

Legal Services Board – Developing Regulatory Standards

Response from the Solicitors Regulation Authority

July 2011

The Solicitors Regulation Authority (SRA) is grateful for the opportunity to comment on the Legal Services Board's (LSB's) paper, Developing Regulatory Standards.

We have some general comments, as well as responses to individual questions.

General comments

The SRA supports the LSB's outcomes-focused approach to regulatory standards.

However the timeframe for consultation, response and delivery is short. If there remains work to complete before the framework is finalised in September this will have an impact on delivery by December.

The SRA agrees that review and improvement processes should benefit the work of each AR in ensuring the effectiveness of regulation. However this mechanism should already exist within each AR. By specifying an overarching framework, criteria and timescale, the LSB is restricting delivery of the improvement process, which may not suit the needs of the individual AR.

ARs should set themselves measurable objectives which seek to improve standards amongst their regulated community and help them meet the regulatory objectives. These objectives will differ amongst ARs serving different sections of the regulated community. The standard proposed at Annex A may mean ARs concentrate on these areas rather than on developing performance objectives which result in improvements for consumers.

Question 1

Do you agree with our analysis of the changing legal services market? Are there other factors that should be taken into consideration?

We broadly agree with the analysis put forward. Although there are other issues affecting the legal services market, we agree that the paper covers the most significant factors.

We agree that consumers have become more empowered over time however we also believe there is a need for the ongoing level of protection set out in the regulatory objectives.

In paragraph 5 the paper states "*..as the legal services market has changed the risks that it presents to the public and consumer have changed*", however consistent risks to consumers remain.

Therefore regulatory standards should also be based on continuing, underlying risk factors for consumers.

As the Board is aware, the SRA in conjunction with the BSB and IPS are conducting a significant research-based review of the legal service market in terms of workforce skills providers need and the impact of new regulatory requirements.

This review, due to deliver results in 4th quarter 2012, will give much needed empirical evidence on whether qualification arrangements need to change to meet the anticipated needs of the professions over the next decade. As the consultation paper recognises at paragraph 34, education and qualification requirements are a crucial pillar of public protection.

Question 2

Do you agree with our focus on outcomes focused regulation; risk identification framework; proportionate supervision; and, appropriate enforcement strategy?

We agree these are the core functions of a regulator, although we suggest a greater focus be given to high entry standards, regulating the perimeter and equality and diversity. The focus on core functions may not be sufficiently flexible to provide the required improvements for consumers of legal services.

In terms of the qualification framework, the SRA has now framed its regulations in the context of the outcomes we need from that framework: e.g. to ensure that solicitors will have achieve and demonstrate a standard of competence appropriate to the work they carry out. However, setting qualification processes that must be followed necessitates operating 'bright-line' rules.

As our organisation develops its risk identification function, our educational requirements, both pre and post admission, will be informed by its findings.

Question 3

How do you think that a more flexible and responsive regulatory regime should be developed?

ARs should be encouraged to develop their own systems of improvement and review, targeted at improving firstly the greatest needs within their regulated community and secondly their own internal effectiveness; both of which should be targeted at the regulatory objectives. Discretion in the delivery for ARs will result in a flexible and responsive regulatory regime.

We agree with the sentiment at paragraph 56 that the shift towards outcomes is part of an increased focus on consumers, which should be based on a proper understanding of consumers and their expectations. It would be useful for the LSB to provide some guidance on the limits of consumer research and whether there are other useful methods of communication and engagement with consumers.

Question 4

We would welcome views on whether self-assessment is an appropriate approach or whether LSB should deliver its oversight by conducting its own reviews.

We support the principle of self-assessment of our regulatory approach; this allows us responsibility and accountability for our own improvement.

Conducting oversight reviews would be costly, resource intensive and is likely to focus ARs on an improvement 'event', rather than continuous improvement as a rolling process.

However, the criterion drafted for regulation could benefit from some revision or clarification. 'Standards' cannot of themselves ensure that 'standards' are achieved and maintained. Robust processes, quality assurance, and proportionate and

targeted monitoring can contribute to ensuring that standards are achieved and maintained. These should stand behind the improvement processes of each AR.

Question 5

What are your views on the benefits, costs and risks to ARs and their regulated communities of our proposals?

The SRA agree that a process of review and improvement will benefit ARs and the regulated community by ensuring the ongoing effectiveness of regulation.

However this mechanism should already exist within each AR. By specifying an overarching framework, criteria and timescale the LSB is restricting delivery of the improvement process. Accordingly, the LSB may not achieve the best from each AR. It would be useful to consider the costs and benefits to consumers of the proposed approach.

The self -assessment process does not seem to have the capacity to recognise areas of under performance that the AR is aware of and is taking steps to remedy.

The ARs' interpretation of Annex A may differ to that of the LSB. Significant time could be spent deciding on interpretation and implementing change based on an incorrect reading.

Implementation within such a short timescale (between September and December) will be resource intensive and is likely to increase costs. A staged process of implementation would allow for development of new processes as part of business as usual, decreasing costs for ARs.

Question 6

We would particularly welcome feedback on the criteria at Annex A, including suggestions on others that might be appropriate.

Further criteria may place undue pressure on an AR to assess performance in areas which may not be a regulatory priority.

The LSB should also consider the flexibility and longevity of the criteria. Diversity of the legal market may require diversity within regulatory approach.

In risk assessment, we note the focus on entity as well as individual, but we agree the balance is for the approved regulator to decide.