



Regulating
Property
And
Probate
Lawyers



LEGAL SERVICES BOARD DRAFT BUSINESS PLAN 2020/21 CONSULTATION

COUNCIL FOR LICENSED CONVEYANCERS RESPONSE

February 2020

INTRODUCTION

The CLC is pleased to provide its comments on the Legal Services Board's business plan for 2020/21. Our comments on the specific consultation questions are set out below, but we have some general remarks to make first.

We look forward to working even more closely with the Legal Services Board to continue to drive improvement in legal services.

Transparency

We very much welcome the LSB's commitment, in the Chair's introduction to the consultation, to making a 'step-change in communications and engagement'. An open 'no surprises' approach is welcome and should give the front line regulators a better understanding of what is expected of them.

We would suggest that, as part of this, the LSB could usefully focus on the proportionate use of its powers. During this strategy period it could explore all of its soft and hard levers to clarify its enforcement approach. We would suggest that there is work to be done on the balance, in legal services regulation, between the outcomes focused approach that the LSB advocates and the CLC follows, and the temptation to prescribe or mandate particular approaches by the front line regulators or the legal sector as a whole

This is something that all the front line regulators grapple with themselves in their work to protect consumers and drive up standards. Where the LSB is proposing mandating a particular approach, it should have to make out a clear case for such an approach in the same way that is expected of the front line regulators. This simply reflects the need to ensure that we manage the regulatory burden carefully and have clearly assessed the proportionality of any measure.

We also welcome the intention for the LSB to make greater use of its convening power and its influence to drive forward thinking across the sector to deliver change and improvement. The LSB must play a key role here to set out a vision for the future of legal services that serve the nation, the economy, citizens and justice.

Regulatory Performance Management

The front line regulators are diverse in their size, mission and regulatory models and it is important that the LSB's approach to managing the performance of each regulator recognises and responds to that. This should not hinder the LSB's ability to address failings effectively where the front line regulators are not achieving the expected outcomes.

Where performance does not meet expectations, that should be dealt with forcefully to ensure a successful and timely resolution. This is important to secure the fair treatment of all lawyers, no matter which front line regulator they fall under and to ensure consumers enjoy consistent levels of support and protection across the sector. The CLC considers that it is desirable for such steps to be taken in public as this will boost the confidence of all regulators in the work of the.

Here again, the outcomes focussed approach can easily be undermined by guidance on achieving the outcome which is so directive as to amount to a rules-based approach. Assessing the successful achievement of outcomes is more challenging than confirming that certain inputs have been achieved, but will be helpful to the long-term health of the sector. It will also help regulators exploit to the full the benefits of their individual regulatory model.

ANSWERS TO THE LSB'S CONSULTATION QUESTIONS

Q1 – Have we identified the most relevant developments in our external operating environment?

Yes. The impact of digitalisation of consumer legal services, changing business models consolidation in the market place, and the effort to engage consumers better are the external factors that are most significant for the CLC.

Q2 – What do you see as the key priorities/issues to be addressed by legal services regulation?

The CLC regulates firms that specialise in property and probate, transactional legal services. The key priorities for legal regulation from that perspective are:

- Ensuring the regulatory framework harnesses the potential of digitalisation and manages the risks
- Developing a framework for ongoing competence that reflects the realities of legal service provision
- Empowering consumers to make better informed choices of legal service providers.

Perhaps the most important challenge facing legal services regulation as a whole is the socially strategic question of how to widen access to justice against a background of shrinking legal aid provision. That does not directly engage the CLC, given our focus on transactional legal services, but we consider that the Legal Services Board can play a key role supporting progress in this vital area by ensuring it is taken account of in all aspects of legal regulation.

Q3 – What are your views on our current approach to market intelligence and how would you like us to develop this function going forward?

The regular programme of research undertaken by the Legal Services Board and LSCP is very useful. It could be further enhanced by engaging front line regulators more in the specification of that

programme and in the analysis of findings. That could also give rise to further or additional research of use to some or all of the sector.

The project on legal technology is a good model for more qualitative, future-focused research to inform the development of legal services and their regulation. That too could be a more 'porous' process to inform a richer discussion to develop a more rounded and fuller vision of how the market can adopt new tools and what regulators need to do in response.

Q4 – What are your views on our plans to move away from a strategy for the LSB towards a strategy for legal services and their regulation, highlighting gaps and opportunities across the market?

This is a very helpful step, we believe. It will help us focus on the outcomes that the LSB and regulators need to achieve together. It should help make the LSB's expectations of front line regulators clearer and less process-driven.

Q5 – Do you have any comments on our proposed business plan and work for 2020/21? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

We do not disagree with any of the workstreams in the business plan. We note that the business plan mentions work to improve the performance of the Legal Ombudsman. We consider the effort to get LeO back on track to be a vital underpinning for the more developmental, cross-sector work that the LSB is leading. It would be helpful to have a better sense of the resources dedicated to this and other 'business as usual' activity.

In relation to question 8 below, it might be helpful for the LSB to lead work on identifying and understanding risks to equality arising from regulatory approaches

Q6 – Do you have any comments on our proposed budget for 2020/21?

We welcome the LSB's commitment to containing its costs. It is important that we keep the cost of regulation to its appropriate and proportionate level. The CLC has made very significant reductions in its regulatory fee rates and we think it is right that the other bodies that draw their funding from the sector, through levies administered by the front line regulators, should take the same care. We are pleased that the LSB's increases are in line with Ministry of Justice guidance.

Q7 – Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

The CLC is already engaging with the LSB on the work to define approaches to ongoing competence. As is mentioned above, we hope that the LawTech project will include more opportunities for discussion to build a sector-wide understanding of how regulators can best respond to and make use of new technologies.

Q8 – Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2020/21.

It has often been observed that some new technologies bring with them the risk of disadvantaging certain groups. This could be through machine-learning that could potentially adopt and amplify the biases that already permeate the legal system or more simply through rapid adoption of new means of accessing the law that increase digital exclusion.