

LSB draft business plan 2017/18

Comments by SIFA (Solicitors Independent Financial Advice), incorporating SIFA360

We wish to respond to question 1 in the consultation document, by commenting on the LSB's proposed programme of work, but we have no comments on questions 2 and 3.

We are wholly in support of the LSB's recognition (in Annex A, para 2) that "*consumers are increasingly demanding joined up legal and non-legal services tailored to their needs*". This chimes with the recommendation of Crispin Passmore, the Director for Policy at the Solicitors Regulation Authority, that solicitors should take an "holistic" view of their clients' needs.

Our concern is that currently many law firms are unable to work effectively with other professionals because they lack the corporate ethos which would enable them to act as businesses and to take and adhere to collective decisions. Instead, most still operate as what have been described as confederations of sole practitioners. All too often, managing partners or directors comment "*I couldn't possibly tell my partners what to do*".

The growth in the number of law firms which have incorporated as limited companies, this now being the most common business structure, is clearly a helpful step but it will not in itself change entrenched attitudes.

The problem arises not only out of solicitors' instinctive caution and risk-aversity, which makes many reluctant to embrace change, but also out of the lack of any regulatory compulsion to install management systems and controls. This is ironic, given that the outcomes-focused regulatory model on which the SRA's Code of Conduct is ostensibly based was derived from the precedent of the Financial Services Authority, for whom the installation of management systems and controls is the indispensable pre-requisite for a sound and compliant business. Management responsibility which goes hand in hand with the authority to demand compliance, consistency of procedure, the orderly maintenance of client data and audit trails, as required by the FSA and now the FCA, are what solicitor firms lack and what they desperately need.

The only reference in the SRA's new draft Code of Conduct to business systems is the perfunctory section 2.1, which relates only to systems for regulatory compliance, and does not touch on business management. By contrast, the FCA devotes a whole sourcebook to the subject; and it is noteworthy that since the management systems and controls requirements were introduced, the quality standards of FSA/ FCA regulated firms has improved dramatically.

We note from the LSB's draft business plan that part of the role of the LSB is to benefit providers of legal services through improved regulation, and we would suggest that in this respect solicitors would benefit from much greater regulatory oversight and direction, because many firms are severely exposed to market competition by virtue of their current business model, which is transaction-based and confined to the legal silo. It is striking that almost all of the innovation arising out of the adoption of Alternative Business Structures has come from non-lawyer entrants to the profession, who regard legal services as a convenient add-on to their existing relationship-based businesses.

If solicitors are to compete, they must begin to learn to conduct much more comprehensive factfinding on their clients' circumstances and needs, to record this information in a consistent manner and to make the resulting data available to all members of the firm in order to be able to cross-sell and to market on a firm-wide basis. Unless these nettles are grasped, many solicitors are likely to be confined to the role of back-room boys in

commercial enterprises run by non-lawyers. However, there is much which a business-minded regulator can do to help them to progress – again, taking a leaf out of the book of the FCA. It is notable that while the SRA plans to reduce its Code to a few minimum generalisations, the FCA continues to impose additional regulatory requirements, many of which assist the firms they regulate to become more efficient and viable as businesses.

Compliance Officers for Legal Practice could be valuable agents for change on behalf of the SRA, but few COLPs fully understand their role, and most still assume that regulation is largely a matter of ethics – an assumption which is reinforced by the SRA. The Code of Conduct on the SRA web site carries a pop-up inviting solicitors to “*Chat to an ethics adviser*”, as though this were the only subject which firms are likely to want to discuss.

The SRA has taken an important first step in the direction of recognising that law firms are businesses, by providing separately for the regulation of firms as well as individuals, but in certain respects its draft Code of Conduct militates against a team mentality in firms. Training is a case in point. Ideally, firms’ managements should be deciding what training is required to achieve their firms’ objectives, and arrangements for individuals should be seen as part of an overall plan, linked to individual members’ personal development plans and key performance indicators. Equally, individuals’ experiences of training should be fed back into the system for the benefit of the firm as a whole (which is likely to be paying the bill) and as a basis for future planning. But the SRA’s new draft Code places the sole responsibility on solicitors for deciding what (if anything) is right for them as individuals, regardless of the interests of the firms within which they work.

Comparing the SRA’s role with that of the FCA, it is notable that whereas the FCA provides both regulation and guidance, such guidance as is available to solicitors is provided primarily not by the SRA but by the Law Society via its Lexcel quality standards body, so there is a lack of joined-up thinking; and Lexcel itself is silent on the issue of business management. This leads us to sympathise with the LSB’s thinking in relation to the creation of a single legal regulator, though the question must be asked as to whether the Law Society would survive on a representative remit alone, now that so many of the support functions which it might have been expected to provide have been undertaken very effectively by organisations such as the Society of Trust and Estate Practitioners, Resolution (The Solicitors Family Law Association) and the Association of Personal Injury Lawyers.

Some consolation might be drawn from the fact that the introduction of a single regulator would level the playing field between the Law Society, which was prevailed upon to hive-off its regulatory arm, and the Institute of Chartered Accountants in England and Wales, which was not (we note with interest that ICAEW is objecting to the idea of separating regulatory and representative functions). Unitary regulation might also address the much lower standard of qualification which is required of accountants seeking to conduct Probate business, compared with their solicitor counterparts.

In short, as regards the LSB’s proposed programme of work, we would suggest that the LSB should require the SRA to incorporate into its draft Code of Conduct specific requirements for the implementation of management systems and controls, and should provide guidance as to what this should involve. Also, it should introduce a requirement that firms should be involved in determining the training which is required for their members, and that this should be part of a structured approach to business planning and development. At present, both the SRA and the Law Society are ignoring the issue of business management, which is critical to the future of the solicitors’ profession.

About SIFA

SIFA was established in 1992 to encourage and assist solicitors to work with financial advisers to provide joined-up legal and financial advice to their clients. SIFA is recognised by the Law Societies and the Financial Conduct Authority. It was a founder member of the Law Society's Financial Services Working Party. The SIFA Directory of Professional Financial Advisers is endorsed by the Law Society; and SIFA Director Ian Muirhead is the author of the Law Society publication Financial Services for Solicitors.