

**Legal Services Commission Response to the Legal Services Board's draft
Business Plan 2011 – 2012
1 March 2011**

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 £2.2 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 again this year, and remains supportive of the thrust of the LSB's work. As a major purchaser of services for many of the poorest people in England and Wales, our key interests include:
 - Technical quality of legal services, giving both a baseline assurance of competence and the opportunity for providers to demonstrate a higher level of capability
 - Service delivery that is accessible and responsive to the needs and concerns of clients
 - Value for money secured through a competitive, thriving market in legal services
 - Professional ethics and standards
3. We strongly believe that improvements in the structure of regulation and performance of regulators have the capacity to improve access to justice, quality of service and outcomes for all consumers. We would contend that thanks to the measures we have put in place to supplement the limited assurance offered by regulation, legal aid clients currently enjoy a level of protection and assurance that is absent for private paying consumers. We welcome the progress already made towards formal independence, and the introduction of a simpler, more accessible complaints system. We look forward to working with the Legal Ombudsman to understand the lessons to be learned from complaints regarding legal aid work.
4. The transformation of both the legal market and the way it is regulated amount to a major programme of reform for the LSB, and is clearly not without risk. We strongly support the LSB's aspiration to be an evidence-based regulator, and hope that the Board will be willing to share evidence that is relevant to the development of publicly funded legal services.
5. Our views on many issues appear closely aligned, and we look forward to continuing to support the LSB with its programme through 2011/12 and beyond. Our comments on the business plan are outlined below.

Putting consumers and the public at the heart of regulation

6. The commitment of the LSB to putting consumers at the heart of regulation is clear throughout the business plan, and we agree that it is more appropriate to assess the LSB's entire planned programme of work for its contribution to this workstream – if it is truly to be achieved, all of LSB's work should contribute to its delivery. With this in mind, the Business Plan could possibly be improved further if a section were in future added to the text on each workstream to make explicit how the planned activity would contribute to putting the consumer at the heart of regulation.

2A Developing excellence in legal services regulation

7. If it is to be made a reality, the goal of putting consumers at the heart of regulation must also be adopted wholeheartedly by the Approved Regulators (AR). It remains unclear quite how this will be done.
8. With this in mind, while we agree that the pillars of regulation each express important aspects of what is required from a regulatory framework for the legal market, it would be helpful if they were recast to show how each contributes to the overarching goal of protecting the interests of consumers. We agree that it is critical that regulation is assessed on the strength of outcomes, and it is therefore critical that regulators understand the outcomes they seek to achieve and how success can be measured. We welcome the steps that the LSB is taking to apply this outcome-based approach to its own work and demonstrate the effects of its interventions.
9. It remains the LSC's view that ongoing performance monitoring of ARs is vital to give consumers justified confidence in the effectiveness of the regulatory framework, and to ensure that poor performance is identified and addressed at the earliest opportunity.
10. We agree that monitoring and reviews should be appropriate and targeted and that self-assessment can form an effective part of this process. We believe that the framework of self assessment supported by data monitoring and regulatory scrutiny exercises has the potential to work well. In order to establish a culture of greater transparency in legal services regulation and promote consumer confidence, information on regulatory performance and the outcomes of scrutiny exercises 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.
11. We would like to understand more about the intended focus and approach to be taken to the deep dive on immigration law. We recognise that, as it takes on new responsibilities in relation to immigration law, it is right that the LSB should seek to satisfy itself regarding the operation of the current regulatory framework. We experienced significant difficulties following the collapse of Refugee and Migrant Justice, as the regulatory framework in place for immigration providers did not give clients the level of protection (e.g. ensuring that files were taken on by alternative providers) that would have been available had the organisation been regulated by the Solicitor Regulation Authority. We would like LSB to look closely at how the protection offered to immigration clients, especially in non-solicitor organisations, can be improved.

12. We have a close interest in immigration law, which is a significant area of legal aid spend, and believe work we have contributed to has significantly raised assurance and standards. Our Quality Team would welcome the opportunity to feed in to the specification of this research, and would be glad to support the work. One question the LSB may wish to consider is whether the compulsory accreditation approach taken to protect vulnerable immigration clients may need to be reapplied in other areas of legal practice.
13. With this in mind, we would like the LSB to consider a future “deep dive” into the question of the competence of services in other areas of law – especially ones such as family, where legal aid contract requirements mean that publicly funded practitioners must meet requirements (e.g. around accreditation) that are not compulsory in private client work; or where clients are particularly likely to be vulnerable. This might lead on to a wider consideration of the place of quality assurance in regulation, and the balance between the roles of regulatory and representative functions in this field.

