

Draft:

**Strategic Plan 2015–18
and Business Plan
2015/16**

For consultation

This consultation will close on 20 February 2015

Our regulatory objectives and the professional principles

Section 1 of the Legal Services Act 2007 (the Act) sets out a challenging set of regulatory objectives for the Legal Services Board, approved regulators and Office for Legal Complaints. 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 interests 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
- promote and maintain adherence to the professional principles.

Section 1 of the Act 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.

Section 4 of the Act also gives the Board a duty to assist in the maintenance and development of standards of regulatory practice and the education and training of lawyers.

Approved regulators

We are responsible for overseeing eleven approved regulators (three of which are also licensing authorities¹), which between them regulate directly approximately 166,800 lawyers² and 398 alternative business structures³ operating throughout the jurisdiction. The approved regulators are:

- The Law Society, which through the Solicitors Regulation Authority, regulates around 138,243 practising solicitors and around 340 alternative business structures
- The General Council of the Bar, which through the Bar Standards Board, regulates around 15,279 practising barristers
- The Chartered Institute of Legal Executives, which through ILEX Professional Standards Limited, regulates around 7,927 practising Fellows
- The Council for Licensed Conveyancers, the regulator of over 1,222 practising licensed conveyancers and 47 alternative business structures
- The Chartered Institute of Patent Attorneys, which through the Intellectual Property Regulation Board, regulates around 2,034 practising chartered patent attorneys
- The Institute of Trade Mark Attorneys, which through the Intellectual Property Regulation Board, regulates around 794 practising trade mark attorneys
- The Association of Costs Lawyers, which through the Costs Lawyer Standards Board, regulates around 562 practising costs lawyers
- The Master of the Faculties who regulates around 792 notaries
- The Institute of Chartered Accountants in England and Wales which regulates five accountancy practices to provide probate services and has licensed 11 alternative business structures.

In addition, two further bodies from outside the traditional legal services sector are formally designated as approved regulators for probate activities, though neither has any members offering these services at present. They are:

- The Institute of Chartered Accountants of Scotland (ICAS)
- The Association of Chartered Certified Accountants (ACCA).

¹ The Chartered Institute of Patent Attorneys and The Institute of Trade Mark Attorneys will be designated as licensing authorities from 1 January 2015

² Figures are based on numbers provided to the LSB by the approved regulators as at 1 April 2014

³ Figures for alternative business structures correct as at 5 December 2014

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Foreword by the Chairman



I come fresh to regulation of the legal sector. I have no preconceptions other than a strong conviction that a healthy legal sector, access to justice and a well-functioning justice system are cornerstones of our civil society.

The importance of the legal sector to the economy is clear. Moreover, the reputation of our legal system contributes to making the UK an attractive place to do

business, and brings inward investment and new jobs far beyond the boundaries of the sector itself.

Since my arrival at the Legal Services Board (LSB), I have met and listened carefully to a large number of individuals and organisations active in the sector. I have seen evidence of the increasingly rapid pace of change in the market. There are new market conditions, business models, entrants and innovative services, creating a mix of new challenges and solutions. What I have heard less about (with some notable exceptions) is how organisations active in the sector are planning for the longer term future.

I believe that the changes facing the sector ought to be a springboard to a different and better market for legal services, one that sees more people and small businesses obtain access to the legal services they need. We must also respond to the cross-economy drive to lighten the burden of regulation and to ensure regulation does not stifle innovation and growth. This is where we all need to focus our energy – and this is reflected in the strategic themes set out in this plan: *breaking down regulatory barriers to competition, growth and innovation* and *enabling need for legal services to be met more effectively*.

The affordability and access gap between the need for legal services and what is currently supplied is a challenge for regulators and policy-makers – and an opportunity for innovative firms and professionals. It's our job to encourage that innovation, without undermining standards in any way.

The development of the unregulated legal service provider market cannot have escaped notice. As I have said before, the division between regulated and unregulated services is a product of history and it would be a well-informed purchaser of legal services who could describe the differences or their implications. So what can or should the LSB do in this area, given that neither we nor the regulators can make rules for unregulated service providers?

I believe that the LSB must take a keen interest in unregulated services. We can't achieve our regulatory objectives – or even work meaningfully towards them – if we don't look at the legal sector as a whole. This is the environment in which consumers make their choices, in which legal services are provided to citizens who need them, and in which legal businesses compete. Understanding the broader legal ecosystem will help us understand what we need to do to help regulated firms compete fairly. It will also encourage us to think about the case for new legislation when, eventually, the opportunity arises.

As well as ground-breaking changes in the market, there are new faces at the LSB and elsewhere. The LSB is saying a very fond farewell to Chris Kenny, its inaugural Chief Executive, who had been in post since the beginning of 2009 and a hearty welcome to Richard Moriarty, our new Chief Executive from 2 February 2015. The Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB) are welcoming new Chairs, and the SRA and The Law Society have new Chief Executives. There have also been changes of Chair and Chief Executive at other legal services regulators and representative bodies.

All these changes fuel my belief that we are at something of a turning point – at the LSB, in legal regulation and in the sector as a whole. I want us to be ambitious and provide leadership as we plan for the next three years, so that we can make the most of this unique opportunity. With only just over 30 members of staff, the LSB must continue to increase its productivity and influence.

We will work on our strategic plan in a spirit of collaboration with the widest possible range of consumer, citizen and legal services bodies that can contribute constructively to our work. We will take into account the geographic diversity of legal needs across England and Wales, including emerging differences between English and Welsh law.

We are also keen to learn from cross-economy discussions. The LSB joined the UK Regulators' Network (UKRN) earlier this year, and we will share knowledge with other oversight regulators, such as the Professional Standards Authority for Health and Social Care and Financial Reporting Council.

Developing a sound evidence base for decision making and policy development will continue to be critical to our work. There remains a paucity of data and research in many key areas of the legal services sector. We will therefore continue to undertake a significant programme of research, both on our own and in collaboration with other organisations, and we will publish, share and promulgate the results of our work to help fill gaps in knowledge across the sector.

Very early in the period covered by this strategic plan, there will be a general election. The requirement for public sector austerity is unlikely to change. Nor will the regulation of legal services be much higher up the political agenda. But growth, international competitiveness and the pressure on people's pockets undoubtedly will be, regardless of the outcome of the election. A healthy legal sector has a vital role in enabling all consumers and businesses to meet those challenges. If it does so, it will become increasingly dynamic and innovative; I believe that this strategic plan will help to meet those challenges head on.

I look forward to hearing your comments and suggestions on any aspect of our draft strategic and business plans.



Sir Michael Pitt
Chairman

Overview of our strategic priorities

1. Our vision is a competitive, innovative and open legal services market, characterised by:
 - consumers who are well informed and able to choose from a range of services that are of appropriate quality and that offer value for money
 - diverse and ethical legal service providers, who compete to offer services that collectively support wider public interest objectives including the rule of law and access to justice for all
 - excellent customer service, with prompt and effective redress for consumers when things go wrong.
2. The vital role legal services play in underpinning our civil society, our economy and our democracy makes our vision relevant to every citizen and every business, irrespective of whether the services they purchase are privately or publicly funded, or obtained in the course of commercial activity.
3. The plan we propose is designed to support delivery of this vision, recognising that it is unquestionably the case that the legal services market is experiencing unprecedented change.
4. The market remains economically significant and is growing. In 2013, the total turnover of the legal sector was £29.2 billion, up 15% in six years. We estimate that regulated legal service providers account for about 70-80% of this turnover, and unregulated providers account for the remainder. Over the same period exports of legal services grew by 18%. As at 1 April 2014, the legal profession in England and Wales comprised 138,243 solicitors, 15,279 barristers, 7,927 chartered legal executives and 5,404 individuals operating in other areas of the legal profession such as conveyancing.
5. New ways of doing business are emerging and the traditional boundaries between the different legal professions are eroding. Many of these changes are positive, and provide evidence of innovation and growth in the legal services market.
6. These changes have the potential to help tackle unmet legal need – the so-called ‘access gap’. Our research shows that, over a three year period, about half of individual citizens experienced at least one legal problem, but one in three did not get the legal help that they needed. Our research also shows that 54% of SMEs see law as very important for doing business, but fewer than 20% get legal advice when they have a problem.⁴

⁴ In other sectors, notably healthcare, a distinction is drawn between *need* for an essential service and *demand* for services that may not be essential. At present, in the legal sector, this distinction is not generally drawn. However, given the very large difference in our research between what respondents said about the extent of their practical problems, the degree to which they perceived these as “legal” matters and what factors underpinned their decision on whether to seek help or advice, we believe that we are likely to be in the territory of considerable unmet need, both for individuals as citizens and economic actors and small businesses seeking to establish themselves and grow. If the effect of the changing market stimulated in part by LSB’s work is to make access to legal services easier, and something that more people demand, the distinction between need and demand may need to be revisited.

7. It is in this broad context of rapid change and on-going concerns about access to justice that we have developed our new strategic plan. We have also taken into account:
- What the evidence base tells us about what needs to be done. We have published a number of research reports since 2009, some of which were undertaken by external academics and research companies and some of which were undertaken in-house or in collaboration with other organisations. About three-quarters of our reports have provided information for a specific policy decision⁵ or general policy development⁶ and about half have supported the ongoing evaluation of the impacts of the Legal Services Act 2007 (the Act).⁷
 - The Legal Services Consumer Panel's response to our 2020 commission in which we asked the Panel to consider what risks might arise to consumers of legal services in the period to 2020 in light of developments in the market, and what the LSB and regulators might do to address these risks. We are very grateful for the Panel's thoughtful and constructive response to our commission.⁸
 - The fact that the LSB's role encompasses promoting understanding, thinking ahead and sharing knowledge across the sector.⁹
 - Our view that the benefits of a well-functioning legal services market – and our responsibilities – extend beyond the consumers of those services to society as a whole. Citizens may have no choice about whether or not to use legal services if, for example, they are arrested. And all members of society have a strong interest in the maintenance of the rule of law.
 - The collaborative work of the regulators following the Ministerial summit of July 2014, as part of which ways to reduce regulatory burdens on practitioners are being explored.

