

Business Plan 2017/18

Consultation response document

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Acronyms used

ACCA – Association of Chartered Certified Accountants

BC – Bar Council

BSB – Bar Standards Board

CILEx – Chartered Institute of Legal Executives

CMA – Competition and Markets Authority

CLC – Council for Licensed Conveyancers

GIRES – Gender Identity Research and Education Society

ICAEW – Institute of Chartered Accountants in England and Wales

IGR – Internal Governance Rules

LeO – Legal Ombudsman

LSA – Legal Services Act 2007

LSB – Legal Services Board

LSCP – Legal Services Consumer Panel

NAO – National Audit Office

OLC – Office for Legal Complaints

SDT – Solicitors Disciplinary Tribunal

SIFA – Solicitors Independent Financial Advice

SME – Small and medium enterprises

SRA – Solicitors Regulation Authority

TLS – The Law Society

Introduction

1. On 6 December 2016, the Legal Services Board (the LSB) published a consultation on its draft Business Plan for 2017/18. A press release accompanied the publication and the document was sent by email to regulators and representative bodies, consumer and citizen groups, professional groups, other regulators, the judiciary and a variety of other interested parties. The consultation closed on 17 February 2017.
2. We held a workshop with stakeholders during the consultation period. The attendees who submitted written responses reflected the views given in the workshop. We have included in our consideration the views of those who attended but did not submit a written response. We are grateful for the contributions received.
3. This paper summarises key points from the responses received to the consultation, the LSB's response and the material changes made to the Business Plan since consultation.

The responses

4. We asked for comments on all aspects of our draft Business Plan and we received 12 responses to our consultation. The overall tenor of responses was supportive of the outcomes the LSB is looking to deliver for consumers, the public and the profession. There was a good degree of support for almost all aspects of the work proposed in the Plan.
5. All of the responses, along with high-level commentary, provided views on a number of projects across the strategic elements as well as opinions on the research proposals and the proposed budget for 2017/18.
6. All respondents have consented to their responses being made public and these have been published on our website alongside this consultation response document. Annex A lists the consultation respondents and the organisations represented at the workshop.
7. We are grateful for each organisation that took time to consider our proposals and to respond or to attend our workshop. All of the points made have been considered carefully and taken into account as we have finalised our Plan for 2017/18. Our Business Plan 2017/18 is now available on our website.
8. In considering the responses, we have taken into account that the number we received is small and that they are primarily from bodies who either have a role in representing the profession or who are subject to the LSB's oversight. Contributions from outside of this group were limited.

Summary of key changes made to the Plan

9. The responses we received to our consultation, alongside our own internal analysis of available resources, have informed the development of our final Plan. The significant changes are:
- the work we proposed to assess the effectiveness of our education and training guidance has been refocused. We will not review our guidance. This work will now concentrate on increasing our engagement with the wider education and training community to make sure that our approach to oversight continues to be fit for purpose and reflects best regulatory practice
 - we will not be seeking updated dual self-certificates of compliance with the Internal Governance Rules (IGR)¹ from the regulators in 2017/18
 - we will not be taking forward our proposed diversity project on movement through the professions
 - the results of the CMA market study have been taken into account and these have helped us refine our work on improving market transparency.

Summary of responses

10. In addition to responses on our Plan in general, we were pleased to receive submissions that addressed, in detail, aspects of the work we plan to do. These responses will be used to inform those areas of work as they develop and are not analysed here.
11. The following pages address the range of points raised by respondents and our response to them where needed. There are a few common themes, however, which we consider useful to address at the outset.

Common theme 1: The importance of impact studies

12. CILEx consider that quantifying the impact of the proposed work plan, both in terms of individual projects and as a collective work stream, would enable a more balanced assessment of what projects should and should not be taken forward at the current time. It suggested that there is a need for an appropriate assessment of impact of these developments, grounded in evidence and referenced.
13. BC and TLS also raised the issue of impact studies in relation to rule change applications. They consider that the LSB should produce, or require frontline regulators to produce, an impact assessment which would allow a thorough and objective analysis of the impact upon consumers, the administration of justice and the regulated community.

