

To:	Legal Services Board	
Date of Meeting:	24 March 2010	Item: Paper (10) 23 a / b

Title:	Business Plan and budget 2010/11	
Workstream(s):	All	
Presented by:	Julie Myers, Corporate Director	
Author:	Julie Myers, Corporate Director julie.myers@legalservicesboard.org.uk / 020 7271 0059 Edwin Josephs, Director of Finance and Services edwin.josephs@legalservicesboard.org.uk / 020 7271 0084	
Status:	Protect	

Summary:

The Board will find attached:

Paper (10) 23 a – which provides an overview of responses to the consultation on the draft Business plan for 2010/11 ('**the Plan**') and proposes amendments to the Plan as a result. Responses were broadly supportive and comments related more to the way in which the LSB will undertake its work, tone and emphasis than on substantive matters of work that should, or should not, be in the final Plan.

Paper (10) 23 b – which provides the final budget proposal for 2010/11 to deliver the Plan. The total budget proposed is £4,931k, which is £15k higher than was detailed in the draft Plan consultation. This difference is due to increased anticipated depreciation charges which will be fixed for the 2010/11 year. At time of drafting, the Ministry of Justice (**MoJ**) has indicated informal approval for the budget – we have requested formal approval in principle in time for this Board meeting, but we have no assurance that this timetable will be met.

Risks and mitigations

Financial: Without formal budget approval from the MoJ, we are not in a position to finalise the Plan.

FoIA: Exempt – policy development.

Legal: N/A.

Reputational: We consulted widely on the Plan and received negligible critical feedback. A number of legitimate points of emphasis and tone were received and we should be seen to be acting upon these by making appropriate amendments.

Resource:	Our ability to deliver the Plan assumes full budget sign-off. The Plan also represents the maximum possible work capable of being delivered with the budgeted resources. Accordingly, any new work not in Plan is likely to require currently planned activity stopping / being re-prioritised.
------------------	---

Consultation	Yes	No	Who / why?
Board Members:		✓	Timing.
Consumer Panel:	✓		Consumer Panel attended consultation workshops but did not submit formal response.
Others:	Audit and Risk Committee endorsed the budget proposal in Paper (10) 23 b.		

Recommendations:
<p>The Board is invited:</p> <ol style="list-style-type: none"> 1) to note the responses to the draft Business plan for 2010/11; 2) to agree in principle the proposed changes to the Plan; 3) to agree in principle the proposed budget, subject to MoJ approval; 4) to delegate authority to approve the sign-off of the Plan to the Chairman and the Chief Executive in order to allow publication.

LEGAL SERVICES BOARD

To:	Legal Services Board	
Date of Meeting:	24 March 2010	Item: Paper (10) 23 a

Business plan 2010/11 – response to consultation

Executive Summary

Recommendations

The Board is invited:

- 1) to note the responses to the draft Business plan for 2010/11;
- 2) to agree in principle the proposed changes to the Plan; and
- 3) to delegate authority to approve the sign-off of the Plan to the Chairman and the Chief Executive in order to allow publication.

Business Plan 2010/11 – response to consultation

Overview

1. This paper provides an overview of responses to the consultation on the LSB's draft Plan for 2010/1. The consultation opened on 16 December 2009 and closed on 5 March 2010 (a period of 11 weeks – a fact commented on by The Bar Council, which noted that this was less than the recommended 12 weeks). In addition to the formal consultation period, we held three workshops with stakeholders to discuss both the draft Plan and Equality Scheme.
2. We received 14 written responses to the draft Plan and 24 individuals and organisations attended the workshops (see **Annex A** for a list of respondents and workshop attendees).
3. Responses were generally briefer than those made in response to the Board's first draft Plan, but again were broadly supportive of both the Board's approach to its work and the agenda for the year ahead. As with last year, few of the comments require substantive change to the work proposed in the Plan and a number are more relevant to the detail of specific workstreams rather than to the Plan itself. This paper goes on to describe the substantive points made.
4. The Board will want to be aware at the outset that none of the responses commented on the budget proposed for 2010/11 specifically. At the time of writing, we have received informal advice from MoJ that budget approval for the required amount will be forthcoming but that timing for that approval cannot be confirmed.
5. The final budget required to deliver the Plan is £4,931k and is discussed in detail in Paper (10) 23 b. The figure is £15k higher than was detailed in the

draft Plan consultation. This difference is due to increased anticipated depreciation charges, which will be fixed for the 2010/11 year. The Audit and Risk Committee reviewed and endorsed the budget at its meeting on 3 March.

