

**Legal Services Commission Response to the Legal Services Board's draft
Business Plan 2010 – 2011 & Draft Equality Scheme
5 March 2010**

Introduction

1. The Legal Services Commission (LSC) is a non-departmental public body sponsored by the Ministry of Justice (MoJ). The LSC is the biggest single purchaser of legal services in England and Wales with an annual spend of £2.1 billion; we are responsible for the delivery of civil and criminal legal aid and the development of community legal services.
2. The LSC welcomes the opportunity to respond to the Legal Services Board's (LSB) draft business plan and equality scheme. We have a strong interest in the regulation of legal services through our responsibility to legal aid clients. We strongly believe that improved regulatory performance will lead to better access to justice and outcomes for consumers.
3. The transformation of the scope and style of the regulation of legal services in England and Wales is an ambitious programme for the LSB but one that will deliver substantial benefits for consumers. We are impressed by the significant progress that has been made in the last 12 months with the LSB laying the foundations of a strong regulatory structure for legal services. The next 12 months look even more challenging with the LSB implementing and overseeing the structure that has been developed and ensuring that it operates effectively in the interest of consumers. We look forward to supporting the LSB with its programme over the next 12 months and long into the future.
4. Our comments on the business plan and single equalities scheme are outlined below.

Putting consumers and the public at the heart of regulation

5. We fully support the LSB's aim to understand the views and experiences of legal services consumers to ensure that the regulatory system works in their interest. We see the creation of the Consumer Panel as an important and welcome step, their work will bring a new dimension to the focus of regulation. We are encouraged by their programme of work and their commitment to engage with key stakeholders including ourselves and believe that their work will deliver significant benefits to the workings of regulation.
6. We welcome the intention to undertake direct consumer research and engagement. The LSC has a track record in ensuring that client services are tailored and accessed by the most vulnerable people in society. Last summer we published our Client Engagement Strategy, which coupled with our quality strategy (that includes client focussed criteria) demonstrates our commitment to procuring services in the interests of consumers. Our Director of Strategy

met recently with Dianne Hayter to discuss how we intend to take forward our client engagement strategy over the next few months.

7. The commitment of the LSB to putting consumers at the heart of regulation is clear throughout the business plan. It will be equally important for the Approved Regulators (AR) to pursue the same goal. The challenge for the LSB will be ensuring, through this programme and their oversight of regulation in general, that the ARs deliver against this core aim. We would like to understand how the LSB will measure AR's success in this area.

Widening access to the legal market

8. We welcome the work of LSB in conjunction with the ARs to widen access to the market through permitting LDPs and ABS. We particularly welcome the provisions for the regulation of special bodies. This is an area that the LSC has previously raised with the LSB as an important subject for consideration.
9. As the largest single procurer of legal services in England and Wales, the LSC welcomes increased competition, provided that all participants market are subject to effective and robust regulation that protects consumers from poor quality service.
10. Competition alone will not protect the interests of consumers. It cannot be assumed that legal service providers will compete in the market on the basis of high quality and excellent customer service. There are a number of different strategies business structures may use to gain market share and or maximise profit in a competitive market, ranging from low cost (but potentially low value/quality) to innovation and development. The challenge for the LSB and the ARs in delivering this objective will be ensuring that the right balance is struck between an open and competitive market and a market where standards are maintained through regulation. We make this point in more detail in our response to the LSBs recent 'Alternative Business Structures: approaches to licensing' consultation.

Resolving complaints effectively

11. We support the continued work in the area of complaints. We believe complaints information is an important component in quality assurance. We have signalled our desire to have access to all relevant information pertaining to legal aid firms including complaints data to ensure that consumers have access to good quality services.
12. We have been working closely with the Office for Legal Complaints (OLC) and the Ministry of Justice to gain access to complaints information and support the recent MoJ consultation on information disclosure which identifies the LSC as an appropriate body to receive complaints information. We hope this will be a view the LSB supports.

Developing excellence in legal services regulation

13. Effective monitoring of ARs and their performance is fundamental to ensuring good regulatory performance in the interest of consumers and those who are regulated. Given the significant changes occurring in the legal services market, for example new market structure and more sophisticated regulation

based on outcomes, this function becomes even more important. Risks to consumers must be minimised.

14. It is the LSC's view that ongoing performance monitoring is vital to ensure that poor performance is identified at the earliest opportunity, and also to demonstrate the individual and/or collective strengths of ARs. This will support the LSB and ARs in being seen as world leaders in the full range of their activities.
15. We agree that monitoring and reviews should be appropriate and targeted and that self-assessment can form an effective part of this process. We would be concerned if the LSB relied too much on self-assessment however, just as we would be concerned if the AR relied on self-assessment of those that they regulate. The LSB must back up any self-assessment with direct independent oversight.
16. We also believe that in order to develop excellence in legal service regulation that information on regulatory performance should be made available to:
 - Consumers
 - Those who are regulated by LSB Approved Regulators to enable them to make informed decisions about their choice of regulator
 - Procurers of legal services, such as ourselves.

Securing independent regulation

17. As stated in our response to the 2009/10 business plan, independent regulation is key to ensure that public confidence is maintained. This is an important move away from the perception or appearance of 'self regulation' by the professions.
18. However the LSC retains concerns that separation of representative and regulatory functions of some ARs has not been fully achieved. We are happy to discuss these concerns further with you, but would at the moment question whether the expectation that you have set that this work will be substantially completed during 10/11 is achievable. We await with interest further developments in this area, and would expect the LSB to take swift and appropriate action where it is shown that regulation is not truly independent.