⁵ For example: *Understanding the consumer experience of will-writing services*

http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lsb_will_writing_report_final.pdf

⁶ For example: *What happens when people with learning disabilities need advice about the law?*

<http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Legal%20Advice%20Learning%20Disabilities%20Final%20Report.pdf>

⁷ For example see: *Market impacts of the Legal Services Act – 2012 Final Baseline Report*, LSB, 2012, <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

⁸ Legal Services Consumer Panel, 2014. *2020 Legal Services: how regulators should prepare for the future* http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html

⁹ The High Court noted the legitimacy of wider activity by the LSB in relation to the regulatory objectives in its 20 January 2014 judgment in the QASA judicial review. Paragraph 89 of the judgment states: "In our judgment, it was entirely appropriate (and a legitimate interpretation of its statutory remit) that the LSB should take steps to ensure that the regulators were aware of its interpretation of the way in which the regulatory objectives ...should operate...".

In 2013, the Ministry of Justice (MoJ) issued a call for evidence¹⁰ to inform its review of legal services regulation. In response, the LSB submitted its *Blueprint for reforming legal services regulation*.¹¹

The MoJ's call for evidence did not produce a consensus either on what short-term deregulatory steps might be possible or whether longer-term structural changes were necessary.¹² Following this outcome, the MoJ arranged a Ministerial summit in July 2014, to encourage wide-ranging discussion on how regulatory burdens on practitioners might be reduced within the current legislative framework.

Since the Ministerial summit, we have been working with the MoJ and the regulators to:

- produce a briefing document which maps existing work by the regulators to reduce unnecessary regulatory burdens while maintaining appropriate consumer protection
- encourage knowledge sharing on deregulatory proposals amongst the regulators
- collaborate on identifying effective business models to avoid the holding of client money
- identify minor legislative changes to reduce the burden of regulation and improve the efficiency of the regulatory process.

The outcomes of this collaborative engagement will be key to our work throughout the strategic plan period.

In addition, we have taken heed of the Legal Services Consumer Panel's encouragement to us in its *2020 report* to maintain the pressure for major legislative reform. We believe the current legislative framework creates unnecessary difficulties in pursuing the regulatory objectives and are therefore leading work with the regulators to discuss and develop a range of legislative options beyond the 2007 Act with the aim of being able to discuss them with Ministers in due course.

8. For this strategic planning period, we are proposing to structure our work into three strands:

- **Theme A: breaking down regulatory barriers to competition, growth and innovation.** As the traditional boundaries between the different legal professions and business models disappear, we must keep pace with market developments. We aim to ensure that unnecessary regulation that can stifle positive changes (including for example market entry) is removed, thereby delivering the benefits of competition, growth and innovation to consumers.
- **Theme B: enabling need for legal services to be met more effectively.** This theme is an obvious complement to our proposed work on improving conditions for providers of legal services: the needs of consumers – including vulnerable

¹⁰ <https://consult.justice.gov.uk/digital-communications/legal-services-review>

¹¹

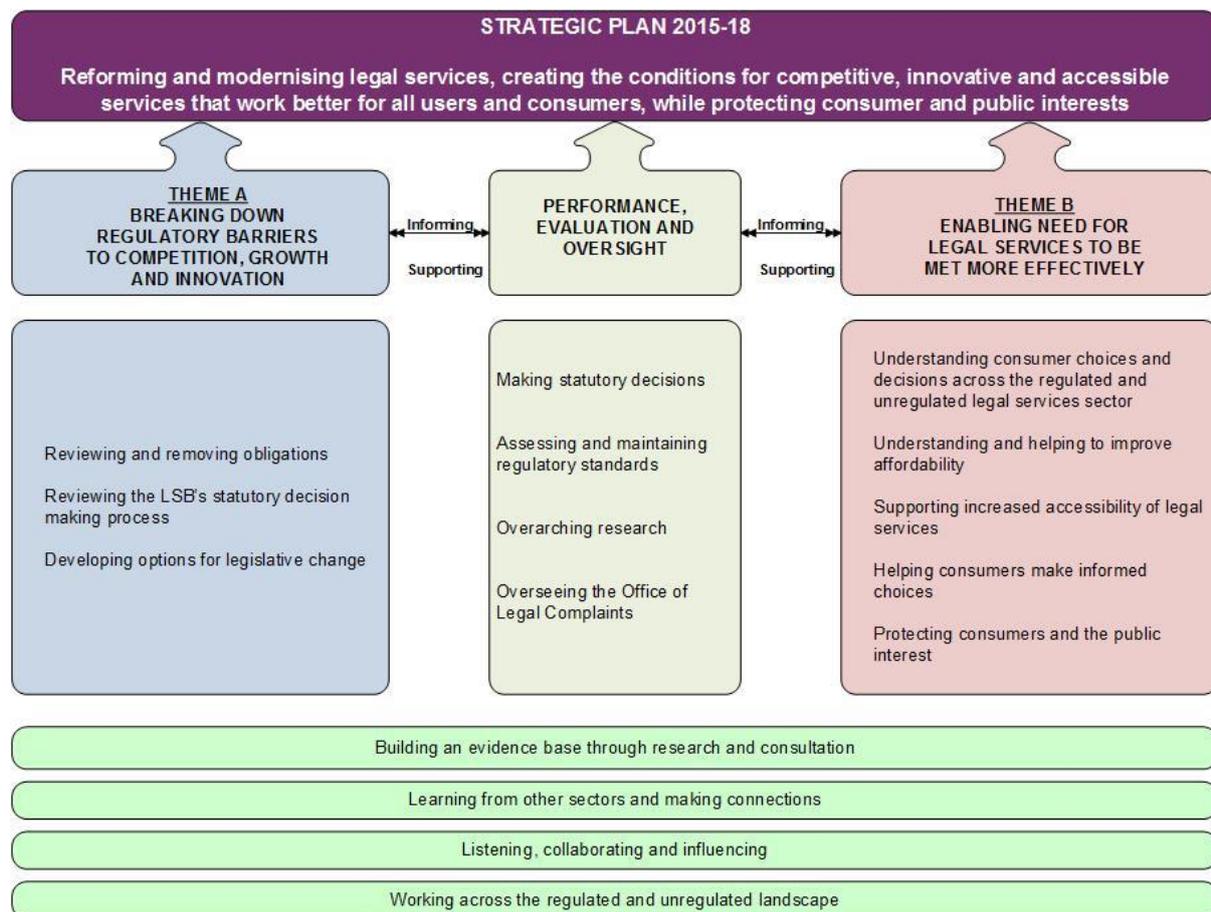
http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/A_blueprint_for_reforming_legal_services_regulation_final_09092013.pdf

¹² <https://consult.justice.gov.uk/digital-communications/legal-services-review/results/legal-services-government-response.pdf>

consumers¹³ – must also be met. Legal services must be affordable and accessible, consumers must be able to make informed choices to take advantage of the range of services that a more dynamic market will offer, and appropriate protections for consumers and the public interest must be secured.

- **Performance, evaluation and oversight activities** which help us to understand the real-world challenges faced by the regulators and market realities. This programme includes the reactive work we are required to undertake by statute (such as the key job of assessing the approved regulators’ steady flow of proposed rule changes against the regulatory objectives and approving the budgets of the Office for Legal Complaints (OLC) and Solicitors Disciplinary Tribunal (SDT)) and activities that are essential in discharging our regulatory oversight function, such as fostering improved standards of regulatory performance. This programme will also include overarching research to understand and quantify change in the sector and our own (and the approved regulators’) impact.

9. The following diagram summarises these strategic priorities:



10. This strategic plan builds on the solid foundations of the LSB's earlier work. While earlier plans necessarily focused on securing early and effective implementation of major

¹³ In this context, we note and welcome the work of the Legal Services Consumer Panel on vulnerable consumers, including the publication of its recent guide *Recognising and responding to consumer vulnerability*.

changes introduced by the Act such as alternative business structures¹⁴ (ABS) and developing the necessary elements of effective regulation (such as independence of the regulators from the representative bodies), they also prioritised consumers, the public interest and widening access to the legal market. We can now move on in this strategic plan to ensuring that those earlier investments pay off in the form of better outcomes for consumers, the public and the economy as a whole.

11. The provisions of the Act mean that anyone not providing one of the six reserved activities in the Act does not attract any specific legal regulation at all, unless they are authorised persons. And, at the moment, consumers of such unregulated services have no recourse to the Legal Ombudsman either. In our work over the next three years, we will take into account both regulated and unregulated providers of legal services – this is vital in order effectively to pursue our regulatory objectives under the Act. Understanding how regulated service providers can compete on a level playing field with unregulated service providers will be an important element of our work in this area. Our research, engagement and intelligence gathering will cover both regulated and unregulated services, as will our work on the availability of information and guidance to help consumers make informed choices. We will also use our position in the legal sector to promote constructive debate about how regulated and unregulated services can co-exist. We will work closely with the Legal Services Consumer Panel – recognising its position as an advisory body to the LSB and the need for the LSB to develop its own consumer policy – on how the consumer experience of the diverse options available in the market can be enhanced and problems and risks addressed.

