

# Draft

# Business Plan 2019/20

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A consultation on our proposed business plan for  
2019/20

This consultation will close on 27 February 2019

**This consultation paper will be of interest to:**

Approved regulators

Providers of legal services

Legal representative bodies

Legal advisory organisations

Other third sector organisations

NDPBs

Consumer groups

Law schools/universities

Legal academics

Members of the legal profession

Accountancy bodies

Potential new entrants to the ABS market

Think tanks

Government departments

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## Foreword by the Chair



In June I was delighted to be asked by the Lord Chancellor to serve as Chair of the LSB until the end of March 2023. It is an enormous privilege to serve in a sector which makes such a critical contribution to our society and economy in support of both the public and consumer interests.

During the coming business plan year we will mark the organisation's tenth anniversary. We can be proud of what has been achieved over the last decade, but there remain some difficult issues to address in securing our vision of legal services that everyone can access and trust. And changes in the world around us present new challenges.

### **Dr Helen Phillips, Chair**

Therefore, as well as reflecting on the successes and challenges of the past, I am keen to look forward to make sure that we tackle the big policy issues that affect us all. Our role as oversight regulator means we are uniquely well placed to bring people together to share our experience and evidence, to ask the difficult questions, debate and discuss the issues, and identify the right solutions.

We know that we will be more likely to achieve better outcomes for consumers, the public and the profession if we collaborate effectively with the wide spectrum of organisations who have a shared interest in furthering our regulatory objectives. This year we plan to engage with a wider range of bodies than before to benefit from fresh insights, and to work in partnership to help bring about change.

With this in mind, this document sets out three ambitious five-year policy objectives that are closely aligned to our existing three-year strategic objectives, and that we consider to be key markers of our success in delivering those strategic objectives. Subject to this consultation, the LSB will pursue these five-year policy objectives during my tenure as Chair. These are as follows:

Strategic objective	Five-year policy objective linked to this strategic objective
<b>Promoting the public interest through ensuring independent, effective and proportionate regulation</b>	The regulators have appropriate frameworks for continuing assurance of professional competence throughout the careers of the people they regulate
<b>Making it easier for all consumers to access the services they need and get redress</b>	The LSB is perceived as being at the forefront of enhancing public legal education
<b>Increasing innovation, growth and the diversity of services and providers</b>	Access to legal services is increased through the promotion of responsible technological innovation that carries public trust

The draft business plan identifies initial packages of work that we plan to deliver next year in relation to each of these policy objectives. I am keen to hear your views on whether we have identified the right issues to pursue as five-year policy objectives and how we might go about our work in these areas.

In pursuing these new policy objectives, we will not lose sight of other key workstreams that will contribute towards our strategic objectives. This includes increasing transparency in the market for consumers and finalising our revised internal governance rules and putting them into operation. Our statutory functions continue to underpin all our work; next year we will bed in our revised regulatory performance framework and consider applications for changes to regulatory arrangements, including those relating to the UK's exit from the EU.

Through this consultation process we want to hear your views on our draft business plan. What have we got right? What could be improved? Where are the gaps? And where do you see scope for collaboration?

## Background

1. The Legal Services Board (LSB) is the independent body responsible for overseeing the regulation of lawyers in England and Wales. We are independent of both government and the profession. We are funded by the legal profession. We hold to account the nine regulators for the different branches of the legal profession and the Office for Legal Complaints.
2. Our draft business plan for 2019/20, setting out our proposed priorities for the upcoming financial year, is annexed to this consultation paper.

### Strategic context for 2019/20

3. Our 2018-21 strategy, which we finalised in early 2018 following public consultation, includes the following strategic objectives:
  - (i) Promoting the public interest through ensuring independent, effective and proportionate regulation
  - (ii) Making it easier for all consumers to access the services they need and get redress
  - (iii) Increasing innovation, growth and the diversity of services and providers.
4. In preparing our Business Plan for 2019/20, we have considered whether any changes were needed to these three objectives in light of developments in our operating environment this last year. We considered:
  - **the market context**, including
    - The Legal Services Consumer Panel's (LSCP's) tracker survey shows that consumer satisfaction with legal services is at an all-time high
    - The LSB's latest research on technology and innovation shows that levels of innovation are unchanged overall compared to three years ago, but legal services regulation is seen as less of a constraint on innovation
    - The LSB's research on the legal needs of small businesses shows that problem incidence has fallen but engagement with legal services providers to help deal with these issues remains limited and perceptions about cost effectiveness of lawyers have not improved
    - The number of ABSs has broken through the 1,000 mark ten years after the Legal Services Act 2007 (the Act) came into force. Each of the 'big four' accountancy firms now has an ABS licence
    - There has been a wave of legal services firms listing on the London Stock Exchange

