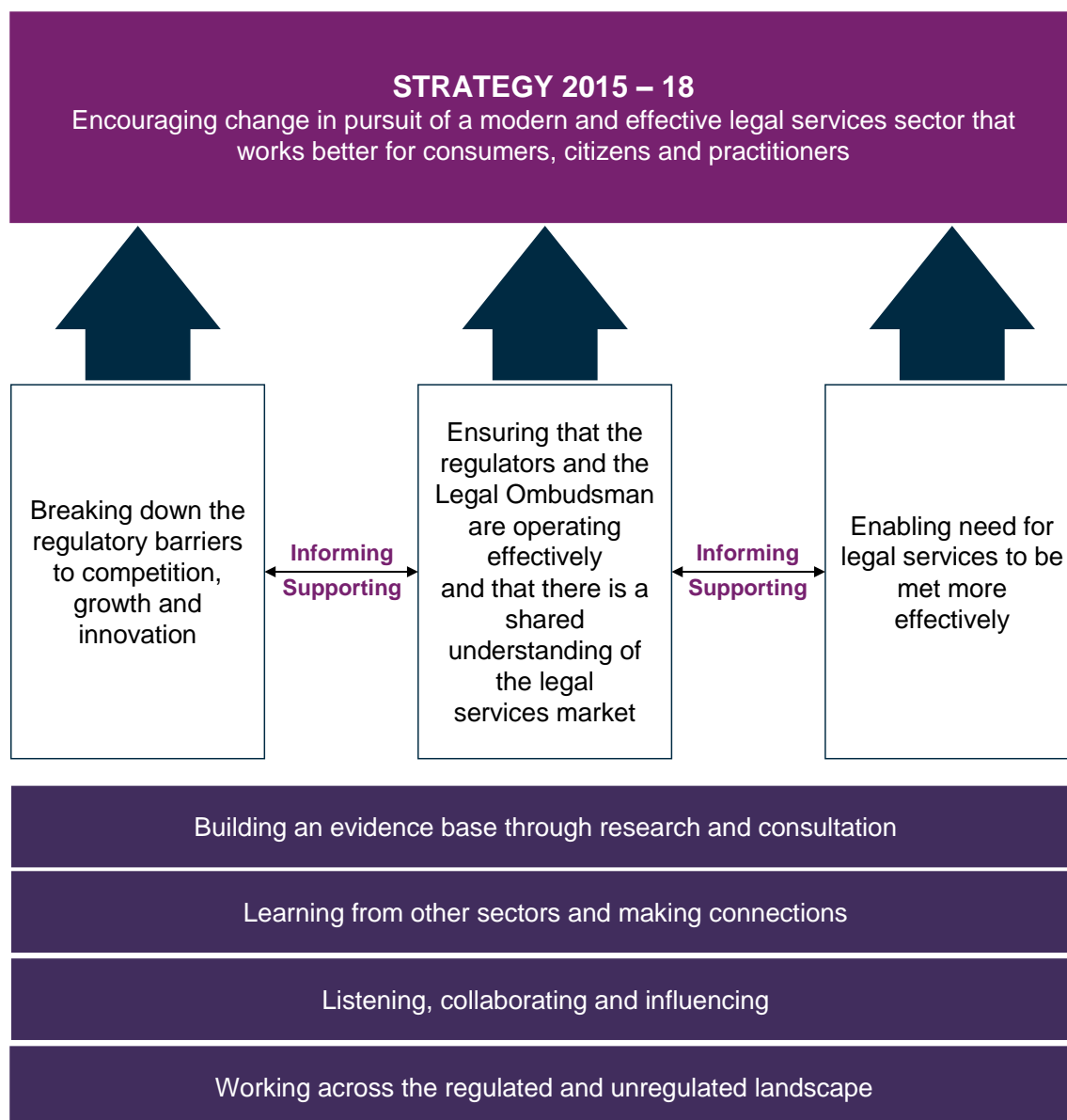


Strategy: 2015 – 18

Strategy 2015 – 18



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Foreword by the Chairman



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 rapid pace of change. There are new market conditions, business models, entrants and innovative services, creating a mix of challenges and opportunities. I also recognise that, despite the continued growth in the legal services sector overall, changes to the scope of legal aid and litigation reforms are having an impact on consumers and many providers.

