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29 January 2025

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Chief Executive
Legal Services Board

Sent by email only:
consultations@legalservicesboard.org.uk

Dear Craig

We welcome the opportunity to respond to the LSB's consultation on its 2025/26 business plan and budget consultation.

Summary

The LSB's proposal of a 14% (£757k) increase for 2025/26 would mean it has increased its budget by 41% over the last 4 years, from £4.287m to a proposed £6.028m. We do not consider that such a significant increase in the cost of regulation over a number of years can be justified. There is insufficient information in the LSB's consultation about why it considers that its oversight needs even more strengthening, when it is already very intensive. There is, for example, no evidence provided to indicate that all sectors of the regulated market have increased their risk profile. In particular, imposing significant increased cost on the regulated IP sector which is mainly business to business and low risk to the regulatory objectives is not an approach which is targeted at the real areas of detriment to users of regulated legal services.

We therefore encourage the LSB to review its planned work (both business-as-usual and additional projects) to reduce any increase in the levy to CPI (currently 2.5%). This could include consideration of making its rule change process more efficient and targeting statements of policy at those areas of greatest risk to consumers rather than the current "one size fits all" approach (the increased requirements on First Tier Complaints is one example of this).

Given the significant cost of the LSB to IPReg's regulated community, we would like to consult them in future years on the LSB's proposals. We therefore ask that the LSB provides a longer timeline for its own consultation to enable this to take place. We consider that this would increase transparency about the LSB's activities and provide direct feedback about the impact that the LSB has on costs in the regulated IP sector. This is particularly important when the LSB's proposals are so much higher than any measure of inflation.

Proposed increase in budget

The LSB proposes a 14% increase (£757k) on the budget to £6.028m. This is in the context of an increase of 12.75% in 2024/25, 9.1% in 2023/24 and 4.6% in 2022/23. If the LSB goes ahead with the proposed £757k increase, the budget will have increased significantly over this period from £4.287m to £6.028m.

One of the contributory factors behind the LSB's proposed budget increase is the appointment of a new full-time employee for the statutory decision-making process to consider rule change applications. We assume that this is predicated on an anticipated increase in the number of rule change applications it receives, although the LSB has not explicitly stated why an additional member of staff is required when application numbers have been steadily falling.[1] In our experience, the LSB's consideration of rule change applications has become considerably more resource intensive over time. In addition, the draft submission process no longer seems to be as helpful as it used to be because the informal feedback given at that stage can be inconsistent with that provided during the formal process.

Therefore rather than increase the staff needed to consider applications, we suggest that the LSB reviews its whole approach to approving rule changes. It might be helpful to start from the statutory test in LSA Schedule 4 – the application can only be refused if granting it would be prejudicial to the regulatory objectives.[2] Given that the issue of whether the proposed rule change is compatible with the regulatory objectives and is the most appropriate way to meet the regulatory objectives will already have been considered by the front line regulator (because this is its statutory duty under LSA s28(2)) it seems unnecessary for the LSB to re-consider these issues in the way it currently does other than in exceptional circumstances. We also note that the anticipated increase in rule change applications is likely to be due in large part because of the LSB's additional requirements imposed on regulators through numerous new policy statements and statutory guidance. For example, the detailed first tier complaints statutory requirements imposed on all frontline regulators will require each regulator to make a full Schedule 4 rule change application. We therefore urge the LSB to consider a less prescriptive way of drafting these documents so that regulatory boards can decide whether they are relevant to the sector in which they operate.

Neither the LSB's 2025/26 budget and business plan, nor its regulatory performance assessments, have presented evidence of an increased overall risk profile of the regulated legal services sector. The LSB's regulatory performance framework assesses the regulators against 3 Regulatory Standards – RS1 (Well-led), RS2 (Effective regulation) and RS3 (operational delivery). The most recent round of completed regulatory performance assessments, covering RS1 and RS2, found that all frontline regulators provided an element of assurance of the standards being met. Based upon the LSB's own regulatory performance framework, there would not appear to be a risk profile that necessitates a significant increase in oversight for the sector. If its current regulatory performance assessment of the frontline regulators which it is due to report on in March identifies need for increased oversight in a particular part/s of the sector it might be appropriate to obtain the costs from that part of the sector rather than require regulated persons from other parts of the sector to pay for that increased oversight.

We understand the LSB's intention to increase external legal budget. This seems (in part at least) to be as a result of the severe under-estimation of the cost of the legal advice it obtained for its work on Axiom Ince (£60,000 budget allocation compared to £231,000 total cost). Again, it does not seem proportionate or targeted for such a significant over-spend to be collected from registrants that had nothing to do with the cause of the issue.

Transparency/Clarification

It is the frontline regulators, through the practising fees they collect from their regulated communities, which fund the LSB. We therefore ask the LSB to be much more transparent about the reason for the proposed cost increases. This could be done by following the transparency requirements that the LSB places on regulators in their practising fee applications. Areas where additional clarification could be provided are:

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[1] The figures are: 13 (2024), 12 (2023), 2022 (13), down from the 17 in both 2019 and 2021 and 16 in 2020.
[2] LSA Schedule 4 paragraph 25(3)(a). There are other reasons but this is the main one.

- Moving office would appear to require £198k in revenue costs and £500k in capital costs, both of which seem very high, particularly if the LSB plans to move out of central London;

- The Legal Services Consumer Panel budget is proposed to increase by nearly £100k (from £209,000 to £308,000 – an increase of nearly 30%). It is not clear why this increase is needed nor whether that is already included in the 'colleague costs' budget line, which itself is increasing from £3,449,000 to £3,728,000;

- The proposed figure of a non-pay contingency £200,000 budget to support it in "meeting demands in the next year which are currently not known";

- Details as to how the LSB has "critically assessed" its proposed activities for 2025/26 and "identified several opportunities for efficiency savings which have reduced the level of our proposed budget". These efficiency savings are not clear in the consultation, particularly in the context of an extensive proposed budget increase;

- How the levy rebate is calculated and applied;

- How the LSB measures value for money and can provide evidence to stakeholders that this is being proactively measured, managed and increased.

Workstreams

The LSB mentions "several systemic challenges" and identifies these as barriers to diversity and inclusion, professional ethical failures and increasing unmet legal need. It identifies five priority policy projects: professional ethics and the rule of law; equality, diversity and inclusion; access to justice; diversity and inclusion; consumer protection. On consumer protection it states that:

"*the legal services market is changing in ways that increase the risk to consumers…we will examine the risks posed to consumers from large firm failures, the injection of third party litigation funding into certain areas of the market, and poor practice in areas such as bulk litigation claims*".

As these risks are limited to certain areas of the legal services market, we suggest that any subsequent requirements relating to these consumer protection risks are targeted at the affected areas and are proportionate to the risks presented. As above, if the risk profile has increased due to issues in a particular part of the sector it might be appropriate to obtain the costs from that part of the sector (rather than require regulated persons from other parts of the sector to pay for the LSB's increased oversight in that area).

I would be very happy to discuss this response with you.

Fran Gillon

Chief Executive, The Intellectual Property Regulation Board