

The regulatory objectives

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Introduction

1. The Legal Services Act 2007 (the Act), sets out eight regulatory objectives. The Legal Services Board (LSB), approved regulators and the Office of Legal Complaints (OLC), “must, so far as is reasonably practical, act in a way – which is compatible with the regulatory objectives” and “most appropriate for meeting those objectives”.¹
2. The regulatory objectives are not defined within the Act. This paper explains the LSB’s view of what each objective means for us and how we will interpret them when exercising our functions. We recognise that approved regulators and the OLC will approach the regulatory objectives from different perspectives.
3. This paper replaces a previous paper on this subject which was published in 2010, shortly after the LSB was established. This new version has been informed by six years of oversight regulation.
4. Our view of the scope of each objective for our work is set out below, covering the following:
 - key aspects of each regulatory objective
 - key resources in measuring impact on each objective
 - the strength of the duty that each objective brings.
5. Whilst each objective is considered in order in this document, it is important to bear in mind that there is significant overlap between the objectives.
6. The regulatory objectives and our interpretation of their scope is relevant to everything that we do.
7. In September 2016 the LSB published a paper outlining a vision for legislative reform of the regulatory framework (see [here](#)). That paper includes consideration of how the regulatory objectives might be amended if reform is pursued. These views on future legislative reform do not affect our interpretation of the regulatory objectives as they stand within the existing legislative framework, which is the focus of this document.

Balancing the objectives

8. The regulatory objectives can overlap and conflict with each other and they are not set out in any hierarchy in the Act. Whilst this paper considers each objective in its own right, what will be required in practice is for the impact of a particular issue on each objective to be assessed and then balanced against the impact on other objectives.

¹ LSB – section 3(2), approved regulators – section 28(2), OLC – section 116(2)

9. When balancing the impact on different objectives, it may be relevant to consider the different levels of proactivity required by each objective. For example, some objectives have a protective focus, such as “supporting”, “protecting” or “maintaining”. Other objectives impose a more proactive duty, such as “improving”, “increasing” and “promoting”.
10. Practical considerations are also relevant to how we treat the objectives. For example, the duty to increase public understanding of the citizen’s legal rights and duties is a strong proactive one but is equally one which the LSB and regulators are not particularly well placed to directly promote. This means that in practice it may be viewed as a less pressing consideration than the other objectives.
11. There is one instance in which the Act does elevate the importance of a specific objective. In relation to rule change applications, Schedule 4 paragraph 25(3)(c) provides that an application can be refused if it is contrary to the public interest (without the need to balance this against the impact on other objectives).
12. All of the objectives are framed as active, ongoing obligations. The Act does not specify an end state that could be achieved to demonstrate that the objectives have been discharged.

The LSB’s functions

13. The Act is constructed so that the LSB promotes the regulatory objectives through the exercise of a limited set of statutory functions. We have very limited scope to promote the regulatory objectives where our statutory functions are not closely related to these objectives (as is the case in relation to the current objective concerning public understanding of citizens’ legal rights and duties, for example). The regulatory objectives are best understood as a series of considerations that we must keep in the front of our mind when carrying out our statutory functions, rather than goals that we can pursue independently of our functions.

RO1 - Protecting and promoting the public interest

14. The public interest refers to the interests of society as a whole. There are certain factors to consider which are always in the public interest, such as:

- public confidence in the justice system
- an effective legal system
- public confidence in the regulatory system
- the rule of law (see below).

15. There may also be other more specific considerations dependent upon the issue in question. The challenge with this objective is to understand the overall impact on society. If the overall impact is positive, it is possible for something to be in the public interest even if it is not in the interests of some members of the public.

16. As set out above, this regulatory objective has particular importance in relation to the LSB's consideration of applications to alter regulatory arrangements, as it is the only regulatory objective that receives specific mention within the refusal criteria (Schedule 4 para 25(3)(c)).

17. The duty here is to "protect" and "promote", which is a proactive obligation to seek to advance the public interest and prevent impacts that are not in the public interest.

RO2 - Supporting the constitutional principle of the rule of law

18. The rule of law provides, in essence, that no-one is above the law. There is not a single accepted definition of the rule of law within England and Wales, or internationally. However, there are common elements across the different definitions that are used.

19. The Bingham Centre for the Rule of Law has identified eight key components of the rule of law:

- i. The law must be accessible (see access to justice objective below) and so far as possible, intelligible, clear and predictable
- ii. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion
- iii. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation
- iv. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably
- v. The law must afford adequate protection of fundamental human rights
- vi. Means must be provided for resolving bona fide civil disputes which the parties themselves are unable to resolve
- vii. Adjudicative procedures provided by the state should be fair
- viii. The rule of law requires compliance by the state with its obligations in international law as in national law.

