

Draft Business Plan
2009/10

Contents

1	Foreword	2
2	Our vision	4
3	The context	6
4	Our role in the future of regulation	8
5	Policy focus 2009/10	10
	A. Putting consumer and public interest at the heart of regulation	12
	B. Widening access to the legal market	14
	C. Improving service by resolving complaints effectively	16
	D. Developing excellence in legal services regulation	18
	E. Securing independent regulation	20
	F. Promoting access to a diverse legal profession	22
	G. Developing research and public legal education strategies	24
6	The levy	26
7	Building our organisation	28
8	Resourcing our strategy	30
9	What we will do when	32
10	Responding to this consultation	34
	Annex 1 Our regulatory objectives and the professional principles	35
	Annex 2 The regulatory objectives matrix	36

Foreword

We are delighted to introduce the first Business Plan of the Legal Services Board (LSB) and look forward to your comments on the detailed plans set forward in it.

The Board took on its first tranche of legal powers on 1 January this year. These will enable us to make the various statutory rules required by the Legal Services Act, but we do not aim to be a rule-making organisation in an old-fashioned, bureaucratic way. The task that Parliament has given us is far wider than that and of central importance to society as whole.

We have to promote the public interest and uphold the rule of law, we have to improve access to justice and to open the legal services market, we have to help all citizens understand their legal rights and responsibilities and we have to foster an independent, diverse and effective legal profession. Like all statutory bodies, we have important responsibilities to promote equality and welcome the possible expansion of these duties to cover social mobility as well. Above all, we have to make sure that the consumer is at the heart, not simply of all our activity as a regulatory board, nor even of the activity of the Approved Regulators (ARs) whom we oversee, but of the legal services market. The consumer needs to be able to exercise effective choice, be confident about the quality and value of the service he or she receives, and to know how to access effective redress when things go wrong.

That is a huge task. It is not one for a single year, nor is it one for a single organisation. Our aim is not to attack this huge agenda in a scattergun way, but to work constructively with the ARs and all our other partners to ensure that we tackle the objectives systematically. We will do this by drawing on the best available evidence from the legal services sector in the UK and abroad, and from the experience of other regulators and policy makers in other sectors. We will work for the long-term, being sensitive to the current economic climate, but ensuring that our agenda focuses on future opportunities, rather than present difficulties.

In short, the LSB is open for business. We look forward to working with all our partners in our shared aim of ensuring that the legal services market as a whole provides high quality and accessible services. This is important to all who rely on the professionalism of lawyers, be that individual citizens (who often require legal services at some of the most vulnerable times of their life) or businesses, at home or overseas, who may engage the largest City law firms. The Board looks forward to working with the profession and all our other partners in ensuring that we jointly meet this vital responsibility ever more effectively.



David Edmonds

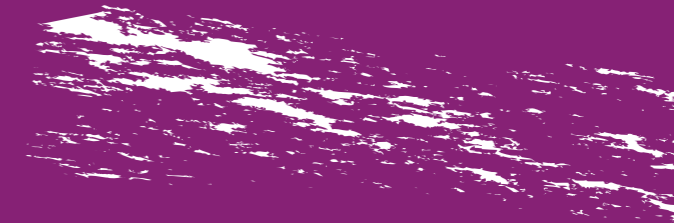
David Edmonds Chair



Chris Kenny

Chris Kenny Chief Executive

the LSB is open for business
and looks forward to working
with all its partners



2

Our vision

1. The goal for the LSB is simple and clear – we will reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales.
 - development of new and innovative ways of meeting consumer demand;
 - a market that allows access to justice for all consumers, in particular bridging the divide for those whose incomes exceed legal aid thresholds but fall below the level required to purchase essential legal services;
 - empowered consumers receiving the right quality of service at the right price;
 - an improved customer experience with swift and effective redress if things go wrong;
 - legal services professions which are as diverse as the community they serve and which constantly strive to improve standards of practice, quality and education; and
 - certainty and confidence in the regulatory structures underpinning the market.

We believe that current market challenges make achieving this vision a higher priority than ever for both the professions and consumers.
2. For the first time, Parliament has created a body with the authority and powers to make these things happen, through a partnership approach to regulation with the legal profession: a profession that we know shares our aspirations.
3. The Legal Services Act 2007 reforms are designed to deliver not only personal benefits to individual consumers, but also collective benefits to society as a whole. The need for a shared and robust confidence in the justice system, particularly in the individuals and organisations charged with protecting our rights and freedoms as citizens, is crucial. Making the market work better is not therefore a distraction from more fundamental debates about the rule of the law and confidence in the legal system: it is an indispensable part of building that confidence for the individual citizen. Our regulatory duties are complementary, not contradictory.
4. The work described in this, the LSB's first Business Plan, explains what we will do in the first year of our operation to begin to make our goal a reality.
5. We set out a programme of work that is challenging in its ambition in both the scale and pace of change. Whilst we do not underestimate the potential barriers to delivery, we believe a bold and radical outlook best serves the public interest; these reforms have been long in gestation, it is now time for all of us – regulators, professional bodies, and partners in other stakeholder bodies - to start the programme of delivery.
6. In preparing this Plan, we have developed a vision of the way in which we want to see the legal services market deliver for consumers in five years time. Its components are simple:
 - greater competition in service delivery and the
7. We believe that this vision is a practical encapsulation of the eight regulatory objectives and the five professional principles described in the Legal Services Act 2007 (see Annex 1). Achieving it is a considerable task, but it is not one for a single year nor is it solely ours to deliver. The Act makes very clear that these objectives and principles are shared equally by the ARs and, as a result, there is a mutual obligation to work together to deliver reform. We will need to develop constructive partnerships, not just with ARs, but also with consumer groups, legal academics, economists and others, to ensure we tackle all aspects of our work systematically.
8. We will be opportunistic in seeking to make connections and drive progress quickly where we can, but will be considered and evidence-based in setting and measuring standards, evaluating our own impact and finding ways, through effective constructive challenge, of raising the performance of ARs across the board. That approach will underpin our management of the existing market and will be central to our approach to the effective management of opportunities presented by the development of alternative business structures (ABS), an area where we aim to make significant headway in the near term.
9. In so doing we will bear in mind that the model of regulatory reform we are charged with implementing remains subject to debate. Critics' views range from those who believe that the separation of regulatory and representative functions of professional bodies is inadequate for true independence in regulation, to those who maintain that the oversight regime of the LSB is an unnecessary and expensive bureaucratic burden on professions already struggling to make ends meet. We have to face these challenges directly.
10. The regulation envisaged by the Legal Services Act is necessarily 'two-eyed'. It recognises the strong heritage of professional self-regulation and the unique place that legal services professionals have in maintaining and promoting the rule of law in England and Wales. At the same time, it expects the ARs, assisted by the LSB, to identify and apply best practice lessons from the models of consumer and market regulation widely in place elsewhere. If we cannot make this hybrid model, agreed by all sides in Parliament, work effectively for consumers whilst maintaining the integrity and standards of the legal profession, the very real likelihood is wholesale statutory regulation, with a progressive loss of public confidence in the concept of a profession. Those who might wish to see the new model fail need to reflect on the consequences.
11. So, what will be different in five years time? It would be wrong, especially in current market conditions, to make hard and fast predictions; many of the substantive market changes will be dependent on the way the market – lawyers, investors and above all consumers – respond to the opportunities that the new regulatory framework facilitates. This Plan rightly sets out desired outcomes, and explains how we will establish the framework for delivering them.
12. But it is ultimately for the market to determine how best to meet consumer needs. Markets work best where regulators deliver maximum impact with limited, targeted, and informed intervention.
13. Alongside this, we will see an improved consumer experience. We expect to see a shift in the power balance from the professional provider / client relationship to an empowered consumer / commercial provider relationship. We want to see consumers of legal services make the same demands of their legal services providers in terms of quality, price and customer care as they do in any of their many other commercial transactions. And when things go wrong, our reforms will instil a 'right first time' approach to complaint-handling by providers – with swift and ready access to an ombudsman service administered by the Office for Legal Complaints (OLC) when that approach fails.
14. Underpinning this work will be a programme of engagement with the ARs to build and deliver a gold standard of consistent regulatory excellence. We will identify what good practice is and make sure it is shared and applied across the regulatory community. In so doing, we will build on the valuable work done to date by ARs to promote and maintain professional standards. We will aim to derive maximum benefit across the sector from individual pockets of best practice. From necessity, this will extend across the regulatory remit to encompass education and training, access to the profession from all social groups and sections of society and quality assurance – so we can ensure that the professional community is as diverse as that of the community it services and keeps standards high.

3

The context

Introduction

15. The legal services sector generates significant income for the economy: current estimates value the contribution at around £23.25bn¹ which equates to around 1.8% of national GDP². It supports sections of society, including some of the most vulnerable, in times of greatest need. In terms of its impact on commerce or on individual citizens, the significance of the legal services market should not be underestimated.

Market structure

16. The legal profession has many branches. Qualified and practising lawyers who provide regulated legal services fall within:

- the solicitors' profession (approximately 108,407 practising solicitors³);
- the barristers' profession (approximately 15,030 practising barristers⁴);
- the legal executives' profession (approximately 7,488 practising fellows⁵);
- the conveyancers' profession (approximately 1,034 practising licensed conveyancers⁶);
- the intellectual property attorneys' professions (approximately 1,782 practising chartered patent attorneys⁷ and 844 practising trade mark attorneys⁸);
- the notaries' profession (approximately 851 practising notaries⁹);
- the law costs draftsmen profession (approximately 248 practising costs draftsmen¹⁰);
- Scottish chartered accountants who are authorised to carry on probate activities¹¹.

