

Response of the Legal Complaints Service:

LSB Consultation on Business Plan 2010/11

Context

Thank you for the opportunity to respond to your draft Business Plan for 2010/11. We are pleased to see the LSB, now that it has taken on its full statutory powers and duties, changing its focus in this Plan towards building the structures, context and knowledge base to move forward with the full implementation of the new regulatory framework. As the plan acknowledges, the legal sector is on *the 'threshold of potentially momentous change'*. In relation to the timespan covered, since the organisation is now in its second year, we wondered whether there would now be value in putting forward a medium-term plan say for 3 years.

The challenges that the LSB will face in moving forward will be significant, not least in terms of the scope and breadth of the oversight requirement. This ranges from assuring compliance with the Internal Governance Rules (IGR) in which the LCS has a continuing strong interest through to closure, to oversight of the performance of the Approved Regulators (AP) and the OLC in the delivery of effective regulatory and public service performance. We believe that your activities, whilst proactive as outlined in your plan, will also require a degree of reactive response as and when unforeseen challenges arise in this new legal world.

We note the reference to the OLC and the '*benefit of an efficient and cost-effective dispute resolution service*' and it would seem appropriate for us, at this stage, to point out, that over the last 3-4 years the LCS has not only achieved significant cost savings but also achieved unprecedented service levels such as:

- Customer satisfaction levels rose from 67% to 84% in 2009
- Cases open over 12 months stood at 303 in 2006 but were down to 43 in 2009
- Cases closed within 3 months of receipts stood at 53% but in 2009 had increased to 68%

We therefore consider that the primary justification for the creation of the OLC is ensuring that complaints handling is seen as independent, rather than cost arguments. As prescribed by Sir David Clementi, the main driver for the creation of the OLC is to ensure that consumers of legal services can obtain redress from an organisation that is wholly independent of the legal profession, which in the past has not only confused both solicitors and consumers alike, but was perceived by consumers to be bias.

Regulatory performance

The Business Plan makes several references to both quality assurance and measuring performance, both in relation to the LSB itself and for its oversight of the organisations that it is charged with regulating. In both cases, it will be important to develop an appropriate mix of measures and indicators, since a balanced scorecard approach will always deliver more information than one based on more limited criteria.

A key matter for the LCS is the quality assurance of the service provided to the consumer by the legal professions. Together with the Law Society and the Office of the Legal Complaints Commissioner, the LCS has endeavoured to drive up quality standards for both first and second tier stages of the complaints handling process for complaints against solicitors.

In terms of overseeing the quality performance of the OLC itself, it will be essential for the LSB to design, develop and monitor appropriate key performance indicators (KPIs). In the case of the LCS, our service quality measures have evolved over time and involve a number of key outcome, communication, interaction, service delivery and timeliness indicators. Together with cost efficiency or value for money and equality and diversity, these measures form the basis of our Business Plan and determine the success of our operations. It may be helpful to the LSB to have sight of the LCS measures by way of example and our current Business Plan KPIs are attached as an appendix. The LSB will need to consider what measures would be appropriate for its assessment of the performance of the OLC.

We review our performance against these KPIs on the basis of a system of internal file reviews and, until now, external auditing by the Office of the Legal Services Complaints Commissioner. We also place great reliance on external feedback from customers, through established survey procedures. Again, it may be appropriate for the LSB to consider how best to assure OLC performance against KPIs.

Our performance has been judged on the basis of targets set by the Legal Services Complaints Commissioner. This is a process which has given credibility to our performance. Therefore whilst we welcome your monitoring of the OLC performance targets it is unclear who will set OLC targets as first you state '*we will also regularly monitor performance targets **set by the OLC** in the operation of its function*', yet further on it is stated '*the LSB will agree a suite of key performance indicators with the OLC and will monitor on an agreed basis*'. If the former statement is correct then we believe that to be an unsatisfactory arrangement, ultimately leaving the OLC open to criticism.

First tier complaints resolution

Another important issue for the LSB will be the quality assurance of the work of the OLC and the APs in driving quality and performance at the first tier complaints handling level. This will rely on the capture by the OLC of relevant and purposive information, the collection of research evidence and the communication of actionable data to the APs, and the education and encouragement by the APs of their members.

In pursuit of similar ends, the LCS has worked with the profession and the Law Society in its Representative Function role, to ensure that in as far as possible, complaints are addressed and resolved directly between solicitors and their clients through our 'Informing the Profession' initiative. Specifically, we have:

- published practical guides to resolving complaints, produced in consultation with practising solicitors and the Law Society;
- produced a series of information packs, various education and training materials; and
- designed and presented seminars and conference presentations on complaints handling and avoidance.