- **political developments**, including
  - At the time of writing, the negotiations relating to the UK's exit from the EU were ongoing and the impact on the future operating environment for the legal sector remained uncertain
  - There has been increased scrutiny of the impact of civil legal aid reforms and of the impact of financial pressures on the effective operation of the criminal justice system
  - There is an ongoing programme of significant investment in the modernisation of courts
  - The Commission on Justice in Wales has taken evidence amidst debate about a separate legal jurisdiction in Wales
  - There is a public debate on a range of diversity issues, including: gender pay gap reporting, including some law firms not including partner pay; the Lammy review of the treatment of, and outcomes, for Black, Asian and Minority Ethnic individuals in the criminal justice system; a focus on bullying and sexual harassment, including the appropriate use of non-disclosure agreements (NDAs), in the wake of the #MeToo movement
- **broader regulatory and market developments**, including
  - There is growing interest in the potentially transformative impact of technology across all parts of the sector, but also concern about the ethical issues. The Government's Consumer Green Paper and its Industrial Strategy both address the opportunities and challenges raised by digital markets
  - Good progress has been made by the legal services regulators to increase market transparency following the Competition and Market Authority's (CMA's) market study. In particular, new requirements for solicitors, licensed conveyancers and legal executives to publish price and other information will shortly come into force
  - There is an increased focus on wellbeing in the professions and greater attention on mental health issues in society more widely
  - Professor Stephen Mayson has started a fundamental review of the legal services regulatory framework in England and Wales. In addition, the Scottish Review of the Regulation of Legal Services has published its conclusions
  - There are ongoing programmes of significant regulatory reforms by the legal services regulators. Some key rule change decisions since April 2018 relate to laying the foundations for the new Solicitors Qualifying Examination (SQE), changes arising from the SRA's 'Looking to the Future' reform programme and changes to the BSB's standard of proof for disciplinary proceedings
  - Some encouraging signs of improvement in the performance of the Legal Ombudsman, although this still needs to be sustained so that it is securely achieving its key performance targets.

5. All these developments indicate that the LSB's current strategic objectives continue to be relevant and important. We consider that our new proposed five-year policy objectives (see paragraphs 8 to 9 below) align well to our existing strategic objectives. Therefore, we propose to leave our strategic objectives unchanged.

## **Market intelligence**

6. The LSB continues to seek to be an evidence-based regulator. We will use market intelligence to ensure that we have a robust evidence base to inform our work and to support our work as an agent for change. We will continue to commission external research as a key component of our market intelligence. However, our own primary research continues to be just one of many sources of evidence and market information that we will rely upon. We have recently created an online resource containing official statistics and other data on the legal services market which we hope will prove a valuable resource for the media and our stakeholders.

### **Q1 – Have we identified the most relevant developments in our external operating environment?**

## **Draft business plan 2019/20**

7. At Annex A we have included a draft Business Plan for 2019/20 which describes the work we intend to complete in the second year of our three-year strategic planning period.

## **The five-year policy objectives**

8. A key feature of our draft Business Plan this year is the introduction of proposed five-year policy objectives for the LSB. These objectives will run alongside the LSB's existing strategic objectives and are aligned with them, although work on the five-year objectives may extend beyond the current strategic planning period. The intention of the five-year policy objectives is to articulate key markers of success for delivering our strategic objectives. In the case of the proposed technology objective (see page 13 below), we have already started some work in this area as part of our 2018/19 business plan. Further work to lay the foundations for the delivery of each of the five-year objectives is included in our draft Business Plan, alongside other key workstreams that will contribute to our strategic objectives.
9. Further detail and background on each of the proposed five-year policy objectives and each workstream is included below.



## **Strategic Objective 1: Promoting the public interest through ensuring independent, effective and proportionate regulation**

### ***Five-year policy objective: The regulators have appropriate frameworks for continuing assurance of professional competence throughout the careers of the people they regulate***

Recent reforms to education and training have largely focused on entry to the profession, but regulators also need to ensure that the people they regulate remain competent throughout their careers. While consumers can usually observe 'service quality' (eg promptness, courtesy, administrative efficiency), often they are not able to assess the technical quality of work. The regulators use a range of approaches to monitor these different aspects of quality. We have noted that, unlike other professional services environments, eg healthcare, there is no regular formal assessment of practitioners during their careers beyond requirements on continuing professional development. Particularly in the wake of QASA no longer being pursued, we consider the time is right to look again at this issue from first principles.