¹ Requiring certain approved regulators and their regulatory boards to self-certify compliance with the Internal Governance Rules (known as the dual self-certification process) is one of the approaches that the LSB has taken in the past to assure itself that there is appropriate independence of regulatory bodies from representative bodies.

Response

14. The LSB is required by the Act (amongst other things) to have regard to the better regulation principles² in carrying out its functions. Impact assessments can be a helpful tool in support of the better regulation principles and the LSB will consider the use of impact assessments for its own work, including our oversight work, where it is appropriate.

Common theme 2: The importance of taking into account the current political and economic climate

15. Several respondents considered that as the sector was clearly undergoing significant change, uncertainty for business should be reduced, not increased. Some expressed the view that additional work programmes that the LSB undertakes could potentially disrupt the legal sector further. Several respondents therefore asked that the LSB consider only taking forward those strands of work that are absolutely necessary at this time.

Response

16. The LSB is alive to the prevailing social, political and economic climate and this has informed the development of our work programme – all of which is designed to deliver improved outcomes for consumers, the wider public and the legal sector itself. As the CMA market study confirmed, the legal services market is not working as well as it should at present and preserving the status quo is not an option. The prevailing climate increases the need for change that improves outcomes. It is of course important that any change is considered, evaluated and communicated well so that those who need to respond to it are not destabilised and that, where possible, it enhances the sector's international reputation.

Common theme 3: Development of the Strategy

17. Several respondents gave opinions on the development of the LSB strategy for 2018-21. The majority of these respondents expressed an interest in engaging with the LSB during the strategy development phase.

Response

18. The LSB was pleased to receive these expressions of interest and the strategy development programme will include significant stakeholder involvement.

General comments on the draft Business Plan

19. TLS believes that the LSB is at risk of applying undue weight to the objective to promote competition in the provision of services and not sufficiently balancing this with the welfare of consumers, the public interest, rule of law and access to justice.
20. Several respondents expressed the opinion that performance, evaluation and oversight work is at the heart of the LSB's role and should therefore be its primary focus.

² These are the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed

21. LeO considers the LSB's plan should have explicit links to the better regulation principles and should use the NAO's *Performance Measurement by Regulators* as a way to measure performance.

Response

22. The LSB does not agree that it places undue weight on one objective. The concerns expressed by TLS would seem to imply that promotion of competition and consumer protection are mutually exclusive objectives. In all of our work, we must consider how best to promote the regulatory objectives. These include objectives to promote the interests of consumers and competition in the provision of services. We pay careful attention to each and weigh them in the balance, alongside all of the other regulatory objectives.
23. We welcome the support for our statutory role in relation to performance, evaluation and oversight which continues to be at the heart of our work programme, and is informed and enhanced by our wider programme.
24. We welcome LeO's reference to the NAO framework which we have discussed with NAO as part of our regulatory performance work. We will be considering how best to integrate relevant aspects of this framework (published in November 2016) into our work.

Work on breaking down regulatory barriers

Assessing effectiveness of the LSB's education and training guidance

25. SRA, TLS, BSB and BC believe that 2017/18 is too soon to assess the education and training guidance. Whilst respondents agreed that the work was important, they advised against carrying out the review while the regulatory bodies were part way through long-term programmes to deliver reform in line with the current guidance.
26. SRA suggested that if the intention is to assess the regulators' progress, the review could be replaced with some form of self-assessment by the regulators against the current guidance.
27. GIRES stated that education and training on gender identity should be provided to all legal practitioners and support staff and should cover the wide range of issues affecting transgender individuals.
28. SIFA suggested the LSB should require SRA to introduce a requirement that firms should be involved in determining the training which is required for their members as part of a structured approach to business planning and development.

Response

29. After further consideration, we agree with respondents that 2017/18 would not be the right time to review our guidance. The extent of changes proposed by regulators in this area does however reinforce the statutory role the LSB has in relation to the maintenance of standards in this area and so we will be increasing our stakeholder

outreach in 2017/18. This will help us to maintain and build a rich and broad understanding of developments across education and training so our approach to oversight continues to be fit for purpose and reflects best regulatory practice.