What I have heard less about (with some notable exceptions) is how those active in the sector are planning to meet these challenges. The trends cannot be ignored: if anything the pace of change will accelerate over the next few years. Against this background, the affordability and access gap between the need for legal services and what is currently supplied has to be addressed.

Success must lie in our collective ability to navigate the legal service sector through this uncertainty and turbulence to create a better market for legal services – one that sees more people and small businesses obtain access to the legal services they need. The ability of firms and professionals to adapt to new market realities and innovate will be a critical part of this. It's our job to encourage competition, without undermining standards. In doing so, we must respond to the cross-economy drive to lighten the burden of regulation and to ensure regulation does not stifle innovation and growth.

I want the LSB to be ambitious and provide leadership as we face these challenges over the next three years. We will remain a small organisation. So we must focus on what matters and continue to increase our productivity and influence. Our strategy will focus on three things:

- Breaking down the regulatory barriers to competition, growth and innovation
- Enabling the need for legal services to be met more effectively
- Ensuring that the regulators and the Legal Ombudsman are operating effectively and that there is a shared understanding of the legal services market.

To inform our work we shall continue our unique and targeted research programme: collectively we are 'data light' in comparison with other sectors. We must also think holistically. 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. We cannot work in a way that is compatible with our regulatory objectives if we do not look at the legal sector as a whole. This is the environment in which consumers make their choices.

We are conscious of the need to set a direction of travel while also being able to respond flexibly as new priorities emerge. We will continue to consult on, and publish, detailed annual Business Plans and Budgets giving clear definition to the work we will undertake in each of the three years of this strategy. By contrast this three year strategy document purposefully sets out the big picture of what we want to achieve.

Finally, I want to use this opportunity to say thank you to all of those that took the time to engage with us after we published our draft strategy in December 2014. This feedback helped to sharpen our focus and appreciate wider points of view. I am keen that we deliver our strategy 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 all have an interest in ensuring that the legal services sector rises to the challenges it is facing. By doing so it will better meet the needs of consumers and the public without eroding standards. I believe our strategy will enable us fully to play our part in meeting this priority head on.

A handwritten signature in black ink, appearing to read 'Michael Pitt', with a stylized flourish extending to the right.

Sir Michael Pitt
Chairman

Our role

Who we are

1. The LSB is the independent body that **oversees the regulation of legal services** in England and Wales.

What we do

2. We **hold to account** regulators for the different branches of the legal profession.¹ We also **encourage change** in pursuit of a modern and effective legal services sector: one that better meets the needs of consumers, citizens, and practitioners.

Why our work matters

3. The vital role legal services play in underpinning our civil society, our economy and our democracy makes our work relevant to every citizen and every business. Our role has three important benefits:
 - Benefits for public confidence in legal services regulation – our proportionate oversight of the regulators helps to command public confidence that the regulation of lawyers is not compromised by representative interests and that the public interest (for example, in the rule of law) is protected.
 - Benefits for consumers – our market intelligence across all aspects of the legal services market enables us to shine a light on areas of unmet need and generate fresh thinking on new ways of tackling this and other issues in the sector.
 - Benefits for providers and the economy – by forcing the pace on deregulation and removing unnecessary barriers we can offer more scope for new providers to start up and for existing providers to grow and innovate, bringing choice, new services and better value for money to consumers.

What we want to achieve

4. Our vision is a 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 value for money.
 - Vibrant, diverse and professional legal service providers, who compete and innovate to offer services that collectively support wider public interest objectives including the rule of law and access to justice for all.
 - Prompt and effective redress for consumers when things go wrong.
 - A regulatory framework that commands the confidence of consumers, the public and all those with an interest in legal services.

¹ See Annex 1 for a list of the approved regulators.

