

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	11 September 2013	<b>Item:</b> Paper (13) 58

<b>Title:</b>	Legal education and training – consultation paper
<b>Workstream(s):</b>	Workforce development
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<b>Status:</b>	Protect

<b>Summary:</b>
<p>Further to the Board’s discussion at its meeting on 24 July, the executive presents a draft consultation paper on the proposed guidance for education and training (<b>APPENDIX A</b>).</p> <p>An update on current developments with the commissioning regulators (SRA, BSB and IPS) is contained within this cover paper.</p>

<b>Recommendation(s):</b>
<p>The Board is invited to:</p> <ol style="list-style-type: none"> <li>(1) Comment on the draft consultation paper and proposed approach</li> <li>(2) Delegate authority to the Chairman and Chief Executive to agree publication of the consultation paper following any final amendments</li> </ol>

<b>Risks and mitigations</b>	
<b>Financial:</b>	None at this stage
<b>Legal:</b>	None at this stage
<b>Reputational:</b>	There is a significant risk that our consultation and plans to issue guidance will be presented by some as duplication of effort with the approved regulators. This risk is heightened by the likelihood of the SRA publishing a consultation and policy statement on education and training after its Board discussion on 11 September
<b>Resource:</b>	Considered sufficient at this time but it is proposed that appropriate resource is reserved for engagement during the consultation period. Staffing changes will require this work to be balanced with other priorities over the remainder of this year and refined in light of the business planning process for 2014/15

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>X</b>		Draft principles discussed with full Board at July meeting
<b>Consumer Panel:</b>	<b>X</b>		Consumer Panel Manager has reviewed and commented on the draft papers
<b>Others:</b>			

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Appendix A	Section 22 – information intended for future publication	

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
<b>Date of Meeting:</b>	11 September 2013	<b>Item:</b>	Paper (13) 58

### Legal education and training – consultation paper

#### Executive Summary

1. In July 2013, the Board received an update on the Legal Education and Training Review (LETR) following publication of the final report on 25 June<sup>1</sup>. The Board agreed to the recommendation that the executive prepares draft guidance for discussion at the September Board meeting. A draft consultation paper containing the proposed guidance is attached at **APPENDIX A**.
2. The consultation paper sets out our views on how legal education and training needs to change in order to deliver the regulatory objectives, drawing on Board discussions that took place in August 2012<sup>2</sup>, November 2012<sup>3</sup> and July 2013<sup>4</sup> as well as the paper published during our seminar series in early 2012<sup>5</sup>. It is built upon our view that a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market.
3. The consultation paper proposes that the current regulatory arrangements need to be reviewed to ensure they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. It sets an explicit expectation that regulators approach to education and training should be risk based and outcome focused, in line with the core principles in our regulatory standards framework<sup>6</sup>. Both the consultation paper and draft guidance apply to all approved regulators.
4. It is suggested that regulators act quickly to review their existing regulatory arrangements and produce a more detailed timetable for reform by March 2014. The guidance also sets out a series of outcomes for education and training in the medium to long term, drawing on the findings of the LETR. The narrative within the consultation document explains our reasoning for these outcomes and some examples for what they may mean in practice. We welcome the Board's views on whether this addresses comments provided in the July discussion.

<sup>1</sup> <http://letr.org.uk/the-report/index.html>

<sup>2</sup> Board workshops on education and training held in July and August 2012

<sup>3</sup> Board Paper (12) 76, Update on Legal Education and Training Review, 28 November 2012

<sup>4</sup> Board Paper (13) 54, LETR Briefing, 24 July 2013

<sup>5</sup>

[http://www.legalservicesboard.org.uk/Projects/workforce\\_development/pdf/20120221\\_education\\_and\\_training\\_its\\_role\\_in\\_regulation\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/workforce_development/pdf/20120221_education_and_training_its_role_in_regulation_final.pdf)

<sup>6</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20111214\\_regulatory\\_standard\\_v11.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf)

5. It is proposed that subject to the Board's views, the consultation paper is published before the end of September. During the consultation period we will need to ensure active engagement with all stakeholders whose participation will be central to a more flexible approach to legal education and training. Our consultation is likely to coincide with further activity by the commissioning regulators in response to the review.