30. We note the recommendation from GIRES and SIFA and would encourage regulators to consider these as they develop their regulatory arrangements.

Supporting changes in legislation to remove barriers

31. TLS raised concerns about the LSB's focus in the Business Plan on supporting legislative change, arguing that there is no demand from consumers or the profession for such reforms. It argued that at present, uncertainty for business should be reduced, not increased.
32. ACCA, whilst generally supportive, expressed concern that the LSB's plan appears to be very reactive to proposals driven by others such as the CMA and the Ministry of Justice. This concern was echoed by CILEx who observed that the wording of the Business Plan appears to offer near-unconditional support for the Government's agenda.
33. LeO stated that it remains concerned that consumers do not lose access to redress. It urged the LSB to maintain a strong focus on ensuring appropriate checks and balances for any changes to regulation and advised that it work with all parties concerned to consider and mitigate potentially negative impacts for consumers.
34. CILEx Regulation queried whether the LSB would actively work to achieve a smaller number of streamlined regulatory arrangements or would rely on approved regulators to initiate change. ACCA felt that the plan should be more specific in respect to changes being sought.
35. BC cautioned against prioritising consistency across regulators over proportionality of regulation.

Response

36. The LSB, as an independent non-departmental public body, is politically neutral. In so far as we engage with the Government's agenda, it is from our statutory perspective as a regulator.
37. The LSB has been proactive in relation to legislative reform based on our unique experience of delivering the current legislative settlement, our understanding of the market and the problems we continue to see consumers and legal services providers facing. For example:
 - the LSB published its vision for legislative reform in September 2016, in which we sought change to the scope, focus and structure of legal services regulation; and
 - the MoJ's 2016 consultation on proposals to amend the Act in relation to the licensing of alternative business structures was a response to a specific request for these changes from all the frontline legal services regulators sent to

Ministers in June 2015³, following a process of discussion and consensus-building facilitated by the LSB.

38. We are therefore not reticent about our view that legislative change is needed. Although we will not initiate additional activity in this area in 2017/18, we will respond to any proposals that the Government brings forward, including any proposals regarding redress.
39. With regard to comments concerning the structure of regulatory arrangements, and their consistency or otherwise, we would note that consistency of outcome is a key concern for the LSB.

Innovation research

40. LeO suggested that this research could be extended to look at how the changing legal services landscape might impact redress, vulnerable consumers and access and delivery of the Ombudsman scheme.
41. CILEx recommended that the LSB should explicitly consider CILEx entities as a means for facilitating greater competition and innovation in the sector. It further recommended that research into innovation should ensure it has a focus on the consumer experience of innovative services.
42. BSB said that updating this research may be a little premature. It cited its own research which suggests that the market is not changing all that rapidly.

Response

43. The innovation research will take place three years following the previous research, which we consider is an appropriate interval to examine whether change has occurred across the market. Further, evidence of an absence of change, or slow change, can be just as useful to regulators as evidence highlighting where change has occurred.
44. We will consider other comments as we develop this work.

Tackling unmet legal need

General comments

45. BC argued that the issue of unmet legal need cannot be considered without an understanding of the relevant political and economic context. It urged the LSB to take into account the many other factors that can contribute to this problem such as cuts to legal aid and increased court fees. It felt that the focus should not be exclusively on lawyers' fees.

³ See:

http://www.legalservicesboard.org.uk/what_we_do/pdf/20150720_Joint_Ministerial_Submission_Covering_Letter.pdf and
http://www.legalservicesboard.org.uk/what_we_do/pdf/20150720_Proposals_For_Changes_To_The_Current_Legislative_Framework.pdf

46. CILEx Regulation requested greater clarity by the LSB for both consumers and other lawyers as to what activities unauthorised lawyers can undertake.

Response

47. We note BC's observations regarding the broad range of factors influencing the ability of consumers to meet their legal needs as our own research has confirmed. Our work seeks to understand the impact regulation can have on unmet legal need in the context of wider public policy decisions such as the amount of funding for legal aid and court fees.
48. With regard to the request for clarity from CILEx Regulation, we would note that this is a matter of law and the LSB does not provide statutory interpretation.