Next steps

6. Pending approval by the Board, the Executive will make the following amendments to the draft Plan:
 - 1) Revision of Chairman and Chief Executive forewords to reflect a final Plan rather than a draft Plan;
 - 2) Removal of Annex 1 – interpretation of regulatory objectives. In line with previous Board discussions, this will become a stand-alone analysis for general use, albeit published alongside the final Plan, rather than one exclusively tied to the Plan;
 - 3) Revision of Plan text to reflect the changes of emphasis and greater clarity identified by the consultation exercise.
7. We expect to be able to finalise the text in week beginning 29 March and to have a document ready for publication by 6 April. Whilst it may be possible to publish the document on that date (pending ‘purdah’ obligations), we recommend that publication be held off until post-election to provide a substantive opportunity for public affairs and media activity. This also recognises that formal budget approval from MoJ should ideally be received before publication.

Matters for the Board

8. The responses do suggest that some amendments are made to the final Plan for 2010/11 and these are outlined in the attached paper. The Board is therefore invited:
 - 1) to note the responses to the draft Plan for 2010/11;
 - 2) to agree in principle the proposed changes to the Plan; and
 - 3) To delegate authority to approve the sign-off of the Plan to the Chairman and the Chief Executive in order to allow publication.

Consultation on draft Plan for 2010/11 – analysis of responses and issues arising

9. On 16 December, the Board published its draft Plan for 2010/11 for consultation. The document was sent to all Approved Regulators (**AR**), consumer and citizen groups, professional groups, other regulators, Ministers, Government departments, a variety of Parliamentarians and other interested individuals. Circa 500 copies of the document were distributed during the consultation period. In consulting we were seeking the views of all parties with an interest in the effective regulation of legal services on the LSB’s workplan and approach.

The responses

10. The consultation closed on 5 March 2010 by which time we had received 14 responses. In addition to the written responses, we supplemented the consultation process by holding two workshops aimed at the generality of stakeholders (80 organisations were invited) and which 24 organisations attended. An additional consultation workshop was held that gave a greater focus to the draft Equality Scheme, but which also discussed the draft Plan.
11. Annex A lists the respondents and workshop attendees. The Board may wish to note that we did not receive responses from all of the ARs (ILEX, ILEX PS, CIPA, ITMA, IPReg, Master of Faculties, ALCD, ACCA, ICAS did not reply). All of the responses and summaries of the workshops will be published on our website.

General themes of responses

12. The consultation document did not ask any specific questions – rather it welcomed views and comments on all aspects of the draft Plan. Respondents therefore tended to focus on areas of most interest to them. The overall tone of responses was welcoming of the Board’s approach to its work, in particular the emphasis on partnership working. No one response could be categorised as a negative response or unduly critical. The following analysis reflects comments made in both the written responses and in the workshops.
13. A small number of general themes emerged – far less than last year – which were:

- 1) **The LSB must recognise that its role is as a supervisory regulator not a director regulator.** This was a point made by The Bar Council, The Law Society and John Weaver (solicitor). Specifically, The Bar Council stressed that that it would be looking to see that the LSB demonstrated recognition of this in:
 - its response to professions’ efforts to create new business models;
 - its research programme, i.e. that the LSB should not reinvent the wheel or do what ARs/ others do;
 - the work programme of the Consumer Panel.

The Law Society commented that the draft Plan does not always respect the principle that the LSB is an oversight regulator, rather than a frontline one. And that the LSB should only use its powers if it judges that an AR has made a decision that is clearly unreasonable in relation to the regulatory objectives as a whole – not just because LSB disagrees. This reiterates a point made in response to the enforcement strategy.

John Weaver suggested that the LSB's vision goes beyond the role set out for it in the Legal Services Act 2007; an alternative view of our role is for LSB to see its role as setting up the framework for regulation – then sitting back and making sure things are ticking over and occasionally if requested to help and co-ordinate AR activities. He commented that the LSB appeared to have a dogmatic attitude – that in a number of areas the Board appeared to have made up its mind both on what the problems are that need to be solved and the solutions that need to be delivered and that it would drive the agenda until that was achieved. His concern was not so much the issues being addressed, as the LSB's attitude in addressing them.

Response – It would be worth reiterating the LSB's assessment of its role, including clarification of what oversight regulation means to the Board, and the messages already articulated in the enforcement strategy, in Section 1. With regard to the question of business models, we will make clear that, while we will not prescribe new business models ourselves, we will be robust in challenging activity by ARs that appears to be restrictive or prescriptive in intent or effect. We will also reflect on the tone of the Plan and of LSB messaging generally.

- 2) **The LSB must set out clearly its own performance evaluation framework.** This was a point made by The Bar Council and in slightly differing contexts by the Bar Standards Board (**BSB**) and Solicitors Regulation Authority (**SRA**). Specifically, The Bar Council expressed disappointment that the LSB had still not published Key Performance Indicators (**KPIs**) which, it pointed out, were important as both accountability and value for money tools. It commented that their continuing absence contrasted with the LSB's desire elsewhere in the draft Plan to set challenging KPIs for ARs.

