



INVESTORS IN PEOPLE

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Dear David,

Legal Services Board (LSB) Draft Business Plan 2009/10

Thank you for sending a copy of the Legal Services Board's draft Business Plan for 2009/10. Firstly, please accept my congratulations on issuing the Plan ahead of schedule.

I welcome the Board's intention to ensure that the consumer is at the heart of the legal services market. It is absolutely right that the consumer is able to exercise effective choice, be confident about the quality and value of the service he or she receives, and knows how to access effective redress when things go wrong.

I am responding to the consultation in my capacity as Legal Services Ombudsman for England & Wales and as Legal Services Complaints Commissioner. I broadly endorse and welcome the overall direction set out by LSB for its first year and the medium term.

It is noted that the Board is closely framing its work programme around the regulatory objectives set out in the Legal Services Act 2007 and that work towards all eight objectives is planned to be undertaken during this initial planning period.

This will represent an ambitious programme of work, as is acknowledged in the draft plan. However, I have noted that the outcomes envisaged do vary in their level of aspiration which could have the appearance of de-prioritisation for some objectives – particularly 5c (improving services by resolving complaints successfully), 5f (providing access to a diverse legal profession) and 5g (research and public legal education strategies).

My comments on the draft Business Plan sections follow below:

Section 2 – the LSB’s Vision

Overall this is an ambitious and aspirational vision for the legal services markets of the future. I would support the principle of consumers being able to access advice in new and different ways, including the use of new technology. However, the shift to a more empowered consumer/commercial provider relationship described in paragraph 13 seems ambitious to be fully realised within 5 years without understanding the key milestones you anticipate.

Paragraph 14 also seems to describe a panacea for regulation – “a gold standard of consistent regulatory excellence”. It is difficult at this point to gauge how close the LSB considers the legal market is to this now and whether regulation across all parts of the legal profession has the capability to progress towards excellence at the same rate. It would also be useful to have a shared understanding of what excellence means in this context.

Chapter 4 – The LSB’s role in the future of regulation

I would agree that the Legal Services Act 2007 marks a milestone in legal regulation. It is also clear that as well as the LSB, there is a substantial piece of work being undertaken to explore this new regulatory landscape – Lord Hunt of Wirral’s review of Legal Regulation. It is unclear at this stage, how the LSB plans to utilise or engage with this extensive piece of work, but perhaps the final business plan could reflect what is envisaged here.

It is noted that in paragraph 30 the LSB states that it will aim to work with the Approved Regulators (ARs) to move towards “principles based regulation” rather than rules based regulation. Recent financial events have raised questions about the system of principles based regulation employed by the Financial Services Authority and other regulators in that sector. It would be useful to understand what lessons the LSB will learn from this that could be applied to legal services regulation in future.

It is unclear what the “gold standard” destination for regulatory excellence described in paragraph 31 looks like. It may be the case that in wanting to achieve consistency, the benchmark for regulators must be set at a single high standard that all can reach. This consistent standard may fall short of excellence, but that is not to say that some ARs could not still go on to achieve excellence. It is also unclear if all ARs would sign up to achieving “gold standard” regulation rather than aspiring to it.

In paragraph 32, the focus on client care at source is one I endorse wholeheartedly. I fully support the LSB’s ambition to take lessons from the Office for Legal Complaints’ (OLC’s) work and ensure that they are fed back throughout the legal services market to help legal practitioners get more things right first time. It follows from this that improved levels of customer satisfaction with both legal services providers and the way in which complaints are resolved should be one of the critical success factors for the LSB. Both my current offices have experience in this area which they would be pleased to share with the LSB and OLC.

However, I am concerned that there is a perception that in providing fast and efficient redress for consumers, that the OLC will have little contact with issues of professional misconduct. This is not currently the case. In figures reported to me as Legal Services Complaints Commissioner, by the end of this financial year, around 1000 complaints will have been referred from the Legal Complaints Service to the Solicitors Regulation Authority (SRA) for potential misconduct. Under

5c Improving services by resolving complaints effectively

By comparison to other areas, the medium term aspirations for the complaints system appear modest, given the improvements in the handling of complaints about solicitors and the solid Ombudsman base which currently exists and can be built upon. Having acknowledged that concerns about complaints were the "primary driver" for legal services reform, it would be heartening to see greater aspirations for the new and independent OLC to match the aspirations for regulation by the ARs.