¹⁴ The framework for alternative business structures in the Act allows non-lawyers for the first time to own, manage or invest in law firms.

Our role

Who we are

12. The LSB is the independent body responsible for overseeing the regulation of legal services in England and Wales.
13. We have a very simple goal – to reform and modernise the legal services marketplace across England and Wales, creating the conditions for competitive, innovative and accessible services that work better for all users and consumers of those services, while protecting broader consumer and public interests.
14. We are funded by, but wholly independent of, the legal profession. Our proposed annual budget equates to around £26¹⁵ per year for each authorised person, down from over £34 at its peak.

Our vision

15. Our vision is a competitive, innovative and open legal services market, characterised by:
 - consumers who are well informed and able to choose from a range of services that are of appropriate quality and that offer value for money
 - diverse and ethical legal service providers, who compete to offer services that collectively support wider public interest objectives including the rule of law and access to justice for all
 - excellent customer service, with prompt and effective redress for consumers when things go wrong.
16. Underpinning this is a regulatory framework that:
 - is targeted at protecting consumers and the broader public interest where necessary
 - is proportionate to the problem it seeks to remedy
 - promotes competition, growth and innovation
 - commands the confidence of consumers, providers, the judiciary and Parliament.
17. A competitive, innovative and open legal services market, underpinned by appropriate regulation, will deliver the regulatory objectives most effectively. Our job is to contribute to this by delivering oversight regulation that is both proactive and proportionate, working alongside the regulators to help them improve – including using our powers to require change where necessary. We will also seek to encourage new thinking and wider debate.

What we do

18. The primary responsibility for devising, developing and implementing regulation for the legal professions in England and Wales belongs to the regulators. The role of the LSB is

¹⁵ This figure is calculated by dividing the LSB's operational budget for 2014/15 (£4,298k) by the number of persons authorised to undertake legal services as at 1 April 2014. This information can be found on our website here: http://www.legalservicesboard.org.uk/can_we_help/faqs/index.htm

to make sure that they meet this responsibility so as to promote the regulatory objectives and the new duty to promote economic growth.

19. All that we do is designed to ensure that the regulators are independent of the representative bodies in the legal sector and have the competence, capability and capacity to promote and adhere to the regulatory objectives. We have statutory responsibilities in relation to:

- **Approval and recognition** – we consider a range of applications from both existing regulators (including applications to become a licensing authority¹⁶, changes to regulatory arrangements and extension of scope) and those seeking to become an approved regulator.
- **Monitoring and investigation** – we monitor regulators’ compliance with regulatory requirements; oversee the budget and performance of the OLC; and perform some specific duties in relation to the SDT. We also examine the wider market place to identify trends, gaps in regulation¹⁷, competition issues¹⁸ and how both our own rules and those of regulators are working in practice.¹⁹
- **Enforcement and disciplinary activities** – we ensure that regulators and licensing authorities perform their duties in ways that meet the regulatory objectives and, where necessary, we exercise the powers at our disposal to ensure that this happens. These powers include the power to set targets, give directions, publicly censure a body, impose a penalty, intervene in the running of the body and ultimately recommend cancellation of a body’s designation as an approved regulator or licensing authority.
- **Regulation, education and training** – we have a duty to assist in the maintenance and development of standards of regulation by approved regulators and in the education and training of persons carrying out reserved legal activities.
- **Scope of regulation** – we have powers to make recommendations to the Lord Chancellor on amendments to the list of reserved legal activities.

Our approach

20. The regulatory objectives and the better regulation principles are at the core of our work. We are transparent, accountable, proportionate, consistent and targeted in all our activities, and we will reflect the obligations of the Regulators’ Code, the Growth Duty, our statutory responsibilities to equality and our equality objectives in what we do. Circumstances may demand that we focus on specific regulatory objectives on occasion,

¹⁶ The Act also makes provision for the LSB to be a licensing authority ‘of last resort’ ie if there is no existing licensing authority with licensing rules suitable for licensing a particular type of ABS. In practice, although it is very unlikely that the LSB would need to license an ABS, we believe that it is pragmatic to be prepared to fulfil this role if required. At present, however, the relevant provisions of the Act are not yet commenced (section 73(1)(a) and Schedule 12).

¹⁷ For example see: <https://research.legalservicesboard.org.uk/wp-content/media/Smaller-ARS-2011-report.pdf>

¹⁸ For example see: *Evaluation: Changes in competition in different legal markets*, October 2013, LSB <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>

¹⁹ For example see: *Understanding barriers to entry, exit, and changes to the structure of regulated law firms*, Regulatory Policy Institute 2013, <https://research.legalservicesboard.org.uk/wp-content/media/RPI-Final-Report-for-LSB-and-TLS-15-December-2013.pdf>

but this does not undermine our statutory duty to promote all objectives, whether in the Act or broader legislation.

21. We maintain an evidence-based, outcomes-focused approach, and steer regulators on where to focus their efforts on the market as a whole, the entity or the individual as appropriate in pursuing the regulatory objectives. This builds on the Board's experience and achievements since 2009 and the unique perspective offered by our oversight role.

22. In practice, it means that we seek to:

- Work with regulators in a relationship of openness and trust, cooperating and collaborating in the interests of efficiency and effectiveness. As part of our work with the regulators, we:
 - drive improvements in regulatory performance, through robust analysis of data and intelligence, by ourselves and the regulators
 - advocate implementation of best practice in regulation, mindful of the need to balance consistency of approach against a proportionate response to the nature of different risks
 - seek to maintain a sense of urgency in bringing about change while carefully managing associated risks.
- Sustain productive working relationships with people and organisations both within and outside the sector who can contribute constructively to the debate about how to achieve an innovative, competitive and open legal services market.
- Continue to commission research to inform our work, including research that helps to fill gaps in the evidence base around legal services and regulation and that helps us understand the changes taking place in the sector and the wider economy.
- Learn from and respond swiftly and flexibly to emerging issues and risks to the regulatory objectives, including altering our priorities as necessary and seeking to improve our performance.
- Use the enforcement powers given to us in the Act where proportionate to do so, but with care and precision, as demanded by the challenges of particular circumstances.

Context for the plan

23. In this section we set out the key changes that we can reasonably foresee over the next three years in the legal sector, as these provide the context for, and present specific challenges in, our areas of responsibility. Our strategic plan responds to these changes and challenges.

Changing market

24. The legal services market has changed rapidly in recent years and it is likely that this will continue over the next three years.

25. The players in the market will change with new entrants, consolidation and the exit of those that cannot adapt. Similar change cannot be ruled out in the regulatory arena.

26. New entrants are likely to be attracted to the market for a number of reasons. For example:

- The draw of a growing economy which is likely to mean increased demand for many types of legal services such as combined legal and business advice for expanding enterprises.
- On-going unmet need for legal services, particularly among individual consumers and small businesses, means that there is a large pool of under-served consumers and businesses with needs to which prospective providers can respond.
- Prospective providers, and financiers, will have greater opportunity and increased confidence as a liberalised legal services market matures, new regulators such as the Institute for Chartered Accountants in England and Wales (ICAEW) enter the market, and existing regulators make further efforts to remove unnecessary barriers – for example in relation to multi-disciplinary practices (MDPs).

27. There is likely to be greater consolidation and specialisation as providers seek to increase their competitiveness in a more crowded market place. Increased scale can drive increased cost effectiveness, as well as enabling investment in technology and providing customers with access to a wider portfolio of related services and expertise.

28. There will be opportunities and challenges for existing players depending on how they adapt to these trends. There are likely to be more providers exiting the market than in the past. This is an inevitable product of an increasingly competitive market place. Some new business models won't work and some existing business models will become outdated. Some providers that are reliant on a declining flow of legal aid work may find it challenging to find alternative income streams.

Changing services

29. It is probable that expansion of the regulated sector, including ABS, will be at least matched – if not exceeded – by expansion of the unregulated sector where there are few barriers to entry and a lower (regulatory) cost base. There are many areas of legal work that are not reserved legal activities under the Act, and that are therefore not restricted to only being carried out by authorised individuals or entities.

30. Services offered are likely to change as competition and new thinking drives innovation. For example, there are likely to be:
- more legal and non-legal services provided under one roof, sometimes to the same individual as a package of broader professional services or business advice
 - but also more unbundling of services – with consumers and different providers combining their efforts to deal with different parts of the same case
 - more on-line services and greater use of technology.
31. The increasing use of non-adversarial legal processes such as alternative dispute resolution (ADR) and the simplification and digitalisation of parts of the Court system and some State legal processes will see less need for and use of lawyers in certain areas.
32. There is likely to be increased focus on the international context, including:
- continued encouragement for the export of legal services and legal education and a continued growth in London as the premier centre for dispute resolution
 - foreign providers and investors increasing their activities in the UK
 - other jurisdictions developing their own liberalisation agendas, informed by the precedent set by the Act
 - more providers operating across jurisdictions or providing different services from different jurisdictions
 - continuing flows of students and lawyers, especially in the early years of their careers, into the UK.
33. For consumers and regulators of legal services, these changes will bring both opportunities and challenges as set out in the following paragraphs.