The BSB supported the need for clear measurement of effectiveness for AR and LSB performance and welcomed the LSB taking the lead in developing appropriate measures. They pointed out that they recognised that hard targets would not always be sufficient.

The SRA requested ongoing reporting by the LSB of progress against milestones. Linked to this, they sought greater clarity on how the LSB would report, on an on-going basis, its assessment of the impact that regulatory reform measures were having on the legal services market.

Response – The draft Plan makes clear that we will be developing our evaluation framework during the year; but it would be worth reiterating the importance we place on this piece of work – and our intention to measure ourselves against the criteria we develop for ARs – in a revised Chief Executive's introduction.

Comments on resources and future planning

14. Only the BSB made any specific reference to the costs of the LSB, stating that they expect to see LSB reduce in size once appropriate frameworks are in place and the Board is satisfied that the regulatory objectives are being achieved by all ARs. They also observed that as the LSB does not expect its budget to decrease in the next three years, they assume this to mean that the Board considers that the current pace and level of work will continue. They suggested that the Board should reflect on this and consider future cost projections based on a reduction ie assuming frameworks are put in place. The Legal Complaints Service (**LCS**) also queried whether the Board should now be looking to develop a three-year plan and observed the need to factor in time for reactive work, as well as proactive.

Response – As this is the first year in which we are operating with our full powers and have yet to form an assessment of the effectiveness of ARs as a group or individually, we have taken the view that it would be premature to commit firmly to disinvestment at this stage. Whilst we can therefore acknowledge that the BSB argument has some force, the response will make clear that any disinvestment can only occur in the light of proven achievement by ARs having a demonstrable and sustainable impact on the achievement of the regulatory objectives.

Comments on the Board's approach to legal aid funding

15. The Bar Council, BSB, The Law Society and Lucy Scott-Moncrieff (solicitor) all, to a degree, suggested that the Board needed to both understand, appreciate and take a view on the impact of public funding on the legal profession. Specifically, the BSB felt that the Board should use its role as an oversight regulator to understand the impact of changes for everyone. The Bar Council advised that the Board needed to recognise that Government policy on legal aid was frustrating the regulatory objective of ensuring an independent, strong, diverse profession – suggesting that the Board draws attention to the problems that the claimed funding gap is causing for access to justice and diversity.

Response – We set out in Annex One of our draft Plan what we thought the regulatory objectives meant. We took a conservative approach to the operation of courts, tribunals and legal aid but on reflection, it is right that we reserve the right to comment on their operation in so far as they interact with regulation and the regulatory objectives. So, for example, we are unlikely to comment on the pay rates of legal aid lawyers but may comment on the role of a competitive market in driving innovation and better value for legal aid. Similarly, we are unlikely to comment on courts' budgets but may comment on tribunal rules that affect the need for a lawyer or on civil procedure rules. The boundaries will be blurred and the final wording informed by the Board's discussion on the Jackson Review.

Comments on individual workstreams

16. The majority of comments addressed individual workstreams and are set out below.

A: Putting consumer and public interest at the heart of regulation

17. Three areas for comment emerged in relation to this workstream:

- 1) **Terminology – eg use of terms, consumer, client, citizen.** The BSB, The Law Society and Lucy Scott-Moncrieff all commented on aspects of the LSB's terminology. The BSB stressed that it was vital for the LSB to understand the needs of all consumers, clients and intermediaries.

The Law Society advised that a lawyer's duty to a client is different in kind to a duty to a customer. In their view, the LSB has yet to make the distinction and, until the distinction is fully understood, the LSB will find it difficult to judge success of delivering the regulatory objectives. This point was echoed by Lucy Scott-Moncrieff, who suggested that the LSB might usefully use the term 'legitimate interests of consumers' – noting that, on occasion, consumers have unreasonable expectations. It would not be appropriate to enforce regulatory standards against unreasonable expectations. The workshops also pointed out that there should be a greater clarity about which work addressed the public interest and which the consumer interest across all work.

Ms Scott-Moncrieff also commented that it would be helpful to have some definition of terms used, e.g. legal services market/sector/industry appeared to be used interchangeably in the Plan and it would be helpful for readers to know whether any distinction was being made between the terms. Additionally, she expressed concern about the use of the term 'citizen', noting that the justice system needs to service non-citizens, i.e. people without citizenship status too.

Response – We recommend that we look again at whether we can more clearly articulate our regulatory response to consumer as opposed to public interest issues. We will also reflect on the helpful suggestion regarding 'legitimate' consumer expectations. With regard to a glossary of terms, we will produce one and publish on our website. The point about the term 'citizen' is well made and we recommend adding an explanatory sentence to the Plan to ensure that there is no misunderstanding about our need to ensure the justice systems services all in society with a legitimate need, and to clarifying this point where we use the term in future.