Increasing market transparency for consumers

49. SRA and BSB welcomed the LSB's work in this area.
50. TLS highlighted to the LSB that SRA are also undertaking research on this and advised against duplication of work and therefore costs.
51. CILEx advised the LSB to consider its role as being to support the frontline regulators as they implement the CMA's recommendations through the programme board. It considers it important that this work is owned by the frontline regulators and that the LSB act in a coordinating role where necessary.
52. CILEx Regulation supported the development of digital comparison tools (DCTs) and CILEx encouraged the LSB to consider what it could do to make sure that DCTs do not inappropriately restrict themselves to certain professions or areas of the market.

Response

53. We welcome the support for this work and note its resonance with the recommendations from the CMA's market study. We have adjusted our programme in this area in order to maximise the impact of work that regulators, and we, will need to do to respond to the CMA's recommendations.

Vulnerable consumers

54. SRA, BSB, BC, CLC, CILEx, GIREs and LeO all showed support for this research in their responses.
55. GIREs encouraged the LSB to include transgender people in this research and to focus on issues such as why trans individuals are reluctant to instruct solicitors.
56. CILEx suggested that this research should explicitly consider legal services that vulnerable groups are more likely to need.
57. Several respondents expressed an interest in working with the LSB to improve delivery of services to vulnerable consumers.

Response

58. We welcome the support for this work. The project started in 2016/17 and will conclude in the first quarter of 2017/18, therefore its scope – focusing on individuals with dementia, and individuals with mental health problems – is already determined.
59. We are grateful for offers from organisations to work with us to use our research findings to help improve service delivery to vulnerable consumers.

Prices of individual legal services

60. CILEx noted that this is a significant and valuable piece of work but cautioned that the drivers of price change must be properly understood and that the research should consider all the relevant drivers such as how economies of scale can effect smaller and medium sized providers.
61. BSB welcomed this research.

Response

62. We will consider the points made by CILEx as we develop this work.

The legal needs of small businesses

63. SRA, and CLC advised the LSB against repeating research too soon.
64. BSB and LeO welcomed the LSB research on the legal needs of SMEs with LeO expressing an interest in working with the LSB on research to better understand this segment of the market and the opportunities to extend redress to SMEs.

Response

65. We have considered carefully the value in updating this research at this time and concluded that it is appropriate. The fieldwork has begun and we have worked with LeO to add questions which explore opportunities to extend redress to SMEs.

Performance, evaluation and oversight

Our core deliverable: discharging our regulatory duties

66. There was general support for these core duties and support for the LSB to improve its processes.
67. TLS and BC recommended that the LSB should produce, or require frontline regulators to produce, an impact assessment which quantifies the cost and benefits of any proposed regulatory change. They argue that without any such impact assessment it is very challenging for the LSB and the public to determine whether there is robust evidence for a regulatory change or whether the change will reinforce or undermine the regulatory objectives. BC added that this would allow a thorough and objective analysis of the impact upon consumers, the administration of justice and the regulated community. TLS further argued that the LSB should also require that changes are reviewed by frontline regulators after implementation to assess their effectiveness against the original objectives, providing transparency and scrutiny of their decisions.

68. In regards to approving requests for changes to regulatory arrangements, SRA and BSB said that the LSB should limit its role to oversight by assuring itself that the regulators' assessment and evaluation processes are carried out well rather than repeating this process itself.
69. TLS argued that the LSB has a role in ensuring that deregulatory changes do not undermine consumer protections.

Response

70. Impact assessments are not required to be submitted with a rules change application but where they are completed they are a valuable part of the evidence that supports the application. We will consider how we can encourage regulators to improve their evidence base with impact assessments, including when they make rule change applications.

Holding the regulators to account for their performance

71. CILEx Regulation, SRA and BSB all welcomed this work with BSB stating that the framework had guided and assisted it with the acceleration of planned significant improvements and modernisation.
72. BSB advised the LSB to factor into this work its role in overseeing the approved regulators' responses to the CMA recommendations.
73. SIFA noted that part of the role of the LSB is to benefit providers of legal services through improved regulation and argued that solicitors would benefit from much greater regulatory oversight and direction because many firms are severely exposed to market competition by virtue of their current business models.