### **Aims and objectives**

6. The LETR underlines the need for greater variety and flexibility of approach to ensure that both new and existing lawyers attain and retain the necessary skills to serve the public effectively. It also raises questions about the relevance of some of the existing regulatory requirements. While the causes may be part of wider issues with the structure of legal services regulation, we believe there are areas where early progress can be made.
7. In the consultation paper we put forward our view is that a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market. We consider that greater flexibility can be achieved through more effective targeting of regulation according to the risks posed. We suspect that there are areas where existing regulation may not be proportionate and is having an impact on access, cost and flexibility. In our view it is therefore a particular priority for regulators to review their approach to education and training in this regard and to develop a more detailed blueprint for change in the medium term. We would expect such a process to lead to simplification of the existing frameworks and better targeting of regulation in this area that will encourage innovation while ensuring appropriate consumer protection.

### **The Role of Guidance**

8. In its oversight role, the LSB has at its disposal a range of tools, one of which is to issue guidance under section 162 of the Act<sup>7</sup>. Our powers to issue guidance are broad and given the significant role of education and training in the regulatory framework, we believe this is an appropriate area for us to do so.
9. It is the view of the executive that statutory guidance provides a clear and transparent way to set out the LSB's views in this area while also providing a solid basis for which we can review progress or take action in the future if we find there is evidence of detriment to the regulatory objectives or better regulation principles. It also provides regulators with a degree of flexibility as to how they

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<sup>7</sup> Section 162 of the Legal Services Act 2007 (the Act) allows the Legal Services Board (the LSB) to give guidance:

- About the operation of the Act and any order made under it
- About the operation of any rules made by the Board under the Act
- About any matter relating to the functions of the LSB
- For the purpose of meeting the regulatory objectives
- About the content of licensing rules
- About any other matters about which it appears to the LSB to be desirable to give guidance

respond, both in relation to the substance of their proposals and the timetable. This is particularly important for those regulators that have not been directly involved with the review and may not necessarily have allocated resources to this area of work.

10. The Act provides for us to have regard to the extent to which an approved regulator has complied with any guidance when we are exercising our functions (section 162(5)). Where regulators decide to depart from our guidance it provides a framework by which they are required to justify those decisions. For example, when submitting rule changes for approval under schedule 4, part 3, we would expect approved regulators to demonstrate how they have considered our guidance and if appropriate, to explain why they have chosen to depart from it. A similar approach would be taken to designation applications. The Board will recall that we have previously issued guidance in relation to other policy objectives, including diversity data collection<sup>8</sup>, referral fees<sup>9</sup> and appeals against the decisions of licensing authorities<sup>10</sup>. We have also had experience of handling rule changes in these areas so the proposed approach of considering the extent to which regulators have “had regard” to our guidance is not new.
11. So in effect, regulators will need to be able to demonstrate how they have taken account of our guidance when applying to us for approval of any changes to their regulatory arrangements for education and training. This ability to shape the agenda is particularly valuable at this stage when the regulators’ responses are at a formative stage.
12. We also see guidance as a mechanism to deliver cultural change in the medium to long term by providing a hook for us to review progress in delivering the outcomes we have set out. Where regulators make no plans to review their approach to education and training, we may decide to investigate whether there is any evidence that the current arrangements are having a negative impact on the regulatory objectives or better regulation principles. Those that have clear plans and continue to make progress in the broad direction of the guidance will be left to deliver. If we did not have guidance it would make it much more difficult to take such an approach.
13. We are not in a position to determine the timetable for such a review at this stage but will do so in March 2014 once we have received responses from regulators. The Board will note that, subject to the outcome of the consultation, the final guidance will be issued in January, giving regulators two months to respond. At this point we believe this is a reasonable timeframe given that the commissioning regulators (SRA, BSB and IPS) have plans to issue their full response to the

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<sup>8</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/diversity\\_guidance\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf)

<sup>9</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20110531\\_guidance\\_referral\\_fees\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20110531_guidance_referral_fees_final.pdf)

<sup>10</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/supplementary\\_guidance\\_on\\_licensing\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/supplementary_guidance_on_licensing_rules.pdf)

LETR by December 2013. However we may need to review in light of the response to consultation, particularly from the regulators that have not been directly involved in the LETR.

### **Timing for publication of the consultation paper**

14. The Board will recall that only three of the approved regulators were involved in commissioning the LETR (Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards). Those regulators are currently considering their full response to the review having provided an initial response in June.