Numbers in most categories have expanded markedly in recent years, although the current economic slowdown may well lead to figures plateauing or beginning to fall from the current historically high base.

17. Supporting these professionals are other operational and service managers, paralegals, clerks, legal secretaries and others, often with professional skills themselves.
18. More widely, legal education is a diverse field, including many academic lawyers in universities and elsewhere and a range of people working in vocational colleges, which feed into the profession itself.

The regulatory framework

19. There has been widespread recognition for some time that the legal services sector needs to adapt in order to continue to serve its diverse consumer base, made up of corporate entities and individuals with a myriad of characteristics, in the best and most effective way possible.
20. Any regulatory regime must put the interests of consumers first. The previous system of self-regulation, which saw the representational professional bodies governing all aspects of their members' professional education, development and standards, was strongly criticised from both within and outside the profession. A Government report published in July 2003 concluded that the framework in place at the time was "outdated, inflexible, over-complex and insufficiently accountable or transparent"¹². In particular, critics focused on the confusing 'regulatory maze' that prevented consumers from understanding who was responsible for ensuring appropriate standards within the legal profession. There was a strong perception that there was too close a connection between representational and regulatory functions within the professional bodies, which led to a lack of faith in independent and public interest regulation.

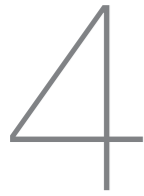
Recent reforms

21. In a process kick-started by a 2001 report from the Office of Fair Trading, *Competition in the professions*¹³, the legal services sector has seen significant change. On 24 July 2003, Lord Falconer appointed Sir David Clementi to head an independent review into the regulation of legal services. His Report, published on 15 December 2004, contained a number of recommendations, including the establishment of the LSB.
22. In October 2007, Parliament passed the Government's Legal Services Act¹⁴. The Act, in line with Clementi's recommendations, revolutionises the regulatory regime. It paves the way for the provision of legal services in new and innovative ways, and it entrenches the principle of independent regulation. It does so by accepting a role for existing professional bodies and also by creating a new system of oversight regulation, with the LSB being responsible for ensuring (among other things) that consumers and the public at large receive the best possible deal.
23. The three central elements of the 2007 Act are:
- the creation of the LSB as the single oversight regulator that replaces the current oversight regulators;
 - the creation of the OLC to administer an ombudsman scheme to deal with all escalated consumer complaints about legal services; and
 - the facilitation of ABS, which will mean that legal services providers will no longer be tied to traditional working practices, but instead will have access to new investment and have a freer hand in shaping their services to meet the needs of consumers.

24. This Business Plan marks the next stage in translating the aspirations of the Act into reality. The vision and specific projects set out in this Plan will create a regulatory system in which consumers can have confidence. A marketplace with high levels of consumer confidence is a marketplace that generates growth and prosperity. Collectively, then, the Legal Services Act is a clear opportunity for UK plc. We intend to see that opportunity grasped.

Notes

- 1 Office for National Statistics (ONS), Annual Business Inquiry (ABI), figures for 2006; <http://www.statistics.gov.uk/abi>
- 2 ONS, ABI and the Blue Book
- 3 The Law Society of England and Wales (TLS): Consolidated Report and Financial Statements 31 December 2007 (<http://www.lawsociety.org.uk/documents/downloads/lreportaccounts08.pdf>)
- 4 The General Council of the Bar (GCB) Annual Report and Accounts 2007 (<http://www.barcouncil.org.uk/assets/documents/Annual%20Report%20+%20Accounts%202007.pdf>)
- 5 Provided by the Institute of Legal Executives (ILEX)
- 6 The Council for Licensed Conveyancers (CLC): Annual Report and Accounts for the Year End 31 December 2007 <http://www.conveyancer.org.uk/CorporateDocs.asp>;
- 7 Provided by the Chartered Institute of Patent Attorneys (CIPA)
- 8 Provided by the Institute of Trade Mark Attorneys (ITMA)
- 9 Provided by the Office of the Master of Faculties (MF)
- 10 Provided by the Association of Law Cost Draftsmen (ALCD)
- 11 The Institute of Chartered Accountants for Scotland (ICAS) recently gained regulatory status for probate, but none of its members is currently authorised to carry out this work
- 12 Competition and regulation in the legal services market: A report following the consultation 'In the public interest?' Department for Constitutional Affairs, July 2003, paragraph 65 <http://www.dca.gov.uk/consult/general/oftreptconc.htm>
- 13 http://www.oft.gov.uk/shared_oft/reports/professional_bodies/oft328.pdf
- 14 http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070029_en.pdf



Our role in the future of regulation

Common agenda

25. The Legal Services Act is a milestone in legal regulation. As a Board, we are passionate about realising its full potential to improve the quality and accessibility of legal services for all citizens, especially those not eligible for state support and those who find the legal system confusing. We are here to use our powers to help all in society, not to engage in a tick-box, rule-making exercise. That means we have to address the full range of tasks and be prepared to use the full battery of powers given to us by the Act.
26. What will guide us in our task are the Act's eight regulatory objectives¹⁵. These would make for a significant agenda for a small body like the LSB. But the Act makes clear that the nine ARs share precisely the same objectives. In other words, we all have a common agenda to ensure that legal services regulation in its entirety contributes to maintaining the rule of law and developing the wider public interest. We start therefore from a presumption of shared endeavour on the part of all legal regulators, rather than from an expectation of hostility.
27. It will be one of our key roles to help the ARs and, through them, the profession in their own efforts to address the regulatory objectives. We will do this by:
- providing constructive critical challenge;
 - identifying relevant learning from both legislation and wider regulatory practice in other sectors and in other jurisdictions and ensuring its dissemination;
 - acting as a fulcrum on matters of legal services research, education and training to assist the development of standards; and
 - ensuring that we identify, celebrate and communicate best practice from each of the ARs.

This co-ordinating and developmental function is, without doubt, a role for an oversight regulator.

28. The LSB and ARs also have a mutual goal to ensure adherence to best regulatory practice. The Act commits both to undertaking their activity in ways that are **transparent, accountable, proportionate, consistent and targeted** only at cases in which action is needed. This does not mean that regulation should be necessarily 'light touch' or that every piece of regulation should be the subject of some kind of 'zero budget' test on the assumption that a regulatory requirement can never be more than a necessary evil. It does mean, however, that both we, and the ARs, need to ensure that our regulatory interventions are swift enough and appropriately targeted to reflect the changes of a fast, ever-changing and ever-developing market place, both globally and in the high street.
29. A common challenge for all regulators is to find ways of identifying and removing any restrictions that obstruct new and innovative ways of meeting those needs, but in a way that also maintains the highest possible levels of consumer protection and professional excellence. We start from the strong presumption that these are mutually supportive, not mutually exclusive, goals. We are clear that we must design the right incentive structures to enable these goals to be achieved and constantly improved upon: we do not intend to codify our approach in a single rigid and prescriptive rulebook. To do so would be self-defeating: such a move would act as a burden on business, stultify the development of new thinking and fossilise good practice, rather than embed it.
30. Our aim will be to work with the ARs to move to a system of regulation which is increasingly principles rather than rule-based. At the same time, we will work to ensure that the system provides sufficient certainty for public and practitioner alike in setting standards of behaviour and, where appropriate, broader governance, expectations of service and quality, and guarantees rapid and effective redress in cases where things go wrong.
- Building regulatory and service excellence**
31. We know that there are examples of good regulatory practice across the ARs. In our first year, we will undertake an intensive programme of activity, working with all of our regulatory partners, to: develop a methodology to identify what excellent independent legal services regulation should be; share what we learn as widely as possible; and then work with each AR to chart the progress they are making in reaching this gold standard. If we are, over the next five years, to set out a route map to consistent regulatory excellence in the legal services market and to monitor

and report how regulators are moving towards it, we need to identify accurately both the destination and the starting point. Defining these points will be one of our primary tasks in 2009/10.

32. We will apply the same approach – identifying best practice, sharing it widely and charting progress towards widespread adoption – in our work to ensure consumers receive the levels of client care and service that they would expect in any other market. We know that there are many examples of good professional practice and customer care in the market already. This work will be enhanced significantly through the establishment of the OLC, which will administer an ombudsman scheme for the entire legal sector. This service will provide a welcome, rapid and professional service for consumers and firms alike, ensuring effective disinterested resolution of all kinds of complaints, the vast majority of which are unlikely to raise any issues of professional conduct. We will work with the incoming OLC Board and its Chief Ombudsman to put the service in place as rapidly as possible.
33. Our ambition, however, is wider; we want to take lessons from the OLC's work and ensure that they are fed back throughout the legal services market to help more people get more things right first time, including handling of initial complaints. Ensuring that the profession has the skills and confidence to deal more effectively first time around with such issues is in the interest of consumers, but also avoids unnecessary costs to both firms and ultimately consumers and builds the reputation of individuals, firms and the entire profession as well.

Developing the market

34. At the heart of the gold standard of regulation there will need to be clarity about when and how regulators should help the market to change and develop to meet the legitimate aspirations of consumers. One of the most radical market developments will be the introduction of ABS. These represent one of the central planks of the market reforms demanded by Parliament, whose desire for change is apparent in the range of duties placed on us by the Legal Services Act. It is right and proper for us to look and see this development move forward rapidly.
35. Many individual and business consumers like to have access to a multitude of legal services providers, perhaps opting for a particular practice or barrister because of a specialism in a particular area of law, as the need arises. In future, their choice should also

include a multi-disciplinary firm comprising all types of legal professionals and others as well, allowing for a 'one-stop shop' to cover a range of legal services. In encouraging these developments, we do recognise that many people value, and will continue to value, an on-going, personal relationship with an individual lawyer. There is no reason why the development of ABS should remove this option. Equally, there is no reason why this should be the only model offered to the consumer.