Response

74. We appreciate the support for this work which is central to our statutory remit.

Independence of regulation

75. BSB supported this work but reminded the LSB that BC continues to have a vital role which must be properly funded.
76. BC argued that the current arrangements to ensure regulatory independence are working well and there is no convincing evidence that the work of BSB has been hampered by the role of the BC and there is therefore no case for taking steps to make the BSB completely separate. It further argued that it does not make sense to look at the issue of structural separation of regulators and representative bodies without a wider, long-term review of the Legal Services Act 2007.
77. SRA supported this work and would like to see even more emphasis in the Business Plan, urging the LSB to allocate sufficient time and resource to this critical activity.
78. CILEx stated that maintaining the independence of frontline regulators should be monitored by the LSB, and intervention take place where necessary, but otherwise a significant work programme is not required at this time.

79. ACCA suggested that the LSB establish through research what 'independence of regulation' entails.
80. In relation to the dual self-certification work, SRA suggested that the LSB should commit to using its existing powers to deliver greater independence within the current legislation.
81. In relation to IGRs, CLC felt that it was not possible to identify from the detail given what resources the LSB intends to commit to this review, nor whether any provision is being made for any IGR of other enforcement activity.
82. CILEx Regulation encouraged the LSB to review its IGRs this year with a view to providing greater clarity and support for regulatory independence.
83. CLC supported a review of the IGRs or alternatively a review of the way in which the IGRs apply to ICAEW.

Response

84. After consideration of these responses, we have decided to proceed with a review of our IGRs in 2017/18. The specific comments regarding independence of regulators will be considered as that work proceeds. In light of this review, we will not be proceeding with a dual self-certification exercise against the current rules in 2017/18.
85. The application of the current IGRs to ICAEW is being considered as part of the current designation applications.

Diversity – movement through the professions

86. SRA, GIREs and CILEx supported this work although CILEx cautioned against the duplication of the significant efforts already underway by CILEx, CILEx Regulation and others.

Response

87. After considering the availability of resources to complete this work, and noting the work already underway by other organisations, we do not propose to proceed with this work in 2017/18 but will take a keen interest in the findings produced by others.

Transparency of regulators' costs

88. CILEx expressed appreciation for the LSB's cost of regulation survey and accepted the findings that providers consider the totality of regulation that they must comply with rather than the source of regulation. It still believes however that there would be merit in considering how to assess the cost implications on providers and practitioners of compliance with the rules that stem from the LSB and the frontline regulators specifically.

Response

89. The LSB undertook research on the cost of regulation in 2014 and 2015. This included a major survey of practitioners published in March 2015⁴ and an in-depth study to estimate the costs of complying with legal services regulation published in September 2015⁵. The LSB will continue to look for practical ways in which it could build on this initial evidence and reduce compliance costs via regulatory reform.

Reviewing delivery of enforcement activities

90. SRA, CILEx, CILEx Regulation and SDT were supportive of this work with SDT welcoming the opportunity to discuss the SDT's role in the disciplinary process.
91. CILEx recommended that the LSB should not limit the review to the larger regulators, arguing instead that all frontline regulators should be considered in the review.
92. SRA and BSB, whilst acknowledging the importance of this area, commented that an end to end review was disproportionate and not sufficiently targeted to areas of known concern. They suggested that the LSB identify benchmarks of success against which the regulators could measure themselves and develop their plans. They suggested this would be more efficient and cost effective than the proposal in the Business Plan.

Response

93. We will have regard to the comments provided as we scope this work.

Undertaking our statutory responsibilities in relation to OLC

94. TLS welcomed the LSB's role in this area stating that in its crucial oversight role, the LSB has done a good job providing challenge and support to LeO in respect of its operations.
95. CILEx did not consider that complaints handling raised any significant problems and so suggested that incrementally making gradual improvements to the system might be the best approach, allowing both the LSB and LeO to investigate how best those improvements could be made.
96. LeO suggested that the strategy for 2018-21 focus more on the specific ways in which the LSB's work will add value to the delivery of the Ombudsman scheme and how the discharge of the LSB's responsibilities will maximise the impact and benefit delivered by OLC.

