

# Business Plan 2020/21

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## Consultation response document

April 2020

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## Acronyms used

BSB – Bar Standards Board

CILEx – Chartered Institute of Legal Executives

CLC – Council for Licensed Conveyancers

CMA – Competition and Markets Authority

HMCTS – Her Majesty's Courts and Tribunals Service

IGR – Internal Governance Rules

IPReg – Intellectual Property Regulation Board

JLD – Junior Lawyers Division of The Law Society

LSB – Legal Services Board

LSCP – Legal Services Consumer Panel

OLC – Office for Legal Complaints

PCF – Practising Certificate Fee

PLE – Public Legal Education

SDT – Solicitors Disciplinary Tribunal

SLC – The Society of Licensed Conveyancers

SQE – Solicitors Qualifying Examination

SRA – Solicitors Regulation Authority

## Introduction

1. On 13 December 2019, we published a consultation on our draft Business Plan for 2020/21. A press release accompanied the publication and the documents were 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 14 February 2020.
2. We held a workshop with stakeholders during the consultation period. Similar themes emerged in the consultation responses and during the workshop. As well as taking into account written responses (see below), we have included in our consideration the views of those who attended our workshop 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 consideration of those points 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 17 responses to our consultation. The overall tenor of responses was supportive of the outcomes we are 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 Business Plan and further aspects for us to consider.
5. Where respondents consented to their responses being made public, 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.
6. We are grateful to 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 Business Plan. Our finalised Business Plan for 2020/21 document is now available on our website.

## Summary of key changes made

### Impact of Covid-19

7. Since publishing our draft business plan all aspects of life in the UK, including the provision of legal services and the administration of justice, have changed dramatically because of the Covid-19 pandemic. The situation is very fluid, and the full impacts will not be known for some time. We will do all we can to support the sector to grapple with the immediate issues it faces and ensure that consumers remain protected. The overarching principle behind our approach will be to ensure that regulation continues to be carried out effectively but also in a flexible way to suit these challenging times. Looking ahead, we will also consider how regulation can help the sector to recover.

8. We have reviewed our business plan proposals to ensure that our engagement with the regulators and wider community does not add unnecessary burdens, meanwhile ensuring that our critical path activities remain a priority. Where our plans have changed this is detailed underneath each project in the sections that follow. Given the rapidly evolving situation, our plans on all projects will be kept under ongoing review.
9. The responses we received to our consultation, alongside our own internal analysis have informed the development our final Business Plan. The significant changes are:
  - We have added a new project on quality indicators.
  - We will carry out research with legal professionals and experts to understand the impacts of Covid-19 and what steps would help the sector to recover.
  - We have added an activity schedule to our website giving an indication of timings for key milestones. We will update this quarterly, in particular as milestones are planned in for the new areas of work we will be commencing this year and in response to Covid-19 developments.

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

### (Question 1)

#### General comments

10. Most respondents agreed with the market trends or drivers for change identified in the draft Business Plan. Some respondents identified additional possible trends or drivers, while the Law Society encouraged us to take a holistic view of the various challenges faced by the legal professions to better inform our future strategy. The SRA noted that the external environment was characterised by uncertainty and change, which meant regulators need to be flexible and able to adapt their approach quickly.
11. The Bingham Centre for the Rule of Law and CILEx both mentioned access to justice issues, including the HMCTS reforms and the digitisation of services. CILEx and the Bar Council suggested the addition of the latest anti-money laundering developments. The Bar Council also highlighted the BSB's review of its Handbook, market transparency reforms and the new education and training arrangements for the Bar. Nottingham Law School identified litigants in person/McKenzie friends and their competition with regulated providers as an area to focus on. A confidential response highlighted the potential implications of the Civil Liability Act on the structure of the market; it also mentioned cyber and data privacy risks.

