Solicitors Regulation Authority

SRA response

Consultation on the Legal Services Board Business Plan 2017/18

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Read the consultation on the proposed work programme of the Legal Services Board for 2017/18 (PDF 30 pages, 509K)
[http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2016/20161206_LSB_Business_Plan_Consultation_1718.pdf]

Overview

- 1.

  We support the LSB's strategic outcomes which underpin the 2017/18 Business Plan. We also support the overarching objectives of the Business Plan and we look forward to working together with the LSB to deliver them. We have set out below our comments on specific aspects of the draft plan. In summary:

  - We believe that working towards full independence of regulation (via legislative reform) and delivering greater independence within the current legislation should be the key priority for the LSB in 2017/8.
  - We welcome the LSB's commitment to improving the process for approving changes to regulatory arrangements and have suggested a way in which the LSB might refocus its activity in this area.
  - We are concerned about the LSB's plans to review education and training and urge the LSB to reconsider this aspect of the draft plan.
  - We support and would welcome the opportunity to work together with the LSB on many aspects of the plan including the review of the approach to regulatory performance, the plans to improve delivery for vulnerable consumers and increasing market transparency.
  - We value the LSB's research activity but would advise caution in repeating research too quickly.
  - We welcome the LSB's commitment to minimising costs and reducing their budget, which mirrors our own work.

Consultation questions

Do you have any comments on our proposed programme of work?

Independence

- 2.

  We are pleased that the LSB sees independence of regulation as a priority but we would like the LSB to give this even more emphasis in the 2017/8 Business Plan. The Competition and Market Authority (CMA) has confirmed that an independent legal profession is important for securing the public interest concerns detailed in its final report and has recommended that the Ministry of Justice should carry out a review of the independence of regulators as soon as possible. The LSB has an important role in pursuing the legislative change needed to bring about full independence and we encourage the LSB to develop a Business Plan that allocates sufficient time and resource to this critical activity.

- 3.

  Until we have full regulatory independence, assuring the independence of the regulators from their representative bodies must be the central and dominant activity of the LSB. We note that the LSB will consider whether there is value in seeking an updated dual self-certificate of compliance with the Internal Governance Rules from the regulators. We suggest that the LSB should commit to using its existing powers to deliver greater independence within the current legislation. For example, rather than relying on self-certification by the regulators, we suggest that the LSB takes more proactive steps to satisfy itself whether the current Internal Governance Rules are being breached and to take action where there is any evidence that they are.

- 4.

  We also urge the LSB to review its Internal Governance Rules to take account of experience and evidence gained since they were written in 2009. Given the LSB call for more independence it should be reviewing the IGR to ensure that they fully use the LSB powers under existing legislation to deliver

independence. This might include, for example, proposals for regulation to be delivered through separate legal entities to the trade association functions of Approved Regulators. The current governance problems of the Law Society reveal its unsuitability to have any statutory function regarding regulation.

Approving requests for changes to regulatory arrangements

- 5.

  We welcome the LSB's commitment to developing the process for approval of changes to regulatory arrangements. We encourage the LSB to limit its role to oversight of the process, to ensure it is robust and carried out effectively, rather than duplicating the process carried out by approved regulators, which is costly and time consuming. The CMA has highlighted the potential for inefficiency in the current process. In particular, the CMA has concerns about the potential problems caused by the risk that the LSB may refuse an application. We have a policy of seeking to remove regulation when there is insufficient evidence to justify that regulation. Yet the LSB approach at present has a prejudice in favour of the status quo by virtue of the process and approach it operates. We do not think that is consistent with the LSB regulatory philosophy. We suggest that, rather than focusing its efforts on (re)assessing our evidence, the LSB should check that we have followed proper process. This would remove unnecessary bureaucracy, facilitate the process of deregulation (where appropriate) and would address the concerns raised in the CMA report. We think that this change in approach can be justified now that the LSB is increasingly confident that regulators are committed to better regulation. It may even be that the LSB could develop an earned autonomy approach to deliver this, regulator by regulator.

Assessing the effectiveness of the LSB's education and training guidance

- 6.

