLC considers that robust licensing is of equal importance to proportionate supervision and that it should be included as a fifth element in the constituent parts of regulation.
- CLC considered the development of a more flexible and responsive regulatory regime is dependent on effective implementation of OFR. The CLC is moving towards this already.
- CLC wants a regulatory culture where ARs are enabled and not disincentivised from adopting new ways of regulation, underpinned by an effective feedback loop (lessons learned).
- CLC considers the self-assessment to be an appropriate approach. But that the December 2011 submission timescale is challenging and that ARs would only have three months.
- The rapid pace of implementation presents risks to ARs as well as creates additional burdens and costs on the regulated community. The rapid pace of change also risks ARs not being able to focus on the learning aspects of implementing the new processes.
- Given the tight timescale of the self assessment which coincides with the CLC launch of OFR and the overlap between these, there may be an adverse impact on other priorities.
- The risks for the CLC are that the self-assessment will be carried out too soon after the introduction of their OFR approach. If the self-assessment process was completed instead in May-June 2012, then there would be better scope of learning from experience by actually applying OFR in regulation.
- The key indicators should make explicit reference to the risks that threaten the specified outcomes in order that what is defined as risk is not open to interpretation.
- There should be a focus on market risks that impact upon both entity and individual.

LEGAL OMBUDSMAN (LeO)

- LeO is keen to ensure that other aspects of consumer protection – speedy compensation arrangements – ties up with redress and insurance so that

when any of the risks do impact on consumers, the system has robust mechanisms in place so consumers benefit from an adequate safety net.

- LeO consider that it would be helpful if there were a single set of complaints handling rules that applied across the legal sector, rather than separate rules from each front line regulator.
- In regard to our market analysis, it would be useful if we outlined how the market is innovating and what are those innovations.
- LeO sees consumer confusion caused by overlap between unregulated and regulated services. LeO is concerned with the impact on consumers and how our proposed approach to regulation will help achieve greater clarity in this increasingly complex market place.
- LeO welcomes further discussion about how the principles in the consultation paper extend past formalised structures like ABS to other equally dynamic business models that are already emerging.
- LeO is interested in the equality impacts of the principles in the consultation paper.
- LeO usefully lists benefit and costs to consumers.
- Leo would like to understand better how their role can feed into the processes around risk assessment.

COSTS LAWYERS STANDARDS BOARD (CLSB)

- The CLSB expects any approach on regulatory standards to include consideration of the ranking of ARs based on: the potential risk they pose to the consumer; a proportionate regulatory strategy; analysis of AR cost/benefit; a review in two year's time; reflect what the consumer would consider as reasonable.
- Importance of using 'plain English' when dealing with consumers. Must be clear by what we mean as 'outcomes-driven approach'.
- Some level of supervision may be necessary in some of the AR professions based on risk rankings and risks identified. But LSB must be careful not to create onerous bureaucracy which may drive costs lawyers out of its regulated community.
- LSB needs to be cognisant not to stray into management of ARs.
- In terms of the criteria, the LSB needs to be clear as to what we expect to see for each.
- Overall, the main focus in developing regulatory standards should be proportionate regulation based on risk ranking/risk within each profession; and regulation based on cost (both to LSB and AR)/consumer benefit.

MANCHESTER LAW SOCIETY

- The Society agrees with the main thrust of the proposed LSB approach.

- That regulation must be consistent across all regulators so that regulatory 'shopping' cannot occur.
- The suggestion by SRA chairman that the number of regulators should be investigated should be looked at further.
- OFR cannot be about firms guessing what the SRA will expect to see. The SRA needs to say now what it expects to see.
- The Society's overriding concern is that firms are having to deal with too much regulatory change at once and are at risk of being swamped by the new requirements.

EMMERSONS SOLICITORS

- Emmersons is sceptical about the merits of the consultation and its rationale.
- The evidence for the necessity of OFR, as presented by the SRA and LSB, is considered weak.
- Emmersons see prescriptive regulation, rather than principles-based OFR, as giving firms and consumers greater certainty in an increasingly plural legal services market.
- The risk assessment requirements and new code of conduct create even more layers of bureaucracy and supervision which are disproportionate to the work that is being done.
- SRA and LSC [LSB] are too consumer focused. Solicitors are members of a profession. Clients are people with whom solicitors interact. The SRA should not be involved with, or concerned about, poor service but about breaches of ethics, breaches to the solicitors code of conduct, etc.
- Too much emphasis is placed on access to justice services and not enough on access to equality legal services that help deliver real justice for clients.
- The regulatory regime should not be flexible.
- That the approach of the LSB toward OFR will weaken the professionalism of solicitors.
- Not enough emphasis on education and training of solicitors.