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*DUN MS JACOBS,*

**DRAFT BUSINESS PLAN 2010/11**

Thank you for giving us an opportunity to comment on your draft Business Plan for 2010/11. The independent, ring-fenced regulator of the Bar, the Bar Standards Board, is responding separately. In its representative capacity the Bar Council wishes to make the following observations.

We remain committed to developing our relationship of constructive engagement with the Legal Services Board (LSB). Our approach is guided by the regulatory objectives set out in section 1 of the Legal Services Act, the first two of which are: "protecting and promoting the public interest" and "supporting the constitutional principle of the rule of law" (section 1(1) (a) and (b)). These objectives are directed to the Approved Regulators as well as to the LSB.

In the past year we have had many useful meetings with the LSB including the opportunity to discuss the board's objectives and plans at first hand with Chris Kenny at the roundtable discussion held on 12 February.

As we indicated in our response to the LSB's earlier draft business plan (for 2009/10), the board can expect the Bar Council to take a close, continuing interest in its activities. Not only do the regulatory objectives of the Legal Services Act apply to Approved Regulators as well as the LSB but we have a shared interest in ensuring that our respective regulatory activities are transparent, accountable, proportionate, consistent, targeted and in other respects reflective of good regulatory practice. We shall bring the same constructive critical challenge to the LSB's activity as the Board applies to Approved Regulators.

**THE BAR COUNCIL**

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

## **Gold standard not gold plating**

We note, from the Chief Executive's overview, that in seeking to fulfil its supervisory duties, the LSB's ambition to ensure gold standard regulation is not to be equated with gold-plated regulation, addressing a concern we raised in our response to the draft business plan last year. Proportionality is the touchstone. Regulation is not the response to every issue which the legal services sector faces. Consistent with the board's assessment of the regulatory context of its operations (pp 8-9) and the balance it needs to strike as a supervisory not front-line regulator, we shall expect this approach to be demonstrated, for example, in:

- The LSB's responses to efforts by the profession to create new business models on terms which not only improve access to justice but also protect and promote the public interest, and support the rule of law
- The formulation of a research agenda which does not reinvent the wheel, for example by duplicating work that is already undertaken by the Approved Regulators or by the Legal Services Commission
- The work programme of the LSB's Consumer Panel, for which a budget of £300,000 has been allocated, recognising that consumers of legal services vary enormously in their sophistication and understanding of the legal services market

## **Measuring efficiency and effectiveness**

We welcome the board's recognition (at p 9) of the need for measures to be developed to enable its impact can be assessed. We drew attention to the need for this in our previous response. We are disappointed therefore to find that, beyond the broad questions identified (at p 11 of the draft plan), the LSB has not yet been able to propose Key Performance Indicators (KPIs) with which to enable stakeholders to measure its effectiveness.

Satisfying this need is an important element of the board's accountability to those it seeks to serve, including Parliament. Without appropriate measures of effectiveness it is difficult for the board to demonstrate the value for money it is seeking to provide across the work streams described in the draft plan – for example, in the context of the development of alternative business structures (ABS) and changes in the way legal services are provided. We very much hope that real progress can be made on this in the year ahead. The absence of KPIs in this respect contrasts with the board's planned approach to the development of "challenging KPIs" for the conduct of regulatory reviews of Approved Regulators (p 19 at paras 43-45).

## **Quality assurance of advocacy**

We share the LSB's interest in ensuring that advocacy services of the highest quality are provided to users which includes not just consumers and parties to legal proceedings but also judges and others whose roles and responsibilities in the legal system will be affected by the quality of advocacy. That is why we look forward to the outcome of the work being undertaken jointly by the BSB, the SRA and ILEX which, we hope, will result in a clear set of arrangements for the development and delivery of different types of quality assurance.

## **Widening access (diversity and social mobility)**

As the LSB recognises (at p 24), it is essential for the legal profession to be, and be seen to be, open to anyone with the requisite abilities and ambition, irrespective of their background. It must be representative of the society that it seeks to serve in all its diversity. This approach has been reflected in a number of initiatives which the Bar has launched over the last 15 years to become a more open, diverse and genuinely meritocratic profession and we have provided the LSB's Diversity Forum with details of our initiatives (which are summarised in *No bar to the Bar*, published last December), which have been commended by the Minister for Higher Education, David Lammy MP. We hope the LSB will build on (and not seek to duplicate) work that is being undertaken by the Government's Collaborative Forum on Access to the Professions, on which (as the LSB will know) the Bar is represented at Chief Executive and Working Group levels.

We shall be pleased to continue to share our experience and best practice with the LSB and to update the board on our progress (which is regularly updated on the Bar Council's website: [www.barcouncil.org.uk](http://www.barcouncil.org.uk)), in partnership with the Inns, Circuits, Specialist Bar Associations, schools, universities and colleges as well as Government.

However, the LSB's duty, which is shared with the Approved Regulators, to "encourage an independent, strong, diverse and effective legal profession" (section 1 (1)(f), Legal services Act 2007), is being frustrated by Government policy.

We wish to reiterate the evidenced-based concerns we have expressed on numerous occasions over the past year, to Government and Parliament, about the effect of repeated cuts in criminal and family legal aid on the professions efforts to promote diversity and social mobility. These include planned cuts of 17.9% in criminal legal aid. These cuts impact disproportionately adversely on Black and Minority Ethnic (BME) practitioners, thereby frustrating the Government's laudable objectives of creating a more diverse and socially mobile society at large as well as among the legal profession.

The efforts the Bar is making to promote diversity and improve access to the profession for talented people from disadvantaged backgrounds, which were recognised by the Panel on Fair Access to the Professions chaired by Alan Milburn MP, are being undermined by Government policy on legal aid.

This approach has longer term consequences for the breadth and depth of the talent pool from which the judiciary of the future will be drawn. As a result, implementation of the recent recommendations the Lord Chancellor's Advisory Panel on Judicial Diversity, chaired by Baroness Neuberger, to which the Bar Council has committed its support, will be more difficult to achieve.

We very much hope that the LSB recognises this tension in Government policy and draws attention to the problems which it is causing for access to justice and improving judicial diversity.

## Conclusion

The LSB's draft Business Plan 2010/11 maps out another ambitious programme and we hope that these observations will be of some use. We note that, once again, the period allowed for publication of this programme fell short of the minimum 12-week period recommended by the Better Regulation Executive (*Criterion 2, Code of Practice on Consultation, 2008*).

We are happy for these comments to appear on the LSB's website and we shall be placing a copy of this letter on the Bar Council's website.

We look forward to the publication of the LSB's final Business Plan for 2010/11 next month.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MARK HATCHER', followed by a long, sweeping horizontal flourish that ends in a small upward curve.

**Mark Hatcher**

Director, Representation and Policy