2B – Developing the Evidence Base

14. It not only the LSB’s responsibility to improve the evidence base. The LSC supports the work of the Legal Services Research Centre (LSRC), whose civil and social justice survey has greatly increased understanding of advice seeking behaviour. The Head of the LSRC sits on the LSB Strategy Research Group, and we are glad to have this level of input into the LSB’s research. The LSB should encourage regulators also to undertake research on areas which are of direct interest to them – for example, on legal providers’ understanding of their regulatory obligations, and how they go about meeting them. Such research will help regulators understand the most effective ways to achieve the regulatory objectives and increase the evidence base on the impact of regulation.
15. We strongly support the LSB’s aim of increasing the range and quality of information available regarding the legal services market, which we agree is not currently sufficient to enable the impact of reforms across the market to be properly assessed. The LSB is well placed to commission research that will be extremely useful to ARs, legal service providers and consumers alike.
16. Of particular interest to the LSC would be improved evidence about the business structure and profitability of legal services providers, and the cost drivers of legal work. This will help LSB understand the capacity for efficiencies in the market, assist legal providers to consider how they can improve their businesses, and help inform major consumers of legal services about the underlying costs of the services they are looking to purchase.
17. We welcome the research already undertaken by the independent Consumer Panel, which we believe helps ensure that consumer interests are kept at the centre of regulatory interest. We look forward to seeing their work programme in due course, and hope that it will build on their earlier investigation of client attitudes to quality by exploring how to better inform client choice.
18. We also welcome LSB’s efforts to continue to understand and reflect the particular needs of the market in Wales. Following on from this, we would also like to encourage the LSB to monitor the regulators’ oversight of practitioners who work

through the Welsh language and/or with Welsh speaking clients to ensure that the needs of Welsh clients are addressed.

3A – Ensuring Effective Redress for Consumers

19. We believe that the introduction of the Legal Ombudsman (LeO) is a very positive step, and intend to work with LeO to ensure complaints data helps inform legal aid contract management and decision-making.

3B – Widening Access to the Legal Services Market

20. The LSC remains positive about the work of LSB in conjunction with the ARs to widen access to the market through permitting LDPs and ABSs, subject to effective and robust regulation that protects consumers. We await the developments of the coming year with interest. Given the important role of third sector special bodies in legal aid, we also welcome the LSB's planned engagement with voluntary sector bodies to develop an appropriate framework for their regulation once the transitional protections are lifted in 2013. We trust that this will extend to a representative group of organisations across both England and Wales.
21. The full effects of the introduction of new business structures are not currently known, and while lessons from other sectors indicate that increased competition should lead to benefits for consumers, it is critical that the LSB proceeds with care, with a close eye on the actual outcomes of the proposed changes. We welcome the further gathering of research evidence to support the impact assessment of this critical area of the LSB's work.

3C – Securing Independent Regulation

22. We are pleased that the LSB is looking to move beyond looking at the formal and structural independence of ARs, to focus on the question of whether independence is happening in practice. As stated in our response to previous LSB business plans, independent regulation is key to ensure that public confidence is maintained, and we retain concerns that separation of representative and regulatory functions of some ARs has not been fully achieved. We would expect the LSB to take swift and appropriate action where it is shown that structural reforms have not given rise to practical independence of regulation.

3D – Developing the workforce for a changing market

23. We welcome the clear timetable set out by the LSB for the introduction of a scheme for Quality Assurance for Advocates (QAA) in criminal law. The LSC remains strongly supportive of the introduction of such a scheme, and has made clear its requirements for QAA, both in our February 2010 Discussion Paper and in our response to the Joint Advocacy Group's (JAG) consultation on a proposed scheme. We are also eager to see QAA extended to family advocacy, and in due course to the work of civil advocates. QAA in criminal law is just the first step on the way to QAA in other areas, and not the end of the process; we would ultimately like to see it rolled out to all areas of publicly funded legal representation.
24. We continue to believe that making the scheme part of the regulatory framework for criminal advocacy will result in a positive outcome for all

advocates and therefore a positive outcome for clients / consumers of advocacy services. However, if it appears that the JAG is developing a scheme that will not meet our requirements, or if there is significant deviation from agreed timescales, we will consider the options that are open to us as a procuring body to obtain quality assurance by alternative means.

25. We welcome the planned review of the education and training framework for legal professionals, and in particular the inclusion of post-qualification quality assurance within the scope of the review. Again, this is an area where there is very limited information outside the field of legal aid, and we would be happy to provide any information and support that we can to aid the LSB in its work. We would like to see a clearer timetable for reform in this area.

3E Improving access to justice

26. We support the LSB's work to improve access to justice. We welcome the planned research, and anticipate that the client segmentation work will build on the findings of the Civil and Social Justice Survey regarding advice seeking behaviour. We look forward to more information on the range of regulatory interventions that may result. It is important that the research looks not only at the behaviour of those who currently use legal services, but also at those who have legal needs and do not obtain advice.

27. We welcome the LSB's decision to prioritise an investigation of the scope of regulation and the extent of reserved activities. A clear economic rationale for regulation and an intellectual framework for the application of regulatory tools will be of immense benefit in putting regulation on a more rational footing.

28. Ensuring access to justice is no small task, and will require input from a wide range of stakeholders including the regulators, representative bodies, purchasers and consumers. Securing access to justice for our clients is clearly a key objective of the LSC, and we look forward to working with the LSB on this area of activity.

We hope that you will find this response useful. If you have any queries about its content, please do not hesitate to contact Peter Jones, Quality Manager, Commissioning Operational Policy, at peter.jones@legalservices.gsi.gov.uk.

Yours sincerely

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