36. The challenge for regulators, therefore, will increasingly be about how to identify properly the obligations that rest on firms, partnerships, chambers and other forms of corporate body as opposed to those which rest on individuals. Our aim must always be to achieve the maximum public interest benefit, whilst avoiding any suggestion of double jeopardy or the removal from an individual of his or her obligation to maintain the highest possible professional standards. A move into this world represents a significant shift from the status quo, but it is one that other professions and jurisdictions, such as New South Wales in Australia, have achieved and clearly reflects the direction of professional services regulation across the economy as a whole.

Conclusion

37. In short, our role is to oversee and facilitate a shared agenda of consumer protection and continuous improvement in professional excellence underpinned by robust yet proportionate, modern regulation. This is a set of objectives shared with the ARs. We need to develop a degree of consistency in regulation across the market, so that consumers and professionals of all kinds, and those in or planning to enter the market as service providers, have confidence in the regulatory structure.
38. Our role is to turn those aspirations into concrete reality. This Plan for 2009/10 sets out our first steps in partnership down this road.

Notes

¹⁵ See Annex 1

5

Policy focus 2009/10

Our approach to developing regulatory policy and practice

39. Our starting point in approaching regulation is as follows:

- The Legal Services Act sets out clear statutory objectives for the Board. These objectives will provide a strategic underpinning for all of the work of the LSB and we will always map our proposals back to those objectives and check our developing vision as set out in chapter 2 against them.
- The better regulation principles are enshrined within the Act – so our activities will always be transparent, accountable, proportionate, consistent and targeted.
- We expect that the ARs will act in accordance with the statutory objectives, limiting the need for us to use our direct regulatory powers. However, we will not hesitate to do what is necessary, should the need arise.
- We will set out the anticipated impact on consumers and the professions of alternative regulatory options in our consultation papers and seek views from others about whether we have made the right assessment.
- We will develop strong working relationships with key stakeholders including the Ministry of Justice (MoJ), the ARs, citizen and consumer groups, the professions, firms and partnerships across the sector, potential new entrants to the market, and the academic community. To this end, we will develop and publish a Stakeholder Engagement Strategy in the course of 2009.

Above all, the public interest will guide us in our work. Our touchstone will be what works best for the citizen and the consumer, not any particular interest group.

How we will work

40. In order to carry out our work programme in the demanding timeframe, we need the right approach to our work and our relationships with our many partners and stakeholders. We will therefore operate as an organisation (and as individuals and teams within that) which will:

■ Be independent and act with integrity in all our dealings, by:

- remaining objective in all decision-making and interventions by ensuring decisions are evidence-based, interventions are proportionate and are applied with consistency; and
- inviting and respecting the views, interests and perspectives of stakeholders (including in those circumstances where we do not necessarily agree with them).

■ Strive for excellence by being challenging, bold, robust and accountable for our work and costs, by:

- learning from experience – by developing successful approaches and working practices which are transferable and, conversely, recognising where an approach needs improvements;
- being open to ideas on best practice from outside the organisation and the introduction of methodologies for the management of projects, risk, contingency planning etc in order to maximise business efficiency and minimise costs.

■ Be open, accessible and clear about our role and how it relates to consumers and citizens and then to our other stakeholders, including:

- the legal professions and the market place;
- ARs;
- the OLC; and
- Ministers, the Ministry of Justice and Parliament.

■ Be passionate, reforming and innovative about the pursuit of the consumer interest in our work and the legal services sector by:

- keeping access to justice issues at the top of the agenda;
- seeking the views of all with an interest in the regulation of legal services;
- facilitating improvements in the operation of the legal services market where there is a benefit to consumers;
- drawing on the widest possible range of research and undertaking our own; and
- making our policies relevant to differences within the legal sector including urban/rural/regional/national, specialism and size differences.

Measuring our own performance

41. Just as the Legal Services Act gives us powers to set performance targets for the ARs, we expect to be scrutinised publicly for our performance by Parliament and others and will conduct ourselves in an open and transparent way to enable this scrutiny.

- We need to approach our work with efficiency and effectiveness. This requires our Board and our staff to be clear about what we want to achieve and what progress we have made against our objectives.
- As we take on our full powers, we will develop and set out clear indicators of progress against each of our objectives.
- We will monitor progress against our key metrics on a regular basis and will set this out to the public regularly via our website and in our Annual Report.

Our work programme

42. As the next sections illustrate, we have set ourselves an ambitious work programme for 2009/10, and the following pages describe the areas that we will focus on:

- Putting consumer and public interest at the heart of regulation
- Widening access to the legal market
- Improving service by resolving complaints effectively
- Developing excellence in legal services regulation
- Securing independent regulation
- Promoting access to a diverse legal profession
- Developing research and public legal education strategies

43. This agenda will see us becoming fully operational from the start of January 2010. At this point we will take on all our powers under the Act and so be able to take action to enforce our rules formally. We will not resile from doing this where necessary. However, it is our firm intention to work constructively with ARs to ensure that our common goals are achieved in partnership.

Putting consumer and public interest at the heart of regulation

Our medium-term aim

44. By 2013, the regulation of legal services will be a model of best practice. The LSB and ARs will be recognised as excellent in the way that they:
- target and assess the impact of their activities on the consumer and public interest;
 - engage with the widest variety of consumer and civic society groups in developing policy and practice;
 - find the most creative ways of identifying actual consumer experience of services and feeding them through into policy development;
 - use the LSB's Consumer Panel and other formal advisory mechanisms to underpin progress by bringing creative challenges.
45. The improved regulatory performance stemming from this approach will lead, in turn, to better access and outcomes so that:
- consumers are more confident in accessing the legal services market and can make better informed decisions about purchases;
 - cultures and systems of quality assurance are embedded throughout the legal services sector to give consumers confidence in the services they purchase.

Why this matters

46. The common thread that underpins the LSB's work is the consumer. As a regulator we must understand, take into account and value the input of consumers, so that the regulatory system works in their interests. Current economic conditions make this more rather than less important: economic downturns can incentivise customer-facing innovation, but may also lead to higher levels of consumer risk if necessary regulatory corners are cut to save cost.
47. Consumers need to be confident that, when they access the legal services market, they are able to get the services that are right for them. It is important that the ARs and we understand what consumers need, what quality, cost and quantity of services are available to them and where the gaps in the market are. This will help us tailor our work to helping the market to fill those gaps.
48. Understanding the actual needs of legal services' consumers is not an easy task. There are a great variety of consumers, with varying needs, knowledge of the legal sector and expectations of what they ought to get out of it. For example, the needs and expectations of an individual conducting a one-off transaction with a high street firm will be different from someone on legal aid, or those in prison, and different again from a large business using the services of a 'magic circle' law firm. The needs of clients of barristers or intellectual property specialists are likewise different. The challenge is to find research and policy methods that capture that diversity of need and experience, especially those that are not being well catered for at present, rather than reduce to misleading stereotypes.
49. In the past, the consumer (and some practitioners') perception of legal services and the effectiveness of the regulatory system has been mixed and in some cases very negative. We need to understand the perspective of these users so that we can target our work on those whose interests are not currently being met by the current regulatory system. To do this

successfully, we will need to embed the consumer perspective in all our work and ensure that we have the processes and procedures to be able to engage easily and successfully with consumers and their representative bodies on all our policies.

Approach

50. Ensuring that we keep the consumer perspective at the heart of our work is important not just in the short term; it is something that will permeate the work of the LSB throughout. We will reflect this in our organisational design, staff culture and working practices. In the sections that follow, we outline in detail the specific ways in which we will deal with consumer issues on a project-by-project basis.
51. As an organisation, we will put the mechanisms in place to ensure consistency and challenge in our approach to consumer issues. Subject to resources being available, one of our first priorities will therefore be to set up our Consumer Panel. We hope to have the Panel in place in 2009/10 so that they can begin to establish themselves and agree their work programme.
52. The Consumer Panel will have considerable scope to advise and influence the LSB from the consumer perspective. We have already written to stakeholders to seek their views on the role and make-up of the Panel and there is clearly a strong desire for an effective Panel with a clear remit. We see the Panel as being a constructive yet critical friend in our work and hope to build a strong working relationship with members so that we consider their views in the development of our policies.
53. Working with the Panel we will engage widely when consulting on our work, taking account of the views and experience of a wide range of consumers of legal services and those that represent them. This will help ensure that we understand the full spectrum of consumer views, including those of established national consumer organisations such as Which?, Citizens Advice and Consumer Focus, and also those, such as Victim Support, who have particular experience of the legal services sector 'at the sharp end'.
54. We would not expect the Consumer Panel necessarily to represent all the different consumers of legal services. Instead, we will work with the Panel to ensure that it is able to access different groups and discuss relevant issues with different types of consumers. For example, the Panel may decide to focus on domestic and small business consumers,

because larger private and public sector consumers have alternative ways to represent their interests. We will also learn from other regulators about the most effective ways of uncovering the day-to-day experience of consumers of legal services

55. However, as the earlier discussion makes clear, we regard the views of the Panel and consumer bodies as an essential, but not of themselves sufficient, way of building the consumer perspective into our work. One of our early priorities will therefore be to debate with the Panel and other stakeholders how best we can ensure that our work and theirs is informed by actual consumer experience – good and bad – and how that is built into the lifeblood of our organisation from the start.
56. We will make particular efforts to reach less accessible and confident groups. We will target our research, consultation and communication strategies on this issue and will constantly evolve them in the light of experience.

