

Annex 1 – Detailed comments on LSB Business Plan

1. Comments are provided in page order with references to subsequent paragraphs or sections where the same point is perceived given where applicable.
2. We would be interested in understanding better the LSB's interpretation of the "improving access to justice" regulatory objective. In the second paragraph of the "Next steps" section on page 6 it is stated that the LSB is mindful of compliance burdens and "the impact on access to justice if restrictions on entry drive up costs for firms and charges for clients". While this may, in some circumstances, be a factor in considering access to justice, it is not in the BSB's view, the sole contributing factor to improving access to justice. Paragraph 66 seems to equate access to justice with being able to get and afford to pay for a lawyer. The issue is much wider than that, including understanding the role of the courts. While we are not in control of all of those factors, we do need to be aware of them so we can understand the extent to which we are able to influence.
3. In the last paragraph on page 6 the role of the workforce in "delivering high-quality services for consumers" is mentioned. However, it is not clear if "high-quality" is meant to refer to the development of the QAA scheme or whether that encompasses a wider set of activities. It is suggested that some clarification may be helpful.
4. We note that in last line on page 6 and over on to page 7 there is a statement that the LSB will "audit the training needs for the workforce of the future and critically examine education and training against them". The "audit" language does not appear again in the Section 3D when the details of education and training are expanded upon. It would be useful to understand better whether an audit type exercise is anticipated or not. The explanations in section 3D seem different in nature.
5. As a minor drafting point the last sentence of the first paragraph on page 7 should say "with the rollout in 2011 of QAA *for crime*" rather than finishing at QAA. This should be reflected in the activities in section 3D as well.
6. The BSB notes the statement at the end of the first paragraph in this section about "Ministers' continued recognition of the importance of our role as independent both of Government and the profession has strengthened the rule of law." This does not accord with the BSB's understanding of the rule of law. The rule of law requires that all laws and government actions must conform to certain fundamental and unchanging principles. That includes equal application of the law: everyone is equal before the law and everyone, regardless of their position in society, is subject to the law. Another fundamental principle is that no person can be punished unless there has been a breach of the law. The rights of individuals are determined by legal rules and not the arbitrary behaviour of authorities, meaning the laws should be openly made. Individual liberties depend on the rule of law. Central to the success of the rule of law is the role of trial by jury and the impartiality of judges. We do not understand how the statement on page 7 fits within this context.
7. Under "Our resources" in page 8 there us a statement about continuing "to provide not only excellent value for money to our levy payers but also transparency on how their funds are spent". We are not sure how value for money is calculated or shown here. We are not aware of communications with members of the legal profession about this but would welcome it if the LSB were to do so.
8. The first paragraph in the "transition year" section on page 8 talks about how the result by the end of this business plan will be a "reshaped institutional landscape which provides a powerful foundation both for consumer confidence and for the next stage of

the reforms". It would be useful to have some recognition of the need to have the confidence of the profession in this endeavour also.

9. Paragraph 4 says "we must address the scope and remit of regulation as the structure and nature of service delivery changes". Is this compatible with outcome focussed regulation (another stated aim) or with taking a principled approach? This seems to indicate that the way in which people want to do business should be the driving force. Would it not be more appropriate to consider desired outcomes (eg no financial risk or loss to clients), then consider the risks to those outcomes posed by the market and changes to it and then regulate accordingly? It seems possible that if the nature of service delivery is the driver then there is the risk that other problems may not be properly balanced and considered.
10. Paragraph 8, 5th bullet point talks a lot about being outcome focussed rather than having prescriptive rules that apply to everyone. The BSB supports this, provided that the balance is right. Managing risks properly may mean that prescriptive rules are required at times. Some risks will simply not be properly managed if a broad outcome statement or something similar is all that is put in place. In a sense even prescriptive rules are "outcome focussed" because they are designed to achieve a particular outcome. It may be better to talk about regulating only as much as necessary instead.
11. Paragraph 10 – we would welcome a greater understanding of how overall performance is to be measured and communicated. Similarly, paragraph 11 refers to "reviewing the quality of the work undertaken". This is an area where we consider that the LSB could provide considerable leadership and assistance to the approved regulators. Evaluating performance is notoriously difficult. If the LSB generated a credible system for evaluating the quality of the work they undertake it would help all of the ARs in assessing their own effectiveness. The BSB would welcome additional activity by the LSB in this area.
12. Paragraph 12 – Moving from a "reactive rules-based regulatory framework to an outcomes-focussed approach, backed by hard-nosed risk assessment" seems reasonable provided that prescription is allowed for where that is necessary. In our view it would be helpful to make clear that the risk assessment needs to consider all of the regulatory objectives.
13. Paragraph 13 – The business plan focuses in looking at how some specific aspects are performing but does not seem to contemplate any overarching or overall evaluation of performance. It would be unfortunate if focussing on the specifics mean that a less than glowing performance in one area may give a distorted picture of an otherwise good all round performance.
14. Paragraph 17 – The approach of having two elements within the plan – core regulatory activities and strategic initiatives – is a sensible one. The concerns regarding the interpretation of section 4 have been canvassed in the covering letter.
15. Paragraph 22 – the four pillars of regulation. In line with comments above, the BSB considers that in the second bullet point there needs to be a robust understanding of the risks to all of the regulatory objectives, not just to the risks to consumers.
16. On the last bullet point, there appears to be a merging of two concepts. A regulator's enforcement approach does indeed deter and punish. However a regulator's compliance approach is aimed at achieving a desired outcome and is perhaps more closely aligned with the first bullet point in terms of giving the correct incentives. We would suggest something more like "an approach that uses the right combination of activities to obtain

