



The Law Society

Legal Services Board draft Strategic Plan 2015-18 and Business Plan 2015-16

The Law Society's response
February 2015



1. This is the Law Society's response to the Legal Services Board's (LSB) consultation on its draft Strategic Plan 2015–18 and Business Plan 2015-16 ('the draft plans') published on 10 December 2014.

Introduction

2. The Law Society recognises the importance to the British economy of ensuring that unnecessary regulation is removed to allow firms to grow and compete within the domestic and international legal markets. It supports initiatives to achieve this, provided that they do not compromise the essential independence and standards of the profession. We are pleased that the Chair's introduction recognises the importance of professional standards. We hope that this recognition will be carried forward in the LSB's work.
3. We would make the following over-arching points in respect of the draft plans:
 - Unnecessary regulation costs firms both financially and in terms of lost opportunities. Even though the cost of the LSB is relatively small, it should consider how far all of the work proposed is essential and whether some of it could be stopped or delayed to reduce that cost still further.
 - Some of the work appears to duplicate that of the regulatory arms.
 - The LSB could do more to monitor the performance and value for money of the regulatory arms.
 - We recognise that there are concerns around the unregulated sector, but we feel that, unless the LSB is considering whether individual areas of law should be reserved, it should be cautious about undertaking major work in respect of this sector unless this is funded by bodies other than the approved regulators. In other words, we do not consider it appropriate that the regulated sector should fund work undertaken in connection with the unregulated sector, thereby increasing cost to the regulated sector.
 - In considering issues around transparency and the provision of information to consumers, the LSB needs to be alert to the extent this will add cost to the regulated community which do not apply to the unregulated community and may lead to a move away from regulation.
 - The LSB also has an important role in celebrating the work of the legal sector which we would encourage it to take forward.
4. We now comment on the detailed proposals below.

Strategic priorities

Theme A: breaking down the regulatory barriers to competition, growth and innovation

5. The Law Society recognises the importance of ensuring that unnecessary regulation is removed to allow solicitors' firms to grow and compete within the domestic and international legal market. However, this needs to be balanced with ensuring that clients' and the public interest are protected. This is particularly important because these are crucial elements in ensuring that "England and Wales maintains its position as the world's leading legal hub and exporter of legal services". There is a real danger that the urge to

remove barriers may lead to a reduction of standards and, potentially, damage to our position as an international centre of legal excellence and jurisdiction of choice.

6. We note the LSB plans to undertake thematic reviews of requirements that have the potential to restrict competition or growth (paragraph 55). It will be important to ensure that this does not duplicate the work of regulatory arms or step into areas that are most suitably left to them. We would encourage the LSB to work closely with, in particular, the Law Society which may already have information which could assist.
7. The draft plan proposes to seek reduction of inefficiencies between regulators by exploring options for shared 'back office' functions (second bullet, paragraph 55). We support any work which would ensure that the services of the regulators are provided efficiently and effectively, thereby ensuring value for money. However, we would urge caution before considering any shared service solution for back office services particularly where the services provided are quite different and operate with very different systems and processes. This can lead to additional cost. There may however be opportunities for standardising certain services for example the approach taken in relation to safeguarding confidential information.
8. We note that the LSB plans to create a 'benchmark' set of regulatory arrangements against which to judge rule change applications (paragraphs 55 and 79). While we recognise that guidance in this area is important and could be useful, we hope that it will not prove to be over-prescriptive which might either risk that scrutiny is reduced to a tick-box exercise or that innovation is stifled.
9. We note that the LSB has been working on possible changes to the Legal Services Act with the regulatory arms. This has been undertaken with little consultation and no input having been sought from the approved regulators or the wider regulated community. While we have no difficulties with procedural changes designed to speed up processes, so long as these do not jeopardise the integrity of the system, these need to be properly consulted upon. Similarly, we believe that the LSB should establish whether there is an appetite within Government and elsewhere for reform before undertaking work on significant change to the structure. To the extent that the LSB is considering any changes to the Legal Services Act, we would welcome a full dialogue so that all implications can be fully considered and, if appropriate, informed decisions made.

Theme B: enabling need for legal services to be met effectively

10. Ensuring access to justice is fundamental to supporting the rule of law. We have seen over recent years, erosion of access to justice which can start to erode the fabric of our society. We believe that the LSB has a role in supporting access to justice. However, we recognise that there are limits to what can be done by regulation of businesses in cases where some vulnerable consumers simply do not have the money to pay for the advice that they need. We would welcome working with the LSB to ensure effective access to justice for all citizens including supporting the LSB where appropriate to give objective advice to government and other stakeholders on the implications of change, in particular, reductions in funding.
11. We note the LSB's plans to look at the unregulated sector. There are very difficult questions about how far it is appropriate for a Board funded entirely

by the regulated community to work towards improvements to the unregulated community as this increases the cost to the regulated community thereby making them less competitive with the unregulated community. Therefore, the LSB should be alert to concerns about the use of money coming from the regulated community to assist potential competitors or to undertake research (paragraph 111). Initiatives in respect of accreditation or similar schemes are most appropriately left to professional/ membership organisations. The Law Society has developed a number of accreditation schemes and would be happy to discuss the development of such accreditation with the LSB but keeping in mind that the operation of such schemes is not in our view a role for the LSB. We have similar concerns over the extent to which use of the Legal Ombudsman's voluntary jurisdiction for unregulated providers might mislead consumers as to the qualifications or standards of the provider.