2009/10 deliverables

57. By the end of 2009/10, we aim to have:
- recruited high calibre candidates for LSB's Consumer Panel, from a diverse range of backgrounds, all with experience in a wide range of consumer issues. We will advertise in a variety of different mediums to ensure that we are able to recruit candidates with diverse experiences that can offer unique perspectives to the Panel;
 - established with the Consumer Panel a first year work plan and agreed research priorities;
 - begun to put in place the mechanisms to understand the experience of different groups of legal services' consumers and reflect that perspective in our work.

The medium-term implications

58. Once the Consumer Panel is up and running, with a clear work plan, it is likely to take the lead on some pieces of consumer research and to engage actively with different consumers of legal services and consumer representative groups. These activities should be well embedded by 2010/11. We will expect the Panel to bring a challenging, but constructive approach to the work of the LSB and, where it chooses, to express a view to other regulators and policy makers whose activities have a bearing on the legal services market.

Widening access to the legal market

Developing a licensing regime for Alternative Business Structures

Our medium-term aim

59. By 2013, the legal services market will be significantly more diverse and vibrant than today. More law firms will offer services in partnership with other professionals – and new entrants will offer legal services as part of a wider ‘one stop shop’ to the consumer.

60. Overall, the market will offer better value and choice for consumers as a result of innovation driven by:

- a wider range of ownership and investment arrangements in firms providing legal services;
- new forms of corporate structure and operational management;
- strengthened competition leading to higher standards and better value for money, driven by new entrants to the market place;
- effective consumer protection regulation through proportionate licensing arrangements.

Why this matters

61. A core recommendation of the Clementi report, and the Government’s White Paper on legal services reform, was the development of ABS for legal services firms. This involves removing regulatory restrictions on the structure, ownership and management of firms that are able to offer legal services.

62. The Legal Services Act will allow ABS firms – which involve external investment in the firm and/or allow partial/whole ownership or management by non-lawyers – to seek a licence to offer legal services. The Act sets out a licensing regime whereby legal services regulators can apply to become Licensing Authorities and regulators of ABS firms. In addition, the LSB could directly license ABS firms that cannot make applications to an alternative Licensing Authority.

63. It will be some time before this regime is in full operation. In the meantime, a number of ARs have reviewed their rules and are implementing changes which will facilitate new organisational structures, in a first important step towards ABS. In particular, the Solicitors Regulation Authority (SRA) is making significant rule changes to allow it to regulate Legal Disciplinary Practices (LDPs) from spring 2009. LDPs can be owned and managed by any combination of differing types of lawyers, and up to 25% non-lawyers.

64. We regard ABS as one of the most important areas of our work and indeed the new regulatory framework. It relates closely to the statutory objectives on the LSB and the ARs to protect and promote the interests of consumers and promote competition in the provision of services. These changes are likely to have a considerable impact upon the way legal services are delivered and consumer outcomes. The opening-up of legal services markets will present both challenges and opportunities to regulators and firms.

65. Liberalisation of the sector should benefit consumers. It offers the potential to facilitate market entry, improve law firm management, increase competition and choice, foster innovation and reduce prices. We see current market conditions adding to the case for early action to achieve these benefits. However, the right regulatory framework is needed to protect consumers, maintain the independence and integrity of lawyers, and manage risks such as conflict of interests.

Approach

66. ABS is a very high priority for the Board, because consumers stand to benefit from the timely development of a regime which facilitates market entry for ABS firms. However, it will take some time for the ARs and the LSB to get the right regulatory framework and appropriate consumer safeguards in place.

67. We have already begun to discuss the development of ABS with ARs and we anticipate ongoing and regular dialogue about this key issue. We are also keen to engage with consumer groups, the professions, and the wider market place. This should include potential investors and new entrants to the market, in addition to all types of current legal firms.

68. We will issue formal consultations as both our own approach and those of putative Licensing Authorities develop on ABS. We will use seminars to foster debate. We will actively monitor the impact of the rule changes made by the SRA and other regulators to permit the setting up of LDPs. There will be important lessons to be learned from the market response and the impact on consumers. We also want to understand the consumer risks and the way that firms and regulators plan to manage them and do so in practice. We will work collaboratively with ARs in monitoring LDPs to fully understand the impact and lessons ahead of full rollout of ABS.

2009/10 deliverables

69. By the end of 2009/10 we will have:

- issued a policy statement outlining our approach to ABS;
- established the process for ARs to seek designation as Licensing Authorities;
- assessed the impact on the sector and consumers of the opening of the market to LDPs;
- addressed the structural/resource implications for LSB of the possibility of direct regulation of ABS firms; and
- agreed a timeline for full rollout of the ABS regime.

The medium-term implications

70. The full ABS regime will not be implemented during 2009/10. The ‘switch-on’ of Legal Services Act Part 5 powers should follow as soon as it is safe and practicable thereafter. Much of the work during this financial year will therefore be consultative and preparatory in nature. In particular, we will define the consumer outcomes we are seeking to achieve over a three-year timeframe.

71. We will prepare this year for the possibility of receiving applications from licensable bodies in future years. We will build this into our organisational development, both in terms of structure and skills mix. We will also facilitate the development of the licensing regime across the sector, which influences the likelihood that the Board itself becomes a direct regulator of ABS firms.

Improving service by resolving complaints effectively

Our medium-term aim

72. By 2013, consumers will be confident that:

- if things go wrong, their legal services provider will be responsive to their concerns and able and willing to act swiftly and informally to sort matters out;
- in cases where disputes cannot be resolved, the OLC will act swiftly, rigorously and impartially to determine the dispute and, where appropriate, provide fair redress.

Why this matters

73. It is inevitable that there will be occasions when consumers do not receive the level of service they might reasonably expect from a service provider. This is as true for legal services as it is for household repairs or utility providers. When this happens, consumers expect service providers to deal with their complaints in a courteous, fair and professional manner. If this does not produce a mutually satisfactory outcome, there is a reasonable expectation that there will be an independent route to simple, fast and effective dispute resolution.

74. Equally, there is an expectation by those who become the subject of complaint that they too will be treated courteously, fairly and professionally and that endeavours made by them to resolve the complaint at first blush are acknowledged.

75. Concerns about the way in which legal services complaints have historically been dealt with was a primary driver for the programme of legislative reform resulting in the Legal Services Act. Investigation by Sir David Clementi revealed a complex system of complaint handling arrangements exhibiting operational inefficiencies, oversight bodies with overlapping powers and a fundamental question of principle about whether legal services complaints systems run by lawyers could ever truly achieve consumer confidence.

76. Concerns of this type are unacceptable in any sector of the economy. Their effect is acutely and particularly felt in legal services where consumers are already likely to be under considerable stress.

77. The new arrangements established by the Act are designed to put the consumer first. They require the establishment of an independent OLC as a body with statutory power to handle all complaints concerning providers of legal services and to award redress to consumers in appropriate circumstances.

78. Before going to the OLC however, consumers must try to resolve their complaint directly with their service provider. As such, under the Act, ARs must require authorised persons to establish and maintain procedures for the resolution of complaints and must take steps to enforce that requirement, taking into account any requirements that the LSB may specify. Implicit in this is an expectation that legal services providers will improve their approach to client care and see high levels of customer satisfaction as a source of competitive advantage.

79. Improved levels of customer satisfaction with both legal services providers and the way in which complaints are resolved will be a critical success factor for the LSB.

Approach

80. Getting complaint handling right will require the involvement of everyone with an interest in ensuring the continued provision of high quality legal services. We know that there are examples of excellent complaint handling process in other market sectors and are confident that, once we begin to look, we will find examples of the highest standards of client care in the legal services sector too. Our challenge is to ensure that those standards become the norm across the sector and are not restricted to isolated pockets.

81. To do this we will need to speak to consumers, lawyers, our Consumer Panel, ARs, consumer bodies, other regulators, and the OLC. It will necessarily involve round-table meetings and workshops, information requests, site visits and formal consultation.

82. In addition, we will need to work closely with individual ARs to understand clearly how they currently monitor and enforce compliance with current complaint handling requirements.

2009/10 deliverables

83. By the end of 2009/10 we aim to have:

- reviewed the requirements ARs impose on authorised persons in terms of 'first-tier' complaints handling;
- benchmarked best practice in 'first tier' complaints handling with a view to consulting on a base-line of requirements that ARs should reasonably require of authorised persons' complaints handling processes;
- audited ARs arrangements for ensuring that their rules are enforced;
- appointed the Chair and Board of the OLC and approved the OLC's first budget; and
- approved rules for the Ombudsman scheme (subject to the OLC's timetable for establishment).

The medium-term implications

84. These new arrangements, which we will expect ARs to incorporate quickly into their regulatory arrangements, when considered alongside the concurrent establishment of the OLC, are expected to deliver a significantly improved consumer experience. We will however need to supplement the work by monitoring – including assessment of consumer feedback – and it may not be possible to see the effects in years one and two.

Developing excellence in legal services regulation

Our medium-term aim

85. By 2013, legal services regulators in the UK will be seen as world leaders, not simply in their independent governance arrangements defined in section E, but in the full range of their activities.

