



REGULATING BARRISTERS

Neil Buckley  
Chief Executive  
Legal Services Board  
One Kemble Street  
London WC2B 4AN

23 February 2016

Dear Neil

### **LSB draft Business plan 2016-17**

We welcome the opportunity to comment on your draft plan.

As ever, the preparation and publication of the front line regulators' plans and the LSBs have run to asynchronous timescales, so this will mean that we have little latitude to adjust our own plans should yours impact on them. Happily, because you are mid-way through your three year strategy, the continuity in your plans is readily visible in this draft and we have been able to take this into account in relation to our draft new Strategy for 2016-19. We nevertheless have a few more detailed observations to make which we hope are helpful.

These are set out below in the order of the sections of your plan to which they refer.

#### **"How we work"**

We welcome the continuity in your approach with that of the previous year. We appreciate that your aim must always be to express matters in plain English, but we do have some concerns that phrases such as "guided" by the regulatory objectives and "(taking) into account the government's better regulation principles" risk giving the impression that you are not clear about the statute under which the LSB is created. We are all required to "act in a way that is compatible with" the regulatory objectives and not be merely "guided" by them. The better regulation principles you specify are our obligations under an Act of Parliament – they are not the "government's" in this context, and referring to them as such plays into the hands of those who suggest legal services are (unconstitutionally) regulated by government.

#### **What we will do in 2016/17**

We welcome the acknowledgement that statutory responsibilities in relation to approval of changes to regulatory arrangements and designations are at the heart of your responsibilities and are your essential public interest function. In this regard, then, it would be very helpful to understand what proportion of your resources is in fact expended on this area of your work. This is not clear from your budget information and we have repeatedly requested you show in your business plans (as the BSB does in its own) what percentage of your resources is used for the different work programmes you undertake. This not only aids transparency and accountability, it

Bar Standards Board  
289–293 High Holborn, London WC1V 7HZ  
DX 240 LDE T 020 7611 1444 F 020 7831 9217  
[www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

helps focus on priorities: the lion's share of your budget should in our view go to this core statutory role.

### **Breaking down regulatory barriers to competition, innovation and growth.**

We heartily endorse your proposition that "service delivery and regulation must not assume one size fits all" and hope that this extends to oversight regulation.

With regard to improving scrutiny of regulatory costs and identifying opportunities for savings we note that your work in 2015/16 proved problematic and that the feedback you got from the regulated communities was unrepresentative and inconclusive. We are very supportive of your move to improve the extent and nature of data published by regulators about costs. However we believe the BSB starts from a better level of transparency and depth of regularly updated information than many, and we would therefore urge that you do not add to our cost base by requiring us to comply with disproportionate or unnecessary initiatives in this area. We say a little more about this later under the Performance, Evaluation and Oversight rubric. We have our own plans for improving the accessibility and comprehensibility of the extensive information we already publish.

We look forward ourselves to becoming a licensing authority for ABSs in this business year and to continuing the constructive dialogue between the LSB and BSB that has existed to date in relation to the roll out of our specialist regime. In this regard, we particularly welcome your intention to review transitional protections for special bodies: we think our specialist ABS regime may be of considerable interest to, for example, law centres, should your review lead to an end to the transitional protections and require them to be regulated differently. We will be pleased to talk to you more about this in due course.

### **Enabling the need for legal services to be met more effectively**

We are very pleased to see this programme of work as a core one for the LSB and there is much consistency between your plans and our own. We too will be considering the impact of unregulated services in the market, potential new consumer risks and access to legal services for vulnerable consumers - and giving them priority.

### **Performance, evaluation and oversight.**

We note your priorities in this area and hope that you will work with front-line regulators to ensure that your processes – for example approving changes to regulatory arrangements, and approving practising certificate fees - are proportionate and risk-based and in particular that you do not seek to substitute your own view for the views of front-line regulators which have been arrived at by their own due processes. In relation to holding regulators to account for their performance, it is of course the primary responsibility of the regulators' own Boards to do just that. So we hope that any changes to the standards framework and how you assess performance are sufficiently proportionate and differentiated to add value to what the front-line regulator does itself. It is important to understand that the approach the LSB takes to this role, and indeed to the other roles it assumes, in significant degree determines costs that the front-line regulator incurs and passes on to practitioners. The LSB thus can itself be a key driver in reducing the cost of regulation by giving careful consideration to the necessity and value of what it requires of the front line regulators. We note that in relation to the historic Internal Governance Rules certification process you appear (in para 51) to be adopting a more proportionate approach i.e. dealing with issues as they arise, and this is welcome.

The BSB also supports the LSB asserting its role in support of the OLC and Legal Ombudsman. LeO is vital to all our work and it needs to be stable and credible in the interests of the public and the profession. But, like all legal services regulation, it needs to be independent of government so we would hope that the review of governance protocols which you plan promotes that principle.

Finally, we are conscious of the potential for regulatory arbitrage that, intentionally or otherwise, the LSA 07 has proved to be capable of producing. However, we would caution against any assumption that the answer to this potential problem is making all regulators do the same thing, which your draft plan appears to suggest. There may be very good reasons for "points of difference" between regulators in relation to, for example, insurance options -which may be enhancing consumer protection, facilitating entry to the market and generally in the public interest. You point to needing to understand and identify unintended consequences emerging from these differences: we hope you will be equally mindful of unintended consequences from your own possible responses.

The LSB and BSB are already working together on joint research: we will welcome the opportunity to do so again, and with other front line regulators, in those areas where we have a common interest.

We will be happy to discuss any aspect of this response in further detail if you wish. We normally make our responses to consultations public and will do so within five days.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vanessa Davies', with a long horizontal flourish extending to the right.

**Dr Vanessa Davies**  
**Director General, Bar Standards Board**