- 2) **The LSB's research programme.** The SRA and BSB requested more visibility of the Board's research programme: the SRA so that they could plan their own research; the BSB as they believed the

£300,000 budget was significant and without sight of the programme they could not comment on whether the budget was appropriate. The SRA also requested greater emphasis on the LSB's role in bringing together research and sharing of best practice. The SRA suggested this might be through a regular forum or central database. Both stressed the need for a partnership approach to research.

The Law Society expressed disappointment that the Board had chosen to focus on a negative statistic in reporting its recent YouGov research, suggesting that sort of 'spin' was unhelpful in establishing the LSB's reliability.

Response – The LSB's Research strategy will be published shortly and will provide more detail about the Board's programme. The Plan will reinforce the Board's commitment to partnership working in research. In saying this, we will also stress the need for reciprocal sharing of research plans, as it will be difficult for the LSB to avoid duplicating activity if we are not alerted to its existence.

- 3) **The work of the Legal Services Consumer Panel.** Four specific points were mentioned with reference to the Panel. The Council for Licensed Conveyancers (**CLC**) expressed hope that the Panel would consult on its own work priorities, a point echoed by the SRA. The Fellowship of Professional Willwriters and Probate Practitioners (**FPWPP**) suggested that the Panel would need to consider how to communicate its existence to consumers. The SRA requested greater clarity about the way in which the Panel and LSB would work together and asked for more detail about the Panel's role in reviewing consumer research.

Response – The Plan can be clarified to say more about the working relationship between the Panel and the Board, picking up on the Panel's Terms of Reference and the memorandum of understanding (**MoU**) between us. The other comments will be passed on the Panel to consider.

18. One final general comment on this workstream came from the Legal Services Commission (**LSC**) who sought more information about the way in which the LSB intends to measure ARs in respect of putting consumer and public interest at the heart of regulation.

B: Widening access to the legal services market

19. In addition to a general welcome to the passing of the baton of activity to the ARs (The Law Society), two matters were raised in relation to the planning of this workstream.

- 1) **Timetable.** The CLC, The Law Society and John Weaver all raised comments relating to the timetable set for the introduction of Alternative Business Structures (**ABS**). The CLC sought

reassurance that meeting the target date would not compromise the need to solve difficult related issues such as indemnity and compensation arrangements.

The Law Society and John Weaver sounded a similar note of caution, warning that the pace must allow for the significant amount of work required to ensure appropriate safeguards are put in place – the regulatory framework needs to be right more than it needs to meet an arbitrary timescale. The LSC also commented that competition alone would not protect consumers – there needs to be a balance with consumer protection measures. In addition, Mr Weaver suggested that the LSB should postpone planning to become a Licensing Authority (**LA**) until it was transparently clear that an application by a major potential LA will be substantially delayed or not possible.

Response – We will need to be robust in responding to these concerns, emphasising the degree of joint planning with ARs which underpins the 6 October 2011 target date and that we have no intention of making ABS a ‘consumer protection-lite’ regime. We will also explain that planning for the LSB to licence directly is purely a contingency activity at this stage, but one that it would be wrong to delay as to do so could leave potential firms unlicensed and/or their customers unprotected.

- 2) **Regulatory consistency and overlap** – Both Lucy Scott-Moncrieff and John Weaver raised the need for regulatory consistency. Mr Weaver cautioned that the LSB should see that ABS firms are regulated to current standards, not have reduced standards because they are judged, for whatever reason, to be difficult for new entities to comply with. Proper regulation is not easy regulation.

Ms Scott-Moncrieff urged the LSB to take a fresh look at regulatory privileges enjoyed by in-house lawyers and the entities for whom they work, in particular Government Legal Service, in the light of ABS, querying whether all entities that provide legal services be brought within ambit of regulation. She also queried why there was no reference to the development of a MoU by June 2010 (in line with LSB consultation documents) and asked whether the LSB was planning to investigate and address any regulatory overlap issues that may have emerged from the experiences of Legal Disciplinary Practices (**LDP**).

The LSC welcomed the provisions for the regulation of special bodies. With regard to complaint handling for ABS firms, the workshops raised the need for the LSB to work closely with the Legal Ombudsman before ABS firms ‘go live’ to ensure that complaints about ABS firms were handled adequately.

Response – We can offer strong reassurance on these points. We have emphasised the need for consistent treatment of ABS and mainstream firms, but need to make clear that this does not simply mean existing requirements all being placed on new entrants. We can also offer reassurance on the points on MoUs and overlap and on close working with the Legal Ombudsman.

