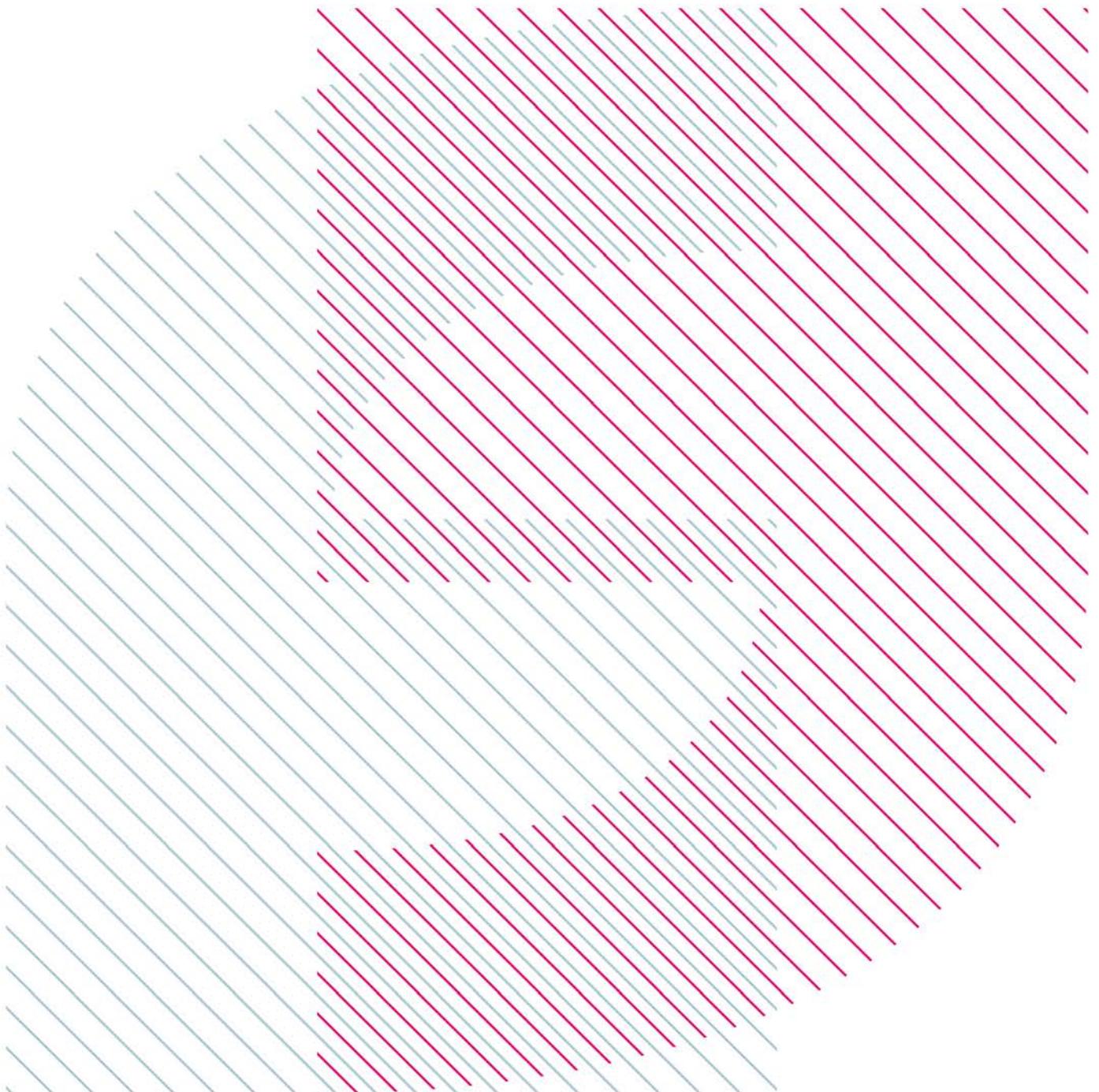




**Legal Services Board:
Draft Business Plan
2020/21**

Consultation response



Introduction

The Legal Ombudsman was established by the Legal Services Act (2007). Our role is two-fold: to resolve disputes between people who have received a legal service and their lawyer(s), and to share insight and learning with the profession, regulators and policymakers to allow the legal services sector to develop and improve.