Therefore, during 2019-20 we will carry out a thematic review of how regulators ensure that the people they regulate remain competent throughout their careers. As part of this work, we will revisit our previous work on quality assurance as well as looking for good practice elsewhere in the legal sector and in other professional services sectors.

### ***Other work packages under this strategic objective***

#### *Regulatory performance*

10. In December 2017 we published our revised regulatory performance framework. This introduces a more risk-based, proportionate and targeted approach, encompassing a programme of ongoing monitoring and allowing us to have an improved real-time understanding of the regulators' performance. The regulatory bodies provided us with their first performance management datasets (PMD) in April 2018 and we will have completed transitional assessments of the regulators and fully adopted the revised framework by the end of 2018.
11. Having established a new relationship management approach to support the operation of the new framework, we will continue to monitor the regulators' performance on an ongoing basis and the PMDs they will be providing to us. We will also follow up on their progress with actions identified from the transitional reviews, monitor their compliance with the new IGRs and review their progress towards the diversity outcomes we have set out, and on their commitments to increase market transparency for consumers.

12. We recognise the ongoing debate around the use of non-disclosure agreements (NDAs) in relation to allegations of harassment and other similar conduct, and the impact on public trust in the profession. We will consider the LSB's role, as an oversight regulator, in addressing these concerns.

#### *Internal Governance Rules review outcomes*

13. Our Internal Governance Rules (IGRs) set out what we expect of approved regulators in relation to the separation of their regulatory and representative functions. Approved regulators must ensure that (amongst other things) their regulatory functions have the resources reasonably required, that their regulatory functions are not prejudiced by their representative functions and that so far as reasonably practicable, regulatory decision making is independent from representative decision making.
14. In July 2018 we set out the high level decisions we made in response to our consultation on options for amending the IGRs to enhance regulatory independence. This set out that the new rules would take a principled and outcome-focused approach with the inclusion of more detailed obligations where the evidence showed these to be necessary. In November 2018 we published a consultation on a draft revised IGR and guidance, which will close on 21 January 2019.
15. During spring 2019 we will publish the final version of the new IGR and guidance and during the 2019/20 business plan year we will put the new framework into operation, including supporting the regulators through a transition period to ensure they all come into compliance with the new rules.

#### *Review of Practising Certificate Fee (PCF) approval process, including targeted review of non-regulatory permitted purposes*

16. It is some time since the LSB reviewed its approach, rules and guidance on its PCF approval process. From an analysis of applications assessed over the last two years, we believe there is scope to improve the transparency of applications that we receive and to clarify the LSB's purpose and expectations when assessing applications.
17. More specifically, we are concerned about the impact of non-regulatory permitted purposes on the level of the PCF. Section 51 of the Act sets out how the approved regulator may spend income derived from the PCF all authorised persons must pay to their regulator. The activities on which the approved regulator is allowed to spend income from the PCF are referred to in section 51 as permitted purposes. Where the approved regulator has both regulatory and representative functions, some of these activities may be carried out by the regulatory body to which the approved regulator has delegated its regulatory functions ('regulatory permitted purposes') and some of these activities may remain with the approved regulator ('non-regulatory permitted purposes'). Section 51(3) gives the LSB the power to make rules specifying the permitted purposes.

18. During 2019 we intend to review our rules, guidance and approach to assessing PCF applications. As part of this review, we plan to conduct a targeted review of expenditure on permitted purposes.

## **Strategic Objective 2: Making it easier for all consumers to access the services they need and get redress**

### ***Five-year policy objective: The LSB is perceived as being at the forefront of enhancing public legal education***

The LSB has a regulatory objective in section 1 of the Act of ‘increasing public understanding of the citizen’s legal rights and duties’. Knowledge about the legal system and legal rights and responsibilities makes members of the public more able to participate as active citizens in society and to recognise the fundamental value of the rule of law.

We want to see higher levels of legal capability in the whole population, and particularly in vulnerable groups disproportionately represented in the legal system. More individuals and small businesses should be able to recognise when their problem is a legal one and know how to get help – and this should ultimately lead to less ‘unintentional’ unmet legal need.

