

SRA response

Triennial review of the Legal Services Board, Ministry of Justice call for evidence

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Strategic approach

1. The Legal Services Board was established in 2009 as the independent body responsible for overseeing the regulation of lawyers in England and Wales. Their stated goal was to reform and modernise the legal services market by putting the interests of consumers at the heart of the system and reflecting the regulatory objectives of the Legal Services Act.
2. As a public interest regulator, we have welcomed the emphasis that the LSB placed on putting the consumer and public interest at the heart of regulation, and have worked with the LSB to further our shared objectives. We also wish to record that we have enjoyed excellent working relationships with the LSB, at both executive and Board level.
3. One of the LSB's early aims was that by 2013 the legal services market would be considerably more diverse than it was in 2009. As we look ahead to 2013, and take account of the progress of the last three years, there can be little doubt of the strides taken towards achieving this aim. The approval and implementation of the regulatory framework for licensing alternative business structures is evidence of that.
4. The LSB's early focus was also, rightly, on developing a regulatory regime that was both independent and transparent. A key element of this was the establishment of robust governance arrangements for the approved regulators, which clearly separated regulation from representation. The implementation of the Internal Governance Rules, together with the LSB's scrutiny of the proposed arrangements, has resulted in the agreement between the SRA and the Law Society, which sets out a

permanent resolution to the management of the relationship between the regulatory (SRA) and representative (Law Society) functions. The LSB's role in brokering those discussions was very helpful.

5. The SRA considers that the Legal Services Board has made significant progress in achieving elements of the purpose for which it was originally established. The LSB has largely struck the correct balance in terms of the way in which it assists in the maintenance and development of standards of regulation. However, given the progress that has been made on the separation of the approved regulators' regulatory and representative functions (in effect, the implementation of the Internal Governance Rules) and the implementation of the regulatory framework for alternative business structures, we think it is now time for the LSB to re-evaluate its regulatory focus. In articulating this shift in focus, the LSB needs to work closely with stakeholders to develop a common understanding of their role. For example, is the LSB a safety net to deal with gross failure by a regulator to deliver the regulatory objectives? Or should it be promoting good regulatory practice? Or should it be attempting to impose a uniform understanding of the regulatory objectives, and of the best means of their delivery, across the sector?

The structure

6. We do not see that there would be any merit in abolishing or fundamentally changing the role and functions of the LSB at this time. The LSB continues to act as a safety net by encouraging good practice across the sector and ensuring appropriate consistency across the different regulatory frameworks; it will also perform an important role in oversight and monitoring over the next few years as the legal services market develops. We would urge the LSB to focus on properly developing its oversight role and in doing so, reducing its approval, enforcement and investigatory functions. We have been encouraged recently by the more proportionate approach the LSB has taken to approving and exempting alterations to the regulatory arrangements.
7. While the current set-up (with some shift in emphasis) is appropriate both for the present time and the coming three to five years, our view is that during this period there are

likely to be significant shifts in the legal services market and, therefore, in the appropriate mechanisms for regulation. It seems unlikely that the current multiplicity of regulators will be appropriate in the medium to long term. Therefore, we consider that it will be at the next triennial review of the LSB that we would be expecting to see significant changes to the form and function of the organisation.

8. We suggest that thought should be given to whether there is any continuing need for both the LSB and the Office for Legal Complaints to have their own internal governance (Board) structure. We are not persuaded that this dual structure is required to guarantee the Legal Ombudsman's independence, and would suggest that consideration be given to some streamlining of the structures. For the avoidance of doubt, we are not arguing for the OLC to be disbanded.

Key points for consideration

9. One of the main achievements of the LSB has been to press Approved Regulators continually to have proper regard to the role of competition to drive improvements in the delivery of legal services for consumers. Whilst acknowledging the wider range of factors at play, the LSB puts very heavy emphasis on the primary purpose of regulation in this area being the promotion of competition and ensuring consumer redress. Our view is that this emphasis is too narrow, that all of the factors set out in ss.1 and 28 LSA must be considered as a part of a balanced package.
10. We also believe that the LSB tends to place an over-emphasis on "redress" at the expense of the use of the full range of regulatory tools to provide either an increased level of assurance that services will be provided "right first time" or to correct information asymmetries such that consumers can make better informed choices. This over-emphasis was apparent in their consultation on the scope of regulation "Enhancing consumer protection, reducing regulatory restriction", published in July 2011.
11. To address this narrowness, we suggest that the LSB executive might benefit from having a wider range of



regulatory skills, particularly those relating to professional, rather than economic, regulation. We consider that this would assist the LSB both in being better able to inform the debate on and approach to the regulation of legal services. In hand with strengthening the executive, we consider that the LSB Board would benefit from increasing their visibility as a board. To the best of our knowledge the LSB does not have a public board session, nor does it publish any board papers; as a start we suggest that this is reviewed.

12. Whilst we accept that the monitoring function of the LSB is very clearly required, the LSB has sometimes been guilty of a micro management approach to monitoring and compliance, with a tendency to get too involved in the detail. We would encourage the LSB to adopt a more outcomes focused outlook, and move away from an over-prescriptive approach which can seem onerous and time consuming.

13. The LSB can display tendency to step into management of the Approved Regulators and their regulatory arms, rather than overseeing the work of the ARs. There is, at times, a failure by the LSB to recognise the diversity of ARs, the rate at which they have developed, the different objectives that ARs have and the fact that they still regulate very different sections of the sector.

14. An example of this is the requirement by the LSB for ARs/their regulatory arms to conduct a regulatory standards self assessment. While the SRA supports the LSB's outcomes-focused approach to regulatory standards and the principle of self-assessment of our regulatory approach; we are concerned about the approach the LSB has chosen to implement. By specifying an overarching framework (which again is very detailed, complex and time consuming to complete), criteria and timescale, the LSB is restricting delivery of the improvement process, which may not suit the needs of the individual regulator. The standard template issued by the LSB forces all regulators to concentrate on specific areas rather than on developing performance objectives which result in the necessary improvements for consumers. Rather than pushing all regulators into a one size fits all model, we believe the LSB would be better advised to encourage regulators to develop their own systems of improvement and review, targeted at improving

firstly the greatest needs within their regulated sector and secondly their own internal effectiveness; both of which should be related back to the regulatory objectives.

15. We are also concerned about the burden that these assessments place on the regulator; conducting these assessments is costly, resource intensive and is likely to focus regulators on completing the assessment purely to be compliant with LSB's s55 information request, rather than to commit to continuous improvement.

Summary

16. The SRA has been, from the start, supportive of the LSB and its work programme, which has been rightly ambitious and challenging. It is important that the LSB and the regulators continue to work in partnership to deliver excellence in the regulation of legal services.
17. The SRA would be happy to provide further information on the points made in this submission, should that be helpful.