#### Response

12. We are grateful for the additional suggestions of market trends and drivers for change and these will inform the delivery of our Business Plan and strategy development.
13. As above, Covid-19 has occurred since our draft plans were published.

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

### (Question 2)

#### General comments

14. Respondents were mixed in what they thought were the key priorities and issues to be addressed by legal services regulation.
15. Access to justice was mentioned most frequently across respondents, followed by technology. Other areas commonly mentioned were public legal education (PLE), ongoing competence, equality and diversity, and market transparency.
16. The Bar Council and IPReg said that promoting cost-effective regulation and keeping the regulatory burden to a minimum should be priorities. IPReg added that regulation should be reduced or removed where the level of risk does not justify the current level of regulation. The Law Society felt a priority should be instilling greater stability and confidence during this period of change and as the regulatory framework evolves.
17. Bingham Centre mentioned that “‘demand side’ reforms are needed to provide the final push necessary to take up legal advice”, including but 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.”
18. Nottingham Law School suggested investigating how the regulators address people management and whistleblowing in relation to “... accounts of young lawyers penalised or struck off/disbarred/equivalent when working under extraordinary pressure and in highly toxic environments...”.

#### Response

19. We are grateful to respondents for these suggestions of priorities and issues for legal services regulation to focus on. We consider that our proposed business plan matches up well against this list. Our priority will be first and foremost making regulation work effectively for the public. While we will of course work to ensure proportionality in terms of cost and burden, that can only be done when our first priority is secured.
20. This question was also designed to inform the development of our next strategy and we will feed these suggestions into that process.

## 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?

### (Question 3)

#### General comments

21. Most respondents were very supportive of our current approach to market intelligence and our use/gathering of evidence more widely. Many commented on the new website and the usefulness of the research published, although CILEx Regulation and IPReg felt that due to the volume of data available, the website can still be difficult to use. CILEx Regulation noted that our research budget had reduced over the years and questioned if this might negatively affect our ability to produce a strategy for the sector. It also wondered if our partnership-based research approach was delivering as anticipated but did not elaborate. The SLC felt that we should make more use of intelligence already available and only commission new research when necessary. The CLC were supportive of the LSB's research but felt that we should engage regulators more when developing the specification of new research.
22. In its response the Law Society reiterated points it made in previous years about the lack of adequate impact assessments by regulatory bodies ahead of rule change applications. Specifically, it invited us to consider conducting research to evaluate the impact of the recent regulatory changes on the sector. The LSCP called for us to be proactive and creative when consulting with consumer groups, charities and advice groups designed around their capacity to engage.
23. Regarding the standing panel of members of the public, most respondents were supportive with some caveats. The LSCP and the BSB, while supportive, highlighted that this kind of panel could still have limitations and consideration would have to be given to accessing more vulnerable or difficult to reach consumer groups. Nottingham Law School suggested that this initiative could be extended to a complementary panel of experts in "...legal practice, legal professional, regulation, etc..." The SLC and the Bar Council expressed concern over whether the public panel would duplicate the function of the LSCP, with the Bar Council requesting more information on what is proposed and how much it will cost.

#### Response

24. We appreciate the positive feedback on our market intelligence function and are glad that external organisations are making use of our research. We will continue to look at ways to make our research more accessible, including through our corporate website. For example, since the consultation was issued, we have published new interactive dashboards to help stakeholders interrogate the individual legal needs survey data, plus additional dashboards containing key figures on the legal services market.
25. We plan to develop our research capacity in 2020/21, reversing the trend of recent years. As part of this, we remain keen to explore opportunities to work in partnership with others. Equally, while LSB can play a leadership role in research, all regulatory bodies need to develop a strong evidence base to inform a risk-based approach to their work. We recognise that those regulators with more limited in-house capacity will

need to find ways to meet those expectations, including through forming their own collaborative partnerships.

