

LEGAL SERVICES BOARD CONSULTATIONS

Strategic Plan 2012-15 and Business Plan 2012-13

Manchester Law Society is broadly supportive of the two plans however; it would ask that consideration be given to the following areas:

1. Inconsistent regulation

There is a fear that regulation will be applied inconsistently across the legal profession, particularly where large Alternative Business Structures are involved; many traditional high street firms believe that regulators will see these entities as too big to take on and will therefore concentrate their efforts on easier targets that they have previous experience of regulating;

2. Regulator shopping

It has been acknowledged that “regulator shopping” is a possibility if consistent regulation is not applied; many law firms feel uncomfortable working within the new Outcomes Focused Regulation regime and are looking for “safe harbour” advice, which they have been told they won’t get from the Solicitors Regulation Authority, but will from the Council for Licensed Conveyancers (CLC).

A good example of “regulator selling” came from the Today’s Conveyancer Conference 2011, where the Chief Executive of the CLC actively encouraged firms with property departments to hive them off into separate businesses so they could be regulated by his organisation, he said that the benefits of doing so would include:

- a. A more pragmatic regulator and relaxed regulatory environment;
- b. The provision of “safe harbour” advice;
- c. Access to lender panels without the need to obtain CQS;
- d. Reduced regulatory costs.

3. Scope of regulation

A more cohesive approach to claims management and referral fees by the Ministry of Justice and the Solicitors Regulation Authority would in our view be appropriate; it is apparent that when breaches of the referral rules occur the SRA will pursue the law firm(s) involved but will not work with the MoJ to eradicate the underlying problem of the non-compliant claims management company(s) involved, leaving firms with the impression that they are being “picked on” by a hard line regulator (SRA) whilst the “soft touch” regulator (CMR) allows the problem in their sector to continue.

The Society would like to see more interaction between the SRA and the FSA in relation to the oversight of professional indemnity insurers; there are clear concerns about the sustainability and credit worthiness of some insurers, but the SRA has indicated that it is not able to have any impact on which insurers can enter its regulated sector. The Society is not asking for the SRA to take over the role of the FSA, it merely suggests that the SRA take a more active role in assessing insurers before they are allowed entry to the sector; many law firms, rightly or wrongly, believe that “approved” insurers have been vetted by the SRA and they therefore do not need to carry out any further due diligence on them. The SRA has said that it doesn’t have the knowledge and/or experience of the insurance sector to vet insurers, yet in its recent consultation document on client protection it suggests that

law firms do, or should have if insurers provide more information; the reality is that in most cases the cost of premiums is the only issue given consideration!

4. Legal education and training

Although reviews in this area are underway there is a concern that too many students are being allowed to study law and take their LPC when there are clearly insufficient positions for them at the end of the process; there is an impression that vested financial interests are taking priority over the welfare of the students involved.

A recent example was provided by a LPC student who said that out of a class of sixty, only one person obtained a training contract and that was because it was their father's firm, how can this be fair and equitable?

5. Diversity

The Society is totally committed to ensuring there is equality and diversity within the legal profession however, there is a real concern that regulatory decisions in this area will be based on "skewed data", and that this could have a negative impact on the firms involved; this problem has been acknowledged by the LSB but it is of the view that it will press on with its plans even if this has negative consequences on firms and individuals within them.

Equality and diversity audits are not mandatory and therefore employees will in many cases choose to "opt out" from answering questions, this could lead to a diverse firm being labelled otherwise purely because a large minority have exercised their right. If firms are potentially to face regulatory sanctions for not being diverse enough, they could insist that employees complete audits, with all the employment and human rights issues such a move could bring.

Recent examples have shown that between 20-30% of staff choose not to complete audits for one reason or another; it would be of interest to see how many of the forty LSB staff chose to "opt out", and if none did, whether this was due to any form of undue influence from management!

6. Understanding of solicitors' practices

The Society welcomes the LSB's intention to enhance its understanding of practices and would be interested in working with it in this regard;

Equality Report and Proposed Equality Objectives

Manchester Law Society is broadly supportive of the report however it would ask that consideration be given to the following areas:

1. Chairman's Foreword

The Society is totally committed to ensuring there is equality and diversity within the legal profession however, there is a real concern that regulatory decisions in this area will be based on "skewed data", and that this could have a negative impact on the firms involved. The LSB has previously acknowledged all the concerns expressed about the use of "skewed data", and has indicated that it will relax its approach slightly however, it is determined to drive through change even if this has a negative impact on individuals (being "outed") and the reputation of firms.

The Chairman states in the consultation, "we must know what is happening", a laudable aim but one that will not be completely achieved where people are able to "opt out" of providing very sensitive information.

Equality and diversity audits are not mandatory and therefore employees will in many cases choose to "opt out" from answering questions, this could lead to a diverse firm being labelled otherwise purely because a large minority have exercised their right. If firms are potentially to be faced with regulatory sanctions for not being diverse, they could insist that employees complete audits, with all the employment and human rights issues such a move could bring.

Recent examples have shown that between 20-30% of staff choose not to complete audits for one reason or another; although regarded as "not statistically significant" it would be of interest to see how many of the forty LSB staff chose to "opt out", and if none did, whether this was due to any form of undue influence from management!

2. Identifying key issues (2.5)

The report states that evidence has highlighted a lack of "comprehensive data" surrounding the diversity make-up of the legal workforce; short of compelling firms to compel employees to complete audits how will the LSB obtain this data? If employees are compelled to complete audits they may feel forced in to providing "false" data to hide something they don't want others to know about (being gay or disabled, socio-economic background, etc.); what value can such "false" data have?

3. Guidance to approved regulators on data collection and publication (2.8)

For the reasons given above the Society cannot see how collected data under an optional or compulsory system can ever be regarded as comprehensive/true, and therefore transparent and meaningful; in the circumstances how could it be fair and/or equitable to publish such data and use it effectively to determine what diversity initiatives should be put in place?

The Society would argue that the approach being advocated by the LSB does not fit within the Better Regulation Principles, namely:

- Proportionate - Policy solutions should be appropriate for the perceived problem or risk;

- Consistent - rules and standards must be joined up and implemented fairly and consistently;
- Targeted – regulation should be focused on the problem. Aim to minimise side-effects and ensure that no unintended consequences will result from the regulation being implemented.

The Society accepts that steps need to be taken to improve matters relating to equality and diversity, but it believes that regulators will be alienated from those they regulate if they make critical regulatory decisions based on data that does not provide a true reflection of those involved; in addition, clients could be left to make purchasing decisions based on an incorrect premise.