Consumer impact

34. Consumers will have a greater choice of providers and service delivery channels. Confident and active consumers are likely to shop around, obtaining better value for money and accessing services more conveniently. There will be demand for intermediaries and comparison tools to help them do so.
35. Similarly, processes that make “doing it yourself” easier, along with unbundling²⁰ and digital service delivery will help many consumers resolve legal issues cheaply and conveniently.
36. The Legal Services Consumer Panel has argued in its *2020 report* that, while these developments should be mostly beneficial, there will be new types of “digital detriment”. These may include web monopolies, behavioural pricing (eg online prices that vary depending on data about which other websites have been visited and when) and greater scope for misuse of personal data.

²⁰ Unbundling is the separate purchasing of components of legal services from different providers, rather than purchasing of the entire service from one provider.

37. Further, there is likely to be greater polarisation between those consumers that can benefit from the changes and those that cannot. Less confident and active consumers will not get the best deals. Moreover, as the Legal Services Consumer Panel has highlighted, many vulnerable consumers cannot access the internet and lack the capability to complete legal and administrative processes without significant levels of support.
38. On-going public spending austerity measures may change the legal needs of many low and no income individuals whilst also reducing the availability of publicly funded legal services. Some consumers are likely to face greater problems accessing affordable legal services as a result, for example, of changes to legal aid funding or litigation funding reforms. One consequence is likely to be a continued rise in the number of litigants in person, perhaps supported by unregulated service providers such as McKenzie friends.
39. While many different types of consumer will benefit from the growth of unregulated and mixed (ie regulated and unregulated) service offerings, not all will understand the potential decisions about protection, quality and price that they may be making. Some non-traditional providers are likely to bring a more sales-based culture to legal services. As shown in our will-writing investigation,²¹ this can bring benefits in reaching consumers not being reached by regulated providers. However, it can also bring risks, for example in the case of will-writing, we found higher instances of unfair sale tactics being reported, with no option for redress from the Legal Ombudsman.

Challenges for regulators

40. Regulators will require capacity and capability to be agile in addressing the changing risk environment. A core objective will be to remove regulatory barriers to competition, innovation and growth to secure the benefits of a more competitive and dynamic market while ensuring that there are appropriate consumer and public interest protections in place.
41. Challenges that the regulators will face include:
- striving to ensure adequate consumer protection when legal services providers underperform, behave badly or close down, while not unjustifiably restricting entry to or exit from the market
 - responding to the different risks and jurisdictional uncertainty with on-line services, a globalised market and mixed service offerings
 - potential confusion as unregulated services grow and the lines between regulated services, unregulated services and self-service further blur
 - securing consistency, managing conflicts and avoiding duplication as the number of MDPs grows and there is less distinction between different types of regulated provider and the services that they offer

²¹ http://www.legalservicesboard.org.uk/Projects/pdf/20130211_final_reports.pdf

- acting within the constraints of the existing regulatory framework – our analysis of its limitations is well documented and increasingly widely shared.²²

Wider implications

42. Our proposed strategic plan has implications for other parts of the legal services sector and other organisations.
43. We will continue to work closely with the Legal Services Consumer Panel and with a wide range of third sector bodies in the legal sector, for example those concerned with pro bono work and public legal education, as well as with 'special bodies' as defined in the Act.
44. We will also seek closer engagement with other professional services regulators and cross-economy consumer organisations.
45. We have worked closely with the judiciary, the Legal Aid Agency and its predecessor and the Crown Prosecution Service in recent years. We will seek to deepen these existing relationships and build new partnerships with other bodies in the civil and criminal justice arena. We will look to share our knowledge and experience with them and with other policy-makers, as, from the base of the regulatory objectives, we seek to develop fresh thinking for the sector as a whole.
46. Any expansion of redress to cover unregulated legal services would have obvious implications for the Legal Ombudsman and we would expect to work closely with the Office for Legal Complaints (OLC) and the Legal Ombudsman in the development of our mutual policy objectives in this area.
47. Regulated service providers can expect both more freedom to innovate and less unwarranted protection from market forces. They are likely to find themselves working alongside unregulated service providers more often.
48. Unregulated service providers should expect more interest in their services and business models, and should prepare to engage with each other, regulated service providers and the regulators themselves – including through the provision of data and other evidence – if they wish effectively to influence the direction of policy development.
49. The courts may continue to see an increase in cost-conscious litigants using non-traditional support services, for example unbundled services and McKenzie friends. There may also be an increase in individuals and businesses seeking to avoid the courts altogether and using mediators or other ADR mechanisms more generally.

²²

http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/A_blueprint_for_reforming_legal_services_regulation_final_09092013.pdf

Strategic priorities for 2015–18

50. We propose to structure our work for the 2015–18 period into work into three strands: two over-arching strategic themes and our performance, evaluation and oversight activities. This structure is driven by our overall vision for the legal services market, while also taking into account our statutory duties and the evolving market context for our work.
51. Our two strategic themes are necessarily broadly drawn. At this stage, whilst we have identified some key work packages to support them, we recognise the need to be flexible and to be prepared to re-prioritise and re-scope, should we need to respond to changes in circumstances over the next three years – while bearing in mind the importance of providing regulatory certainty where possible. Our two strategic themes will be:
- Theme A: breaking down regulatory barriers to competition, growth and innovation
 - Theme B: enabling need for legal services to be met more effectively.

Theme A: breaking down the regulatory barriers to competition, growth and innovation

52. Breaking down regulatory barriers is not an end in itself, but will facilitate competition, growth and innovation, all of which will deliver benefits for consumers. Success in this area will:
- ensure that England and Wales maintains its position as the world’s leading legal hub and exporter of legal services
 - encourage new types of legal services, giving consumers more options for meeting their legal needs and small businesses the legal advice they need to grow.
53. To achieve these outcomes, we will seek:
- more choice for consumers and less unmet need
 - a greater range of business models in the sector, with increasingly diverse service provision and an increased ability for service providers to be agile and respond to changing patterns of demand
 - a smaller number of streamlined and simplified regulatory arrangements.
54. We are proposing this theme because:
- It supports all our regulatory objectives. There is a direct link to the regulatory objectives of improving access to justice, promoting competition and encouraging an independent, strong, diverse and effective legal profession. A healthy and vibrant legal services market also supports the rule of law, protects and promotes both the public interest and the interests of consumers, increases the public understanding of citizen’s legal rights and duties and promotes adherence to the professional principles set out in the Act.
 - Despite a statutory framework that involves multiple regulators, there is increasing market movement away from the traditional legal services boundaries defined by title

and the partnership or simple Chambers business models.²³ Consumers are increasingly demanding joined up legal and non-legal services based on, and tailored to, their varied needs, which means that regulation must not assume “one size fits all”.

- With the pace of change in the market, there is a need for regulators to ensure that regulation does not lag behind these developments and restrict innovation unnecessarily.
- Focusing on breaking down regulatory barriers to competition, growth and innovation will make an important contribution to the success of our work on enabling need for legal services to be met more effectively.

55. The proposed work packages under this theme include:

Reviewing and removing obligations

- Throughout this strategic plan period, we will undertake thematic reviews of requirements that appear to have the potential to restrict competition, growth or innovation. At the beginning of the strategic plan period, we may use ‘challenger’ events (in which potential new entrants are asked what barriers exist), alongside exploration of any barriers that hinder existing players in the market growing and innovating, and undertake analysis of unjustified inconsistencies in regulation to collect evidence on areas to prioritise for review. Where supported by the evidence, we may direct changes to regulatory arrangements in light of the outcome of these reviews if we consider that regulators are moving so slowly as to jeopardise the regulatory objectives. Following on from specific thematic reviews, we will consider the case for making recommendations regarding the reservation of additional activities – enabling the use of appropriate regulatory arrangements targeted at the risks identified – but only where this is supported by clear evidence of need (for example, documented rather than potential consumer detriment).
- We will identify duplication, inefficiencies and inconsistencies between regulators and propose solutions. These may include exploring options for regulators to jointly commission services such as ‘back office’ functions or encouraging creative approaches to delivery of regulatory arrangements, for example for compensation, investigation and enforcement. In doing so, we will consider all possible levers available to us where we see that action is required to better deliver the regulatory objectives or better regulation principles. In the first year of our strategic plan, we may start this work by looking at the variation in regulators’ work on dealing with firms in financial difficulty.

²³ Traditional boundaries and distinctions in the sector are blurring or even disappearing. Examples of this erosion of boundaries include (i) ABS – some of which are firms from outside the legal sector such as insurers offering legal services and some of which involve in-house expertise being offered direct to consumers; (ii) new legal services regulators from outside the legal sector ie ICAEW; (iii) barristers offering public access; (iv) solicitor advocates; and (v) firms consisting entirely of legal executives.

Reviewing the LSB's statutory decision making process

- In 2015/16, we will review our rule change and designation approval processes, with the aim of simplifying and speeding them up where possible, bearing in mind the fundamental need to gather the relevant information for each application to enable a prompt decision.
- We may develop a benchmark set of regulatory arrangements based on outcomes – and use this to help assess rule change applications against the statutory criteria.

Developing options for legislative change

- We will continue our collaborative work on legislative change with the regulators, which was initiated as a result of the July 2014 Ministerial summit, as well as taking forward our own initiatives in areas where consensus may be harder to achieve. In the first year of this strategic plan period, this work will encompass:
 - communicating and highlighting existing deregulatory achievements, explaining how these have been balanced with ensuring adequate consumer protection and setting out future plans
 - sharing knowledge and learning on specific initiatives to reform regulation and develop common proposals across regulators where possible
 - identifying and pushing for legislatively simple, but high impact changes to the Act to reduce regulatory burdens and streamline regulatory processes
 - developing, explaining and communicating options for a new legislative framework beyond the 2007 Act.