86. Consumers will therefore be confident that their lawyers are proportionately regulated by bodies which:

- keep constantly modernising and updating registration and education requirements to promote diversity in, and wider access to, the profession and reflect changing social and consumer needs;
- maintain and enhance standards of professional conduct in the light of changing circumstances and best practice elsewhere;
- ensure that robust and independent systems of quality assurance are in place;
- monitor and, where necessary, take enforcement action to ensure that professional standards are put into action at ground level;
- are accessible and responsive to concerns put to them.

87. Authorised persons should also be confident that their regulators are:

- proportionate and consistent in their decision-making, monitoring and enforcement activities;
- well-governed and cost-effective;
- up to date in their professional thinking and management practice.

88. All stakeholders will be confident in the effectiveness, speed and rigour of the LSB's own processes for approving rule changes.

Why this matters

89. Section 4 of the Legal Services Act 2007 gives the LSB a duty to assist in the maintenance and development of standards of regulation by ARs. There is a mutual interest in this: the more efficient and effective an AR becomes in meeting the regulatory objectives and the obligations placed on them by the LSB, the less the risk of regulatory failure. Therefore, the need for us to use the very extensive powers of intervention which are given to us in the primary legislation also diminishes. The development of effective practice in ARs will also help to ensure that the Board's own rules and guidance can be set at a proportionate, principle-based level.

90. There is also a common interest in achieving shared understanding of:

- what excellence in regulatory practice and governance means in the context of the legal services market;
- how ARs and their regulatory arms should assess their own performance against that standard;
- what form of verification the LSB should seek to validate those judgements;
- an agreed mechanism for how the LSB will approve the rules of ARs and grant AR status to new regulators;
- how the LSB will enforce its policies to ensure that the work of ARs is adequate and in the interest of consumers; and
- the establishment of benchmarks for each individual AR against which future progress can be assessed.

91. Achieving this understanding will give ARs a powerful tool in relation to their own priority setting and performance management and will help the LSB to establish its own priorities in the medium-term, in relation to both the supervision of individual organisations and the overall emerging policy agenda.

Approach

92. Developing this programme of work will be a highly collaborative activity. In addition to formal consultation documents, we will engage with all our stakeholders, not just the ARs, collectively, in various meetings and workshops to develop and test ideas on the methodology to be used. The discussions will draw on the experience of regulators in other sectors and will evaluate how far lessons learned from related activities, for example, capability reviews of central government departments or Hampton implementation reviews offer relevant experience.

93. We are working with the Legal Services Consultative Panel to understand their current work in relation to rule approval. One of our non-executive members attends Panel meetings as an observer. We will work with the Panel to ensure a smooth transition from the current regulatory system to the new one.

94. In addition, we will work closely with individual ARs to understand how they currently monitor and evaluate their own performance and agree practical arrangements for individual reviews to achieve the best operational fit.

95. We will need to develop a consistent and clear framework for how the LSB will intervene if an AR fails to meet its regulatory objectives. We will consult on our plans to ensure consistency with the framework we intend establishing for monitoring practice and performance.

2009/10 deliverables

96. By the end of 2009/10, we aim to have:

- an agreed methodology for use by both the ARs and the LSB to assess regulatory performance;
- specific action plans emerging from the reviews of the effectiveness of the performance and governance of individual ARs against benchmarks set in that methodology;

- rules in place to enable us to approve the rules of ARs and the approval of other bodies to become ARs;
- a clear strategy for the LSB in the medium-term on how to build continuous quality improvement in regulatory practice across the board; and
- a process which identifies lessons learned for improvements in specific areas where the LSB and ARs collectively need to target their efforts.

The medium-term implications

97. It is difficult to identify how this programme will develop in future years as judgements on that will, in very large part, depend on the outcome of the work undertaken in 2009/10. We will also, review the effectiveness of the approach taken towards the end of the first year as part of the process of scoping work for the future. However, we expect outputs from the review to inform the Board's medium-term work programme in relation to:

- identification and communication of best practice in a variety of areas;
- determining the form of regular monitoring of AR's activities and the development of monitoring tools, both quantitative and qualitative, for the future;
- ensuring shared understanding of areas for improvement and how these will be monitored and reported; and
- identifying areas of generic practice where there is scope for policy development work by the Board itself directly and for the Board to work with ARs and other stakeholders in inducing common approaches.



Securing independent regulation

Our medium-term aim

98. By 2013, the regulation of legal services in England and Wales will be – and be seen as – world leading in its:

- clarity of responsibilities;
- transparency of processes and costs;
- clear focus on the public interest as the starting point of all regulation;
- robust governance arrangements, which clearly separate representative and regulatory functions;
- effective compliance disciplines which demonstrate that both the letter and spirit of separation are being met in practice.

Why this matters

99. Independent and transparent regulation is an essential hallmark of a publicly credible regulatory system. It was one of the foundations upon which the Legal Services Act was built, and for good reason: consumer confidence in a regime that was perceived to be ‘run by lawyers, for lawyers’ could not be sustained. The Act therefore requires us to make rules that can give effect to the reality and – importantly – also to the perception of regulatory independence.

100. First, we will make internal governance rules under section 30 of the Legal Services Act. That section requires ARs, so far as reasonably practicable, to ensure that the exercise of their regulatory functions is not prejudiced by their representative functions; and that decisions relating to the exercise of their regulatory functions are taken independently from decisions relating to the exercise of their representative functions. Because of the central importance of such rules, we will pay particular attention to developing mechanisms that will evaluate the success of the rules in separating the regulatory and representative functions within ARs.

101. Second, we will make rules under section 51 that specify the purposes to which ARs will be permitted to apply amounts raised by practising fees paid by their membership (ie relevant authorised persons). No practising fee will be payable by any authorised person to their AR unless we approve the level of that fee.

102. Collectively, this work is of particular importance because:

- consumers must have faith that regulation is designed to protect their interests. Accordingly, they have the right to expect that the regulation of legal services is not controlled or prejudiced by people elected specifically to represent the interests of the providers of those services;
- a regime that holds high levels of consumer confidence will allow us to maintain our focus on oversight governance, therefore keeping cost and complexity as low as possible, rather than the LSB coming under pressure from consumers and their representatives to provide the independent voice ourselves in the regulation of legal professionals;
- accountability demands that regulated professionals themselves should have the right to know what they pay their mandatory practising fee charges for – and consumers also have an interest in seeing that financial arrangements underlying the regulatory framework provide demonstrable

independence and autonomy for the regulatory bodies. This provides the right incentive for ARs to both achieve and demonstrate value for money in all their activities.

Approach

103. Understanding the diversity of the legal services regulatory market will be critical to the success of this work. Ultimately, the interests of consumers and the public at large will be paramount: whether something is right or wrong is not necessarily determined by how difficult (or otherwise) it is to achieve.

104. However, where we make rules, those rules should be as capable of effective adoption by the smallest regulator that we oversee, as by the largest – so issues of proportionality will be extremely important. This does not mean that we should pitch all rules at the lowest common denominator. Instead, it means deciding, through a process of consultation and engagement with all stakeholders, principles on the operation of independent and transparent regulation and ensuring that the resulting rules encapsulating those principles are applied in a proportionate and sensible way across the board.

105. We will consider questions of proportionality as a central part of the consultation and engagement process. Overall, our strategy will be to avoid being too prescriptive in terms of mechanical details in rules to be made, which should help to minimise any risks here.

106. During the course of the coming year, we will undertake public consultation exercises on the substance of rules that need to be made under sections 30 (internal governance) and 51 (practising fees). We will meet the widest possible range of interested parties, including – where appropriate – under Chatham House Rules to encourage full and frank debate. Once rules have been settled and adopted, we will work with ARs to ensure that mechanisms designed to monitor the effectiveness of those rules are adequate. We will test the proposition that a dual self-certification process (whereby the

regulatory and representative arms of each AR certify that they are compliant with the rules issued) should be the first step of demonstrating that the requirements have been met.

2009/10 deliverables

107. By the end of 2009/10 we will have:

- agreed rules requiring all ARs to establish and maintain a clear and demonstrable separation between their regulatory and representative functions;
- designed mechanisms that will test the degree to which regulatory independence has been achieved, enabling ARs to demonstrate, and the Board to test, such effectiveness; and
- agreed rules to ensure that all practising fees paid by authorised persons are as transparent and fair as possible.

The medium-term implications

108. After the rules on internal governance and practising fees are in place, attention must turn to ensuring their effective implementation. The evaluation mechanisms that are developed will therefore come to the fore, and we will work to develop tools that enable ARs, their regulatory arms, and the Board to assess effective and proportionate compliance.

109. In any circumstances where there are found to be gaps in compliance, we will work with ARs to put corrective arrangements in place. There is a range of informal steps that we can take to work collaboratively and constructively with ARs, but – although we do not envisage having to use them – we also have a number of options relating to more formal powers of intervention if, and when, required.



Promoting access to a diverse legal profession

Our medium-term aim

110. By 2013, consumers will be confident that their access to justice is facilitated by a legal profession that:

- ever more closely matches the growing cultural diversity of the UK;
- actively works to overcome discrimination and disadvantage in its own working practices and cultures, going above and beyond its statutory obligations;
- is rigorous in setting, monitoring and communicating competency levels;
- consistently modernises itself through formal continuing education requirements and a consistent culture of professional learning and improvement.

