

BAR STANDARDS BOARD

REGULATING BARRISTERS

Legal Services Board Draft Business Plan 2010/11 BSB response to Consultation

The Bar Standards Board (BSB) welcomes the opportunity to respond to the Legal Services Board's (LSB) draft business plan for 2010/11.

Introduction

1. The BSB has worked closely with the LSB during its first year of operation and is committed to doing so over the coming year.
2. The continued emphasis on working in partnership and in particular avoiding duplication of effort is strongly supported.
3. In general the BSB understands the work that the LSB is proposing to undertake and sees the continuation from the current year's programme. There are a number of specific comments about aspects of the business plan, as follows.

Measurement and Cost

4. The BSB supports the need for clear measurement of effectiveness for both approved regulators and the LSB. In seeking to meet the regulatory objectives, we agree that hard measurement is not always possible. The LSB's lead on the development of appropriate measures to assist all regulators is welcomed.
5. Effectiveness must also be balanced with efficiency. The BSB is pleased to see that the LSB does not project that its cost will rise significantly in the coming year. However, we also reiterate the point made on the LSB's 2009/10 plan that the BSB would expect to see the LSB reduce in size once it is satisfied that the appropriate frameworks are in place to ensure that the regulatory objectives are being satisfactorily achieved by all regulators. There is no detail of the work expected to be undertaken in 2011/12 or 2012/13 by the LSB but given that the budget does not decrease, it appears to assume that the work levels will continue at the present pace and content. As many of the frameworks and systems should be in place within the next three years, the BSB would encourage the LSB to consider the future cost projections.
6. As a specific point in relation to cost, the BSB notes that £300,000 is allocated to research budget. While that is a significant amount of money in itself, the BSB is also mindful of the fact that considerable funds can be expended on research. The need to use funds effectively is particularly important in this area. The research programme is due to be published in 2010/11 but as yet the research strategy (scheduled for

publication by the end of March in the current year's business plan) has not yet been issued for consultation. This makes it difficult to comment on this aspect of the LSB's budget at this stage. The BSB research is very interested the detail of the research the LSB is planning to undertake. We would equally be interested in making suggestions about subject areas for research as well as assisting with spelling out what needs to be done. Exploring how to share the commissioning of research would also be of interest to us. Using resources across all regulators effectively and avoiding duplication of work is of considerable interest to the BSB.

Consumers

7. The LSB makes a number of comments in the draft business plan about the need to understand the needs of all consumers. This is viewed as particularly important by the BSB.
8. As the LSB is aware, the self-employed Bar is predominantly a referral profession. While the BSB has facilitated rules that allow direct access in an increasing number of areas, in many cases the Bar still operates exclusively on a referral basis. This means that there is often not a simple consumer-lawyer relationship for a barrister in the way that a consumer has direct contact when buying a consumer good or seeing a solicitor.
9. The many types of intermediaries and clients need to be understood and factored into the LSB's consideration of issues. Gaining this depth of understanding of the segmentation of the legal services market and how different legal service providers operate within is considered vital for all of us, from the LSB to its Consumer Panel to each of the approved regulators. Without it, we may all inadvertently adversely affect other regulatory objectives such as access to justice, the rule of law and public interest. The BSB is very supportive of the LSB taking a broad approach to the identification and understand of all types of consumers, from individuals to large businesses, and those involved in the supply of legal services, whether directly or on a referral basis. In our view this includes considering the views of the judiciary, solicitors, government departments and even perhaps legislators in thinking about who the consumers of legal services are. They are all substantially affected by barristers' work.
10. This understanding is relevant to protecting and promoting the interest of consumers but also to the promotion of competition of legal services. It is highly likely in our view that competition already exists and operates very effectively within various sectors of the legal services market. The impact of attempting to move towards a single market in which all lawyers compete equally needs to be thought about carefully to ensure that any existing benefits of market segmentation are not lost.

Equality and Diversity

11. The BSB supports the emphasis on equality and diversity by the LSB. The BSB's commitment to the creation of a diverse profession and the removal of barriers to that pre-dates the introduction of the regulatory objectives. The Legal Services Act 2007 simply reinforces the action that the BSB was already taking.
12. The BSB is also aware how complex and difficult equality and diversity issues can be, both in relation to the profession and in our own business practices. The BSB has specialist staff and a committee working to support its work in this area. The BSB encourages the LSB to consider how it allocates its resources to this vital area of work. The LSB could add considerable benefit to the work of all approved regulators if it were

able to provide specialist advice, knowledge and experience to supplement the considerable work already undertaken by approved regulators.

Advocacy

13. In area 2F, the LSB states that it would like to see “early progress on a comprehensive quality assurance scheme for advocacy” and seeks to “drive this forward”. The LSB will be aware that the SRA, ILEX and BSB have jointly issued a consultation paper looking at creating common standards for criminal advocacy. This is part of a wider initiative already underway by the three regulators to create such a quality assurance scheme. The LSB may wish to consider changing the language so it is supporting or enhancing the work already underway by the regulators during 2010/11.

Comment on Courts, Legal Aid

14. In paragraphs 23 and 24 of Annex 1 the LSB states that it does not expect to pass judgement on the administration of various elements of the justice system, including legal aid. While the BSB agrees that, as a regulator, it is not interested in the levels of remuneration for barristers undertaking legal aid work (that is for the representative body), it is interested in the effect that cuts to legal aid may have upon the profession. When cuts to legal aid are having the effect of discouraging a strong and diverse legal profession, we must be interested in that. Not to do so is to be selective about the need to uphold the regulatory principles in our view. Changes to legal aid or the administration of the courts or tribunals may affect several of the regulatory objectives: the public interest, access to justice and the interests of consumers. This must be thought about in relation to the types of work undertaken by different categories of barrister. The effect may not be equal for all areas.
15. These changes are having an impact across the legal sector. As oversight regulator, it seems logical that the LSB should take an interest in these changes and seek to understand how they are affecting all parts of it. It may be that barristers and solicitors are affected differently. It may be that clients are affected differently. Understanding this across the whole sector would be valuable for everyone involved. The BSB urges the LSB to consider how it can use its oversight role to understand what these changes mean for all.

Bar Standards Board
5 March 2010