Theme B: enabling need for legal services to be met more effectively

56. Consumers should be able to meet their legal needs conveniently, affordably and effectively, with appropriate protections in place to prevent harm to them or the public interest.

57. The outcomes we will seek from this work include:

- improvements in the extent to which need for legal services is met, demonstrated through the available evidence (including the 'access to justice' indicators in our evaluation framework²⁴), including evidence showing better public understanding of legal services and the justice system
- showing that we have increased our – and the sector's – understanding of the legal services landscape, the consumer's journey through it and where our resources can be targeted to have the biggest impact
- securing appropriate protections for consumers and the public interest in a rapidly changing market.

²⁴ <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

58. We are proposing this theme because:

- It supports all our regulatory objectives. There is a direct link to the regulatory objectives of supporting the rule of law, improving access to justice, protecting and promoting the interests of consumers and protecting and promoting the public interest. Our work under this theme will also seek to promote competition as one way of increasing the extent to which the need for legal services can be met, which in turn contributes to the objectives of encouraging an independent, strong, diverse and effective legal profession and promoting adherence to the professional principles set out in the Act. Increasing public understanding of citizen's legal rights and duties will be part of our work under this theme aimed at helping consumers make informed choices.
- It reflects our desire to put consumers at the heart of what we do.
- Research shows that there is a big gap between legal need and the use of legal services:
 - Half of the public will have a legal problem over three years:
 - only 20% of those will use a lawyer to solve that problem
 - 35% will not seek any advice
 - 13% will do nothing.²⁵
 - Nearly 40% of small business will have a legal problem in a 12 month period, but only 11% of them will seek advice from a lawyer.²⁶

59. Further, in recent years there has been a rolling back of legal aid – there is less money for legal aid and it will fund fewer things. These changes significantly alter the landscape in which we must consider how need for legal services can be met.

60. We expect the insight and expertise of the Legal Services Consumer Panel to be particularly important to our work in this area.

61. This strategic theme is closely related to the concept of access to justice. We recognise there are differences of opinion across the legal sector, academia and among consumer stakeholder groups about what this means. An important element of access to justice is undoubtedly access to the courts and the formal legal process of the justice system. But there are wider concepts of access to justice of special relevance to this strategic theme. In particular, the LSB's discussion paper from 2012 *How can we measure access to justice for individual consumers?*²⁷ defined access to justice as encompassing a gateway to legal services delivered through any channel, not just face-to-face legal services.

62. Consumers can choose to meet their legal needs through the use of either regulated or unregulated legal services or some combination of both. And, as the Legal Services Consumer Panel has explained in its *2020 report*, there is also likely to be increasing "self-provision" of some elements of legal services in future. It is therefore clear to us

²⁵ BDRC continental (June 2012), *Legal Services Benchmarking*, <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

²⁶ Pleasence and Balmer (April 2013), *In need of advice? Findings of a small business legal needs benchmarking survey*, <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf>

²⁷ <https://research.legalservicesboard.org.uk/wp-content/media/Evaluation-measuring-A2J-11-09-12-Discussion-paper-FINAL-FORMATED.pdf>

that, under the heading of “enabling need for legal services to be met more effectively”, we must understand and take into account regulated services, unregulated services and the extent of self-provision. We are clear that it is not part of our purpose to “legalise” every possible life or business problem: consumers and firms may very well choose to tackle matters differently or even ignore them. But those decisions need be informed by a sense of all the options available to them, including a breadth of different and accessible legal services.

63. Affordability is one, but by no means the only, necessary condition to enable need for legal services to be met more effectively. Affordability is not a straightforward matter of the price of legal services nor the ability to access legal aid. It is also about the trade-offs consumers are prepared, or even forced, to make when making decisions about spending their money.

64. We also consider whether there are other barriers to meeting need for legal services as part of this strategic theme, such as consumers being daunted by complexity, being over-awed or scared by the system or other barriers that may particularly affect vulnerable consumers. We will take into account and work alongside other initiatives in the sector²⁸ where we believe these initiatives (or parts of them) will contribute constructively to progress in this area.

65. The proposed work packages under this theme include:

Understanding consumer choices and decisions across the regulated and unregulated legal services sector

- We will need to undertake some initial work in the first year of this strategic plan period to build on our existing knowledge and evidence base and to fill the gaps in our understanding of how legal needs are met in the legal services market, and how consumers navigate through the market.
- Additional research is likely to be required. We will aim to build on and develop what the LSB, the other legal services regulators and other organisations (eg UKRN) have already done in this area. The objective will be to understand how consumers solve their legal problems, the choices and information available to them, recent trends in pricing and affordability and what the key barriers to meeting legal needs are.
- We will aim to understand variations in how – and the extent to which – legal needs are met across different types of consumer, areas of law and legal activity, enabling us to identify priority areas for further LSB activity.

Understanding and helping to improve affordability

- Building on our understanding of consumers’ journeys through the legal services landscape, we will explore ways in which legal services can be delivered more efficiently, at lower price while retaining appropriate quality safeguards. We will start

²⁸ For example, in September 2014, the Law Society launched an ‘Access to Justice’ campaign, with goals including raising public awareness of the help available and supporting solicitors in making their products and services more accessible.

this work in the first year of this strategic plan period by developing an understanding of what 'affordability' means for different types of consumer in the legal services market.

- Our work may include identifying and evaluating innovative developments in the market to lower costs.
- We will consider ways to reduce the risk that regulation unnecessarily increases the costs of delivering services, whether directly or indirectly.

Supporting increased accessibility of legal services

- We will consider how market regulation can incentivise the provision of simple, less daunting legal services.
- We will begin this work in the first year of this strategic planning period by looking at innovations within and outside the legal sector that are aimed at making the consumer experience less complex, to determine their impact, with a view to subsequently spreading best practice and facilitating third party action to make the necessary changes in the legal sector.
- We will consider particular accessibility issues for vulnerable consumers as part of this work area, to ensure that they share in the benefits arising from regulatory reform and increased competition and innovation in the market.

Informed choices

- Our work in this area will aim to promote better availability of information for consumers (ranging from guidance for consumers to the transparency of specific parameters such as price and quality to inform particular purchasing decisions) so that consumers can more easily navigate and make decisions about legal services, as well as broader work on public legal education.
- In the first year of this strategic plan period, we will build on our existing work with the regulators to ensure they deliver on their existing commitments to publish data, and we will undertake research on the availability of quality and price information for consumers. We will also consider the roles of legal service providers, regulators and third parties (eg comparison websites) in providing the necessary information, and how to ensure that the provision of information works in the consumer interest.
- We will look at other professional and wider service industries to determine what lessons can be learnt.

Protecting consumers and the public interest

- In the first year of this strategic plan period, we will build our understanding of trading behaviour risk – when sales (and purchasing) behaviour can result in harm to consumers – and how any problems in the legal services market in this area (whether old risks arising from outdated business models and failure to adopt better ways of working and communicating or new risks generated by innovative business models and increased competition) can best be remedied, working with the Legal Services Consumer Panel and building where appropriate on existing solutions in

other sectors. We will aim to build closer links with consumer enforcement agencies as necessary, including in light of the proposed Consumer Rights Bill.

- We will consider whether and, if so, how section 163 of the Act (voluntary arrangements) might be used to ensure necessary safeguards are in place for consumers and the public interest (eg, ADR for all, accrediting of codes of practice, promoting or producing consumer guidance) whilst taking into account the implications of the proposed updated guidance on *Accountability for Regulator Impact* referenced in the Autumn Statement.
- We will explore the extent and effectiveness of frameworks for quality comparisons between legal service providers in the first year of the strategic plan period. We will subsequently seek, in light of the outcome of that work, to encourage and facilitate as necessary the extension of existing quality assurance schemes to the legal services sector and the development of new quality schemes for regulated and unregulated providers as appropriate.
- Building on our existing statutory guidance in both areas, we will promote and facilitate the development of a shared approach to education and training and diversity across the approved regulators. We will review progress and take action where necessary to maintain progress.
- We will, working with the Legal Ombudsman as appropriate, support the expansion of redress to cover unregulated legal services (without expanding the scope of regulation by adding to the list of reserved activities).
- We will aim to undertake wider thought leadership on consumer and public interest protection issues where change in how things are done or improvements in outcomes may contribute significantly to the achievement of our regulatory objectives.

Performance, evaluation and oversight

66. Both of our strategic themes are supported and informed by our performance, evaluation and oversight activities, which we are required to carry out in our role as the oversight regulator for legal services. These essential activities bring us into day-to-day contact with the regulators and others, and require us to work with them to understand the real-world challenges they face, and the demands of the market in which their regulated communities operate. The activities include:

- Our on-going statutory activities, including our statutory decision-making functions.
- The essential work we do to discharge our regulatory oversight function including our regulatory standards work. For example, during this strategic planning period, we see an increased need for regulators to develop their own strategic thinking about the future and to build their capacity to deal with new risks, including those arising from increased competition and new service channels such as digital delivery.
- Our cross-cutting research which is not carried out in the context of a specific project but that helps us to understand change in the sector and our own (and the approved regulators') impact. We will always remain open to collaboration with the widest range of partners in doing this work.

- Our work overseeing the OLC in its administration of the Legal Ombudsman. This includes regular review of the OLC's assessment of Legal Ombudsman key performance indicators, including their feedback to the regulators, the professions and consumers, and the organisation's ability to respond quickly to changes in the legal complaints environment. This will be especially important as the new claims management complaints jurisdiction commences – and as the implications of the implementation of the EU ADR Directive for the Legal Ombudsman and the LSB become clear.