26. In response to the Law Society, we intend to consider impact assessments requirements as part of our review of the materials and processes we use for statutory decisions. During the autumn we plan to publish a State of the Legal Services Sector Report, which will consider the overall health of the sector. However, it is the responsibility of individual regulatory bodies to evaluate the impact of their own specific reforms.
27. We accept the LSCP's points about engaging with grassroots and other organisations representing consumers, which we will bear in mind across our work. For example, we have organised standalone meetings designed to help these groups engage with us on the development of our next strategy.
28. The support for the standing panel of members of the public is welcome. The points about the limitations of this model are well made. Each research methodology has its advantages and drawbacks; the panel will form one element of our overall approach, which from time to time will include bespoke research with the most vulnerable groups. The public panel and the LSCP serve different but complementary purposes. While the former is designed to provide lay input to inform the development of policy proposals, the latter provides expert advice and representation on the consumer interest.
29. In response to Nottingham Law School, while our current priority is to establish a public panel, we will consider the case for setting up a parallel panel of experts in future. We are already planning to establish such a panel for our technology work.

## **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?**

### **(Question 4)**

#### **General comments**

30. This proposition was largely supported, as were our commitments to a collaborative and evidence-based approach. For example, Legal Beagles suggested this was a natural step for the LSB now that it had established and consolidated its position in the landscape and could reflect on ten years' experience. However, several respondents called for more clarity about our plans and some outlined specific concerns.
31. The LSCP supported this move but stated that we must get the engagement right and address the concerns and needs of the diverse range of consumers so that the strategy serves the whole sector.
32. The SRA and Law Society focused particularly on the need for transparency on the distinct roles and responsibilities of the LSB, regulatory bodies and other stakeholders in order to avoid any duplication. CILEx and the BSB expressed concern over the LSB fettering the discretion of the regulatory bodies. CILEx wanted the LSB to focus on its core business and suggested that the expertise to meet strategic expectations is best

delivered at a local level. However, in another part of its response, it said that it would welcome a review of the Legal Services Act regime, including due to “variances in justification for reserved legal activities”. IPReg stated that it was unclear how our proposition was different from a ‘strategy for the LSB’ and that care would need to be taken to avoid duplicating the work already done by the Mayson review.

33. Nottingham Law School and the SRA identified a challenge around the vast array of services delivered outside of the regulatory ambit of the Legal Services Act.

## **Response**

34. We welcome the support for our plans to develop a strategy for the sector, rather than just a corporate strategy for LSB. We accept that this is difficult for stakeholders to assess in the abstract, so we have created a dedicated page on our website providing more information about our approach and planned engagement activities.
35. Our hope is that we will build consensus around some common goals for the sector to aspire towards. Of course, this will not fetter the discretion of regulatory bodies and others to decide their own business plans targeted at the needs of their communities of interest. Since none of these goals is likely to be achievable by regulatory bodies acting alone, it will be important to highlight where regulators can and cannot help, as well as to suggest where other groups of actors, including government, have a role.
36. We welcome the Mayson review and look forward to reading the final report soon. Ultimately, it is for government to decide whether to pursue legislative reform, and we note that the CMA will return to these issues when assessing the progress made on the recommendations in its 2016 legal services market study later in the year. In this context, as part of the development of the next strategy, we consider that more can be achieved within the existing legislative framework. For example, there is consensus that the reserved activities do not reflect areas of greatest risk. Therefore, if major legislative reform is not contemplated, it may be timely for us to use our existing powers to recommend to the Lord Chancellor changes to the list of reserved activities.
37. In response to Covid-19, we will consider how best to address the issues that the sector is likely to face when we enter the recovery phase. We will be turning our minds to consider the wider role that regulation might play in supporting and promoting economic recovery and we will do that together with the regulators. As part of this effort, we will carry out research with legal professionals and experts to understand the impacts of Covid-19 and what steps would help the sector to recover. Engaging stakeholders will continue to be a crucial element of our strategy development, but we are rescheduling elements of our planned approach. We will use online tools to engage with members of the public to understand their issues, concerns and priorities.