20. Whilst this is just one version, it gives a good sense of some essential components of the rule of law that could be taken into account when considering potential impacts.

21. The duty here is to “support” the rule of law, recognising that whilst the LSB should seek to help and contribute to the maintenance of the rule of law it is not best placed to lead on its promotion. This more protective duty reflects the fact that many key components of the rule of law are outside the LSB’s role.

22. As a public body the LSB is also duty bound to act within the rule of law in its own right and as such must not exceed the limits of its powers. We seek to operate in keeping with the principle of treating all individuals fairly.

RO3 – Improving access to justice

23. Access to justice means being able to exercise your legal rights. In many senses this is reliant on the rule of law, which provides the necessary framework to allow access to justice to be achieved. Access to justice should mean that when disagreements arise in society, “just” or fair outcomes are achieved to resolve them.
24. An important component of access to justice is that those who have a dispute are able to access assistance or other materials required to allow them to secure a fair outcome. This is not just about availability, it also requires that any advice, representation or other resources that are provided are of an appropriate quality.
25. The LSB believes that access should have a broad definition, to include services delivered by any method, such as face to face, telephone or internet. It could also be satisfied in some circumstances by availability of resources to assist consumers to address their own legal need without seeking advice, if this is how they wish to proceed. Finally, we do not define access only in terms of availability of and ability to use authorised persons but include access to other professions, advice bodies, the third sector and unregulated commercial providers.
26. The LSB regularly conducts legal needs surveys for individual consumers and small businesses, which examine the number of consumers who have a legal need and how they deal with them.² These have identified high levels of “unmet legal need”, which is where a consumer has a legal problem and cannot or does not access advice or resources that would assist them to exercise their rights. The level of unmet legal need provides an indication of the extent to which consumers have access to justice.
27. Consumers’ ability to meet their legal need will depend on their circumstances. In particular, vulnerable consumers may face greater challenges in achieving access to justice. There are therefore clear links between this objective and protecting and promoting the interests of consumers.
28. Consideration of access to justice will need to take into account public policy, including issues such as the administration, operation and funding of courts, tribunals and legal aid. We will assess the impact of our activities within this context, bearing in mind that such public policy decisions are outside our scope.
29. The duty here is to “improve”, which recognises that there is an ongoing obligation to seek advancement. It also recognises the changing needs of consumers over time, which will mean expectations in relation to access to justice will evolve.

² These can all be found on the research pages of our website (available [here](#)).

RO4 – Protecting and promoting the interests of consumers

30. This regulatory objective relates to promoting the interests of consumers as a whole, or specific groups of consumers. For the LSB, it does not create obligations in relation to individual consumers.
31. The Act suggests a broad definition of consumers in section 207(1)³ and we take this definition to include anyone who might have recourse to legal services because of a legal issue. We see consumers as including those that could benefit from legal services but, for whatever reason, are currently unaware of this. Our definition is therefore wider than simply “clients” of legal services providers.
32. Consumers will include individual persons, small or large businesses, or other entities with a legal problem. This could include in house legal teams that use external legal services. When considering the interests of consumers, it is important to consider this range of consumers. The market segmentation model that the LSB uses identifies the following types of consumers:
- i. individuals
 - ii. small businesses or those without in house legal teams
 - iii. larger businesses and those with legal capacity
 - iv. government.⁴
33. The potential for consumer detriment is seen as greater for those types of consumers near the top of the list, where the imbalance in knowledge and power is the greatest. As a result, it is the first two types of consumers that will need the greatest attention when it comes to protecting and promoting the interests of consumers.
34. The Legal Services Consumer Panel (LSCP) has developed a toolkit on using consumer principles to assess and understand the consumer interest in different circumstances. This sets out a framework based on seven principles, all important considerations when considering the interests of consumers:
- Can people **access** the goods and services they need or want? (see access to justice objective above)
 - Is there any **choice** of services?
 - Are the goods or services of an adequate **quality**?
 - Is **information** available, accurate and useful?
 - Are some or all consumers unfairly discriminated against (**fairness**)?

³ “consumers” means...persons – (a) who use, have used or are or may be contemplating using, services within subsection (2),

⁴ Oxera, *Oxera segmentation framework – simplification*, June 2012 (available [here](#))

- Do consumers have a say in how goods or services are provided (**representation**)?
- If things go wrong, is there a system of **redress** for putting them right?⁵

35. The LSCP has also developed a Guide to Consumer Vulnerability which provides guidance on assessing impact on vulnerable consumers.⁶ It is important to remember that consumer vulnerability is not static and can arise from either consumers' characteristics or circumstances.

36. Whilst these resources are important, engagement with consumers on specific issues (through research or consultation with consumer groups) is also important, to ensure that we do not substitute our own judgement for the views of consumers. This also recognises that in most cases there will not be a single consumer view which represents the views of all consumers.