We know that there are a considerable number of organisations that have been active for many years in promoting PLE. We want to work in partnership with others on PLE to help improve access to justice and, through early intervention, to help prevent the legal issues experienced by individuals and small businesses spiralling into more serious problems through lack of confidence and capability. There may also be a role for the LSB in encouraging the frontline regulators to simplify their public-facing processes, and to develop more cross-regulator coherence in those processes, to build public confidence in navigating the sector.

With this in mind, in 2019/20 we will build our understanding of the range of organisations active in PLE and engage with possible partners. For example, we wish to understand if we can contribute to the support available for litigants in person. We will also use existing research and data, and where necessary originate our own research, to identify key gaps in public knowledge and to establish a baseline of legal capability to allow impact monitoring in future years.

### ***Other work packages under this strategic objective***

#### ***Increasing consumer transparency***

19. The CMA’s 2016 market study included a number of recommendations for the regulators to improve transparency for consumers about price, terms of service, quality and regulation. In October 2018 we published a report on the progress the regulators are making in addressing the CMA’s recommendations one year

following our initial assessment of their action plans. Overall, we felt regulators collectively had made substantial progress in delivering against the action plans. However, we also identified the need for further work to help consumers compare the quality of providers and to make progress on assessing the feasibility of a single digital register of providers. Where regulators are pursuing voluntary approaches we have set a clear expectation that they review the effectiveness of their guidance to ensure it delivers the desired outcomes and if this is not sufficient to move to introduce mandatory transparency requirements.

20. We will continue to engage with the regulators, including through our participation in the cross-regulator group working on these issues - the Remedies Programme Implementation Group - and to monitor their progress. We see work to improve transparency for consumers as one of the key underpinnings of the wider work we will be undertaking on public legal education (see above).

#### *Individual legal needs survey*

21. In 2012 and 2016 we undertook largescale surveys of consumers to understand how they responded to legal problems. This research has helped to identify and advance understanding of the scale of unmet legal need and some of the factors which contribute to it. During 2018/19 we started our third individual legal needs survey, which we are conducting in partnership with the Law Society. We expect to publish a full report on the survey findings in summer 2019.

22. In addition to informing our own policy, this survey has broader value for stakeholders and the market. For example, our 2016 survey was heavily referenced by the CMA in its market study. For this reason, we plan to lead significant follow up work to ensure that key findings are shared with and understood by other key players.

### **Strategic Objective 3: Increasing innovation, growth and the diversity of services and providers**

***Five-year policy objective: Access to legal services is increased through the promotion of responsible technological innovation that carries public trust***

We consider that new technologies, such as artificial intelligence and blockchain (a secure, verifiable and distributed database technology), have the potential to improve access to justice by enabling providers to offer better quality and cheaper services. However, research we published in November 2018 painted a mixed picture of the use of technology in legal services, and revealed concerns among providers about ethical issues. As the Centre for Data Ethics and Innovation highlights, by ensuring technology is used ethically, public trust will be promoted and this will help increase responsible innovation.

Our work in this area aims to help the frontline regulators identify the key risks to the public interest and consumer protection and develop the appropriate regulatory approaches. Building on the research above, we recently started a project to examine the regulatory implications of developments in technology, with a particular emphasis on ethical as well as consumer protection dimensions. Working in collaboration with the Centre for Ethics and Law at University College London, we are commissioning a collection of papers and providing opportunities for discussion and debate, to look at these issues from a variety of perspectives. By using our convening role to bring together experts from different fields, we hope to create a useful resource to help the regulators address these issues.

In addition to this policy initiative, we will promote wider use of regulatory sandboxes in the sector. Regulatory sandboxes allow providers a 'safe space' to develop innovative ideas that could test regulatory boundaries, for example by making use of waivers and not taking enforcement action for technical breaches of rules. The SRA has already developed an approach in this area, building on examples of similar schemes in financial services, civil aviation and elsewhere. During 2019/20 we will explore what similar arrangements other legal services regulators are currently using, or might use, to encourage providers to innovate.

#### ***Other work packages under this strategic objective***

##### *Responding to the regulatory consequences of EU exit*

23. We will work towards as smooth a transition as possible for the public, for consumers and for legal services providers as the UK leaves the European Union. With this work, we will contribute to maintaining the international standing and competitiveness of the legal sector.
24. We will continue to seek assurance that regulators have adequate plans for managing the impact in their areas of responsibility, that we maintain effective communication with the Ministry of Justice and the regulators and that we play

our part in the process of adapting regulatory arrangements in light of the final agreements that are made as the UK leaves the European Union.