The LSB will need to work closely with the OLC and the ARs to develop both capture and feedback mechanisms in pursuit of this important objective, that has the potential to deliver significant benefits to the consumer.

Access to justice

A specific matter addressed in the Business Plan is that of the impact of commercial mechanisms such as referral fees and the implications of the Jackson review in considering how to safeguard or enhance access to justice. The Business Plan rightly identifies this as key to the maintenance of civil society.

As a complaint handler, we have very little evidence to support a position on referral fees. Consumer detriment may be considered likely to arise where consumers are not advised that a referral fee has been paid but if the consumer does not know about the referral fee, they are unlikely to complain to LCS about it. There is also the issue of referrals per se, since consumer detriment may arise irrespective of whether or not a fee is involved, in as far as there is a restriction of choice and competition.

While we do not hold a particular view on whether lawyers should be able to pay or receive referral fees, we do believe that it is important for a settled position to be arrived at. A further factor that we have drawn attention to previously is the particular importance of ensuring that there is a level playing field, both between different types of lawyers and legal entities and between lawyers and other professionals (such as estate agents).

There are also access to justice considerations arising in relation to Alternative Business Structures (ABS) which the LSB will need to be mindful of, particularly with regard to the competitive impact on existing providers of legal services, the effects of economic and market drivers on the range of services provided and concerns around traceability on closure or when entities cease trading.

Policy focus

We endorse your commitment to putting the consumer and public interest at the heart of regulation and this reflects our own past and continuing activity. We await with interest further details of your proposed research programme as we understand your approach and need for research. We ourselves conducted a major piece of research on 'Understanding our Customer' which we would be happy to share with you.

The introduction of ABS will be a significant turning point in the legal market place and we can only endorse your proposed work to monitor trends. Identifying any trends, whether they are positive or not, at an early stage can only be of benefit to both consumers and the profession alike.

Within our own Business Plan for 2010 we are very clear that going towards closure our service levels should not be compromised, therefore we welcome the sentiment behind your commitment to oversee *'the approved regulators own complaint handling performance and service to ensure appropriate levels are maintained as the commencement date for the OLC draws nearer'*. It is only right that consumers should not experience a diminished service due to a period of transition.

We support your work on regulatory independence as we believe that it is of paramount importance that consumers have trust and belief in any regulatory body

which, foremost is ensured through independent regulatory and representative bodies. Our experience informs us that there is confusion, for both consumers and practitioners alike, surrounding a regulatory function tied to a representative function. Additionally, the associated negative perception this arrangement brings only serves to weaken both the regulatory authority as well as the representative value for each arm of such a body. That being said, your contribution towards putting in place '*robust governance arrangements*' by 2013 would seem to be prolonging an already unsatisfactory situation and we would like to think that this ambition could be in place by no later than the end of 2011.

Your workstream of 'regulatory objectives supported' refers to the areas of claims management and immigration. In relation to inadequate professional service these are both areas that we have experience of and, in particular with claims management we have more recently seen an increase in multiple complaints coming to LCS. We would be happy to share with you our experiences in these areas.

Appendix: LCS Key Performance Indicators

Performance Area and KPI	Forecast Performance 2009	Performance Objective 2010	Measured and reported
Getting the Right Answer Q1 We will achieve a fair outcome and service standard, without significant failings, in at least 90% of cases closed.	86%	90% (new measurement method)	Once, in Qtr 2, by audit
Doing it Quickly T3 We will investigate and resolve at least 60% of cases within 3 months of receipt. T6 We will investigate and resolve at least 80% of cases within 6 months of receipt. T12 We will investigate and resolve 99% of cases within 12 months of receipt, apart from in exceptional circumstances.	65% in 3m 87% in 6m 99.9% in 12m	60% in 3m 80% in 6m 99% in 12m	Year to date, reported each month via MI
Informing the Customer S1 We will ensure at least 80% of our customers are satisfied with our service.	83%	80%	Year to date, reported each month via MI
Providing Value for Money C1 We will continue to significantly reduce the LCS cost of our service in real terms.	Cost Index reduction of 9%	Total spend <£16m*	Year to date, reported each month via MI
Preparation for Handover and closure H1 We will appropriately minimise the total LCS caseload by the OLC vesting date.	3,470	2,700**	Final objective, reported each month via MI