37. The duty in relation to the interests of consumers is to "protect" and "promote". This requires strong, proactive action to ensure that the legal services market operates in the interests of consumers.

⁵ Legal Services Consumer Panel, *The consumer interest*, January 2014 (available [here](#)).

⁶ Legal Services Consumer Panel, *Recognising and responding to consumer vulnerability*, October 2014 (available [here](#)).

RO5 – Promoting competition in the provision of services

38. In a competitive legal services market providers should be free to respond to commercial pressures and opportunities, confident that regulation will only restrict them where it is necessary and consistent with the regulatory objectives and better regulation principles.⁷
39. A competitive market should encourage legal services providers to respond to consumer demand by providing new and innovative services. It should also create pressure to deliver value for money.
40. This objective is not concerned with keeping all existing providers in the market at all costs nor is it concerned with guaranteeing the commercial viability of particular business models. Some market exit, as well as entry, is part of a competitive market.
41. The objective is limited in its application by s.1(2), which provides that it relates to services “such as are provided by authorised persons (including services which do not involve the carrying out of activities which are reserved legal activities).” We take this to mean that it is directed at competition in relation to legal services and not just competition in relation to regulated providers.
42. The duty is to “promote” competition, which is a proactive and positive duty. Flowing from this, we believe that it should be for those who seek to maintain restrictions on competition to justify them rather than for those who argue for their removal to justify change.
43. As with the other objectives, the duty is an ongoing one and there is no defined end state.

⁷ Transparency, accountability, proportionality, consistency and targeting (as listed in s.3(3)(a) of the Act.

RO6 – Encouraging an independent, strong, diverse and effective legal profession

44. This regulatory objective is broad and covers key considerations concerning suppliers of legal services. There is overlap with other objectives here as there is a strong public and consumer interest in there being an independent and diverse legal profession available to assist those in need, to encourage public confidence and the perceived legitimacy of the profession. It is from this perspective that we approach this objective.
45. The focus on encouraging a diverse profession is central to this objective. We believe that the intention should be for the legal profession, across all its arms, to reflect the diversity of society. The extent to which the profession is seen by the public to be diverse is relevant as well.
46. The objective also encompasses independence. This relates to the importance of providers being independent from government and other influence, such as financial incentives, which could undermine their independence. A client should be confident that their provider will advise and act in their interests, subject only to their overriding duty to the court.
47. We believe that the references to a strong and effective profession flow from the profession being independent and diverse. For example, if the legal profession is drawn from across the diversity of the population then it should be strong as a result of using the broadest possible range of talent.
48. The duty is to “encourage”, which reflects the fact that this regulatory objective creates proactive obligations. It recognises that working with other organisations might be required.
49. The LSB is also subject to the public sector equality duty which requires us to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out our activities. These requirements overlap with this regulatory objective.

RO7 – Increasing public understanding of the citizen’s legal rights and duties

50. This regulatory objective relates to members of the public understanding when they have a legal need and what options they have for addressing this. We believe that this includes helping to empower consumers so that they find it easier and less daunting to deal with their legal problems. It is in relation to consumers, rather than the wider public, that the LSB is better placed to contribute.
51. This objective has clear crossover with other objectives, as empowered consumers can help to drive effective competition and are also better placed to protect their own interests and therefore secure access to justice.
52. The duty is to “increase” understanding, which suggests the need for positive, ongoing action. We recognise that there are many other players who have more resources and are perhaps better placed than the LSB to directly increase public understanding of legal rights and duties. However, the LSB can contribute to increased consumer understanding less directly. An example is through research activity (eg examining the existing levels of consumer knowledge and empowerment and measuring progress) and through taking part in wider discussions on how public legal education and information can be used to improve consumer knowledge. We can also exercise our functions so as to encourage approved regulators and legal services providers to make information available to consumers in clear and accessible formats. Beyond this, the scope of our statutory powers limit our practical ability to pursue this objective.

RO8 – Promoting and maintaining adherence (by authorised persons) to the professional principles

53. The professional principles are set out in s.1(3) of the Act. They are:

- a. that authorised persons should act with independence and integrity,
- b. that authorised persons should maintain proper standards of work,
- c. that authorised persons should act in the best interests of their clients,
- d. that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- e. that the affairs of clients should be kept confidential.

54. These principles cover certain core ethical requirements that should apply across all authorised persons. We expect the regulatory arrangements of all approved regulators to adequately cover these principles so as to ensure adherence by those that they regulate.

55. Whilst the focus is on authorised persons, our view is that the supervisory role that lawyers play in legal services means that these professional principles should ideally be encouraged through the whole workforce. For example, section 176 of the Act extends regulatory duties to employees and managers of authorised persons and bodies.

56. The requirement is to “promote” and “maintain adherence”, which covers actively building understanding and knowledge of these principles as well as preventing deterioration in levels of adherence.