Draft Business Plan for 2015/16

67. This draft Business Plan outlines the work the LSB intends to undertake in year one of its three-year strategic planning period. It is organised around the three strands of our draft Strategic Plan for 2015–18:

- Theme A: breaking down regulatory barriers to competition, growth and innovation
- Theme B: enabling need for legal services to be met more effectively
- Performance, evaluation and oversight

68. The plan is underpinned by the regulatory objectives. As set out in *The Regulatory Objectives*²⁹, we balance these competing and complementary objectives on a case by case basis informed by the particular circumstances of the issue being addressed. In our judgement, that is the right way to approach them – they are never ranked or in any sort of hierarchy.

69. We also expect to seek the advice of the Legal Services Consumer Panel to inform our work. Our current expectation is that the advice request will address one or more of the following areas and we would welcome consultees' views on these or alternatives:

- what kind of information could regulators collect from firms to aid consumers?
- which areas of law should be priorities for the LSB's work on enabling the demand for legal services to be met?
- whether any individual or market risk factors that contribute towards making a consumer vulnerable should be priorities for regulators, for example, the individual risk factor of age?

Our equality objectives

70. Commitment to equality and diversity will continue to be thread throughout our work and we are maintaining our equality objectives broadly as they are into 2015/16.

Objective 1: Through our regulatory oversight role, encourage and work with the approved regulators to promote equality and diversity, including developing a diverse workforce across the legal sector at all levels by:

- assessing regulators' implementation plans to gather and evaluate diversity data
- reviewing and monitoring the progress made by regulators in delivering their implementation plans
- continuing to engage with approved regulators and others on how best to enhance a more diverse workforce across the legal sector.³⁰

²⁹ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

³⁰ <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>

Objective 2: Ensure our decisions take account of all relevant equality and diversity information by:

- factoring equalities and diversity elements into our research, whether on workforce or consumer issues
- undertaking equality analysis where appropriate when developing our programme and policies for consultation³¹
- engaging with diversity groups and organisations
- continuing to encourage the Legal Services Consumer Panel to develop a wide range of contacts and to incorporate diversity and equality into its consideration of consumer issues.

Objective 3: To ensure that the LSB's own practices and policies, including its internal staff and external stakeholder engagement focus on equality and diversity issues, are examples of the approach we promote to others. We will do this by:

- ensuring that our publications are available in a variety of formats on request
- monitoring and publishing the diversity profile of our staff and responding to the results (bearing in mind the size of the organisation)
- when tendering for services, work with firms who can demonstrate that they have a commitment to equality and diversity
- applying recruitment processes that are in line with our Equality Duty.

³¹ <https://research.legalservicesboard.org.uk/wp-content/media/Review-of-published-evidence-on-the-equality-of-pay-in-legal-services-Final.pdf>

Draft work programme 2015/16

Theme A: breaking down regulatory barriers to competition, growth and innovation

71. As the traditional boundaries between different legal professions and business models disappear, regulation must keep pace with market developments. Work in this theme is designed to ensure that unnecessary regulation that can stifle positive change is removed, thereby delivering the benefits of competition, growth and innovation.

72. Our work in this area will be informed by:

- our own intelligence gathering
- at least one 'challenger event' which we will arrange with potential and new entrants to the market, to gather evidence of their experience of statutory and regulatory barriers to entry. We may also consider a similar event for existing players in the market to provide more evidence if needed on barriers to growth and innovation
- the outcomes of our continuing work into the cost of regulation. The final report is due in June 2015 and will help us to see which regulatory obligations are costing the most in terms of compliance and are perceived to be delivering the least benefit
- analysis of the outcome of joint LSB/SRA research on innovation, which will help us understand what the barriers to innovation are and how these can be addressed.

73. Once work is complete, it may lead to proposals for reform or specific action to bring about change.

What we will do

Reviewing and removing regulatory obligations

Thematic reviews into aspects of regulation that appear to restrict unnecessarily sector competition, innovation and growth

74. We will complete the work we began in 2014/15 on reviewing regulatory restrictions that go beyond section 15 of the Act³² and encouraging regulators to review, and where necessary change, their rules around business ownership restrictions in response to the issues which we identified in our October 2014 report *Review of business ownership restrictions*.³³

75. We will also build on work from 2014/15 and analyse the impact of ending the different transitional periods provided in the Act³⁴ and make recommendations to do so if appropriate.

³² Section 15 of the Act sets out when an entity has to be authorised to provide reserved legal activities to the public or a section of the public.

³³ http://www.legalservicesboard.org.uk/Projects/thematic_review/Business_Ownership_Restrictions.htm

³⁴ The Act gives certain types of non-commercial legal service providers' special provision. They are entitled to carry out reserved legal activity without a licence for a 'transitional period'. Rights during the transitional period also apply to some commercial firms under Schedule 5 of the Act and the Administration of Justice Act 1985.

76. Our initial options for new reviews in 2015/16 are below but a final decision on which will come under scrutiny will be taken following a prioritisation exercise and informed by the outcome of this consultation. **We would welcome consultees' views on which we should prioritise and why, along with any additional suggestions:**

- **Review of barriers to firms moving between legal regulators** – in which we would consider whether the differences in regulatory requirements and any barriers to movement identified are consistent with the regulatory objectives and better regulation principles. This would include an analysis of the statutory and regulatory barriers to firms and individuals moving to a different regulator as well as the difference in consumer protection for professional indemnity insurance (PII) and compensation that exist between different regulators. Particular attention would also be given to requirements for run-off cover and successor practice rules. The work would also assess the benefits and risks of firms moving between legal regulators and consider how evidence might be gathered on the extent of such switching in practice.
- **Review of restrictions on choice of insurer** – in which we would analyse regulatory requirements that restrict individual and entity choice of insurer. Through targeted research, if appropriate, we would identify the potential positive or negative cost of such restrictions and the impact of removing them. In so doing so we would also consider whether the restrictions identified are consistent with general competition law, the regulatory objectives and better regulation principles.
- **Review approved regulators' treatment of under-spend of practising certificate fees** – in the context of permitted purposes under section 51 of the Act and reducing regulatory burdens (including costs) for practitioners, we would look at those regulators that have representative and regulatory functions and analyse whether the treatment of any under-spend of practising certificate fees (PCF) by the regulator is consistent with accounting best practice and the requirements of section 51. This work links to our work on the cost of regulation and will seek to identify the amounts of money involved since section 51 came into force and make recommendations for action if changes or improvements are necessary.

Thematic reviews into areas of regulatory inconsistency

77. We will also look at areas where we see duplication or inefficiencies that arise from differences in regulatory arrangements. In this respect, we will consider a thematic review about how regulators identify and deal with firms in financial difficulty. There has been a lot of focus on financial stability of firms regulated by the SRA, but other regulators do not appear to have had the same level of focus. However, SRA and LSB/Law Society research³⁵ has highlighted issues about regulatory barriers to exit, the cost of interventions and the risks to consumers. A review could evaluate the different approaches taken by regulators, including an assessment of whether the use of intervention powers is a proportionate response to a failing firm.

³⁵ <https://research.legalservicesboard.org.uk/news/latest-research-1/>

Reviewing the LSB's statutory decision making process

78. Whilst our processes for handling our statutory decision making responsibilities are well established, we will review them this year to ensure that they are delivered within the statutory timescales and that they do not unnecessarily impede the regulatory changes that the approved regulators wish to introduce. Our aim will be to achieve simplification and improved timeliness where possible, bearing in mind the fundamental need to gather the relevant information for each application to enable a prompt decision.
79. We may develop an "ideal" set of regulatory arrangements based on outcomes and use them as a benchmark to help in assessing rule change applications against the statutory criteria.

Developing options for legislative change

80. We will take forward work initiated following the July 2014 Ministerial summit and work in collaboration with the regulators, to develop options for legislative change. This work will include identification of specific key changes to the Act which would help to reduce regulatory burdens and streamline regulatory processes as well as developing, explaining and communicating options for a new legislative framework beyond the Act.
81. In partnership with the regulators, we will also identify, communicate and celebrate deregulatory achievements and show how these have been balanced with ensuring adequate consumer protection. We will also promote knowledge sharing and learning on specific initiatives (eg related to financial protection arrangements) with a view to developing common proposals across regulators where possible.

Theme B: enabling need for legal services to be met more effectively

82. The needs of consumers – including vulnerable consumers – must be met. Legal services must be affordable and accessible, consumers must be able to make informed choices to take advantage of the range of services that a more dynamic market will offer, and appropriate protections for consumers and the public interest must be secured. We want consumers to be able to meet their legal needs conveniently, affordably and effectively, and we want to improve the extent to which need for legal services is met. We want small businesses to be able to grow by being able to access the services they need at a price they can afford. We aim to improve our – and service providers’ – understanding of the consumer’s journey through the legal services landscape, and how we can target our activity in this area (whether by type of consumer, area of law or legal activity) to have the most beneficial effect for consumers.

What we will do

Understanding consumer choices and decisions across the regulated and unregulated legal services sector

83. We will undertake a number of activities to understand the different legal needs of different types of consumers including vulnerable consumers, how they choose to deal with their problems and the reasons why. We will seek to develop our understanding of different types of providers and the services on offer (regulated or not), the benefits and risks that go with them and how this complete picture changes over time. Specific activities will include working in partnership with stakeholders to carry out surveys of individual consumers and small businesses to ascertain how they respond to legal problems including whether or not they choose to seek advice and their choice of provider. We will also seek to increase our understanding of unregulated providers of legal services with further research, which may include reviewing and building on existing research and information.
84. We will complete our joint research with the Legal Services Consumer Panel into the impact of unbundled services on consumers at the beginning of 2015/16. We will analyse the findings and consider whether there are any implications for consumer choice that we should take forward.
85. Research held over from 2014/15 into the availability of ADR schemes will form part of our full market evaluation in 2015/16.

