

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Neil Buckley
CEO
Legal Services Board

BY EMAIL ONLY

16 February 2017

Dear Neil,

**RESPONSE TO THE LEGAL SERVICES BOARD 17/18 BUSINESS PLAN
CONSULTATION**

The Bar Standards Board welcomes the opportunity to comment on the work of the Legal Services Board. We were also pleased to attend the discussion of your draft business plan at the presentation given by Caroline Wallace on 6th February. In the coming year, as we prepare our responses to the report by the Competition and Markets Authority (CMA) and whilst we await possible reviews of legal regulation by the Ministry of Justice, the LSB has an important role in overseeing the regulators of legal services in England and Wales.

Question 1: Do you have any comments on our proposed programme of work?

We welcome much of the work which the LSB is proposing to do, especially the work focused on tackling unmet legal need through increasing transparency and improving the delivery of legal services to vulnerable customers.

Education and training guidance

We share the SRA's concern that now is not an appropriate time to be reviewing the LSB's guidance on education and training. The LSB's current statutory guidance has shaped a significant programme of reform undertaken by the BSB and other regulators in recent years. Both we and the SRA are now at the stage of beginning the implementation of this work after extensive processes of research and consultation. Changes to the guidance at this stage would be highly disruptive and we believe that its effectiveness can only be judged once regulators have had an opportunity to implement their plans. We therefore recommend that the LSB should not undertake this work during the current strategic plan period.

Approving requests for changes to regulatory arrangements

We also agree with the SRA that the LSB's plans to develop the process for approving changes to regulatory arrangements are welcome and that there would be merit in the LSB focusing more on whether regulators have followed proper processes in making changes to

regulatory arrangements rather than seeking to reassess their evidence. We agree that this would encourage a more risk based approach to regulation and enable the frontline regulators better to adapt to changes in the market.

Holding the regulators to account for their performance

We support the LSB's work to hold regulators to account for their performance and their work on regulatory standards – its framework has guided and assisted us with the acceleration of significant improvements and modernisation that the BSB had planned to undertake. We support the move to review the LSB's processes to ensure they are risk based and proportionate. We look forward to engaging with the LSB's consultation, and note the need for the LSB and approved regulators to respond to changing priorities.

For each approved regulator (AR), the CMA's recommendations following its market study into legal services will be one of the key priorities over the next 2-3 years and the LSB will have an important role in overseeing our response. We suggest this is kept in mind when reviewing the overall approach to regulatory performance – we all have limited resources and the focus on the CMA's recommendations may mean reprioritising other work that regulators might otherwise have undertaken in this area. We trust that the LSB will be mindful of the need for the approved regulators to rightly devote resource to addressing the CMA recommendations and will ensure that this is appropriately taken into account when finalising its business plan for 2017/18.

Independence of regulation

We note the priority which the LSB places on the independence of regulation and the Ministry of Justice's intention to consult on further separation of the legal regulators from their representative bodies. The BSB acts independently from the Bar Council in its decision-making. We believe that fuller separation could allow both the BSB and our representative body to be stronger in their respective roles, but that the Bar Council continues to have a vital role which must be properly funded.

Reviewing delivery of enforcement activities

We fully agree that an impartial and rigorous disciplinary procedure is vital to sustaining public confidence in the legal profession. We welcome relevant scrutiny of this aspect of our work in order to assist us in making improvements to modernise our disciplinary system. We already have plans in place to change our disciplinary governance arrangements and are committed to reconsidering the position on the standard of proof. However, we question whether a blanket "end to end" review of the larger ARs' disciplinary procedures is reflective of a risk based approach. The LSB has identified specific aspects of the disciplinary procedures where it considers there is scope for improvement i.e. timeliness and transparency. However, it has not identified any other areas of concern, nor an evidence base, that would support a potentially costly "end to end" review that may not be proportionate or sufficiently targeted.

We agree with the SRA that it would be more effective for the LSB to consider first setting suitable benchmarks or hallmarks of success against which the ARs could measure performance: such benchmarks would need to be set after appropriate consultation with the ARs. Thereafter, a reasonable period of time should be accorded to the ARs to consider and, if necessary, adapt aspects of our systems to meet the agreed benchmarks.

We consider this would be more in keeping with a risk based approach and the better regulation principles enshrined in the Legal Services Act 2007.

Question 2: Do you have any comments on the research we have proposed?

The LSB's proposed research into transparency and the legal needs of small businesses is welcome but updating research into innovation which was undertaken as recently as 2015 may be a little premature. Our own research into service delivery models suggests that that market is not changing all that rapidly, for example.

Question 3: Do you have any comments on our proposed indicative budget?

We welcome and share the LSB's commitment to minimise the costs of regulation. We agree with the SRA that amending the way in which the Board approves changes to regulatory arrangements might release further savings for both the LSB and other regulators.

If there is anything further you and your team wish to discuss with us in light of this response, please don't hesitate to get in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vanessa Davies', written in a cursive style.

Dr Vanessa Davies
Director General, Bar Standards Board