

## Response to LSB Business Plan 2011/12

1. My name is John Weaver . I am a solicitor and have been in “High Street “ practice in and around Oxford for the last 28 years. I am on the committee of the Berks Bucks and Oxfordshire Local Law Society and also sit on the Council of the Law Society representing Oxon and Bucks. This response is my personal response and not of those organisations.
2. I responded to the LSB Business plan 2009/10
3. As in my previous response and on the same analysis of the LSA which I do not repeat I remain unconvinced the LSA 2007 gives the LSB a mandate to “reform and modernise the legal services market in the interests of consumers” or that its function is other than to act as an oversight regulator and to “assist” front line regulators.
4. In my previous response I criticised the LSB for being overly dogmatic and deciding the answer before considering the question: some of this concern remains
5. I support much of what is in this business plan which is entirely consistent with ensuring that the current regulatory beds down appropriately and that the future regulation of ABS will be proper.
6. There are two matters however over which I am concerned.
7. I appreciate that this is the end of the beginning and that what has to be done over the next two years is building on the framework of the new regulatory structures . However I do think that at least towards the end of this period the LSB needs to consider what it’s role will be over the medium / long term from 2012 onwards . I think that room for this forward consideration should be found in this business plan probably towards the end of 2012 . Hopefully by then the structures for ABS will be in place although possibly comparatively few organisations will have been through the process and the current regulatory arrangements will have settled down. There will then be a place for the LSB as oversight regulator to monitor and to ensure that the arrangements are working properly but it will need to consider either directly or by establishing criteria under which it will consider what else it should be doing bearing in mind its obligations are to “assist” not drive. There is some suggestion in this plan ( paras 29-39 and page 7) that the LSB is casting around for what to do next. It does not follow that there is any regulatory need for the LSB to “deep-dive” any of these particular issues in para 29-39 ( or others) at all. I think that the LSB needs to be careful in considering projects it may undertake that it should be an oversight regulator assisting in matters whether there is clear regulatory need and not to undertake them either for something to do and justify its existence or because in an unobtainium-plated regulatory world something might need tweaking.

8. I accept that one of the regulatory principles is to “encourage... a diverse.. legal profession”. I have concerns as to whether this should be LSB driven or front line regulator driven and some reservations as to whether the use of the verb “promote” is quite the same as “encourage”. The LSB will also have to consider whether part of its remit is to “promote social mobility” the extent to which regulation is an appropriate tool to do so and the extent to which such regulation might go further than firms statutory non-discrimination obligations.
9. I agree that in considering ABS implementation diversity as set out in principle at section 3D is an appropriate matter to consider generally. However I do have concerns, as with QAA, that the LSB has decided what the answer is before the investigation. I am not sure that having a “strong initial view” nor expecting “robust action “ by ARs to “promote” diversity and “rigorous evaluation “ is the best place to start. I think the LSB should obtain the evidence and then consider what that suggests rather than making initial assumptions. The LSB will need to consider carefully the evidence of whether a more diverse profession of itself promotes the other regulatory principles and confidence in the rule of law and the converse of whether a less diverse profession does the opposite
10. I fully appreciate that consumer perception and in particular a belief that access to law is open to all is of itself important and that any self regarding profession view that it knows better is unhelpful. However I do not think it necessarily follows as would appear to be implied in para 89 of this plan that consumers will have greater confidence in the rule of law and access to justice purely as a result of a more diverse profession as opposed to better standards achieved as a result of diversity. Under s3(3) LSA the LSB will have to consider how heavy a regulatory hammer to suggest when the nut is of consumer perception rather than actual objectively measurable harm to the regulatory objectives.

John Weaver  
18/2/2011.