- 3) **Competition concerns.** The BSB warned that there might be unintended consequences in moving to a single market where all lawyers compete on an equal basis as this may risk losing existing benefits of market segmentation ie any current pockets of highly competitive activity.

Response – We do not speculate about the way in which the market will develop as regulation changes and the market opens further. However, it is important that the risks and concerns are well mapped and that current performance of the market is base lined so that changes in access to justice and other areas can be mapped. The LSB is driving an evidence-based approach to this through its research programme and work with ARs on data collection.

C: Improving service by resolving complaints effectively

20. It was noted in the workshops that the Board retains a role in overseeing conduct complaint arrangements within ARs. Both the workshops, and the LCS in its response, noted that consumers should not experience a diminished service in complaint handling during transition, the following comments were received in relation to the LSB's relationship with the Legal Ombudsman, and the LSB's work on first-tier complaints.

- 1) **Performance indicators for the Legal Ombudsman.** Both the LCS and SRA commented that the draft Plan was unclear about whether the Board was setting targets for the Legal Ombudsman or the Legal Ombudsman was setting its own. The LCS observed that if the Board did not set targets it could leave the Legal Ombudsman open to criticism.

The LCS offered advice based on their experience of setting targets and KPIs, noting that the Board would need to develop a mix of measures and indicators for effective oversight and an appropriate monitoring and audit regime.

Response – We will clarify that the LSB has stated that it expects to endorse targets/measures set for itself by the Office for Legal Complaints and its Ombudsman scheme and the timetable for doing this, but if these do not address all of the areas required by the LSB, or are insufficiently stretching, the LSB will impose measures/targets.

- 2) **Data and feedback.** The LCS suggested that the LSB would need to do a degree of quality assurance of the work of the Legal

Ombudsman and the ARs (in respect of first-tier complaints) and ensure that appropriate feedback was given to service providers. The LSC confirmed that it would hope to receive appropriate data about publicly funded practitioner complaints. The CLC hoped that the LSB would take a proportionate approach to data collection to avoid imposing a data burden.

Response – These comments will be fed into the work on first-tier complaints rather than addressed in the Plan.

21. More generally, the Office of Fair Trading (**OFT**) urged the LSB to work with the SRA and BSB to increase the robustness of the consumer protection regime suggesting this was likely to include:
- 1) the complaints handling body being given broad discretion to act in consumer interest;
 - 2) proactive monitoring of service providers; and
 - 3) a regime able to impose, sometimes, severe punishment and sanctions so as to prevent it becoming little more than a redress mechanism

Response – We will continue to work with the OFT to ensure that best practice from other regulatory regimes is incorporated into the regulation of legal services, whilst recognising that the Legal Ombudsman has a different type of role – dispute resolution – to other complaints-handling bodies.

D: Developing excellence in legal services regulation

22. The Bar Council welcomed the clarification that the LSB's aim was to achieve 'gold-standard' not 'gold-plating'. We also received a number of specific comments.

- 1) **Balance of work.** Views were expressed in the workshops that the LSB has not placed sufficient emphasis on the core business of regulation (business as usual).

Response – Experience since the start of 2010 suggests that there should be a greater emphasis on the resources that are required to undertake business as usual activities such as alterations to regulatory arrangements. We will review the Plan to ensure that the importance of this activity is clearly signalled.

- 2) **Engagement with ARs (including applications to become an AR or extension of remit).** In relation to applications to become a new AR or for an existing AR to expand their regulatory remit, the CLC warned that the LSB would need to be proportionate, taking care not to be so burdensome in what is required to make an application that bodies are prevented from applying. It was suggested that this might have the inadvertent consequence of reducing access to justice. The FPWPP commented that the rules governing applications need to be supported by firmer guidelines

and procedures. The need to consider how best to engage with smaller ARs was also raised in the workshops, along with a desire for sharing of good practice.

The Law Society questioned whether an assumption that competition between regulators drives up standards of regulation is well founded, suggesting that a real risk that 'bad' regulation might force 'good' regulation out.

Response – We will make clear that we will actively learn from our initial experience of handling applications for new ARs and extension of remit. We will also make clear that the approval regime and common criteria for recognition should obviate the potential danger perceived by The Law Society.

- 3) **Process for regulatory reviews.** There was a general sense in the workshops that much more information was needed about the process for conducting these reviews. The LSC said that they would be concerned if the LSB placed too much reliance on self-assessment; in their view, self-assessment must be backed up with direct independent oversight. In addition, they advised that the LSB would need to make regulatory performance information available to consumers, those who are regulated and to procurers of legal services. The SRA requested more information on the concept of thematic reviews.