We welcome the opportunity to respond to the Legal Services Board's (LSB) consultation on its draft business plan for 2020/21. Our interest in this consultation is based on the impact of the LSB's work on our own operations and our wider interest in the flourishing of a legal services sector which is accessible to ordinary people. Our own vision for the work we do centres on building trust and public confidence in legal services, and we see the LSB as an important contributor to that overall aim.

The business plan highlights the main regulatory issues in the legal services market at the moment, and particularly targets the use of technology and information for consumers, which we think is helpful. We will be especially interested to see the development of work around quality under several of the objectives, and look forward to opportunities to contribute to this where we can.

LSB Draft Business Plan 2020/21

Q.1 Have we identified the most relevant developments in our external operating environment?

Yes, the developments listed appear to cover all of the major influencing factors at the moment. We therefore agree that it is appropriate for the LSB's strategic objectives to remain as they are for the final year of its strategy.

Q.2 What do you see as the key priorities/issues to be addressed by legal services regulation?

At the Legal Ombudsman we believe that access to justice must always be the key priority for legal services regulation. This is one of our shared regulatory objectives, but even beyond this, we believe that this principle underpins a fair society. In recent years there have been more and greater challenges to access to justice, especially for the vulnerable. We would therefore advocate that the LSB make this a central focus for their regulatory strategy, particularly ensuring that innovation does not come at the expense of accessibility of legal services for all.

We suggest that a major way to address this is by tackling gaps in redress, ensuring that effective redress, financial or otherwise, is available in all situations. When deciding our remedies, we are sometimes aware that the complainant may not be able to receive their redress because of the limitations of professional indemnity insurance (PII) and regulator Compensation Funds.

The approach taken by PII providers to ombudsman remedies can differ according to the provider and regulator. For example – if a service provider cannot afford to pay the excess on their insurance policy, under some minimum terms and conditions (MTCs), the insurer would have to pay this, but under others it would not. We have also seen cases where a complainant has been unable to claim recompense from the relevant regulatory Compensation Fund, but if the provider had been under a different regulator they would have been covered. These are things we would be keen to work on more with the LSB in future, alongside all of the frontline regulators, to ensure a more consistent experience for users of legal services.

Q.3 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?

We are very supportive of using evidence as a basis for policies, decision-making and other elements of regulation. We are pleased to see the importance that the LSB has long assigned to this, as well as the renewed emphasis in this business plan (and elsewhere) on ensuring there is strong evidence for new regulatory plans.

More specifically regarding the LSB's approach to market intelligence, we are particularly interested in the potential development of a standing panel of members of the public to inform policy proposals. We will wait with interest to hear from the LSB about how this works in practice, and if successful, we would want to consider how this might factor into our own policymaking.

Q.4 What are your views on our plans to move away from a strategy for the LSB towards a strategy for legal services and their regulation, highlighting gaps and opportunities across the market?

While this is somewhat hard to assess in the abstract, we can see the advantages of developing a more comprehensive strategy that focuses on the wider remit of the LSB's work and its impact, rather than the organisation itself. It also allows for more flexible future planning, given the ongoing discussions about the future of regulation and the potential appetite for regulatory reform.

We will be eager to engage in the LSB's process for developing the new strategy, and interested to hear about the areas it identifies as needing more action and chooses to work on.

Q.5 Do you have any comments on our proposed business plan and work for 2020/21? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

Of course, the major element of relevance to the Legal Ombudsman is the LSB's oversight of our performance and cost. We are pleased to see recognition of the improved situation both with regards to recent reduction of pre-assessment wait times and to longer-term, continuous improvement of our investigations. We are also eager to begin developing our learning and insight work further, and are pleased to note that this is a priority area for the LSB as well.