Why this matters

111. Professional diversity and social inclusion are crucial in any group or organisation seeking public credibility. The legal profession is high profile and it touches some of the most vulnerable parts of our society. It is therefore all the more important for it to lead the way in this critical area. It is essential for the legal profession to be, and be seen to be, open to anyone with the requisite abilities and ambition, irrespective of background. Making a legal career accessible for all with the necessary ability is an important part of the wider access to justice agenda. This aspect of the LSB's agenda correlates with the Government's recent announcement of a Panel on Fair Access to the Professions. We welcome the creation of the Panel, which will give added momentum to our efforts and look forward to working with it as it develops its programme and recommendations.

112. At the same time, all regulated lawyers need to be equipped with the appropriate skills to match their professional responsibilities. Consumers need

to have faith in practitioners' capabilities through, among other things, appropriate use of accreditation systems. Fair access and high levels of competence are complementary, not opposed, objectives.

113. These issues are of considerable importance to consumers, practitioners and the public at large:

- consumers turn to lawyers in what are often trying circumstances, including during personal relationship breakdowns, financial disputes and encounters with the criminal justice system – whether as victims or otherwise. A profession that is not reflective of the society it serves and/or which fails to maintain the highest standards of transparency, professionalism and competence will not command respect and confidence – ultimately damaging the interests of consumers and providers; and
- because the future of our judiciary is almost exclusively dependent on that pool of talent, the community of lawyers from which judges are drawn must be both highly skilled and made-up from the widest possible base to maintain judicial standards and diversity.

114. Section 4 of the Legal Services Act requires us to assist in the maintenance and development of standards in relation to the regulation of approved persons; and in relation to their education and training. Importantly, the regulatory objectives also provide a general duty to encourage an independent, strong, diverse and effective legal profession, as well as other obligations including protecting and promoting the consumer and public interest and promoting and maintaining adherence to the professional principles – all of which are highly relevant to work in this area.

115. Like all other public bodies, the LSB is under duties in its own practices as an employer and as a policy maker to combat discrimination and encourage equality. We will benchmark our plans against best practice in similar bodies with the aim of becoming an exemplar in our own practices.

Approach

116. Leadership at all levels will be important. We need to play a role, as do the ARs and colleagues from the world of academia. However, in terms of professional diversity, a lot of impetus must come from the profession itself. We therefore envisage a highly collaborative approach with partners taking responsibility themselves for shaping the agenda and driving individual aspects forwards.

117. It will be particularly important not to 'reinvent the wheel'. It would be a mistake to attempt to start from scratch in this field because a significant amount of valuable work is already underway – both in terms of the professional diversity agenda and on the education and development front. We will not establish new forums where others already exist or replicate initiatives that others are leading. But we will make a positive contribution. Education and training of authorised persons is one area where this will be particularly important. We will need to work with both the profession and legal academics to ensure that qualifications ensure quality, utility and academic integrity.

118. There is a wealth of recent work and numerous recommendations have been made concerning the scope for improvements. For example, reports from the Legal Services Consultative Panel¹⁶, Lord Neuberger's working party on entry to the Bar¹⁷ and from Lord Ouseley on regulatory outcomes for BME solicitors¹⁸ provide solid foundations on which to build. We will make sure that any work that we progress will complement existing work streams, including the Judicial Appointments Commission's Diversity Forum and the MoJ's initiatives on barriers and the Expert Network. In terms of accreditation, the MoJ's Legal Services Market Study¹⁹ recommended that a number of issues require further consideration. Rather than forming new groups to generate similar ideas, we will select particular strands of work that have already been identified as being necessary and then work with our partners to focus on delivery.

119. We are conscious that some may argue that this work does not merit priority, especially in the current economic climate. We will make clear both the statutory underpinning of activity in this area from both the LSA and anti-discrimination legislation. We will also develop the business case to make clear that ensuring the widest possible range of entrants to the profession and their fair progression means better service to the public and value to the

industry. We will also make sure that the economic case for continuous professional development – and the equal economic risks of failing to make that investment – are properly articulated.

120. In working to bring about change, it will be important to engage with people throughout Wales and the English regions to ensure that this important debate is not skewed as 'London-centric'.

2009/10 deliverables

121. By the end of 2009/10, we aim to have:

- reviewed the work already underway within the sector on professional diversity;
- with ARs, started to drive forward a small number of specific diversity initiatives which will have a tangible impact;
- pre- and post-qualification education and training arrangements which can be explained in ways easily understood by consumers, so they know what they are paying for in respect to quality and expertise; and
- ensured that arrangements are in place which facilitate constructive working relationships between the profession, the ARs and providers of legal education.

The medium-term implications

122. This is an area where there is a real danger of 'motherhood and apple pie' statements and little real action. The challenge for our first year of work is therefore to identify hard outcomes and the means of achieving them for delivery in the medium-term.

Notes

¹⁶ http://www.dca.gov.uk/legalsys/diversity_in_legal_2col.pdf

¹⁷ <http://www.barcouncil.org.uk/news/TheEntrytotheBarWorkingPartyFinalReport>

¹⁸ <http://www.sra.org.uk/documents/SRA/equality-diversity/ouseley-report.pdf>

¹⁹ Legal Services Market Study: Final Report. Published by MoJ in November 2007

Developing research and public legal education strategies

Our medium-term aim

123. By 2013:

- consumers will be more knowledgeable about how to access legal advice from a range of sources and be better equipped to find the answers they need on any given issue;
- the legal services market will work more effectively for them, thanks to better interaction between practitioners and researchers in highlighting challenges, evidence and solutions;
- the LSB and ARs will produce ever more creative and practical solutions on policy issues, thanks to the development of a strong research, evaluation and application culture.

Why this matters

124. Better regulation principles demand that all regulatory interventions derive from as full an evidence base as possible in order to lessen risk and give the greatest possible certainty of outcome. This evidence can be derived from a variety of sources; views of consumers, firms and authorised persons operating in the market place gathered quantitatively or qualitatively. It can be pure research starting from a legal analytic perspective or applied research with a focus on practical impact. If we are to produce robust policies, we need to tap into all these sources of learning and ensure that the products are widely disseminated throughout our work and activities.

125. We have a wider role in acting as a fulcrum on debate, research and practice development in the field of legal services regulation. It is not our job to become a research institute, although we will need the capability to commission some research on our own behalf and on behalf of the Consumer Panel. However, we will aim to act as a research hub in order to:

- provide an authoritative over-view of what is going on in the field;

- identify where gaps in research coverage are emerging by developing understanding with stakeholders on where each see priorities for activity; and
- facilitate dialogue between the research community and practitioners.

126. Doing this effectively will improve our own regulatory practice and that of the ARs in a wide range of activities in support of the regulatory objectives in the Act.

127. It is important to recognise that our role in relation to research is as important to the general public as it is to core stakeholder organisations. The Act identifies increasing public understanding of the citizens' rights and duties as one of the core regulatory objectives. As the experience of other regulators with similar remits shows, making progress on issues of education and public understanding is very challenging. It is not a challenge that can be ducked. A better informed public will help the legal market to function more effectively, be better able to secure redress quickly when things go wrong and will, ultimately, enable less intensive regulation of both entities and individuals. As with research generally, the challenge for the LSB is to find effective ways of providing a fulcrum for activity, comprehensively identifying partners, identifying best practice and those areas of research where it can add specific value on its own.

Approach

128. Even more than most of our work, developing a research strategy will be a highly collaborative activity. We expect the identification of research needs and options for filling them to be high on the agenda of our Consumer Panel. Working together, we will identify the means to address the issues that they raise. We will also keep in close touch with research work and programmes currently done by ARs and, through a wide variety of legal academic groups, in law schools and other academic institutions, as well as in commercial consultancies. This will enable us

to identify relevant work to which we can contribute our understanding and the outcome of which may add value to our policy deliberations. It will involve intensive individual discussion and workshop style events to link different partners together and establish 'thought partnerships'.

129. We will take the same approach to mapping and understanding the bodies currently active in the world of public legal education, where networks essentially of an even wider and more diverse set of stakeholders will be essential in identifying the action to be taken.

130. Throughout, we will be engaging with the research community and other relevant stakeholders, not simply to identify priorities and activity in an abstract way, but to ensure that the best thinking is fed into the our emerging policy work and proposals. The LSB's research staff will provide a vital link between internal policy development and the wider intellectual world.

131. We are likely to have highly constrained budgets for research in our first year as we focus organisational build. We will not, therefore, be soliciting proposals from researchers other than in very tightly defined areas to contribute to our overall policy programme. The Director of Strategy and Research will be responsible for oversight of all research proposals ensuring, firstly, that the work cannot best be performed in-house, secondly, that other external sources are not already tackling the same issue and thirdly, ensuring that there are tight project disciplines in the specification, design and delivery of any projects adopted. This approach will enable us to ensure quality in the project we undertake. We will also consider, depending on the nature of the project, convening external advisory groups on an ad hoc basis and ensuring peer review in the final stages of projects.

132. The Director of Strategy and Research will have a particular role in ensuring that other colleagues are aware, and making use of, research products in their work. Both the Senior Management Team and the

Board will also build the nature of the evidence base into their assessment of emerging policy proposals and all LSB publications will be explicit about how these have been used.

2009/10 deliverables

133. By the end of 2009/10 we will aim to have:

- a draft research strategy for consultation with our partners;
- clear protocols with the Consumer Panel about how we will complement each other in relation to research and public legal education; and
- clearly communicated on how we see the priorities for public legal education going forward.