Response – We are committed to developing a broad and deep understanding of the regulatory performance of the ARs. We consider that a self-assessment process will deepen our knowledge of their current performance, help focus future regulatory interventions by the LSB and, in all probability help ARs step and back and reassess their own capacity and direction. We are clear that no one tool will give perfect assurance of regulatory success so are developing a broad toolkit of which self-assessment, thematic reviews, and our enforcement policy are but three.

E: Securing independent regulation

23. Comments centred on embedding independence and practicalities of practising certificate fee (**PCF**) approvals.

- 1) **Regulatory independence.** Whilst the LCS commented that 2013 was too far into the future for embedding independence, prolonging an unsatisfactory situation, the LSC wondered whether the LSB's expectations for its work in 2010/11 were realistically achievable bearing in mind their view that separation has not yet been fully achieved.

The SRA requested greater clarity on the way workstreams 2D and 2E overlapped.

Response – The comments on timetable will be reflected in the work going on to ensure that the LSB’s Internal Governance Rules are implemented. Clarification of the interplay between 2D and 2E will be provided in the final Plan.

- 2) **PCF approvals.** The FPWPP commented that ARs would need support in making PCF applications, whilst the SRA sought greater clarity on type of information required in yearly application cycles.

Response –The LSB will set out the criteria it expects to use in assessing a PCF application after discussion with existing ARs. That will be made available to all potential ARs via our website.

F: Developing a workforce for a changing market

24. The following comments were received.

- 1) **The LSB’s role in quality assurance for advocates (QAA).** John Weaver observed that the LSB appeared to have jumped straight from an anecdotal view that a minority of advocates are not up to standard to deciding that a compulsory QAA scheme was the answer. Whilst QAA was clearly a subject the LSB should be concerned with, he suggested that the approach being taken – leading, setting deadlines, rather than assisting – appeared to be outside of the LSB’s remit. He suggested that the LSB should move at the pace of the SRA/BSB and ILEX Professional Standards. This view was shared by the BSB, which commented that the language of the Plan should be changed to make clear that the LSB was supporting SRA/BSB/ILEX PS work rather than leading or driving forward. The Bar Council commented that it looked forward to the outcome of the SRA/BSB/ ILEX PS work.

Response – We will make clear that the leadership of this work rightly rests with the Joint Advocacy Group of ILEX PS/BSB/SRA, but that stakeholders in the senior judiciary have welcomed the clear approach taken by the LSB in galvanising the process through the setting of clear deadlines.

- 2) **Workforce diversity.** Reiterating broader comments made by others on the LSB’s approach to work generally, The Bar Council stressed that the LSB must build on work done by others and take care not to duplicate effort. The BSB suggested that the LSB could add benefit by providing specialist advice, knowledge and experience to supplement considerable work already undertaken by ARs. The Lawyers with Disabilities Division stated that it was pleased to note the LSB’s commitment to enhancing and improving diversity needs. A sentiment shared by the Welsh Assembly Government. Finally, the Society of Legal Scholars (**SLS**) commented on the difficulty in established how far changes in practice in education bring about changes in workforce.

Response – As with other areas of the Plan, we will reiterate our commitment to working in partnership and avoiding duplications.

- 3) **Qualifications route-map.** The SLS sought more information about the mechanism that will be employed to produce the single route map of qualification routes.

Response – We will engage directly with the SLS on this piece of work.

G: Improving access to justice

25. This workstream attracted somewhat more comment than others and was the only area where our explanation of what the regulatory objective means for us was commented upon.

- 1) **LSB definition of access to justice.** The Law Society commented that the LSB interpretation of what access to justice means appears to lay blame for non-delivery at feet of lawyers. They stated that ‘access’ should be driven by what each client needs not by LSB’s model of what the public ought to want. This might include the provision of face-to-face advice.

Lucy Scott-Moncrieff expressed concern that the LSB had not considered the requirements of Article 6 of the European Convention on Human Rights as regards ‘equality of arms’. Phone advice may be acceptable in some circumstances, but the LSB needs to recognise that it might not be sufficient or appropriate when facing someone represented in person by an expert advisor. She sought more information on how the LSB would assess whether any reduction in availability does or does not amount to a reduction in access to justice.

The LSC agreed that access to justice is wider than access to traditional advice provision.

Response – We will reflect these comments as appropriate in the Access to justice strategy being separately considered by the Board. For the most part, they seem to reflect a misunderstanding that, in suggesting that services will develop and transform, existing patterns of provision will disappear in their entirety. We have never asserted this and, indeed, would argue that the provision of face-to-face advice may increase, but be better targeted on those who actually need it, rather than being the default mode for all activity.

- 2) **Reserved and unreserved activities.** The CLC commented that the LSB should take a broad perspective when considering the scope of reserved and unreserved activities, and should review whether it remained correct for the regulation of lawyers to centre on definitions of reserved legal activities which have arguably now become outdated. The LSC urged the LSB to prioritise this area of

activity, noting that there are risks to consumers where areas of law fall outside of the reserved definition.

