

Michael Abiodun Olatokun response to the Legal Services Board consultation on the Draft Business Plan for 2020/2021

This response is written by [Michael Abiodun Olatokun](#), Research Fellow in Citizenship and Head of Public and Youth Engagement at the Bingham Centre for the Rule of Law. Michael is a former Deputy Chair of the Teaching Excellence Framework Subject Pilot Panel for Business and Law. Since 2017 he has served as a member of the Solicitor General's Public Legal Education (PLE) Committee.

Qs 1 and 2: Relevant developments in the external operating environment and key priorities for regulation.

The issues referenced in paragraph 4 of the consultation document are comprehensive in outlining contemporary challenges for the regulation of legal services. The following aspects of the contextual analysis are particularly prescient from my perspective:

- Capitalising on opportunities for advocacy in shaping the government's legal support plan,
- Ensuring that law schools, firms and students are prepared the SQE,
- Informing consumers of the basis on which legal technology solutions are offered to them,
- Sharing best practice between alternative business structures and more traditional legal providers,
- Clarifying the differences between the standard of service delivered by qualified lawyers and McKenzie friends providing unregulated legal services.

One recent development that I would emphasise, and one with which my organisation is very involved, is the package of reforms pursued by HMCTS affecting the delivery of courts and tribunals across England and Wales. The various reforms, when taken together, seek to move the adjudication of legal disputes increasingly online. LSB colleagues will be aware of Online Civil Money Claim and Digital Divorce, two initiatives for initiating small debt claims and the conclusion of marriages, which will alter the practice of contract and family law.

Increasing digitisation of such services will affect the behaviour of consumers and practitioners. The two initiatives referenced above will likely reduce demand for legal services in the medium term, as more litigants in person will successfully resolve these claims without legal assistance. Alternately if the public view the systems to be inaccessible, the online processes may instead create new opportunities for legal advisors to shepherd clients through the online systems. This is an area where the LSB can guide the considerations of both practitioners and civil servants.

LSB colleagues should also consider the wide range of challenges raised by civil society, academics and legal practitioners during the recent House of Commons Select Committee inquiry into access to justice. Consultees were concerned that the online systems would compromise procedural, substantive and transparency-related notions of justice. I wrote a submission response with colleagues that sought to check the ambition of HMCTS that the reforms will directly deliver a 'just, accessible and proportionate' system on the basis that many people will not engage with legal

processes for a host of reasons not related to the nature of the system itself. This response is summarised as a comment piece on our website.¹

Aside from the nature of the reform programme, behavioral factors are very important for determining how digitisation will affect consumers. People with low legal capability very often face clusters of other legal and non-legal problems, and as such it may be a rational choice to choose to resolve financial, health or other personal challenges before tackling a legal problem. Despite that rational choice, legal advice may help to alleviate some of their difficulties. Those that make an active choice not to engage with their legal problems might be described as 'latent consumers of legal services'.

The HMCTS reforms can be viewed as 'supply side' reforms that are likely to improve the outcomes and experiences of those who are 'current consumers of legal services' or those with high legal capability. For the latent consumers of legal services, 'demand side' reforms are needed to provide the final push necessary to take up legal advice. Such reforms include but are not limited to the provision of information, running face-to-face workshops, support for using digital justice services, teaching lessons in formal settings and giving advice through trusted intermediaries.

I am encouraged by the prominence given to PLE in the draft business plan and believe that public policy advocacy opportunities will arise in the coming months for the LSB, Bingham Centre and others in this space. Politicians have shown considerable interest in PLE over the last two years. Examples include:

- 19 July 2017: then-Solicitor General Robert Buckland QC MP launched the PLE Committee²
- 15 May 2018: North East Hampshire MP Ranil Jayawardena held a debate on PLE³
- 31 October 2018: Cheltenham MP Alex Chalk launched a vision statement for PLE in the UK⁴
- 31 October 2019: The House of Commons Justice Select Committee published a report on access to justice and court reform arguing that the government should introduce PLE to its legal support plan⁵

¹ 'Courts are becoming modern but may leave many behind'

<https://binghamcentre.biicl.org/comments/73/courts-are-becoming-modern-but-may-leave-many-behind>

² 'New panel launched to drive legal education' <https://www.gov.uk/government/news/new-panel-launched-to-drive-legal-education>

³ Public Legal Education- Hansard <https://hansard.parliament.uk/Commons/2018-05-15/debates/C71C9E06-36D0-4EDE-B732-F2645A73BE83/PublicLegalEducation>

⁴ Vision for Public Legal Education <https://www.gov.uk/government/news/our-vision-for-legal-education>

⁵ https://publications.parliament.uk/pa/cm201919/cmselect/cmjust/190/19005.htm#_idTextAnchor032

Q3 – What are your views on our current approach to market intelligence, and evidence more widely, and how would you like us to develop this function going forward?

I support the proposed approach to market intelligence, especially the aspect involving consultation with non-professional members of the public. This approach could ensure that regulation is informed more directly by the priorities of consumers. This model of consultation can create a sense of ownership amongst members of the beneficiary group and the outputs that result might be more likely to influence public understanding of the professions as a result.

I would also like to commend the LSB for commissioning research into the effectiveness of PLE in order to support the developing strategy and business plan. The first limb of the Solicitor General's PLE vision statement is ensuring that it is "supported by a robust evidence base, showing what the need is and what works best". The LSB has taken a lead in delivering this principle by conducting this work.

Q7 – 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.

I feel that I am sufficiently engaged with the LSB on a number of fronts in my areas of expertise. I sit with LSB colleagues on the Solicitor General's PLE Committee and will be part of an LSB panel during Justice Week 2020. I am currently working with LSB colleagues to review the effectiveness of PLE evaluation and look forward to further such collaborations in the future.

For more information on the Bingham Centre's work on PLE, visit our website:

<https://binghamcentre.biicl.org/categories/citizenship>.

Yours sincerely,
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