How we work

5. We are guided by the regulatory objectives² agreed by Parliament in the Legal Services Act 2007 (the Act). Our work balances these objectives.
6. We take into account the government's better regulation principles and so aim to be transparent, accountable, proportionate, consistent and targeted in all our activities. We also have regard to our obligations outside the Legal Services Act 2007, for example, our statutory equality objectives and the Regulators' Code.

How we work in practice

- 1 We maintain an evidence-based, outcomes-focused approach, and steer regulators on where best to focus their efforts.
- 2 We work with regulators in a relationship of openness and trust. We:
 - drive improvements in regulatory performance, through robust analysis of data and intelligence, by ourselves and the regulators
 - encourage improvements 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 risk.
- 3 We sustain productive working relationships with people and organisations both within and outside the sector who can contribute constructively to our work.
- 4 We 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.
- 5 We will use our enforcement powers where proportionate to do so, but with care and precision, as demanded by the challenges of particular circumstances.
- 6 We will take into account the geographic diversity of legal needs across England and Wales, including emerging differences between English and Welsh law.
- 7 We will share knowledge with other oversight regulators, such as the Financial Reporting Council and the Professional Standards Authority for Health and Social Care.

7. We are funded by, but wholly independent of, the approved regulators of the legal profession. We will **freeze our budget** in cash terms for 2015/16. Our proposed annual budget equates to around £26³ per year for each authorised person, which is down 24% in cash terms from over £34 since 2009/10.

² See Annex 2 for a description of the regulatory objectives.

³ 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

Operating environment: risks and opportunities

The market as a whole continues to grow but not all providers are benefiting

8. As at 1 April 2014, the regulated legal profession comprised 138,243 solicitors, 15,279 barristers, 7,927 chartered legal executives and 5,404 individuals operating in other areas such as conveyancing.
9. In 2014, the total turnover of the legal sector was £30.2 billion, up 18% in five 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 2009 – 2013 period, net exports of legal services grew by 10%.⁴ Although the sector as a whole has grown, there are some parts of the sector that have seen reduced income, for example the Office for National Statistics estimates that total barrister revenue fell by 29% between 2010 and 2014.⁵

New business models are emerging

10. Traditional boundaries between the legal professions are eroding. Many of these changes are positive, and provide evidence of innovation and growth in the legal services market.
11. We expect the pace of market change to continue over the next three years. For regulated providers, this is likely to mean new market entrants, consolidation and exit. The development of alternative business structures as a model for delivery will continue although we anticipate that any expansion of the regulated sector, 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, therefore, can be carried out by unauthorised persons or entities.
12. 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 sales-based culture to legal services. As shown in our will-writing investigation,⁶ this can bring benefits in reaching consumers not being reached by regulated providers. However, it can also bring risks; 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.

The 'access deficit' remains a major challenge

13. These changes have the potential to help tackle unmet legal need. Our research shows that, over a three year period, about half of individual citizens had at least one legal problem, but one in three did not get the legal help that they needed.⁷ Our research also

⁴ Data available at <http://www.thecityuk.com/research/our-work/reports-list/legal-services-2015/>

⁵ Data available at <http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/published-ad-hoc-data/econ/february-2015/index.html>

⁶ LSB (Feb 2013), *Sections 24 and 26 investigations: will-writing, estate administration and probate activities* http://www.legalservicesboard.org.uk/Projects/pdf/20130211_final_reports.pdf

⁷ BDRc continental (June 2012), *Legal Services Benchmarking*, <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

shows that about half of SMEs see law as very important for doing business, but less than a fifth get legal advice when they have a problem.⁸ This is a massive lost opportunity for consumers and providers.

