



Legal Services Board  
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8 March 2011

## **LSB Draft Business Plan 2011/12**

### **ILEX Professional Standards**

This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Legal Executives. Legal Executives are members of the Institute of Legal Executives (ILEX). ILEX is the professional body representing 22,000 qualified and trainee Legal Executives and is an Approved Regulator (AR) under the Legal Services Act 2007 (LSA 07).

ILEX and IPS are committed to regulating Legal Executive businesses and businesses in which Legal Executives are partners and managers by 2012. IPS will establish regulatory arrangements that not only comply with the requirements of the LSA 07 and with any regulations made by the Legal Services Board (LSB) under the LSA 07 but that also provide public protection.

The consultation paper is wide ranging and IPS does not propose to respond in detail to all of the issues in the consultation, but hopes the general observations below may be of value.

### **Progress**

IPS recognises the LSB's major priorities for modernisation and reform of legal services in England and Wales, which are embedding independent regulation, opening up the market and establishing the new complaints handling regime. IPS has engaged and participated with the LSB in all these areas as required. The LSB has defined its progress in relation to embedding independent regulation by the introduction of the Internal Governance Rules (IGRs). IPS and ILEX believe they are in compliance with the IGRs. The LSB has made progress in developing governance requirements and operational rules to build the licensing framework for Alternative Business Structure (ABS). IPS has participated in LSB led meetings on ABS, in particular the ABS implementation group meetings. Finally, progress towards a new complaints handling regime has seen the establishment of the Office for Legal Complaints (OLC) and the Legal Ombudsman scheme (LeO). IPS has engaged with the LSB in relation to first-tier complaints handling.

### **Measuring LSB performance in 2011/12**

IPS agrees with the levels at which the LSB will evaluate its overall performance. The levels set by the LSB are 'business as usual' tasks, the delivery of a change in regulatory best practice and the delivery of long-term market change. The LSB has expressed that to evaluate its overall performance in relation to the delivery of a change in regulatory best practice, it will carry out reviews, particularly around regulatory independence and first-tier complaints handling. In order to comment on the proposal, IPS would need specific details on what the reviews entail and in particular, further detail on the criteria that will be used for Red/Amber/Green (RAG) ratings proposed in the consultation.

In relation to the LSB's performance in delivering long term market change, the LSB will evaluate its performance against evidence of the market changes which improve access to justice via more innovative and better value services. The LSB plans to find ways to link its activities to changes in the legal market experienced by consumers. IPS welcomes this work of engagement with consumers, to find out more about their experiences and to feed into regulatory arrangements.

### **Draft work programme 2011/12**

IPS recognises that the majority of work planned for 2011/12 represents continuity of work begun in 2009/10 and 2010/11. The LSB has outlined how it will undertake its day to day activities including its approach to approval of changes to regulatory arrangements, its options for a programme of regulatory scrutiny exercises and its evidence gathering approach.

The LSB lists four elements/pillars which it believes are core to effective regulation of the legal services market. In relation to the first pillar of an outcomes-based approach to regulation, IPS welcomes outcomes focused regulation (OFR). The Code of Conduct for ILEX members has always been of that nature. Considering the second and third pillar, IPS recognises the importance of a risk based framework and supervisory arrangements that cover entities and individuals. When considering the fourth pillar, of a robust compliance and enforcement approach, the LSB should recognise that each ARs compliance and enforcement arrangements will differ according to how they are set up. ILEX is not a statutory body and its enforcement arrangements are limited. The LSB should consider these issues and how they affect its business plan.

As part of the LSB's development of regulatory excellence, it plans to investigate into specific areas. One of these areas is ARs disciplinary rules, enforcement and appeals mechanisms. The LSB plans to explore scope for alignment of processes of disciplinary decision making and comparative/collaborative work to identify best practices. Again, ILEX is not a statutory body and has limited disciplinary and enforcement powers. As a result IPS' processes of disciplinary decision making may not fully align with processes administered by other ARs. IPS had undertaken a comprehensive review of its complaints handling rules and procedures in 2009. They resulted in the implementation of new rules in 2010 which streamline investigating and decision making processes.

The LSB has indicated that it will assess whether change is needed in either the regulatory framework and/or its application in relation to conveyancing as evidence suggests that levels of fraud are rising and recommendations have been made that a review of conveyancing is conducted. IPS recognises that conveyancing is a high risk area.

Regulatory shortcomings in this area can have a detrimental affect on consumer protection. This area should be investigated provided there is evidence that it is causing the highest consumer detriment.

Finally, in the area of development of regulatory excellence, the LSB proposes to scrutinise interventions in immigration during late 2011/12. However, there are no details in the consultation on how the LSB plans to scrutinise interventions or what the nature of the activity is. Clarity is needed on what this proposal will involve before comments can be made.

The LSB's draft programme for 2011/12 will also involve maintenance and development of standards in the sector and the education and training of lawyers. This will involve the LSB ensuring that all stages of complaints resolution at both provider and Ombudsman level are effective. In order to do this, the LSB will undertake a qualitative review of ARs regulatory arrangements and activity. The LSB plans to look at how ARs collect and use valuable information extracted from complaints to identify systemic issues that should inform decision making. IPS has so few complaints to extract information from. The information gathered will not help with developments. However, IPS will embrace the LSB's scheme as best it can.

The consultation highlights that this year will see the first Alternative Business Structure begin trading and that the SRA and CLC have made progress towards developing licensing rules. The LSB plans to work with other regulators who wish to become Licensing Authorities. ILEX is working on an application to become a Licensing Authority and IPS is dedicated to getting involved and working with the LSB in this area. It is also interested in engaging with special bodies.

This year the LSB will work to ensure that compliance with the IGRs are delivered in practice as well as on paper. IPS and ILEX were mainly compliant with the IGRs in 2010 and in comparison to other ARs, had little work to do to ensure full compliance. IPS and ILEX will embrace the new approach that will be taken in this year's IGR assessment.

IPS is working in conjunction with the SRA and BSB in the recently launched Education and Training Review. IPS notes that this year the LSB will be working on ensuring that ARs are auditing/critically examining the education and training needs for the workforce of the future.

IPS welcomes the examination of regulation and reservation as it is an area central to consumer protection. IPS submits that regulation should proportionately target and address consumer detriment.

The LSB will undertake a market assessment of a reserved area at the end of 2011. However, IPS recognises that further work will be done in this area.

**IPS/08.03.11**