The medium-term implications

134. The definition of the research strategy and work on public legal education in the LSB's opening year of activity is designed to map the ground, rather than reach final conclusions. The work on strategic direction outlined here under both headings however, should ensure that we are in a position to develop concrete programmes of action in both areas in 2010/12, by being clear about where:

- we need to act directly to fill gaps in activity;
- we can address issues most effectively by acting in partnership with a wide range of bodies; and
- we need to develop a lobbying and influencing agenda in order to persuade other public bodies, ARs and other partners to address issues which, more legitimately, fall to them to take forward.

135. It is likely therefore that over time the relative share of LSB's resources taken by research and its priority within our operational agenda will rise and not fall.



The levy

Our medium-term aim

136. By 2013, consumers, authorised persons and ARs will be confident that:
- the interventions of the LSB are all underpinned by robust cost benefit analyses; and
 - the direct costs of the LSB and the OLC are beginning to be defrayed by savings generated in the cost of compliance as regulation becomes more targeted and in professional indemnity insurance charges as standards rise.

Why this matters

137. The LSB is required by Part 7 of the Legal Services Act 2007 (specifically sections 173 – 175) to meet all its, and the OLC's costs through a levy on the ARs. The LSB will therefore need to make rules for all leviable expenditure, as defined in the Act, which includes relevant expenditure made by the LSB, OLC and the Lord Chancellor in respect to both implementation and ongoing running costs.
138. Part 7 of the Act allows for different parts of the levy to be payable at different rates. We will therefore establish how the costs for the LSB and OLC for both implementation and running costs will be split between the different ARs. We will ensure that costs are proportionate in respect to the different ARs in line with our obligation, under the Act, to apportion the levy in accordance with fair principles.
139. We are required to consult with the ARs, and other stakeholders, before making the levy rules and the consent of the Lord Chancellor is also required.

Approach

140. A clear approach to the levy will help the ARs manage their costs and help us to ensure the cash flow of the LSB and OLC. It will therefore be critical that there is an open dialogue between the LSB and the ARs on this issue. We will need to work to devise appropriate rules for the split of implementation and first year running costs, which will ensure that it:
- is based on a common and relevant unit of measure for all ARs;
 - has potential for further sophistication in future years; and, where possible
 - minimise any data collection costs for ARs.
141. We have already undertaken research into how other levies operate in order to understand best practice. However, unlike most organisations which are funded by a levy, the LSB is not levying firms or individuals but is instead levying their regulators. So we

recognise that comparisons with the way other regulators operate will only take us so far. We have also held meetings with the representatives of the Treasury on how best to set up the processes within the organisation relating to levy and funding.

142. Timing is also important in this context, as we need to ensure that the ARs are aware of the costs that they need to pay early enough to be able to find the money to pay them. The detailed financial mechanics of how the levy will operate and the transfer of funds between the ARs and the LSB and OLC will be defined in the Memoranda of Understanding between the different organisations and the LSB.
143. We will consult formally on all of this to ensure that, in particular, we are able properly to ascertain the effect of our proposals on the ARs and the professions they regulate. We are aware the levy has the potential to affect the professions through potential increases to their practising fees. We are therefore keen to ensure that the levy is manageable and proportionate. The professions need to understand what they are paying for, and why and how meeting our costs relate to the other costs that they are required to pay. We therefore need to be able to communicate a clear and coherent message on the levy and we will do this by open consultation.
144. We will look at the burdens already placed on authorised persons and ensure that the levy for implementation costs is not recovered in one lump sum. The rules we make in relation to practising fees will also help to ensure that the practising fee as a whole represents value for money.
145. We have constructed a timetable that takes into account the fact that it will take time for changes to practising fees to be made. Consulting early in 2009/10 will allow time to consult with, and communicate the policy to, the ARs early enough for them to take account of this when defining their practising fees for 2010/11 and beyond.

2009/10 deliverables

146. By the end of 2009/10 we will aim to have:
- levy rules in place which meet the requirements of section 173 of the Act to apportion the levy in accordance with fair principles;
 - a process that ensures we are able to collect the levy for the LSB, OLC and the MoJ's implementation costs as efficiently as possible;
 - begun work on an approach to cost benefit analysis of our individual projects, our impact on compliance costs and our overall impact on the market to ensure that our activities have a positive impact.

The medium-term implications

147. We will monitor the way the levy operates in terms of its effectiveness, fairness and the impact it has on the professions. This will help ascertain whether the theory works in practice and whether the levy we create for implementation costs and first year running costs is appropriate or in need of further refinement. This will be a process in which we will consult in detail with the ARs and the professions and our other stakeholders.



Building our organisation

148. In addition to establishing ourselves as the new oversight regulator of legal services in England and Wales, we need to establish the LSB as an organisation. We have had the opportunity to specify the type of organisation that the LSB will be in terms of:

- how it will be organised;
- the type of people it employs and how they are rewarded; and
- as set out in previous chapters, the manner in which we fulfil our duties and interact with stakeholders.

149. The importance of this cannot be underestimated as the decisions taken on all these matters greatly influence how successful we will be in the short, medium and long term.

Organisation design

150. Having considered our regulatory duties and the work that needs to be undertaken to fulfil them, we have concluded that we need a small organisation of about 35 people. There will be pool of professional staff working under three main staff – the Director of Strategy and Research, the Director of Regulatory Practice and the General Counsel, working on projects on the different work-strands. The aim throughout will be to ensure active cross-fertilisation of ideas, to develop corporate memory overall and ensure that policy and practice is developed in a holistic way at all levels of the organisation. The precise make-up of project teams on any individual project will be determined by the needs of the work.

151. There will also be functions responsible for the management and provision of all our infrastructure services.

152. We believe that by working in this way we will be offering innovative, interesting and challenging work with significant opportunities for development that will prove attractive to the high-calibre colleagues from both the private and public sectors we need to staff the LSB.

Governance

153. The Board as a whole has a responsibility to ensure that the LSB complies with its statutory requirements as set out in the Act and all other appropriate legislation; and government accounting rules in reference to its use of public funds. Establishing a best practice governance framework with appropriate audit trails and checks and balances is critical to good decision-making and risk management.

154. One of the Board's first acts, therefore, has been to agree its Code of Practice, so that there is a clear framework in relation to conduct of members. The Code of Practice was constructed in line with Cabinet Office guidance and the Combined Code. It therefore reflects both standard Non Departmental Public Bodies responsibilities and the specific responsibility on us to reflect best corporate governance in Section 5 of the Act. This document is available on our website.

155. In constructing all our policies and procedures, we take account of best practice, and while following Government policy and guidance, ensure that what we have is fit for purpose and proportionate for an organisation the size of the LSB.

156. The Board has established an Audit and Risk Committee and a Remuneration and Nomination Committee, to ensure proper procedures are followed in terms of our finance and our staffing.

157. Once the senior managers are recruited, they will form the Senior Management Team, which the CEO will chair. This Team will be responsible for the management of the LSB, including:

- setting the direction for the organisation within the strategy determined by the Board;
- financial and administrative decision-taking (or review prior to Board/sub-committee consideration);
- monitoring; and
- management policies (eg HR policies).

158. It will also be responsible for ensuring top level read-across between the different projects and issues within LSB.

Risk management

159. We will need to meet the competing priorities of time, finance and quality whilst at the same time ensuring the regulatory objectives are achieved. In the context of the LSB's work therefore, a risk is defined as something which could interfere with the LSB's ability to perform its duties under the Act.

160. The following principles will be applied to the risk management of the LSB:

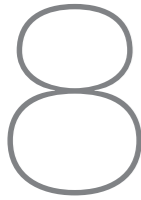
- the LSB's risk management strategy will ensure that the LSB is not prevented from achieving its objectives through having to be reactive to unforeseen pressures and events;
- the Board sets the tone and influences the culture of risk management within the LSB;
- the LSB through the Audit and Risk Committee and the Senior Management Team, is aware of where likely risks will come from and is able to appropriately manage them; and

- a consistent approach to risk management is fully embedded within the LSB.

161. The purpose of the risk management strategy is to define how risks will be managed and handled during their lifecycle, it will ensure that:

- actual and potential risks are identified;
- risks are assessed and prioritised;
- where possible, risks are avoided; or
- risks are reduced to an acceptable level and damage to the organisation are minimised; and
- mitigation plans are created, owned and monitored.

162. The risk management process will ensure that the LSB is more likely to achieve its objectives as risks to the LSB are quickly, effectively identified, and managed.



Resourcing our strategy

163. As with any new endeavour, we will need to invest upfront to ensure that we build momentum in implementing the ambitious plans set out in this document. This document makes clear that we propose a step change in the pace of implementation that has previously been discussed with stakeholders. Initial planning work undertaken before the Board was in place assumed that the Board would focus only on its statutory rule-making functions in its first year of operation. After working in shadow form for four months, the Board is convinced that the scale of challenge and opportunity it faces means that it should start to generate momentum across the full range of its statutory obligations. That is the challenge which Parliament has given and to which we are determined to rise.

164. We are determined to be an organisation that stands for value for money and is transparent in what we are spending and why. We will implement a high-class organisation that is capable of fulfilling its statutory obligation as efficiently and as effectively as possible. Cheapness per se is not an objective – getting the quality of staff and the research evidence-base needed to undertake the challenging work programme defined in chapter 5 will need early investment. Our challenge is to manage that investment effectively, not least in ensuring that the outcomes of the work diminish cost pressure in the longer-term.