compliance or undertake enforcement where compliance does not produce the desired result”.

17. Paragraph 25 contains a good summary of the approach that should be taken if the need for the regulators to understand consumer detriment is expanded to include understanding detriment to all the regulatory objectives. Also, while we agree with acting “in the spirit of compliance”, this could present significant practical difficulties if the LSB is then expecting non-compliance to translate into enforcement action. Enforcement may be difficult without specifics.
18. Paragraph 29 should be widened in scope. Regulatory intervention may be required to protect one or more of the other regulatory objectives. Restricting it to consumer detriment and the public interest will not, in our view, properly address our statutory obligation.
19. Paragraph 32 – It is noted that these “deep-dive” areas do not appear in the key milestones Annex. This makes it difficult to assess what the volume of work will be for approved regulators or when action may be expected. Further details on these aspects would be very helpful for our planning purposes.
20. That being said, the BSB does not see that it will need to have much involvement in the examination of conveyancing or in relation to the smaller approved regulators work. Subject to the amount of resources the BSB will obviously contribute to the extent that may be helpful or necessary.
21. On the other areas, we would welcome further detail of what the LSB envisages doing in relation to disciplinary rules, enforcement and appeals. We note that considerable change has been effected on the rest of the complaints process so it is logical to extend it all to all aspects of complaints management. The extent of change in those areas could affect disciplinary tribunals and how we work internally as well. The BSB has already scheduled a review of how we think the changes are operating during 2011/12. We could look at future changes as part of that. The LSB is asked to consider that we have a very heavy workload in the coming year so minimising the extent of additional work in this area would be welcomed. We also wonder if it may be good to focus on getting the work outlined in paragraph 51 completed first. The LSB anticipates giving “approved regulators the ability to assess the effectiveness of the regulatory arrangements they have adopted for complaints-handling and to develop action plans where the review has revealed regulatory gaps and/or areas for improvement”. This may identify a link with our processes for complaints that do proceed to disciplinary action which it would be useful to understand before having to reform the disciplinary processes.
22. The BSB is very supportive of the LSB being active in investigating referral fees. The BSB would encourage the LSB to include consideration of “intra-market” activity such as the interactions between solicitors and barristers. The advent of ABSs may create more hidden activities like this that should be scrutinised to ensure that the market is not being distorted with a consequential adverse effect on consumers, the rule of law or access to justice.
23. Given the transfer of immigration responsibility to the LSB, this is clearly an area that will require examination. The BSB is supportive of this.
24. We assume that the satisfaction ratings will be sought for both complainants and barristers, although this is not clear from the wording of paragraph 49.