Technology and (un)bundling are offering greater choice

14. For all providers, competition and new thinking are expected to drive innovation in service delivery. Greater use of technology and more online service delivery are widely predicted. Providers will be considering how to bundle or unbundle services to better meet consumer demand. Bundling may take the form of 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. Unbundling may take the form of consumers doing parts of the work themselves or and different providers combining their efforts.
15. For consumers and regulators of legal services, these changes will bring both opportunities and challenges. On the positive side, 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. Similarly, processes that make “doing it yourself” easier, along with unbundling and digital service delivery will help many consumers resolve legal issues in a more cost-effective and convenient way.
16. Less positively, and as highlighted by the Legal Services Consumer Panel in its 2020 report,⁹ new risks for consumers with legal needs may emerge including web monopolies, behavioural pricing (for example, online prices that vary depending on data about which other websites have been visited and when) and greater scope for misuse of personal data. Further, there may well be greater polarisation between those consumers that can benefit from the changes and those that cannot. Less active consumers will not get the best deals. As the Legal Services Consumer Panel has also highlighted, many vulnerable consumers cannot access the internet and lack the capability to complete legal and administrative processes without significant levels of support.

Public spending is likely to remain constrained


17. Ongoing public spending austerity measures may change the legal needs of many low income individuals whilst also reducing the availability of publicly funded legal services. Some consumers may 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.

⁸ 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>

⁹ Legal Services Consumer Panel (Nov 2014), *2020 Legal Services, How regulators should prepare for the future* http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2020consumerchallenge.pdf

Our strategic priorities for 2015 – 18

18. Given the market challenges our strategy focuses on three *equally important* outcomes.

-  Breaking down the regulatory barriers to competition, growth and innovation
-  Enabling the need for legal services to be met more effectively
-  Ensuring that the regulators and the Legal Ombudsman are operating effectively and that there is a shared understanding of the legal services market

19. All three elements support our 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.

1 Breaking down the regulatory barriers to competition, growth and innovation

Why this is important

20. Breaking down regulatory barriers is not an end in itself, but will it 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 and diverse types of legal services, giving consumers more options for meeting their legal needs
- help reduce unnecessary burdens for practitioners.

21. Increasingly the market is moving away from traditional legal services boundaries defined by title and the partnership or simple Chambers business models.¹⁰ Consumers are increasingly demanding joined up legal and non-legal services based on, and tailored to, their varied needs, which means that service delivery and regulation must not assume "one size fits all".

22. 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.

Indicators of success by the end of 2018

23. If we are successful in this area we will see:

- 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.

Selected priorities

24. We propose to undertake work in these areas:

- reviewing and removing regulatory obligations through thematic reviews
- reviewing the LSB's statutory decision making process
- developing potential options for legislative change and the future vision for effective regulation.

For more details of what we plan to do in the next year, please see the LSB's Business Plan 2015/16.

¹⁰ Traditional boundaries and distinctions continue to blur. 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.

2 Enabling need for legal services to be met more effectively

Why this is important

25. Consumers need to 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. Research shows that there is a big gap between legal need and the use of legal services.

LSB research insights

- 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.¹¹
- Nearly 40% of small business will have a legal problem in a 12 month period, but less than one in five with a legal problem will seek advice from a regulated lawyer.¹²

26. Regulators must do all they can to help consumers navigate the changing landscape as they try to solve their legal problems, especially against the background of the reforms to legal aid, where there is less money for legal aid and it funds fewer things, and the outlook for the public spending environment over the next few years. This includes an appreciation of:

- the range of options available – including through the use of either regulated or unregulated legal services, self-provision or some combination of all three
- affordability – which is not just 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
- accessibility – including the extent to which consumers are daunted by complexity of the system and whether these or other barriers are especially acute for vulnerable consumers.

¹¹ BDRC continental (June 2012), *Legal Services Benchmarking*, <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

¹² 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>

Indicators of success by the end of 2018

27. If we are successful in this area we will see:

- improvements in the extent to which need for legal services is met, demonstrated through the available evidence (including if feasible the ‘access to justice’ indicators in our evaluation framework)¹³
- an increase in 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
- appropriate protections for consumers and the public interest secured in a rapidly changing market.

Selected priorities

28. We propose to undertake work in these areas:

- understanding consumer choices and decisions across the regulated and unregulated legal services sector
- understanding affordability and identifying ways to address it
- supporting increased accessibility of legal services, for example, by learning from other sectors.

For more details of what we plan to do in the next year, please see the LSB’s Business Plan 2015/16.

¹³ LSB (2012), *Market impacts of the Legal Services Act 2007 – Baseline Report*
<https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

3 Ensuring that the regulators and the Legal Ombudsman are operating effectively and that there is a shared understanding of the legal services market

Why is this important?