## **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?**

### **(Question 5)**

#### **General comments**

38. Most respondents focused on specific projects rather than making general remarks. However, the Bar Council and CILEx both believed that the discharge of statutory functions should be given priority in our plans. CLC welcomed the commitment to a step-change in communications and engagement, so that regulatory bodies would have a better understanding of what is expected of them. It also suggested that we focus on a proportionate use of our powers and explore all our soft and hard levers to clarify our enforcement approach. It suggested that there is work for us to do on the balance between an outcomes focused approach and mandating specific approaches.
39. The JLD's response largely focused on the Solicitors Qualification Examination (SQE).
40. The LSCP encouraged us to prioritise between our plans.

#### **Response**

41. We will continue to devote all the resources necessary to discharge our statutory functions, which will remain at the core of all our work. At the same time, we have a positive duty to actively promote the regulatory objectives. This requires us to resource appropriately activities that stretch beyond the delivery of our statutory decisions work. In pursuing our objectives, we make a careful judgement on a case-by-case basis on the best mix of the various soft and hard levers at our disposal. In order to support transparency, consistency and predictability in how we exercise our powers and deliver our functions, we have published a document which articulates our regulatory approach<sup>1</sup>. This document should be read alongside our enforcement policy<sup>2</sup>.
42. The JLD's submission will inform our review of the processes we use for statutory decisions.
43. In response to the LSCP, we are confident that we can deliver all the projects in the final business plan, but we may need to prioritise in-year in response to developments.

#### **Review of rule change approval process**

44. There was broad support for our review. The Law Society added that rule changes must be accompanied with a cost benefit analysis and be well-evidenced. Similarly, CILEx stated that regulatory bodies have a responsibility to not be passive and request evidence from consultees. By contrast, CILEx Regulation recognised that applications

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<sup>1</sup> [https://www.legalservicesboard.org.uk/what\\_we\\_do/pdf/Regulatory\\_Approach.pdf](https://www.legalservicesboard.org.uk/what_we_do/pdf/Regulatory_Approach.pdf)

<sup>2</sup>

[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/New%20folder%20\(3\)/FINAL\\_Statement\\_of\\_Policy\\_for\\_Enforcement\\_v3.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(3)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf)

should be to a decent standard but requested that we consider the impact on the workload of regulatory bodies. IPReg was supportive but would prefer an independent review that starts afresh rather than using the current arrangements as a starting point.

45. The JLD requested that we identify the scope of our review, including the date for completion and the parties involved, and defer consideration of any rule change applications until after the review is complete. Further, it stated that transparency was essential and requested that we publish our correspondence to regulators setting out our concerns, the standards we expect, how we intend to ensure standards are met and how we intend to enforce.

## **Response**

46. We are grateful for comments and suggestions in this area, which we will factor into our work. The planned review will take a fresh look at our approach against best practice and will ensure that the rules continue to be fit for purpose in the future. We will write to all regulators when the project commences, setting out the scope of the review, key milestones and our expectations around engagement. We intend to engage with all stakeholders during the review to hear views on proposals.

## **Regulatory performance**

47. Most were supportive of our regulatory performance work, but some respondents voiced concerns. IPReg stated that we must accept that “OK is OK”, avoid pushing for “gold-plated performance”, and not encroach on regulatory boards’ judgements about how best to hold their executives to account. CILEx stated that the process should not become too onerous. The CLC requested that we consider the differences between regulatory bodies in our approach and avoid guidance that is so directive that it amounts to a rules-based approach. It also argued that regulators that do not meet expectations should be dealt with forcibly and publicly.
48. The Law Society was supportive and would like to see more progress in areas where regulatory bodies fall short of expected outcomes. In addition, it stated that we should scrutinise the implementation of recent regulatory reforms to ensure adequate guidance to the profession, clients and the public.
49. CILEx Regulation stated that it would appreciate early notice of what is expected to meet or exceed the well-led standard if there are new expectations in this respect.