Response

97. We welcome the responses here and agree that an important focus of future work will be to maximise the relationship between regulators and LeO and to improve the impact that the LeO and its data can have on the sector.

⁴http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2015/the_LSB_Cost_of_Regulation_Survey_Report.pdf

⁵ <https://research.legalservicesboard.org.uk/wp-content/media/In-depth-study-into-the-cost-of-regulation-version-2-for-publication.pdf>

Market information: research planned

General comments

98. The majority of respondents were supportive of the LSB's research, finding it valuable and informative.
99. A few of the respondents cautioned the LSB against repeating research too soon.
100. TLS highlighted the fact that two of the three suggested research proposals related in some way to competition. TLS said that the LSB should focus more of its time and resources on performance, evaluation and oversight work.

Response

101. As stated in paragraphs 22 and 23 of this response document, we pay careful attention to each of the regulatory objectives and weigh them in the balance. This applies as much to our research programme as it does to the rest of our work.

Delivering our plan: Budget

General comments

102. SRA, TLS, BSB, CILEx, and BC all commended the LSB on the downward trend of its budget.
103. CILEx Regulation and ACCA also commended the LSB on reductions made to the budget but raised concerns that these cuts may affect the LSB's ability to undertake its duties as an oversight regulator.
104. BC were supportive of the reduction in budget but queried whether the 19% spend on pensions (2015/16 accounts) could be reduced. They also suggested that spend reduction as calculated by head is not wholly attributable to a reduction in the LSB expenditure due in to an increase in the number of practitioners. It therefore questioned whether there is scope for greater reduction in expenditure.
105. SRA and BSB suggested that further savings could be made if the LSB changed the focus of its process for approval of changes to regulatory arrangements and TLS suggested savings by not undertaking work within the scope of the individual frontline regulators.
106. CILEx argued that the LSB's budget reduction is not indicative of a reduced cost of regulation in and of itself and recommended a fuller consideration of the impact of the LSB decisions, and an assessment of the cost of compliance with the LSB rules and those of frontline regulators.
107. CLC did not agree that the reduction in the budget for research could be adequately mitigated and it believes that the research budget should be increased at least to its previous level of £300,000 even if that means consequential reduction in other line items. GIRES asked for confirmation that the £100,000 for research would be ring-fenced.

108. LeO questioned why there was no capital budget set out in the LSB's business plan.

Response

109. The LSB makes a standard pension contribution of 10% for colleagues but it promotes the importance of colleagues saving for their own retirement. Many colleagues make their own pension contribution and as the LSB facilitates this through 'salary sacrifice' - this is added to the amount shown under employer pension payments.
110. The observation on the LSB budget per practitioner is well-made and we agree that these figures are merely indicative of direction of travel. However, the LSB has made year on year cost savings and continues to look for efficiencies.
111. We recognise the concern regarding the reduced research budget but are confident that it is sufficient to meet the LSB's own primary research needs for 2017/18 and urge those with concerns to consider how best they and their partners can help to contribute to the wider evidence base for the legal services sector.
112. With regard to capital budget, the LSB does not require a capital budget in 2017/18.

Annex A

Organisations represented at the Business Plan consultation workshop

Bar Council

Bar Standards Board

Chartered Institute of Legal Executives

CILEx Regulation

Council for Licensed Conveyancers

Gender Identity Research and Education Society

Institute of Chartered Accountants in England and Wales

Legal Ombudsman

Lincoln's Inn

Office of the Immigration Services Commissioner

Solicitors Disciplinary Tribunal

The Law Society

Consultation respondents

Association of Chartered Certified Accountants

Bar Council

Bar Standards Board

Chartered Institute of Legal Executives

CILEx Regulation

Council for Licensed Conveyancers

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Solicitors Independent Financial Advice

Solicitors Regulation Authority

The Law Society