

A Response by IPS on the LSB's draft business plan 2014/2015

Introduction

1. This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Chartered Legal Executives. Chartered Legal Executives are members of the Chartered Institute of Legal Executives (CILEx). CILEx is the professional body representing 20,000 qualified and trainee Chartered Legal Executives and is an Approved Regulator under the Legal Services Act 2007 (LSA). IPS is committed to the regulatory objectives and the principles of good regulation set out in the 2007 Act.
2. The Legal Services Board (LSB) is the independent body responsible for overseeing the regulation of legal services in England and Wales. We have worked closely with the LSB during its time in operation and we are committed to doing so over the coming year and beyond. The continued emphasis on partnership working and avoiding cost duplication is strongly supported, especially in relation to research and data collection. IPS shares the LSB's approach to regulation – an outcome focused code rather than a rule book, clear identification of risks, proportionate supervision and robust enforcement.

Role of oversight regulator

3. IPS shares the LSB's goal 'to reform and modernise the legal services marketplace in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales' and work to facilitate achievement of this.
4. The LSB clarifies that it will continue to deliver its regulatory work programme through three strands:
 - regulator performance and oversight - assuring and improving the performance of approved regulators

- strategy development and research - helping consumers to choose and use legal services
- statutory decision-making - helping the changing legal sector to flourish by delivering proportionate regulation to address risks.

Equality and Diversity Objectives

5. IPS strongly supports the LSB's continued emphasis on equality and diversity. We are keen to promote equality and diversity, including developing a diverse workforce across the legal sector, and are committed to collecting equality and diversity information in connection with entities we will regulate. We are interested to learn more about the equality and diversity groups the LSB intends to work with and the information we will gain from such activity.

A. REGULATOR PERFORMANCE AND OVERSIGHT

Regulatory standards and performance

6. During 2014/15 we understand that the LSB will require regulators to account for the progress they have made on their action plans produced as part of the regulatory standards self-assessment. Each regulator is expected to have learned about their organisation and the actions they have planned to improve their performance over the next few years. The LSB should provide early and transparent information on the expectations they have and the format in which they expect regulators to report, to enable regulators to prepare adequately to respond.
7. The LSB states it will review the regulatory standards against best regulatory practice, including the new regulators' compliance code, the forthcoming requirement to promote economic growth, and other approaches to regulatory assessment in other sectors. The LSB should indicate how it will carry out the review, including how it will balance compliance with the new regulators' code with the regulatory objectives. It must take into account that the Legal Services Act requires compliance with the regulatory objectives alone.

8. In relation to the new duty to promote economic growth, we will be interested to see specific proposals from the LSB, not just as to how it will avoid inhibiting growth but actively promoting it while ensuring compliance with the regulatory objectives. Economic growth is not one of the statutory objectives under the LSA 2007 but will impact on regulatory objectives such as consumer protection and professional principles.
9. The LSB has indicated its intention to plan for full reviews of all regulators to take place in 2015/16. We would like more information on the ambit of the review, its objective and the criteria to be used in such a review. It would be beneficial for IPS to know in greater detail about the areas the LSB intend to review and allow for sufficient time for regulators to make a full response to a review.
10. We must stress the importance of the LSB being transparent and outlining their expectations from regulators at the outset of the assessment process. We expect the LSB to provide all regulators with a well written assessment form, criteria and appropriate guidance. The LSB should take into account feedback that regulators have provided about the assessment process in previous years, in developing its next self-assessment process and form. It is important for all regulators to have a clear indication from the LSB on whether or not it should commission an independent review before the self-assessment is submitted.

Thematic reviews

11. Economic liberalisation is a broad term that refers to fewer government regulations and restrictions in the in the economy. The LSB mention that there are a number of areas where information has been gathered from prior regulatory reviews, wider research and stakeholder discussions which highlight that more in-depth exploration would be beneficial. We understand that the LSB would like to reduce regulation and states that a liberalised market is the best means of bringing benefits to consumers. We believe the rationale for thematic reviews needs to be more tightly defined than it is in the draft Business plan. Reviews should only be carried out if costs can be justified.