## **Response**

50. The general support for our performance framework is welcome. In response to comments about taking a more risk-based approach to how we apply our framework, we have explained our approach in our most recent regulatory performance report, published in December 2019. We recognise the diversity of the regulators, nevertheless, each carries out the same functions under the Legal Services Act 2007. Therefore, our assurance will continue to focus on ensuring that the common set of standards in our performance framework are met. However, in making our assessments, where appropriate, we will consider the particular circumstances of each regulatory body.

51. In response to the comment from The Law Society, we have committed to review the performance framework periodically and we would expect to assess its effectiveness in the next business plan year. We publish the performance assessments and will continue to make our reports as informative as possible for the widest audience.
52. In response to the point about being clear on our expectations, we have provided clarification more broadly on areas such as expecting year-on-year improvements in performance and the need for regulatory bodies to more fully embed the performance framework into their own governance arrangements. We have also provided guidance on specific areas such as rule change applications and diversity and we will continue to work with regulatory bodies and approved regulators to clarify our expectations.
53. In relation to diversity, following the progress review we published in January 2019, we have been closely monitoring developments and the impact of regulatory activities. During 2020/21 we plan to make clearer our expectations of what good regulatory performance looks like on equality matters, which we expect to write into the framework in due course. As planned, we will carry out a review of progress against the action plans published in 2019 and other activity by each regulatory body.

### **Oversight of the Office for Legal Complaints**

54. Several respondents voiced concern about the Legal Ombudsman's performance and felt that getting it "back on track" was vital. There were also concerns about the budget increase that the OLC had proposed when consulting on its draft business plan.
55. Respondents supported work that would enhance the Legal Ombudsman's capacity to disseminate intelligence and learning. Indeed, the Legal Ombudsman was pleased to note that this a priority area for us. The CLC considered this work to be vital and thought it would be helpful to have a better sense of the resource dedicated to this and other 'business as usual activity'.

### **Response**

56. We share stakeholder concerns about the Legal Ombudsman's performance. We are working closely with the OLC and Ministry of Justice officials to agree a roadmap that can deliver an acceptable level of performance in an agreed timeframe. Concerns about the OLC's proposals for a budget increase have been noted and will be considered as part of our process for considering its final budget application.

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

57. There was broad support for our work here. The Bar Council emphasised the importance of non-regulatory permitted purposes expenditure to the public interest. CILEx believed that greater clarity would enhance transparency in relation to the costs of practice and would benefit relationships between regulatory bodies and approved regulators. CILEx Regulation commented likewise in relation to its reserves.

## **Response**

58. We welcome the broad support for this work, which is already underway. We will consider the issues raised here as part of the PCF review. In response to Covid-19 we have pushed back our planned consultation to ease burdens on stakeholders, but we still plan to finalise new rules and guidance in time for the 2021 PCF cycle.

## **Proposed projects under Strategic Objective 1 (promoting the public interest through ensuring independent, effective and proportionate regulation)**

### **Five-year policy objective – ongoing competence**

59. There was broad support for our work under this five-year policy objective. CILEx Regulation stated that it would be helpful if the outcomes aligned with addressing unmet legal need and PLE. The Bar Council quoted at length from its submission to last year's draft business plan when it set out current arrangements for barristers and emphasised that any new measures must be carefully designed and introduced only once their need is objectively demonstrated. The BSB said it was important that this work is informed not just by public attitudes and expectations, but also by evidence of risk in the market that existing arrangements are failing to address.

## **Response**

60. We welcome the broad support for this work and comments will be considered as part of our wider PLE work. We encourage stakeholders to respond to our call for evidence on this issue, which has a submission deadline of 15 May. We will review the timing of our formal consultation phase in response to Covid-19 developments.