  We are concerned about the LSB's plans to review its guidance on education and training given that we, and other regulators, are already part way through long-term programmes to deliver reform in line with the current guidance. Making any fundamental changes to the guidance at this stage would cause unnecessary disruption to our programme of work. Any such disruption could be costly and delay important reforms which, if implemented post consultation, will bring important market and consumer benefits. If the LSB does not intend to make significant changes to the guidance, then we would question the need for a review at this stage. If the intention of the review is to assess regulators' progress with their reforms, then we suggest that this could be achieved through dialogue with the regulators or through some form of self assessment by the regulators against the current guidance. We urge the LSB to reconsider this aspect of its business plan and avoid work that is both premature and potentially a costly distraction from more fundamental issues

Reviewing delivery of enforcement activities

- 7.

  We agree with the LSB that an impartial and rigorous disciplinary procedure is vital to sustaining public trust in the legal profession and to the maintenance of professional standards. We have already made some progress in this area through our recent review of decision making criteria and the re-tendering for our external legal panel. But we know that we have more to do and plan to make further improvements in timeliness, cost, consistency and overall effectiveness. We would be happy to share our progress and our future plans with the LSB and to contribute to any review in this area. We suggest that the LSB might consider identifying suitable benchmarks or hallmarks of success against which the regulators could measure themselves and develop their plans. This would provide a useful tool against which the LSB could review regulators' performance and might prove more efficient and cost effective than a detailed end-to-end review. We are sure that the LSB will want to continue to collaborate on pushing reform of the disciplinary process, including the SRA's fining powers, the standard of proof used at the SDT and wider reform to modernise this important regulatory area.

Holding regulators to account for their performance

- 8.

  We note the LSB's plans to review the process for assessing regulators' performance. We accept the LSB's oversight role and welcome the opportunity to work with the LSB in updating its approach to regulatory performance.

Holding regulators to account for their performance

- 9.

We share the LSB's view that more can be done to increase market transparency for consumers and we welcome the LSB's commitment to this in the Business Plan. As the LSB will be aware, we have already published a discussion paper on how we can provide more transparent information about those we regulate to help people make more informed decisions when buying legal services. We welcome the opportunity to work together with the LSB, and other regulators, to agree how to take forward the recommendations on market transparency in the Competition and Market Authority report.

Vulnerable consumers

- 10.

  We support the LSB's plans to explore ways to improve delivery of legal services to vulnerable consumers and we will work collaboratively with the LSB on this area to avoid duplication of effort and share our experience and expertise.

Approving practising certificate fees and transparency of regulators' costs

- 11.

  As the oversight regulator, we accept the LSB's role in scrutiny of the practising certificate fee. The LSB will already be aware that we are committed to pushing down the costs of the practising certificate fee, as demonstrated by the reduction in both the individual practising fee and the total amount collected from firms in 2016. We would like the LSB to support us in our efforts to drive down these costs by ensuring that all elements of the fee, including the representative element, are scrutinised on a consistent basis in the context of the regulatory objectives and the principles of better regulation. We also note the LSB's intention to continue to seek improvements in the level of transparency of regulators' costs. We support this and will continue to work collaboratively with the LSB on this.

Diversity - movement through the professions

- 12.

  We note the LSB's plan to explore the reasons underlying the slow pace of change in progression within the professions. As the LSB will be aware, we take our role in promoting diversity seriously and have already outlined a broad programme of work in this area. We would be happy to work together with the LSB to avoid duplication and share expertise.

Do you have any comments on the research we have proposed?

- 13.

  We value the LSB's research activity, especially where it provides higher level insights across the market (for example, consumer need, pricing, innovation) as it is difficult for us to allocate resource to these cross sector areas given the need to focus our own research on support for specific regulatory tasks and reforms (for example, our research into the quality of legal advice provided to asylum seekers and our assessment of the personal injury market). But we would advise caution in repeating research too quickly, as proposed for the innovation research and the research into the needs of small businesses, because there is a risk that this can be costly whilst not adding any major new insights.

Do you have any comments on our proposed indicative budget?

- 14.

  We welcome the LSB's commitment to minimising costs and reducing their budget over the next two years. We suggest that further cost savings might be possible if the LSB refocuses some of its activities, for example, if it changed the focus of its process for approval of changes to regulatory arrangements. While these may be marginal for the LSB they could lead to additional (marginal) cost savings at regulators.