Response – These comments will be fed into the work programme as it commences. The themes are, to some extent, also picked up in the Access to justice strategy.

- 3) **Scope of research.** The CLC warned that the research should not be too narrowly focussed. For instance, the work on referral fees should not be confined to civil litigation but must also consider non-contentious areas like conveyancing. The FPWPP commented that it did not think comparison websites are a correct vehicle to help consumers decide from whom they require legal services.

Response – We will carefully consider the scope of research activity. The comments on comparison websites will be fed into the work programme.

Annex A – List of respondents and workshop attendees

Written responses received from:

The Bar Council
Bar Standards Board
Council for Licensed Conveyancers
Fellowship of Professional Willwriters and Probate Practitioners
The Law Society
Lawyers with Disabilities Division
Legal Complaints Service
Legal Services Commission
Office of Fair Trading
Lucy Scott-Moncrieff (solicitor)
Society of Legal Scholars
Solicitors Regulation Authority
John Weaver (solicitor)
Welsh Assembly Government

Workshop attendees:

Better Regulation Executive
Ministry of Justice
The Law Society
Legal Services Consumer Panel
Institute of Chartered Accountants in England and Wales
Legal Complaints Service
Institute of Barristers Clerks
Office of Fair Trading
Legal Services Commission
Institute of Trade Mark Attorneys
Commercial Bar Association Equality and Diversity Committee
The Bar Council
Claims Management Regulator
Association of Law Costs Draftsmen
Solicitors Regulation Authority
National Association of Paralegals
Society of Scrivener Notaries
Institute of Professional Willwriters
John Flood (University of Westminster)
Fellowship of Professional Willwriters and Probate Practitioners
Commercial Bar Association
Committee of Heads of University Law Schools
Bar Standards Board
Professor Stephen Mayson (Legal Services Policy Institute)

LEGAL SERVICES BOARD

To:	Legal Services Board	
Date of Meeting:	24 March 2010	Item: Paper (10) 23 b

Proposed operational budget for 2010/11

Executive Summary

Recommendations

The Board is invited to agree in principle the proposed budget, subject to MoJ approval.

Overview

1. The first draft of the Plan for 2010/11 was presented to the Board on 30 November 2009 and, following comments from the Board, the draft Plan was formally published for consultation on 16 December 2009.
2. The 2010/11 financial year will be the first year of operation for LSB and consequently there is no history or projections that can be used from the current set up year.
3. As Paper (10) 23 a describes, there were no adverse comments from the consultation on the Plan, and indeed several merely commented that resources were in line with their expectations.
4. We know that approximately 86% of the current running budget of LSB will be made up of 'fixed'¹ costs (Board, OLC Board, staffing, accommodation, depreciation, outsourced services) and that the remaining 14% will be accounted for by research, consultancy support and contracted out services, and office running costs etc. This 14% of costs will be determined largely by the activities that LSB will want to undertake in the 2010/11 year and will relate directly to the level of planned activity.
5. This high level of fixed costs could be reduced in future years if the Board decided to reduce the approved staffing establishment, although this could only be effected on the departure of existing colleagues without replacement or by making some colleagues redundant. We are currently carrying three vacant posts – two regulatory associates and one administrative support.
6. The MoJ has confirmed that it has used a slightly higher figure for the LSB's budget for 2010/11 in its finance planning and Estimates for HM Treasury than was in the Plan and that this would be the level that it would

¹We recognise that some of these costs are capable of adjustment, e.g. if the Board decides that different staffing levels are required.

formally endorse by way of a formal letter from the relevant Minister before the end of March 2010. The difference is accounted for by a higher depreciation charge.

7. **Annex A** shows the proposed operational budget and **Annex B** a cash flow forecast for 2010/11.

Proposed annual budget

1. The total budget shown is £4,931k. This figure is £15k higher than was detailed in the draft Plan consultation. This difference is due to increased anticipated depreciation charges, which will be fixed for the 2010/11 year.

Budget assumptions

2. We have assumed an overall salary related increase for 2010/11 of 3%. HM Treasury has acknowledged that there are many three-year pay agreements within both central departments and NDPBs that will probably expire in 2010/11 and consequently any restrictions on pay levels and budgets will not be effective until 2011/12.
3. There is currently some uncertainty as to whether LSB colleagues will fall within a HM Treasury pay remit as levels of remuneration are currently agreed and set by the LSB Board. We are likely to recruit up to our full approved establishment level of 34 colleagues.
4. We will appoint to at least one (and possibly two) of the Board Member positions that will be vacant as at 31 March 2010. However, the timing of the General Election means that there is a strong likelihood that any new appointee(s) will not take up post before September.
5. Non-pay expenditure headings have only been increased for increased levels of activity, with the exception of the uplifts allowed in the Service Level Agreements with the Competition Commission for the provision of IT, Finance and Facilities support.