### **Internal Governance Rules (IGR) review outcomes**

61. IPReg suggested postponing the consultation on how compliance with the IGRs will be monitored until we had completed consideration of all the proposed related rule changes. IPReg also suggested that LSB should provide a template for what it expects to receive from regulatory bodies and approved regulators in terms of compliance with the IGRs in the same way as we have done for PCF applications.

## **Response**

62. After the draft business plan was published, we issued a consultation on the LSB's regulatory performance framework and proposed regulatory independence monitoring. The consultation closes on 5 April. Comments in relation to the IGRs made in response to the business plan consultation will be considered as part of the IGRs consultation and a consultation response document will be published in due course.

### **Contingency planning for regulator exit**

63. The SLC was not convinced of the need to review our approach since it had not seen evidence requiring a review at this time.

## Response

64. Contingency planning is essential for a responsible regulator, to ensure measures are in place should extreme or unexpected circumstances arise. As a matter of good practice, it is better to be prepared for regulator exit in advance of the circumstances that might cause this arising. We will proceed with this work.

## Proposed projects under Strategic Objective 2 (making it easier for all consumers to access the services they need and get redress)

### Five-year policy objective – public legal education

65. There was broad support for our work under this five-year policy objective. The BSB agreed that we have a valuable convening role but highlighted that regulatory bodies might have a different focus in delivering PLE and that any work must be done in partnership with other organisations.
66. CILEx Regulation said that it remained committed to Legal Choices but felt its effectiveness should be reviewed and improved and that other means of reaching the wider public should be identified. IPReg suggested that the final Business Plan make clear how our work on PLE sits with the work that the regulatory bodies are doing on Legal Choices. It was concerned that additional work on PLE risked diverting resources from Legal Choices.
67. The Legal Ombudsman felt that we could take a more active role in PLE and suggested that we consider using the proposed literature review to identify gaps in current provision and seek to action some recommendations ourselves.
68. The Law Society supported the objective, working with us and other organisations. However, it stated that the broad PLE that is necessary to achieve the objective is the purview of the state and is not best achieved through regulation of the profession. By contrast, a confidential response encouraged LSB to consider ways in which regulatory levers could be used to promote the public's legal capability by giving them a greater understanding of legal services and clearer expectations of providers.

## Response

69. The recent increased interest in PLE by regulatory bodies is encouraging, which was reflected in consultation responses. As is reflected in the membership of the Solicitor General's PLE Committee, regulators are among a wide range of actors who have a positive contribution to make in this important area. Further, we view PLE as one part of a range of interventions that should be focused on reshaping legal services to better meet society's needs.
70. The Legal Choices website has an important role to play in helping consumers to understand how the law can help them and successfully navigate the legal services market. Since the draft business plan was published the SRA has written to suggest that the LSB should take over the running of the website. The breakdown of the

collective ownership model that sits behind Legal Choices is highly regrettable and we will explore a range of options to safeguard the future of this important service.

71. Looking beyond Legal Choices, over the last period we have engaged with regulatory bodies and approved regulators to gain a better understanding of current activities. Following this mapping exercise, we will next consider options on what, if any, regulatory levers we should deploy to help advance our work on PLE.

### **Future approaches to enforcement**

72. There were mixed views about this work. The Law Society supported the idea of file reviews. The BSB requested that we consider proportionality and not duplicate assurance. Similarly, the SRA stated that file reviews are resource intensive and would welcome a targeted and proportionate approach that reflects existing quality assurance and its own enforcement strategy.

### **Response**

73. We will develop and implement new arrangements for enforcement and disciplinary oversight under the regulatory performance framework. There will be four elements to our approach:
- require regulatory bodies to put in place effective and transparent quality assurance frameworks that demonstrate their disciplinary processes are rigorous and working effectively to ensure consistent, transparent, proportionate, reasonable and evidenced enforcement decisions are being taken
  - build ongoing assurance of those mechanisms into our regulatory performance framework
  - develop an audit process that enables the LSB to gain assurance that effective enforcement and disciplinary procedures are in place in each regulatory body. We will design the process to be flexible so we can undertake proportionate, risk-based audits of other standards in the regulatory performance framework as well
  - link all of this to our recent statement that regulators should have in place mechanisms to understand any differential impact of their disciplinary processes on diversity characteristics.