25. The BSB agrees with having research carried out into consumer perceptions of the outcomes they experience with first-tier complaints handling. Given the much smaller numbers of complaints against barristers and other legal professionals, care will need to be taken to ensure that the methodology is capturing sufficient information. For instance, it will be important to ensure that a sufficient sample of people who would have experienced chambers' complaints handling is obtained in order to get meaningful data. This may require a combined analysis of how long chambers have had systems in place and how many complaints there have been in order to obtain an appropriate sample. We would like to work with the LSB on ensuring that this research gives results upon which all approved regulators can act.
26. The BSB notes the LSB's signalled intention to consider the costs of direct licensing and the options for funding that cost. Other approved regulators and regulatory arms are likely to have commented on cost implications for the profession. We add our voice to any concerns they may have expressed regarding the impact on practitioners, particularly the overall impact on smaller parts of the profession, including barristers.
27. Paragraph 62 makes mention of indicators on diversity, access to justice and service quality being developed. We suggest that there may be a need to have a wider set of indicators including issues such as financial risk to clients or perhaps conflicts of interest and how they are being managed.
28. Paragraph 64 says "new forms of collaboration and new entrants into the market will increase consumer choice, whilst greater competition will raise standards". Consideration of other factors should also be included, for instance on how to address information asymmetry, which is likely to have a significant distorting effect in our particular market.
29. Paragraph 65 refers to "challenging old orthodoxies" and the "unreformed market" having "difficulty with the pace of change". While we agree that behaviours and out-dated aspects need to be challenged, we also consider that there are many areas which operate effectively and where things are functioning well. It would be good to have some recognition of the fact that some segments of the market place are receptive and adaptable to change indeed in many areas they are leaders in change.
30. Paragraph 69 makes a statement about the focus being on "delivering good outcomes for clients". The BSB is cautious about this statement. Often people are taking advice from lawyers because they are heading towards Court. The court system is adversarial by its very nature. Often one side "wins" and the other "loses". The unsuccessful party may not perceive that to be a good outcome. The language used could give rise to an expectation that somehow everyone will win. If what is meant is that everyone, regardless of the result in their proceedings, will have a good outcome in terms of courteous, well-balanced, quality advice, then we wholeheartedly agree. The wording may require some amendment if that is the case.
31. We do not understand that connection between independence (in terms of independence of the regulatory arms from the representative functions) and the threats and opportunities created for practitioners referred to in the last sentence of paragraph 75.
32. Paragraph 80 talks about practitioners having the risk skills to properly serve their diverse client base. We agree with this but wonder if there is also a need to make sure that they have the skills to meet the regulatory obligations in the new models. This may go more to the public interest but should perhaps be considered.

33. As noted in the covering letter, paragraph 83 outlines work to be undertaken to define “the key principles for education and training requirements that should be part of the regulatory framework”. It’s not clear what the scope or results of this work might be. The extent to which regulators may need to contribute to it is also not clear.
34. The BSB endorses the LSB’s statement in paragraph 86 that it wants to add value when addressing cross-sector issues. We see that as being central to the LSB’s role and where it can contribute significantly to the work of all approved regulators. Given the specialised nature of equality and diversity, the BSB suggests that the LSB may wish to consider the extent to which it is able to engage its own specialist advisors in this area. There is so much work to be done it may be a useful amplification of the LSB’s contribution to everyone’s work.
35. Paragraph 92 mentions a cohort study. Studies of that nature are often very expensive and time consuming although often of immense value. The BSB would be interested in understanding this proposed work better.
36. The milestones and outputs table on page 27 does not mention any consultation or discussion about the key principles for education and training. We would have thought this would be a minimum requirement.
37. The QAA section in the same table requires amendment to reflect changes since the draft plan was published. There will not be any decisions on extending to other subject areas until much later. Our understanding is that preliminary thoughts or evidence may be gathered now but actual decisions are not anticipated until later years.
38. The second bullet point in paragraph 96 talks about a legal workforce going above and beyond statutory objectives. The BSB does not agree with this statement. As a regulator we should be setting the appropriate standards that must be met. Seeking to exceed them may be a point of difference for a business providing some competitive advantage but that seems to us to be more of a representative concern than a regulatory one. We do not understand why a higher requirement should be put in place and would be particularly interested in understanding whether there any cost implications or possible impacts on the other regulatory objectives by stating this as a goal. We note the contrast with paragraph 109 which says that interventions should not go beyond what is absolutely needed.
39. The last bullet point in paragraph 96 is also problematic when thinking about the referral Bar. Who is the consumer when it is a referral matter? Does the LSB consider solicitors consumers for this purpose? If so then barristers are also consumers of solicitors’ services in terms of the referral. The type of provider used may also depend on the type of work being undertaken. This section may need some rewording.
40. Paragraph 101 introduces the concept of having a “rational and intellectually sustainable framework for assessing whether and where regulation is required”. This looks like a significant piece of work but it is very difficult to assess on the information presented at present. More information would be most welcome. The level at which this work would be undertaken and the effect upon the frontline regulators’ discretion also requires clarification. The need to consider all regulatory objectives must also be built into any such framework.
41. We take it that the regulatory framework proposed in section 3E is to be used to assist the LSB in deciding when to recommend to the Lord Chancellor that the list of reserved legal activities be amended. Any wider activity could have significant time and cost implications for approved regulators.