B. STRATEGY DEVELOPMENT AND RESEARCH

Regulatory reform

12. The LSB has advised that they will continue the work of looking at current regulatory costs. This will focus on the following areas and will culminate in an initial assessment that will be published by the LSB in the second quarter of 2014/15. It is important for the LSB not to focus on work designed to strengthen its blueprint for regulatory reform. The LSB's obligations are defined by the LSA 2007, not one view of the future of legal regulation.
13. We understand that the LSB will be reviewing costs imposed on the legal market by itself and regulators, both directly and indirectly. We believe that it is important to understand the cost of regulation as this is a burden which falls, ultimately, on the consumer. Therefore information about regulatory costs must be clear and costs must be appropriate. When reviewing regulators' costs the LSB must have regard to the provisions in the Act regarding 'Permitted Purposes'.
14. There are costs imposed by the Legal Ombudsman, both directly and indirectly. IPS believes that it is important to implement the 'polluter pays' principle for costs. Those who have the complaint raised against them should be liable for paying the Legal Ombudsman's costs, reducing the impact on the legal services sector and ultimately consumers.
15. The LSB is looking at barriers to de-regulation and proper targeting of regulation at risk and options for improvement. We consider it important to balance consumer expectations that regulation is taking place effectively against the drive towards deregulation based upon identification of risk.
16. The LSB needs to gather and publish more information on market analysis undertaken on specialist and niche sectors of the market. Research should include details of consumer needs and expectations of specialist lawyers. In paragraph 33 the LSB has advised that they will identify a select number of issues either across regulators or for specific regulators, and conduct an in-depth

review of them. The LSB needs to state the rationale it uses to select areas for review, how the selection will take place and the objectives for such reviews.

17. We believe that the LSB should take the opportunity to review the basis for reserved legal activities. We are of the opinion that it would be prudent for a thorough review to be taken for reserved legal activities and to establish how they protect the interests of consumers.

Liberalising the legal workforce

18. The way that legal businesses recruit and train their workforce is fundamental to the delivery of the regulatory objectives. The LSB states that a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market than what exists now. It states that this can happen without compromising professional standards. IPS, with CILEx will have a significant impact on the liberalisation of the legal work force; indeed they have already done so through the opportunities they have provided for a range of legal qualifications within the sector. The development of independent practice rights will take this further. IPS believes that the LSB should review carefully not only barriers affecting individuals, but also those which inhibit firms' from moving between regulators.

Improving the consumer experience

19. LSB research has found a number of reasons why consumers avoid seeking help to resolve legal problems. These include:

- fears that lawyers will be too expensive
- lack of confidence around their ability to negotiate about costs
- lack of costs' transparency
- lawyers' estimates frequently being misleading, with costs often exceeding expectations.

20. In any market, it is also essential that consumers have access to the information they need to make decisions regarding the services they are buying; be it the cost or quality of legal services and who is providing them (including the diversity

of the workforce). IPS worked with other regulators to develop Legal Choices website to facilitate the provision of transparent information to consumers.

21. The liberalisation agenda has been greatly enhanced by the granting of independent practice right to CILEx lawyers. It will be further advanced by a supportive approach to CILEx's licensing application, when it comes.
22. The LSB states that the evolving experience of the Legal Ombudsman is highlighting similar issues, both generally and specifically. IPS is of the opinion that it is not just costs that prevent consumers seeking legal assistance. The lack of understanding on the part of the consumers about which type of lawyer can provide them with the service most appropriate for the matter in hand also contributes to consumers not seeking legal assistance. We will seek to provide relevant consumer information, through *Specialist Lawyers* and through *Legal Choices*.
23. In relation to consumer engagement, it would be beneficial if the LSB produced positive advice and provide support in an area which is generally acknowledged to be very difficult. The LSB needs to give particular attention to the regulatory challenge of balancing innovation in service with consumer protection.

Statutory decision making

24. In paragraph 71, the LSB is considering whether it should change its approach to assessing compliance with the Internal Governance Rules and whether 'self-certification' by the approved regulators should continue as the only form of assurance. IPS submits that if the LSB decides that 'self-certification' is no longer appropriate it must explain the reasons for such decision. We would find it helpful to have some indication from the LSB as soon as practicable, as this impacts the timing of the preparation of the Internal Governance Rules response.
25. While a review of 'permitted purposes' may be welcome within the overall context of seeking to eliminate cross-subsidy between regulators and professional bodies in either direction, consideration should be given to how this review fits in with primary legislation.

26. The LSB needs to review its resources available to undertake the ad hoc statutory decision making.

Relationship with the Office of Legal Complaints (OLC)

27. We understand that the LSB has a statutory relationship with the OLC, the Board of the Legal Ombudsman. This includes a responsibility to review its performance in administering the Legal Ombudsman scheme. We would benefit from transparency and increased data sharing from the OLC so that it may contribute to our assessment of risks and our intelligence gathering function.

Budget

28. We support the LSB's proposed approach to a more sophisticated calculation of the levy, now that they have a few years' data to support this.

29. Although we welcome the LSB's budget reduction of some £150,000, this must not negatively impact on their work and ability to meet KPI's. We would expect the LSB to have the necessary resources in place and be in a position to meet its objectives.