Developing the workforce for a changing market

19. We welcome the LSB's governance and prioritisation of the quality assurance of advocacy, an area that we consider to be a mostly unregulated market. The LSC has recently signed up to the LSB's mandate and governance structure for delivery of a quality assurance scheme for crime advocates by 2011.
20. We believe that the Joint Advocacy Groups (JAG) accountability for delivery of a quality assurance scheme, coupled with LSB oversight, should result in a positive outcome for all advocates and therefore a positive outcome for clients / consumers of advocacy services.
21. We have recently published a discussion paper on quality assurance for advocates outlining our requirements for such a scheme based on our work in this area over the past 3 years. If it appears that the JAG is developing a scheme that will not meet our requirements, or is delivering a scheme that will

be implemented outside of agreed timescales, we will consider the options that are open to us as a procuring body to seek alternative quality assurance. We are confident that the LSBs work in this area will ensure that the scheme delivered will be fit for purpose and within agreed timescales.

22. To ensure that we are purchasing good value services we would expect regulators to provide a guarantee that legal services meet minimum quality standards. We look forward to seeing the outputs of the LSBs work in this area and also hope to work closely with the LSB and the ARs to ensure a robust regulatory structure that inspire consumer confidence.

Improving access to justice

23. We agree with the LSB that the concept of access to justice is wider than access to traditional forms of advice provision e.g. face to face. Delivering access to justice should include innovation in delivery methods (telephone, web, email etc), alternatives to court action and more focus on dispute resolution and mediation.
24. Overall the scale of ensuring access to justice will require support from a wide range of stakeholders including the regulators, representative bodies, purchasers, consumers and the LSB. Encouraging LAs to have a consistent approach to understanding the market is one means of starting this. We are keen to work with the LSB and others to deliver this programme.
25. The business plan identifies a strand of work on whether the current scope of regulation is achieving the right balance in the interests of consumers. We agree that this will be an important area to look into. The issue of reserved or unreserved legal activities is subject to frequent debate with many stakeholders and we believe that as part of this strand the LSB should prioritise the investigation of this area.
26. The LSC is concerned that some organisations tasked with delivering legal advice appear to be unregulated for the legal services that they provide for example certain Not for Profit organisations. The introduction of ABS and the provisions for the regulation of special bodies is a welcome step, as this will go some way to close this significant gap. However as not all of these (currently unregulated) special/non commercial bodies undertake reserved legal activities there will still remain a proportion of such providers outside the regulatory structure. This is of particular concern in legal aid where some areas of law fall outside the reserved legal activity definition. This creates a large risk to consumers as they are likely to assume that regardless of the type of legal advice they receive (reserved or unreserved) they will be protected.

Draft Equality Scheme

27. The LSC welcomes this opportunity to feedback on the draft equality scheme and we hope that there will be ongoing dialogue between our organisations in this area.
28. The draft equality scheme demonstrates the LSB's commitment to equality and diversity and will send a strong message that this should be a priority area for the entire legal services market. We are strongly committed to promoting equality and diversity in all our employment and service delivery

operations, which we articulate in our Single Equality Scheme (SES) and Action Plan¹.

29. The scheme the LSB has set out is a great improvement on previous drafts we have seen and commented on, clearly demonstrating that the LSB is listening and responding to the input of key stakeholders. We set out below a number of comments that we hope the LSB will find helpful in further strengthening the scheme.

Benchmarking

30. When developing our SES, we undertook a full internal audit of policies and procedures and priority Equalities Impact Assessments. Also, we commissioned an independent external audit, measured against Local Government standards to determine the priorities moving forward. Whilst the LSB has not been in operation for long it may still be helpful to consider whether some investigation is required into how things are currently operating before the formal introduction of the scheme, which can then be used as a benchmark to demonstrate progress against any action plan that is developed.

Developing an infrastructure to promote equalities

31. We welcome the ambitious action plan in place for 2010/11 and agree that it should help to support the LSB in ensuring that equality and diversity is at the heart of everything they do. The action plan does not give an indication of how this work will be co-ordinated and how progress will be monitored. We would strongly recommend that the plan includes an infrastructure to promote equalities, with explicit objectives and processes which demonstrate leadership commitment e.g. Diversity Champion, Diversity Officer, Diversity Board etc. This would serve to support the implementation of the scheme.

Governance and management reporting on equalities

32. The scheme identified that issues will be governed by the Board, however there was no indication of the governance processes to manage equalities, how issues will be translated into the business process and the indicators for success, for example ensure that 100% of policy proposals have EIAs etc. In order to firmly embed equalities into the business planning process such governance will be necessary and should be set out in the plan.

Stakeholder engagement

33. We would also recommend that in addition to the stakeholder engagement planned for consultation on the Scheme the LSB should also set out their intentions for general stakeholder engagement and inclusion in business as usual activities.

We hope that you will find this response useful. If you have any queries about its content, please do not hesitate to contact Jennifer Will, Quality Manager, Strategy, at jennifer.will@legalservices.gov.uk.

¹ [Single Equalities Scheme 2008 – 2011](#)