29. Effective regulation and complaints-resolution are intrinsic to consumer and public interests, to the continuing health of the legal services professions and to the economy. Overseeing standards of regulatory and complaint-resolution performance is among our most visible and demanding responsibilities. It is our duty to get these essential foundations right – as it is from them that confidence in the legal sector flows.
30. Our ongoing statutory activities, including our decision-making functions, require us to work with all of the organisations with whom we have a statutory relationship to understand the real-world challenges they face, and the demands of their regulated communities. In the case of bodies whose budgets or practising certificate fees we approve, we also need to understand their performance and improvement plans. For many regulators, we also need to remain vigilant about their independence from the professions they regulate, which is vital to public confidence. All regulators will require the capacity and capability to be agile in addressing the changing risk environment.
31. Our cross-cutting research helps us to understand change in the sector and our own (and the regulators’) impact. Amongst other things, it shines a light on the way people think about solving their legal problems and how they choose and pay for services.

Indicators of success by the end of 2018

32. If we are successful in this area we will see:
 - regulators, acting independently, developing their own strategic thinking and building their capacity to deal with new risks, including those arising from increased competition and new service channels such as digital delivery
 - regulators increasing their understanding of consumers and the impact of changes in the legal services market and our and the regulators’ impact
 - an improving contribution by the Legal Ombudsman to the legal profession, regulators and consumers.

Selected priorities

33. We propose to undertake work in these areas:
 - scrutinise the performance of the OLC to ensure it is meeting the needs of consumers with complaints, the legal profession and regulators
 - assess regulators’ performance against the regulatory standards
 - update our 2012 market evaluation and undertake other cross-cutting research.

For more details of what we plan to do in the next year, please see the LSB’s Business Plan 2015/16.

Annex 1 – Approved regulators

We are responsible for overseeing eleven approved regulators (three of which are also licensing authorities¹⁴), which between them regulate directly approximately 166,800 lawyers¹⁵ and 398 alternative business structures¹⁶ operating throughout the jurisdiction. The approved regulators are:

- 1 The Law Society, which through the Solicitors Regulation Authority, regulates around 138,243 practising solicitors and around 340 alternative business structures.
- 2 The General Council of the Bar, which through the Bar Standards Board, regulates around 15,279 practising barristers.
- 3 The Chartered Institute of Legal Executives, which through CILEx Regulation, regulates around 7,930 practising Fellows.
- 4 The Council for Licensed Conveyancers, the regulator of over 1,222 practising licensed conveyancers and 47 alternative business structures.
- 5 The Chartered Institute of Patent Attorneys, which through the Intellectual Property Regulation Board, regulates around 2,034 practising chartered patent attorneys.
- 6 The Institute of Trade Mark Attorneys, which through the Intellectual Property Regulation Board, regulates around 790 practising trade mark attorneys.
- 7 The Association of Costs Lawyers, which through the Costs Lawyer Standards Board, regulates around 560 practising costs lawyers.
- 8 The Master of the Faculties who regulates around 790 notaries.
- 9 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).

¹⁴ The Chartered Institute of Patent Attorneys and The Institute of Trade Mark Attorneys will be designated as licensing authorities from 1 January 2015

¹⁵ Figures are based on numbers provided to the LSB by the approved regulators as at 1 April 2014

¹⁶ Figures for alternative business structures correct as at 5 December 2014

Annex 2 – Our regulatory objectives and the professional principles

The Legal Services Act 2007 sets out a challenging set of regulatory objectives for the Legal Services Board, approved regulators and Office for Legal Complaints. These are to:

- 1 Protect and promote the public interest
- 2 Support the constitutional principle of the rule of law
- 3 Improve access to justice
- 4 Protect and promote the interests of consumers
- 5 Promote competition in the provision of legal services
- 6 Encourage an independent, strong, diverse and effective legal profession
- 7 Increase public understanding of the citizen's legal rights and duties
- 8 Promote and maintain adherence to the professional principles of:
 - 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