#### *Market evaluation exercise*

25. Every three years we publish a report which assesses whether the market outcomes associated with the regulatory objectives in the Act are being achieved over the longer term, and where more progress needs to be made. Using an evaluation framework, the assessment pulls together data shared with us by approved regulators, analysis of survey data, published official data on trends in the justice system, and a range of other evidence.
26. We plan to publish our latest assessment before the end of 2019.

#### **Other ongoing work**

27. In addition to the above work under our 2018-21 strategic objectives, the business plan sets out our ongoing work to fulfil our statutory duties. During 2019/20 we expect to consider a significant number of individual applications for changes to regulatory arrangements. This is likely to include the following:
- applications from the SRA following its 2018 consultation on changes to its Professional Indemnity Insurance and Compensation Fund arrangements
  - the BSB's proposed market transparency rules.

#### **Our costs**

28. Since our inception we have consistently achieved a downward cost trajectory. This situation has been subject to constant review and, at the beginning of the 2018/19 financial year, we reached the minimum level of resourcing which we believe is necessary for the successful delivery of our work. In light of this, we propose to maintain this level of resourcing in our 2019/20 budget. We are also currently in the process of managing two budgetary contingencies which cannot yet be fully estimated owing to the early stage of the related projects. These relate to an unavoidable premises relocation before the end Q3 2019/20 and a project to refresh obsolete IT infrastructure. While we cannot yet be certain about the final expenditure, we will aim to manage the impact of these projects within current budgetary levels.
29. We are therefore proposing to maintain the 2019/20 budget at the 2018/19 level of £3.798m. We will require a capital budget for 2019/20 of £150k to refurbish new accommodation in the last quarter of 2019/20.

#### **Q2 – What are your views on our proposed five-year policy objectives?**

**Q3 – Do you have any comments on our proposed business plan and work for 2019/20? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?**

## Partnership working

30. In order to achieve our vision, we recognise the importance of effective partnership working with other players in the sector. This is particularly important in relation to our work as an agent for change, where working with others will help us to communicate evidence and key messages and stimulate change.
31. We hope that stakeholders will support us in delivering this business plan, building on the existing strengths of the sector and helping to make the market work better for consumers and the wider public. Through this consultation process, we invite stakeholders to identify elements of our business plan on which they see scope for further more detailed dialogue and/or collaboration with us. We particularly seek opportunities for joint funding of market intelligence work both with regulators and/or other organisations.

**Q4 – Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.**

## Equality Act Assessment

32. The LSB has given due consideration to its obligations under the Equality Act 2010<sup>1</sup>. Some of the activities proposed in this consultation (for example, our proposed work on ongoing competence and the regulatory implications of technology) may have an impact on individuals with protected characteristics to varying degrees and we will consider those impacts in line with our Public Sector Equality Duty as we go through the process of carrying out those activities. We would welcome any comments respondents may have on any equality issues they believe arise as a result of our proposed business plan.

**Q5: Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2019/20.**

## Next steps

33. This consultation closes on 27 February 2019. During the consultation, we will host a stakeholder engagement session to provide an opportunity for stakeholders to discuss our draft business plan and ask any further questions.
34. Once the consultation has closed, we will consider all feedback received and make any resulting amendments to our business plan. We will publish our response to the consultation, alongside our final business plan, by the end of March 2019.

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<sup>1</sup> [Public Sector Equality Duty](#): public authorities have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It also requires that public authorities have due regard to the need to: eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The LSB is a public authority listed in [Schedule 19](#) of the Equality Act 2010.

## Questions

**Q1 – Have we identified the most relevant developments in our external operating environment?**

**Q2 – What are your views on our proposed five-year policy objectives?**

**Q3 – Do you have any comments on our proposed business plan and work for 2019/20? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?**

**Q4 – Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.**

**Q5: Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2019/20.**

## How to respond

35. We welcome views and comments on all aspects for our draft Business Plan by 6pm on **27 February 2019**.

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

37. Responses should be sent to:

**Email:** [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

**Post:**

Ramandeep Bhatti  
Legal Services Board  
One Kemble Street  
London WC2B 4AN

38. 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.

39. 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.



## **Complaints**

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

Ian Wilson  
Legal Services Board  
One Kemble Street  
London WC2D 4AN

Or by e-mail to: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)