165. As mentioned in the previous chapter we have established an Audit and Risk Committee. We have also appointed the MoJ's internal auditors to act as our internal auditors for the period January – March 2009 and plan to tender for a wider internal audit service in partnership with the OLC in early 2009/10. We have worked through key systems assumptions with them and the National Audit Office, to ensure that from the start our financial processes are robust.

166. The LSB's Remuneration and Nomination Committee is designed to ensure that the LSB sets remuneration levels at the correct levels to attract and retain staff with the necessary skills. We commissioned independent consultants to carry out benchmarking

studies to provide the committee with the necessary documentation / information to advise the Committee on the right level of salary, reflecting rapidly changing labour market conditions. This is particularly important as the Board is determined to develop a professional services staffing model, which assumes fewer staff than initial estimates, but at a higher skill level in order to achieve greater flexibility in their usage.

167. Against this background of high ambition and determination to achieve value for money, our budgetary plans are set out in the table opposite. At £4.9m, the budget for LSB implementation is £0.8m greater than the estimate of £4.1m included in the Supplement to the Regulatory Impact Assessment (RIA)²⁰ (prepared by the Government in June 2007 to inform the passage of the Act). There is no intention to change the overall levy-recouped portion of the implementation budget for the LSB and OLC of £19.9m; we are committed to this remaining within this firm ceiling. But the Board, and the Chair of the OLC, believe that this split of resource is right in order to ensure the correct balance of resource between the services needed by those consumers who have serious complaints, and the generality of consumers who need to be served by a consumer sensitive market place with low entry barriers to encourage innovation but underpinned by the right kind of regulation for consumer protection.

168. Our approach inevitably front loads our costs in the implementation period, but, as we look ahead, our future running costs are within the broad estimates put forward by Government during the passage of the Act. Two specific additions should also be noted:

- first, the inclusion of the costs of the Consumer Panel to ensure that members can be appropriately remunerated;
- a research budget.

	Implementation costs until end of Dec 09 £000	Running costs Jan-March 2010 £000	Predicted costs for 2010/11 £000	Predicted costs for 2011/12 £000
Staff	2,362	620	2,541	2,604
Accommodation	580	223	552	560
IT	548	75	226	234
Research	100	25	155	161
Recruitment	553	-	75	100
Office Costs	183	46	209	216
Implementation costs	325	-	-	-
LSB Board costs	257	55	226	231
Consumer Panel	44	20	81	83
Total Excluding OLC Board	4,952	1,064	4,065	4,189
OLC Board	161	42	174	178
Total Including OLC Board	5,113	1,106	4,239	4,367

The above figures are compiled on a **cash** basis reflecting expenditure as incurred and paid for, not a **resource** basis which would capitalise infrastructure expenditure and depreciate over assumed asset periods.

169. As Ministers indicated in the passage of the Legal Services Act, it is open to the LSB to agree to recoup these implementation costs over a number of years. The consultation document on the levy discussed in chapter 6 will raise the possibility of costs being recouped entirely in the course of 2010/11 or spread over a period up to three years.

170. Looking ahead, the table also indicates our estimate of our likely operating costs for the next two years of operation as well. In each case, inflation forecasts have been included, rather than being held at constant prices. The figures show that the organisation we have designed is clearly affordable within the basic estimates put forward by Ministers in the course of the passage of the Act.

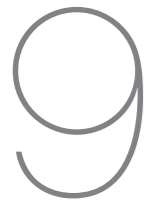
171. These estimates of future year costs should not be regarded as definitive at this stage: to a great extent, levels of costs and activity in those years will reflect the outcome of our activities in 2009/10. For that reason, we expect to make a number of our initial appointments on a short-term or secondment basis to take account of the fact that some areas of work may not need to be resourced as intensively – or possibly even at all – in the long-term.

172. However, it is equally possible that investment that is more intensive will be needed if our initial diagnostic work uncovers significant policy gaps in the regulatory framework or failings in regulatory practice. Likewise, if we face expensive judicial review challenges that generate both direct costs and the need to differently resource the work of staff diverted to tackle challenges, then costs are likely to rise unpredictably. Equally, if we find that we need to use our default powers to act as an AR ourselves, the cost consequences could well be significant, not least because of the need to ensure a clear separation of functions between our oversight and direct regulatory roles. Nevertheless, our base case planning assumption is that we will seek a budget for 2010/11 significantly lower than for the implementation period and that the total will rise only by inflation in 2011/12.

173. We are discussing the implications of this proposed budget for the implementation period with the MoJ. For the avoidance of doubt, pending the Board's review of the outcome of this consultation exercise and subsequent ministerial decision, our actual spend will be based on the current assumed figure of £4.1m.

Notes

²⁰ <http://www.justice.gov.uk/docs/RIA-Supplement-v021.pdf>



What we will do when

Quarter 1 2009/10	Section and/or workstream	Quarter 2 2009/10	Section and/or workstream	Quarter 3 2009/10	Section and/or workstream	Quarter 4 2010/11	Section and/or workstream
APRIL - JUNE		JULY - SEPT		OCT - DEC		JAN - MAR	
Appoint the Consumer Panel	5A	Consult on the procedures and criteria we will apply when considering applications from ARs to become Licensing Authorities	5B	Stakeholder Engagement Strategy	5	Publish a set of core requirements for ARs to incorporate into the authorised persons complaints handling procedures	5C
Issue discussion paper on the development of ABS	5B	Consult on guidance to Licensing Authorities on the content of licensing rules	5B	Agree the work plan and terms of reference for the Consumer Panel	5A	Review the experience of the exercise of undertaking regulatory reviews and begin to develop proposals for consultation on the way forward	5D
Issue a call for information from the ARs for information on complaints handling	5C	Issue a consultation on core requirements of 'first tier' complaint handling processes	5C	Consult on a Policy Statement regarding ABS	5B	Publish a paper on the challenges for legal services regulators	5G
Hold a round-table event to review best practice across the professions in complaints handling	5C	Consult on the rationale for our approach and an outline methodology to assess regulatory performance	5C	Publish final details of approach and begin to undertake reviews of regulatory performance	5D	Research strategy published for consultation	5G
Consult on the draft rules for the approval of ARs rules and applications for Approved Regulator status	5D	Begin to develop the detailed programme for performance reviews with individual ARs	5D	Publish rules on enforcement and disciplinary arrangements	5D	Discussion document on public legal education and Board's role in driving improvement	5G
Work with interested parties to identify areas of work within the diversity agenda where we can add value.	5F	Develop proposals for consultation on regulatory performance accreditation with a view to consulting later in the year	5D	Publish rules on approval of ARs and rule approval mechanisms	5D	Initial payment received from the levy	6
		Develop proposals for consultation on the policy statement on enforcement and discipline rules	5D	Make internal governance rules and rules under section 51 requiring ARs to comply with those rules from 2010 onwards	5E		
		Publish the findings of our consultation exercise and report on proposed next steps for the rules on the internal governance mechanisms in ARs	5E	Arrange meetings and events throughout the country to highlight our work to encourage increased diversity, setting ourselves specific targets against which to measure impact	5F		
		Develop and deliver a series of seminars on challenges for legal services regulators	5G				
		Consultation on detailed split of costs for implementation and level of first year costs for both the OLC and LSB	6				

10

Responding to this consultation

174. We welcome written views and comments on all aspects of our draft Business Plan 2009/10 by **5pm on 13 March 2009**. This is less than the usual 12 weeks we intend to allow for formal consultations to allow us to reach conclusions before the start of the financial year.

175. We would prefer to receive responses electronically (in Microsoft Word format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Email: boardsecretary@legalservicesboard.org.uk

Post: Cathryn Hannah
Legal Services Board
Victoria House
Southampton Row
London
WC1B 4AD

Fax: 020 7271 0051

If you want to discuss any aspect of this consultation, or need advice on how to respond, please contact:
boardsecretary@legalservicesboard.org.uk.

Next steps

176. We intend to publish all responses to this consultation on our website unless a respondent specifically requests that a specific part of the response, or its entirety, should be kept confidential. Respondents requesting confidentiality should explain the reasons for the request which the LSB will consider.

177. The LSB will consider all responses to this consultation and will publish its final Business Plan for 2009/10 in April 2009.

Annex 1

Our regulatory objectives and the professional principles

Section 1 of the Legal Services Act sets out a very challenging set of regulatory objectives for the LSB and the ARs. These are to:

- protect and promote the public interest;
- support the constitutional principle of the rule of law;
- improve access to justice;
- protect and promote the interest of consumers;
- promote competition in the provision of legal services;
- encourage an independent, strong, diverse and effective legal profession;
- increase public understanding of the citizen's legal rights and duties; and
- promote and maintain adherence to the professional principles.

Section 1 further defines the professional principles as:

- acting with independence and integrity;
- maintaining proper standards of work;
- acting in the best interests of clients;
- complying with practitioners' duty to the Court to act with independence in the interests of justice; and
- keeping clients' affairs confidential.

Annex 2

The regulatory objectives matrix

Although, broadly speaking, most strands of our work will further, to a greater or lesser degree, each of the regulatory objectives, some strands of work will have particular relevance to specific regulatory objectives. The following matrix highlights areas of direct synergy:

	Consumer and public interest	Opening the market	Complaints handling	Developing excellence	Independent regulation	Maximising opportunity	Developing research and public legal education strategies
The public interest	■	■	■	■	■	■	■
The rule of law			■		■		
Access to justice	■	■					■
Consumer interest	■	■	■	■	■	■	■
Enhancing competition		■			■		
Independent, strong and diverse profession	■	■	■	■	■	■	
Citizens' rights and duties			■				■
Professional principles		■	■	■	■	■	



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