### **Legal needs survey of small businesses and individuals**

74. Respondents referred to our individual legal needs survey in the course of addressing other questions, but there were no direct points on our proposed work.

### **Response**

75. The individual legal needs survey was published during the consultation period and we welcome the positive reaction to the research. We will continue to release briefings on the research during 2020/21 to exploit this valuable resource to its fullest extent.

## **Proposed projects under Strategic Objective 3 (increasing innovation, growth and the diversity of services and providers)**

### **Five-year policy objective - technology**

76. There was broad support for our work under this five-year policy objective. CILEx considered the development of LawTech to be a key priority and noted that the current regulatory model risks omitting “digital solution providers” from scope. The Law Society supported the overall objective but was not clear that all aspects of our proposed work fit within our regulatory ambit. It suggested a collaborative approach, consideration of risk-based models of regulation and believed that regulation should be calibrated to protect consumers without stifling innovation. The Legal Ombudsman welcomed the papers and podcasts that we had published. It felt we should now move on to supporting regulators with their approach, and exploring ethical implications of future developments, especially focusing on vulnerability and digital exclusion.

### **Response**

77. We welcome the support for this work and are pleased that the papers and podcasts have been helpful. We will proceed with this work as set out in the draft plan, with the exception that we will postpone the planned mapping exercise in order to reduce burdens on the regulators as they respond to Covid-19.

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

78. CILEx hoped that we would input to EU negotiations on issues linked to competition and consumer choice, for example, recognition of CILEx members. The Law Society said it was keen to work with LSB and other stakeholders to ensure stability and the good standing of the profession and legal system.

### **Response**

79. The draft business plan was published before Parliament voted to leave the EU. We will continue to engage with the Ministry of Justice and other responsible government agencies as necessary and closely monitor the ongoing negotiations.

### **Engaging with the CMA review of progress on its legal services market study**

80. There were few comments on this proposed work, perhaps reflecting that the review is being led by the CMA. The Law Society strongly welcomed our proposal to look at the indicators of quality of service given the risk that consumers focus on the price alone. The Law Society also identified a need to raise awareness of what regulation means.

### **Response**

81. We look forward to engaging with the CMA during its review.
82. As part of this process, and more widely, we have identified three priorities on market transparency for the year ahead: ensuring regulators follow through on commitments

to evaluate the impact of their reforms; securing the long-term future of the Legal Choices website; and quality indicators.

83. While the regulatory bodies have made good progress on many aspects of market transparency, there has been less progress than we would wish on quality indicators. We have started to explore policy options, which we will develop further in 2020/21. This is now included as a separate project in our final business plan.

### **Prices research**

84. There was broad support for this work. The Legal Ombudsman noted that costs is consistently one of the largest sources of complaints and felt this work is important given the common perception that legal services are prohibitively expensive and the ongoing debate around legal aid.

### **Response**

85. The fieldwork for the research has now completed and we are now analysing the results ahead of publishing a report in the summer.

### **Ideas for further work**

86. The CLC thought that it might be helpful for us to lead work on identifying and understanding risks to equality arising from regulatory approaches.
87. IPReg suggested that it would be useful if we focused on identifying opportunities for greater consistency between regulatory arrangements and removing regulation.
88. A confidential response suggested that ongoing evaluation of the impacts of the latest regulatory reforms was missing from our work.