12. A key missing element from the sections headed 'Helping consumers make informed choices' and 'protections consumers and the public interest' is consumer awareness of the client financial protections which exist - or are absent - in the services offered by different providers of legal services. It is important to distinguish between the up-front protection that exists (namely solicitors' PII and in the event of fraud, the Compensation Fund) and 'consumers' rights' - i.e. the avenues for making a complaint and seeking redress from a range of providers of legal services. The Law Society has a crucial role in helping and informing the public about the role of solicitors thereby enabling them to make an informed choice about the services they purchase. We would be happy to discuss this with the LSB.

Draft Work Programme for 2015/16

Theme A

13. The LSB is seeking views on prioritisation for its proposed thematic reviews for 2015/16. The Law Society has doubts about the first two options, (moving between legal regulators and the review of restrictions on choice of insurer). In the first case, we are not aware of obvious market problems in this area or suggestions that the requirements are inappropriate for the protection of consumers and maintenance of standards. The second appears to us to overlap with the work that the SRA is undertaking. Again the Law Society has considerable knowledge in this area and would welcome a conversation about its complexities. We are committed to ensuring that our members have appropriate levels of insurance cover, at an appropriate cost which protect them and importantly the public.

Thematic reviews into regulatory inconsistency (paragraph 77)

14. The LSB has identified the inconsistencies between regulators in the treatment of failing firms as an area it wishes to review (paragraph 77). Both the Law Society and the SRA recognise that intervention is a draconian measure and has adverse impacts not only in terms of cost to the profession but to clients. For this reason, we have supported the SRA in trying to move away from interventions into firms in financial difficulties, where there are no client protection issues, and instead allowing firms to wind down. However, where clients or the public are at risk we still believe that intervention powers are necessary.

Reviewing the LSB's statutory decision making process (paragraphs 78 and 79)

15. The two paragraphs under this heading do not provide detail about the LSB's thinking of how it might take forward improvements in its decision-making processes. The experience of the SRA's rule change application for a lower level of PII cover showed, in the Society's opinion, that rule changes aimed at achieving far-reaching positive results for consumers and the profession need to be treated rather differently to applications in respect of minor technical rule changes. As that application demonstrated, robust research, evidence and testing of proposals is needed in order to avoid unintended damaging consequences. It will be important to ensure that simplification is not achieved at the expense of quality.
16. It will be helpful to have greater clarity on what is meant by an "ideal" set of regulatory arrangements (paragraph 79). The legal services market is varied and different sectors may well need different approaches and, indeed, different outcomes. Creation of an "ideal" set risks may run the risk of stifling innovation or reducing the proper examination of applications to a tick-box exercise. We would welcome further dialogue on this issue.
17. The LSB proposes that, in partnership with the regulators, it will 'celebrate' deregulatory achievements (paragraph 80). We consider that it would also be helpful if the LSB could actively celebrate the success of the profession as a world leader in the supply of legal services thereby actively supporting the profession.

Theme B: enabling need for legal services to be met more effectively

Helping consumers make informed choices

18. We have already indicated our reservations about the LSB undertaking significant work on the unregulated market. While the work on consumer choices may have some relevance to the work of the regulated professions, we hope that the LSB's work will concentrate on those aspects that are relevant to those professions.
19. The Board has also indicated an interest in ADR in this context. ADR generally works best when those involved have access to legal advice. We are always interested to explore alternative models of resolving disputes but it is important to recognise that parties should have access to legal advice to avoid inappropriate and unfair settlements arising from the inevitable imbalance of power between parties in any dispute. It would be helpful to have more information about what the LSB has in mind here.
20. The LSB has encouraged regulators to share publicly available data with third party organisations in a more accessible format. While we accept that this is publically available data, we do have concerns about it being re-published by third parties, as such data could be misrepresented and thereby become misleading. We are not clear that these concerns have been adequately addressed. Before any further work is undertaken on providing more detailed data (paragraph 89), regulators should ensure security of data held by third parties has been adequately reviewed. We stress that requirements of this sort can create increasing burdens and costs for the regulated community which are not shared by their unregulated competitors. This applies also to the question of "quality comparisons" (paragraph 94) where, again, we would question whether this should be a regulatory priority.

21. We note the proposals for a review of the effectiveness of the current requirements about informing consumers of their right to complain (paragraph 92). We would encourage a review of the requirements to ensure that they are outcome focussed. In addition we note that the prescriptive nature of the requirements means firms are required to tell clients about the Ombudsman's service even when they are aware that the client is not eligible to use the service. We would encourage and support a requirement to provide clear, relevant and straight forward guidance to the public on the use of the Ombudsman's service.

Education and training

22. We agree with the suggestion in the plan that undertaking a thematic review of education and training during 2015-16 would be premature (paragraph 97). The SRA is still in the relatively early stages of its work on education and training. A review at this point could increase uncertainty and risk delay to the introduction of a new training and assessment framework for solicitors.

Performance, evaluation and oversight

23. We believe that the LSB needs to take a more active role in reviewing the performance of the regulatory arms, particularly since the Internal Governance Rules significantly curtail the ability of the approved regulators to do so. Self-assessment needs to be constructively challenged and it could be useful to benchmark performance of the regulatory arms against those of other regulators and service providers.

Conclusion

24. We hope that above comments and observations in this response are helpful. We would welcome an opportunity to meet with the LSB to discuss the proposals in more detail, to help with our understanding of the LSB's priorities and to identify areas where the Law Society can help inform the LSB's strategy, which we hope will lead to the improvement of the regulatory environment which will support the delivery of legal services and whilst protecting the public.