Understanding and helping to improve affordability

86. Taking into consideration the work being conducted by the UKRN we will develop an understanding of what ‘affordable’ legal services means for different types of consumer and different legal activities (whether regulated or unregulated). We will aim to identify what barriers (eg regulatory, cultural and behavioural) exist to making legal services more affordable. If necessary we will then make recommendations for change.

87. Building on discussions in 2014/15 about the regulation of special bodies/non-commercial bodies, we will also identify whether regulatory arrangements or cultural issues in regulators are impeding the development of the services that these bodies want to provide.

Supporting increased accessibility of legal services

88. We will explore innovations that have been developed to improve accessibility in other related sectors (eg health and financial services) through knowledge sharing with regulators in those sectors.

Helping consumers make informed choices

89. Work in this area will focus on providing consumers with the tools they need to make informed choices about how they obtain legal services so that they have a better understanding of what a legal problem is and when and how best to seek legal advice. We will continue to hold regulators to account for delivering their commitment to publish data on their regulated communities and will progress this work by considering whether more detailed datasets would be beneficial and what options there may be for monitoring how consumers use that data as it becomes available. We will undertake research into the availability of quality and price information for legal services. This will build on our understanding of how consumers solve problems and make choices, and our work on how consumers search for legal services providers and the associated search costs.

90. Engaging with consumers is a key part of delivering a successful outcomes-focused regulatory regime. We may, therefore, conduct a thematic review into regulators' approaches to consumer engagement. A review would specifically focus on how regulators engage with consumers and consumer bodies as a part of their policy development. Effective consumer engagement means that regulators talk and listen to consumer groups as part of their decision making process, helping those groups feel that they understand the decision and, to the extent possible, have participated in the decision-making process.

91. We will also seek to further our understanding of open data and markets and how this could develop in legal services and will look at the role of intermediaries and choice tools in helping consumers across both the regulated and unregulated market. This may include looking across other sectors to see what regulators have done to protect and empower consumers so they can stimulate competition and growth.

92. We will consider a thematic review into the effectiveness of the current requirements under section 112 of the Act about informing consumers of their right to complain and, if needed, carry out research and consult on and implement changes to the rules made by the LSB.

Protecting consumers and the public interest

93. We will build relationships with consumer-facing organisations and enforcement agencies, and with regulators in other sectors, and conduct research if appropriate, to increase our knowledge of trading behaviour risk and how this manifests itself currently

in the legal services sector, and how it might manifest itself differently in the future in light of market changes.

94. We will evaluate the effectiveness of frameworks for quality comparisons between legal service providers and, in light of the results of our evaluation, plan further work as necessary on quality assurance schemes in the legal services sector.
95. We will begin work – in partnership with the Legal Ombudsman as necessary – to explore the scope for expansion of redress to cover unregulated legal services without expanding the scope of regulation by adding to the list of reserved legal activities.
96. We will analyse the powers that section 163 of the Act (voluntary arrangements) gives us and the circumstances in which it might be appropriate to use those powers. We will consider whether it would be helpful to set out criteria for deciding whether to use the powers or not.
97. We will consider a thematic review of education and training during 2015/16. However, we recognise that it may be more appropriate to maintain our monitoring and intelligence gathering in this area and schedule any such thematic review for a later business plan period eg 2016/17, as we issued statutory guidance on education and training³⁶ relatively recently (March 2014) and several regulators are currently in the middle of significant programmes of change in this area.
98. We will continue proactively to monitor the regulators' work on diversity, and gather intelligence on and seek to promulgate developments in this area across the legal sector. We see a strong conceptual link between our work on diversity and our work on legal education and training, and we will seek to act as a thought leader on diversity as appropriate.

³⁶

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

Performance, evaluation and oversight

99. The Act gives us a range of responsibilities which we fulfil through our programme of performance, evaluation and oversight activities. These range from approving new designations and requests for changes to regulatory arrangements to monitoring the performance of approved regulators in delivering the requirements of the Act and evaluating the Act's impact. We also oversee the OLC's performance in administering the Legal Ombudsman scheme and approve the OLC's budget.

What are we seeking to achieve

100. Since 2012 we have been monitoring regulators' performance and their capacity to deliver the requirements of the Act via a self-assessment process. The LSB considers that best regulatory practice for legal services regulation consists of four regulatory standards³⁷ and believes that effective delivery of these standards will contribute to growth in the sector and the economy more generally.

101. Approving new designations and changes to regulatory arrangements is a key part of our oversight role and contributes to delivery of the regulatory objectives. Alongside this we also have a statutory responsibility to approve the PCF of each regulator, assess whether each regulator is acting independently from the representative bodies and approve the annual budget of the SDT. By approving new entrants and designations we will allow more firms to enter into or expand their services and thus improve choice for consumers. In hand with this, ensuring that changes to approved regulators' handbooks and rules continue to become more outcomes focused will provide the market with an appropriate framework in which they can innovate.

102. In exercising our statutory powers we also aim to support our other activities, for example work on PCF approval contributes to a better understanding of the cost of regulation, the other permitted purposes and other burdens on business.

103. Delivering our plan relies on a comprehensive programme of research to ensure we have a robust evidence base to inform our decision-making. Our research programme consists of work carried out in the context of a specific project and also cross-cutting pieces which will help us understand changes in the sector and the impact of regulatory developments.

104. We are also acutely aware of the vital importance of the Legal Ombudsman in the legal services market. It should contribute to giving consumers confidence to use regulated legal services in the knowledge that an independent, fair and effective route to redress is available where service falls short. Our role in ensuring the performance of the OLC as it administers the Legal Ombudsman scheme is therefore an active and ongoing responsibility.

³⁷ *Developing regulatory standards*, LSB, 2011, http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf

What we will do

Deliver our statutory activities, including our statutory decision-making functions

105. We will continue to consider applications from existing regulators and licensing authorities to extend their range of reserved legal activities or to change their regulatory arrangements. We will also undertake our regular annual review of the regulators' PCFs and their compliance with the LSB's internal governance rules. We will also scrutinise and approve the budget of the SDT.

Discharging our regulatory oversight function

106. During 2015/16, we intend to conduct a complete review of the regulatory standards of all the approved regulators. We will include the latest regulatory developments in our assessment, including the Deregulation Bill's growth duty and the LSB's quality standards. We will also include consideration of the regulators' capacity to identify and deal with the risks around innovation, eg new channels of service delivery including digital delivery, cross border delivery of legal services and the pace of change in the legal services market.

107. For the first time we will seek views from consumers, providers of legal services and those that represent them on the performance of the regulators. This will complement the information we gain from the self-assessment to be produced by the approved regulators. Our goal is not just to assess performance but share best practice and to help improve performance of the regulators so they can better deliver the regulatory objectives.

Cross-cutting research and evaluation

108. During 2015/16 we will continue to consult our Research Strategy Group (RSG) to identify gaps in evidence and develop our research plan for the year ahead to support the programme of work. The RSG is an essential resource that informs our understanding of the research plans of approved regulators and others so as to avoid duplication. Alongside primary research, we will continue to use our evaluation framework³⁸ to monitor the impacts of regulation on the legal services market and in 2015/16 will complete a full market evaluation.

109. We will also explore with the SRA, the possibility of creating an on-line independent legal services research hub with independent editorial control.

110. The amount of research we are able to carry out is always dependent on the available budget and so this year we will again be seeking joint funding to deliver some aspects of our research plan. We will also seek to build links with new partners, for example through the Civil Justice Research Forum, continue to share detailed research

³⁸ *Evaluation Framework*, LSB, 2011, http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf

plans at the Regulators Research Forum, and engage directly with the academic community through presentations to a variety of conferences.

111. Our initial research proposals for 2015/16 are:

Title	Description	Work supported
Large scale survey of individuals' legal needs (work commenced in 2014/15)	Survey of consumers who have had a legal problem over the 2012-2015 period, how they responded, and why they did so.	Theme B: enabling need for legal services to be met more effectively – understanding consumer choices
Availability of quality and price information	Analysis of accessibility of this information for legal services, and its impact on consumers' decisions to use legal services, and to choose between providers.	Theme B: enabling need for legal services to be met more effectively – helping consumers make informed choices
Research into unregulated providers of legal services	Research to develop our understanding of the unregulated legal sector, including the size, scope, and customers of this part of the legal sector.	Theme B: enabling need for legal services to be met more effectively – understanding consumer choices
Research into impacts of restricting the choice of insurer	Empirical research to support proposed thematic review	Theme A: breaking down the regulatory barriers to competition, growth and innovation – reviewing and removing obligations
Evaluation of the best methods to inform consumers of their rights	Building on previous research, this will apply what behavioural economics teaches us about the best way to inform consumers of their rights, supported by an analysis of complaints data trends.	Theme B: enabling need for legal services to be met more effectively – helping consumers make informed choices
Trading behaviour risks	Research to establish the current nature of 'bad' trading behaviours in the legal sector and other sectors with a view to transfer of learnings to the legal sector, and to identify future evidence needs.	Theme B: enabling need for legal services to be met more effectively – protecting consumers and the public interest
Cost of legal services regulation – exploring specific areas	Following on from the 2014/15 cost of regulation research, a quantitative investigation of the	Theme A: breaking down the regulatory barriers to competition, growth and innovation – reviewing and removing obligations

	cost of specific areas of regulation.	
Benefits of legal services regulation	A companion piece to the 2014/15 cost of regulation research work. This work will explore the benefits of specific areas of regulation so that they can be taken into account in future policy making.	Theme A: breaking down the regulatory barriers to competition, growth and innovation – reviewing and removing obligations
Legal services affordability study	Gathering evidence on what ‘affordability’ means for different groups of consumers and different types of legal activity.	Theme A: breaking down the regulatory barriers to competition, growth and innovation – understanding and helping to improve affordability
Evaluation: updating the 2012 baseline ³⁹	This research will assess progress towards the delivery of the outcomes associated with the regulatory objectives, over the past three years.	Performance, evaluation and oversight – cross-cutting research and evaluation

112. During 2015/16, and as we have done in previous years, we will revise our research plan to support new needs, or where other organisations take forward initiatives that might also answer our research questions so that carrying out separate research ourselves is no longer necessary.