It is positive to see the emphasis being placed on finding better resolution to disputes at the first tier. Recent client care initiatives I have agreed as Commissioner with the Law Society are certainly designed to assist firms in this area. There must be a real emphasis for all concerned on client care and preventative work which could be measured by an overall reduction in the number of service complaints coming to the OLC in the medium and long term.

Improving customer satisfaction levels is only one measure of success for the LSB – and I have found that consumer satisfaction with service is subject to a wide variety of methodologies for measurement as well as being intrinsically linked to the outcome of the complaint. As Commissioner, I have retained this as an indicator, but have latterly focussed more on targeting improving outcomes for consumers.

5d Developing excellence in legal services regulation

My observation is that the high ambition to world leadership by 2013 is not yet underpinned by a clear route map towards this. The draft business plan does not quite address where we are now in terms of the baseline or what the comparators are in terms of world class regulation. Therefore it is difficult to judge the scale of the task the LSB is setting for itself and the ARs.

I would also note that the emphasis on initial self-assessment by the ARs, the relatively small organisation envisaged for the LSB and the other objectives being concurrently worked towards could mean that the achievement of excellence would require a longer timeframe than is envisaged.

5e Securing independent regulation

Independence of regulation from representation was one of the main goals of the Legal Services Act and it is given due emphasis in the LSB's draft business plan. Clearly development of the Rules will be pivotal.

One of the key tests of independence must be the LSB's access to the regulators. In the case of the SRA; this will be through the Law Society, the representative body for solicitors. This does appear a circuitous route and one not best developed to react quickly. I would look to the LSB to review the effectiveness of this model as time progresses.

5f Providing access to a diverse legal profession

As oversight regulator, the consumer will look to the LSB to set the tone for the whole legal profession in terms of its actions on and its attitude to promoting diversity. As such, it would be appropriate for the LSB to set the bar on its aspirations at the excellent or “world class” level in terms of diversity of the legal profession.

The LSB acknowledges that there is momentum behind a number of initiatives in this area, therefore it is important not to reinvent the wheel, however, it has a leadership role to benchmark and to marshal best practice so that all branches of the profession can benefit and also to require commitment so that the hard outcomes are to be achieved.

There are arguments that could be made for not doing many elements of the LSB’s work, but to give air to scepticism solely in relation to the issue of diversity (paragraph 119) could be counter productive and may seem to lessen its importance. As one of the regulatory objectives, all of which are unranked in terms of priority, it should not be necessary to justify pursuit of this work in the LSB’s business plan.

5g Developing research and public legal education strategies

The medium term aims to be achieved by 2013 appear to be ambitious, particularly in relation to consumer knowledge.

It is noted and welcomed that the LSB intends to work with a wide range of partners in order to research and develop policy in this area. However developing a programme of action in 2010/12 (paragraph 134) would not seem to allow sufficient time to support achievement of the medium term aims by 2013.

Legal services consumers need to access services usually infrequently and often triggered by a variety of life events. There is a school of thought that information and knowledge are therefore required by the individual at the point of access and that general legal education strategies are not necessarily likely to lead to better purchasing strategies at the time of need.

It may be however, that embedding information on rights, responsibilities and fairness at a young age could create more “savvy” consumers in the future. This would clearly require the LSB to work with other policy makers in education, particularly Government Departments, in order to influence education strategy for young people to take account of legal education. The time allowed for research before detailed action plans are developed (as indicated by the draft Business Plan) could mean that there are missed opportunities to reach out to young people in the next 2 to 3 years and it would be positive to see this accelerated if possible.

General note on Sections 6 to 9

With respect to the comments above, I would broadly support the LSB’s initial views on the levy, the resources needed to conduct the programme of work indicated and the organisational framework set out in the draft Business Plan.