We are pleased to hear the direction of travel for assessing technical competence. While this is outside our remit to investigate, we take a holistic interest in the public's experience with legal service providers and their confidence in the profession more generally.

Sometimes we find that people who come to the Legal Ombudsman are dissatisfied with the outcome of their legal matter rather than with the service provided by the lawyer. There may be circumstances in which there are elements of this that we can consider (such as whether a provider failed to advise the complainant on a crucial part of their case), but where the dissatisfaction stems from questions around the provider's technical competence, we cannot become involved. This means that people can lose confidence in legal service providers and the system as a whole, as they are left without assurance that the legal support they received was of a reasonable standard.

We therefore support the LSB's decision to look more closely into assessing ongoing competence and will be interested to read responses to the proposed call for evidence, consultation and research. Other workstreams under objective one also seem sensible.

Regarding objective two, we are in favour of greater investment in public legal education (PLE) and believe that the actions proposed by the LSB do go some way towards promoting this. In our experience many who use legal services have limited knowledge of what to expect when they purchase a legal service and what is required from them as well. A few years ago, we published a guide for first-time buyers because we had seen cases where people had unrealistic expectations of what their provider would know about the property they had viewed and were buying.

We would be in favour of working with others to address this type of knowledge gap and ensure that this information is available to people at the point of need. The proposed literature review of existing research evidence would be helpful to understand if there are recommendations already published that the LSB or others could action over the coming years.

We appreciate the benefit of having an independent body at the forefront of this work, free from specific regulatory interests. However, we feel that the LSB perhaps take a more active role in the PLE programme, perhaps by working in concert with the Legal Services Consumer Panel. We would suggest therefore that the LSB consider using the literature review to identify gaps in current provision and identify areas in which it could begin to action some of the recommendations itself.

Other workstreams under objective two appear to be appropriate and we have no further comments on these.

The various papers and podcasts produced by the LSB on LawTech over the past year have been welcome, and we are pleased to see that there are more of these planned for release. It seems fitting for the LSB now to move onto supporting regulators with their approach, and exploring ethical implications of further development, especially focusing on issues of vulnerability and digital exclusion. This is particularly important given the LSB's emphasis in its five-year policy objective on responsible innovation and public trust.

We also look forward to reading the findings of the prices research that the LSB has commissioned, as costs remains one of the top areas of complaint we see every year. We think this is important work to do, particularly in light of common perception that legal services are prohibitively expensive, and the ongoing debate around legal aid.

Q.6 Do you have any comments on our proposed budget for 2020/21?

No – the proposed budget for next year appears sensible and we particularly support the LSB's intention to invest more in research.

Q.7 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.

We have largely indicated our interest in collaborative work elsewhere in this response, but would also be keen to be involved in the LSB's proposed meeting with regulators on quality indicators in legal services. This is an important element for us of the CMA's findings in its legal services market study, and we are keen to work with regulators and others in the sector to identify helpful solutions. We are clear that our experience is important for further development in this work. To this end we have released a discussion paper on *Transparency and Reporting Impact*, and look forward to continuing this conversation after all responses have been received.

Q.8 Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2020/21.

We cannot foresee any particular issues regarding equality and diversity arising from this year's business plan.

Conclusion

Thank you for the opportunity to comment on the Legal Services Board's Draft Business Plan for 2020/21, and for the helpful conversations that were facilitated at the LSB's stakeholder workshop on 20 January.

Overall, the LSB's proposed workstreams for the coming year appear to be sensibly directed with regard to its overarching strategic and policy objectives. We look forward to understanding more about the LSB's vision for the sector and discussing the future of legal services as it looks to develop its new strategy for 2021-24.

For any questions about this response please contact our Parliamentary and Policy Officer at support@legalombudsman.org.uk