Overseeing the Office for Legal Complaints

113. The Legal Ombudsman scheme is an essential channel to redress for consumers when things go wrong and is a valuable source of data that can contribute to the regulatory system. Through our oversight role, we aim to ensure that the service it delivers is efficient, delivered at the right cost and meets the needs of consumers. We also encourage effective joint working across the sector so that the information that the Legal Ombudsman holds can inform operational work, policy development and improvements to delivery of legal services.

114. In 2015/16, members of the LSB and OLC Board will continue to meet on a quarterly basis to review the way in which the OLC is overseeing performance and we expect to work closely with the OLC and Legal Ombudsman as they develop their new framework for measuring performance. Regular meetings of Audit and Risk Committee Chairs will also be scheduled to ensure that mutual risks are managed effectively and any risks that each organisation presents to the other are also understood and mitigated.

³⁹ *Market Impacts of the Legal Services Act 2007 – Baseline Report Final 2012 –*
<https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

115. In 2015/16, we will pay close attention to the performance of the Legal Ombudsman as it takes on jurisdiction for complaints about claims management companies (CMCs). We will also develop necessary protocols to take on the role of 'Competent Authority' in line with current proposals by the Department of Business, Innovation and Skills to implement the EU ADR Directive.

116. At this stage, we have not identified any areas on which we may require the OLC to report to us under section 120 of the Act, but will make such requests as and when the need arises. To date we have made two requests of this type and we expect the second report, into the circumstances around complaints where there has been a perceived lack of transparency about costs, in April 2015.

117. The LSB will also scrutinise and approve the OLC's budget and raise the necessary levy for OLC expenditure that falls within their legal services jurisdiction, noting that funding for the forthcoming CMC jurisdiction will be from MoJ.

Delivering our Business Plan

Budget

118. The table below shows our proposed budget for 2015/16, the first year of our three-year strategic plan. Based on our planning assumptions, our budget for the year will remain at the same level as in 2014/15.

119. The LSB's costs will be scrutinised as part of the investigation into the cost of regulation. We will take on board any findings from this work when setting our 2016/17 budget and beyond.

LSB budget for 2015/16

	Operational budget 2015/16 £000
Staff	2,422
Accommodation	424
Research and professional services	250
IT/facilities/finance	245
LSB Board	200
Legal Services Consumer Panel	204
Office costs	126
Depreciation	30
Governance and support services	132
Legal reference/support	108
TOTAL excl OLC Board	4,141
OLC Board	157
Total inc OLC Board	4,298

Budget assumptions

120. Based on the current staffing complement, approximately 86% of the planned running budget of the LSB will be made up of 'fixed' costs (Board, OLC Board, staffing, accommodation, depreciation and outsourced services). The remaining 14% will be accounted for by the research, professional services and office running costs needed to support the LSB's work programme for 2015/16.

121. Maintaining the budget at the same level as 2014/15 amounts to a decrease in real terms. The largest non-staffing item is for accommodation services and we are in a period of formal rent review with the landlord.

122. Our own costs will be scrutinised in the cost of regulation project being carried out over the remaining part of the 2014/15 and the 2015/16 financial year. We have concluded that it would be unwise to pre-empt the findings of this work but we are aware

that we will need to be prepared to take on board any findings from this work when setting our 2016/17 budget and beyond.

123. Costs will continue to be recouped through the statutory levy on approved regulators and any underspend will continue to be used to reduce the levy for subsequent years.

124. We have made a public commitment to driving efficiency savings and securing value for money in our work and to date we have consistently beaten these aspirations.

Risk and information management

125. We are committed to robust risk management across all of our activities whether regulatory or operational. Risk is managed at all levels in the organisation: within projects; across the work programme; at senior management, Audit and Risk Assurance Committee (ARC) and Board level through regular review. Corporate risk management is focused on the actual risks facing the LSB at any one moment that we have the power to influence, whilst ensuring that we understand the general environment of risk in which we operate.

126. One area where we work hard to avoid both regulatory and operational risk arising is information management. As a knowledge driven organisation we rely on good corporate knowledge; all of our work is underpinned by the evidence we gather, the information we hold and the decisions we make. This information must be managed well to ensure we make sound decisions and are able to fulfil our statutory obligations under both freedom of information and data protection legislation.

127. We will continue to comply with our statutory responsibilities under data protection and freedom of information legislation and ensure that our internal policies accurately reflect any changes in legislation. We will also meet both the letter and the spirit of the transparency agenda, seeking to meet requirements at the lowest cost whilst achieving the maximum impact.

Corporate services

128. Underpinning all of our regulatory activity is a slim corporate services function. We actively designed our organisation to rely so far as possible on low cost, out-sourced 'back-office' support and thus our telephony and facilities will be provided by the Office for Rail Regulation and our IT support is provided by Co-operative Systems. Our human resource advice is provided by a commercial provider. We have two in-house lawyers and access to a panel of general and specialist advisors, appointed through a competitive tender process which was refreshed in 2013/14. By adopting this approach, we have managed to keep in-house staffing requirements to a minimum and have secured appropriate and proportionate commercial services at competitive prices. We keep these arrangements under continuous review to ensure that they remain the most appropriate way of securing value for money and manage individual contracts robustly.

Finance process performance

129. In our annual report and accounts, we report our success at paying all undisputed invoices within 30 days. We have also undertaken to meet the 2008 Cabinet Office Guidance for Departments and we have set a target of paying undisputed invoices within ten days of receipt. We support the Cabinet Office's aspiration to support businesses through ensuring the public sector pays its bills swiftly.

Freedom of Information and Data Protection Act requests

130. We aim to acknowledge and to respond fully to freedom of information requests within 3 and 15 working days, respectively, on average. The statutory maximum for responding is 20 working days and our current average is seven working days.

131. We aim to acknowledge and to respond fully to subject access requests within respectively 3 and 20 working days on average. The statutory maximum for responding is 40 calendar days.

Statutory performance targets

	Change to regulatory arrangement	New approved regulator designation or additional reserved legal activities	Licensing authority designation	Cancellation of designation for approved regulators*	Cancellation of designation for licensing authorities*
We will publish applications on our website as long as we consider the applications to be complete	Within 2 days	Within 5 days**	Within 5 days**	Within 5 days**	Within 5 days**
We will make a decision or recommendation on the application	Within 28 days for simple applications *** Within 3 months for complex applications ***	Within 130 days^	Within 130 days^	Within 65 days	Within 65 days
Where appropriate, we will publish advice from mandatory consultees and any representations on that advice	Within 5 days	Within 5 days	Within 5 days	Within 5 days	Within 5 days
We will publish recommendations to the Lord Chancellor	Within 5 days	Within 5 days	Within 5 days	Within 5 days	Within 5 days
Where appropriate, we will publish our: decision; extension; warning; and refusal to consider; Notices on our website	Within 2 days	Within 2 days	Within 2 days	Within 2 days	Within 2 days

Note: All days are working days, except for decisions or recommendations on regulatory arrangements, which are in calendar days.

**This KPI only applies under sections 45(3) and 76(3) of the Legal Services Act 2007 (that is, where the approved regulator applies for cancellation, and therefore, is not as a result of an enforcement process)*

***The applications will be published on our website as long as they are complete. The LSB reserves the right during this period to request further information from the applicant.*

****Paragraph 26 of Part 3 of Schedule 4 to the Legal Services Act 2007 provides for a maximum decision period of 18 months from the date the applicant received a warning notice from the LSB.*

^Paragraph 15 of Part 2 of Schedule 4, and paragraph 13 to part 1 of Schedule 10 of the Legal Services Act 2007 provides for a maximum decision period of 16 months.

How to respond

132. We welcome views and comments on all aspects of our draft strategy and business plans by 5pm on **Friday 20 February 2015**.

133. We would prefer to receive responses electronically (in MS Word format), but hard copy responses by post or fax are also welcome.

134. Responses should be sent to:

Email: consultations@legalservicesboard.org.uk

Post:

Karen Afriyie
Legal Services Board
One Kemble Street
London
WC2B 4AN

Fax: 020 7271 0051

135. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

136. If you want to discuss any aspect of this consultation, or need advice on how to respond, please contact the LSB by telephone (020 7271 0050) or by one of the methods described above.

137. We will consider all responses to this consultation and will publish the final Strategic Plan for 2015–18 and Business Plan for 2015/16 in March 2015.

Complaints

138. Complaints or queries about the LSB's consultation process should be directed to Julie Myers, Consultation Co-ordinator, at the following address:

Julie Myers
Legal Services Board
One Kemble Street
London
WC2B 4AN

Or by e-mail to: consultations@legalservicesboard.org.uk