15. The Board may therefore wish to note the following information that is based on our current understanding:

- The SRA Board is considering its policy statement on education and training at its meeting on 11 September which sets out three phases for future reform. The first phase will include the development of a competency framework for solicitors and proposals for ongoing competence (i.e. the reform of CPD). Subsequent phases will consider what these developments mean in practice and are likely to involve a discussion around the role of the SRA in setting particular routes for qualification as a solicitor. The SRA is also planning to publish a 'red tape challenge' consultation alongside the policy statement which will focus on its proposals to simplify education and training regulations in the short term. We do not know at this stage what these proposals will be and they are subject to the views of the SRA Board (paper for discussion on 11 September) and its Education and Training committee (19 September). The SRA is yet to agree the timing of these publications but our current expectation is that they will be put into the public domain in early October. We are meeting with the SRA to discuss in more detail on 17 September
- The BSB Board is expected to consider its full response to the LETR at its meeting on 26 September. Recent minutes from the Bar Council Meeting reveal the perception of the Chair of the BSB that we "will issue directives to the regulators as to what should be done as a result of the report"<sup>11</sup>. We understand from discussions with the BSB that CPD would be an early priority for its work and that the BSB already has in place plans to review its Bar Training Regulations at some stage. We have not yet seen any detailed proposals or timetable from the BSB. We are meeting with the BSB to discuss in more detail on 16 September.
- IPS is yet to respond fully to the report but the Board should note recent steps to review its approach to education and training, notably rule changes to introduce work based learning outcomes for CILEX fellows and a new output based CPD scheme. These rule changes were approved on 21 March 2013 and 25 July 2013 respectively. CILEX and IPS are jointly hosting a Summit on

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<sup>11</sup> <http://www.barcouncil.org.uk/4767.aspx>

17 October where the Legal Services Consumer Panel will be presenting. We have not yet received an invitation to that event

16. The Board will recall from the July update paper that of all of the commissioning regulators, the SRA has so far made the most forward looking response to the LETR. Further it now appears to be moving relatively quickly with its plans for education and training now the review has concluded. While we have not seen anything on paper and their plans are subject to Board discussion and approval, our initial impression at this stage is that the SRA's approach is likely to be consistent with our draft guidance. We will look to explore this further with the SRA at the meeting scheduled for 17 September and through scheduled chief executive level meetings.
17. The Board will note the risk identified in the cover paper that the decision to issue guidance, particularly at this time, may be perceived as duplication of effort or may be presented as such by the regulators. This view is likely to be relayed by other regulators, particularly in the context of the Ministry of Justice review of legal services regulation. We believe this risk can be best mitigated by effective stakeholder engagement and careful consideration of the timing of any LSB publication but nevertheless some risk will remain.
18. We would expect the commissioning regulators to be of the view that the LSB can best fulfil its statutory duty to assist in the maintenance and development of standards in relation to education and training<sup>12</sup> by taking more of a passive role and waiting for their full response to the review before taking any action. Given the lack of information on timetable, we do not know at what point that would be. Further, we do not agree that such an approach is appropriate.
19. As we have set out in our recent paper on Overseeing Regulation<sup>13</sup>, there is a clear hierarchy in the regulatory framework and we must be proactive if we are to be in a position to discharge our responsibilities properly and proportionately. Furthermore, we need to have regard to the actions of the other regulators that were not involved directly in the review<sup>14</sup>.
20. In order to be proactive and to influence the regulators' next steps, it is the view of the executive that we need to act now rather than waiting for their response and reacting accordingly. However it is important that we are clear in both the guidance itself and the broader messaging during the consultation period that we do not intend to direct either the detailed responses to the review or the timetable for that response. We would therefore welcome the views of the Board on

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<sup>12</sup> Section 4 of LSA 2007  
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[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20130610\\_overseeing\\_regulation\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20130610_overseeing_regulation_final.pdf)

<sup>14</sup> The Board may wish to note the consultation being undertaken by the CLSB in relation to its education and training regulations which closes on 1 October 2013. CLSB is proposing to introduce aims and outcomes to its qualification framework. This is likely to lead to an application for LSB approval of changes to regulatory arrangements (under Schedule 4, Part 3 of the Act)

whether the level of detail within the guidance is appropriate. We also propose that in finalising the date of publication for the consultation, we consider the proximity to or sequencing of other external announcements.

### **Next steps**

21. It is proposed that subject to the views of the Board, we finalise the consultation document with a view to publishing before the end of September.
22. It is suggested that given the likely overlap with the SRA publications and the need for careful stakeholder management, an appropriate publication date is agreed once we are aware of the outcome of the SRA Board discussion on 11 September and we have had follow up discussions with both the BSB and SRA during week commencing 16 September.
23. The consultation period will last 8 weeks and will include targeted discussions with key stakeholders, including a roundtable with the commissioning regulators. We plan to return to the Board in January 2014 with an update on the outcome of the consultation.

### **Recommendations**

The Board is invited to:

- (1) Comment on the draft consultation paper and proposed approach
- (2) Delegate authority to the Chairman and Chief Executive to agree publication of the consultation paper following any final amendments