Notes to the budget headings

6. Staffing:

- a) This is based on 100% of posts filled throughout the period as per the assumptions stated above.
- b) The staffing budget is currently made up of:

Policy (Strategy, Research, Regulatory)	54%
Legal Support Team	12%
Corporate Support	34%

(the latter including CEO, Board Secretary, Finance, Corporate and Public Affairs/Media and Planning).
- c) We have deliberately at this stage not sought to cost activity by project. Although workable estimates could be produced, precise areas of staff deployment will be highly variable due to factors such as the level of cooperation obtained from stakeholders, the quality or otherwise of submissions under-pinning the 'business as usual' agenda and the need to divert into reactive 'enforcement' activities. There is also a high level of uncertainty about establishing in advance the extent to which

the time of Corporate Support colleagues will be split between 'pure' corporate activity and identifiable 'project/policy' contributions.

7. **Accommodation:**

- a) The rateable value of our office has increased by 82.1% from £163,000 to £297,500. We estimate that Business rates will increase by 26% from 1 April 2010 based on the new 1 April 2008 valuation of business property. Although we intend to appeal against this new valuation, the appeal may not be considered until after 2011 given the expected large number of cases that the Valuation Office will have to deal with.
- b) In addition, Victoria House is within the Bid Levy area of *In Holborn* and is subject to a 1% surcharge.
- c) The rental amount is fixed until November 2013. This heading also includes utilities and Landlord service charges.

- 8. **IT/Finance/Facilities/HR:** This is in line with the activities agreed and now includes HR as an outsourced service (instead of being shown under staff costs).
- 9. **Research Costs:** Previously this was shown under implementation costs but will now be reported as a discrete spend heading. The Board has already agreed the LSB Research Strategy and Programme for 2010/11.
- 10. **Office Costs:** This comprises the general office overhead costs – stationery, licences, travel, telephony, postage, media subscriptions, publishing costs and website, catering, etc.
- 11. **LSB Board:** This is based on all Board Members being in post and the same number of Board and Committee meetings as in 2009/10. Hence the current frictional vacancies may provide a small in year saving.
- 12. **Legal Reference and Support:** This is based on subscriptions to legal databases and external legal support.
- 13. **Contracted Out Services:** This includes internal and external audit and general consultancy support.
- 14. **Consumer Panel:** This comprises the costs of Panel members and its dedicated staffing as well as a small amount for specific research (expected to be managed on their behalf, and in agreement with, the LSB Research Manager).
- 15. **Depreciation charges:** These are the costs of assets that we have purchased which are charged to the accounts over their useful life.
- 16. **OLC Board Costs:** These are the fees that are paid to the OLC's Chair and Board and also include their travel expenses.
- 17. **Judicial Reviews:** We have deliberately not made any provision for funding judicial review actions. MoJ has indicated that it will guarantee our cashflow in the event of the need to defend ourselves against such actions. Further discussion is needed to clarify the extent to which it would be legitimate to recover such costs from the Levy in future years: much may depend on the circumstances and the outcome of any individual cases.

18. **Allocation of Budget to Headings:** For the 2011/12 proposed budget, we will be informed by an analysis of our performance against the budget 2010/11 for the first six months and by looking at the make-up of our work e.g. 'business as usual' regulatory activity, proactive policy development and reactive 'enforcement' activities up to September 2010. In the course of the year, we will consider how best to gather reasonable estimates of time spent to inform more accurate forecasting for the allocation of budgets to discrete headings for 2011/12.

Performance indicators

19. In line with the statement published in our draft Plan, we have agreed that in assessing regulatory activity, both our own and the ARs, we will take a wide view rather than a narrow 'target' or KPI approach.
20. In each circumstance, we will take into account any evidence that we believe to be relevant, ensuring an ongoing risk assessment of performance and proposals against the regulatory objectives where we consider the risks are greatest and the potential for incompatibility with the objectives most significant (see pp. 10-11 of the draft Plan 2010/11).
21. Our work plan describes both the medium-term outcomes that we expect to see both directly and indirectly as a result of the activity we undertake and the milestones we intend to meet in year (see pp. 42-43 of the draft Plan 2010/11- Annex 3 for a summary).
22. Whilst we can readily report our progress against delivery of 'hard' milestones, many of the medium-term outcomes we are aiming to facilitate are subjective and do not readily lend themselves to 'hard' numerical indicators.
23. We plan therefore to develop a 'balanced scorecard' approach to measuring and accounting for our performance which incorporates a combination of hard indicators and soft assessment of market impact during the year, which we will test and use as much as possible during 2010/11 ready for full implementation in 2011/12.