### **Response**

89. We are grateful for these suggestions of further work.
90. In response to the CLC, we plan to look afresh at how we can better enhance equality, diversity and inclusion throughout our work, including in statutory decisions. We will also be considering these issues in our State of the Legal Services Sector Report.
91. In response to IPReg, we consider there has been good progress on liberalising the market in recent years, but we continue to encourage regulators to remove unnecessary regulatory barriers. We can see the merit in greater harmonisation of regulatory arrangements, which also links to the complex institutional landscape. As noted in paragraph 36 above, as part of the development of the next strategy, we will wish to consider what more can be achieved within the existing legislative framework.
92. As noted in paragraph 26 above, during the autumn we plan to publish a State of the Legal Services Sector Report, which will consider the overall health of the sector. However, it is the responsibility of individual regulatory bodies to evaluate the impact of their own specific reforms.

## Do you have any comments on our proposed budget for 2020/21?

### (Question 6)

#### General Comments

93. Of those that commented on the LSB's budget, CILEx and CILEx Regulation supported the proposed modest increase. The Legal Ombudsman voiced its support for investment in research. The LSCP also considered the increase to be necessary to deliver the additional work planned.
94. The CLC noted that it had achieved very significant reductions in its own fee rates and felt other bodies drawing their funding from the sector should exercise similar care, although it was pleased that LSB's increases would be in line with Ministry of Justice guidance. The Bar Council welcomed the year on year decrease achieved by LSB in its budget in recent years and wanted increases kept to a minimum due to the impact on the profession. The SLC queried whether a modest increase was necessary. IPReg asked us to provide more detail and analysis of the budget over/under-spend and how it would impact on the levy. It also suggested that the LSB publish a three-year projected budget in order to provide more certainty to the regulators.
95. The Law Society advocated for a joined-up approach to intelligence gathering with the frontline regulators and other stakeholders in order to avoid any research duplication. They also queried how investing in communications made the LSB a stronger sector regulator considering we are not a public-facing body. It suggested that closer collaboration with the representative bodies, who have a direct outreach to the professions and the public, could achieve far more tangible communication outcomes and spare the need for additional expenditure.

#### Response

96. We welcome the broad overall support for the proposed 3.3% increase in our budget. The decision to propose an increase in resources was not taken lightly and we are always mindful that our costs will be passed on to the professions and consumers. However, as set out in the consultation document, after many years of reduced costs, at the beginning of 2018/19 we reached the minimum level of resourcing which we believed was necessary for the successful delivery of our work. The additional costs that we plan for 2020/21 are not only necessary to deliver our functions but should also deliver a return on investment for the sector, for example by delivering a more proportionate regulatory environment and unblocking latent consumer demand.
97. The final budget we have submitted to Ministers is £3,923k - the figure we consulted on.
98. We appreciate that over/under-spends may have a proportionately larger impact on the levy for smaller regulators in percentage terms. Through improved business management and resource planning, we expect our final expenditure in 2019/20 to be very close to our agreed budget. We plan further enhancements to these tools during 2020/21 so that any over/under-spends should be consistently kept to a minimum.

99. We can see merits in IPReg's proposal for LSB to indicate three-year projected budgets and acknowledge that we ask regulatory bodies to provide three-year budgets as part of their PCF applications. Should we proceed, it would make sense to align this to our strategic planning period. This would also need to take account of departmental spending reviews. Any three-year costed strategy that we produce could only be indicative, and we would still consult annually on a proposed budget for the forthcoming business plan year. We will consider this proposal further.
100. In response to The Law Society, we remain committed to a joined-up approach to market intelligence; this includes working in partnership on research studies, as we did successfully with The Law Society on the individual legal needs survey. We recognise that professional bodies offer a direct conduit to members and the public, which we are keen to harness where appropriate. However, as independent oversight regulator it is important that we develop and maintain sufficient communications and engagement capabilities of our own, which allow us to reach out to the widest range of stakeholders and the public.

**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.**

### **(Question 7)**

#### **General Comments**

101. Many respondents identified areas across the Business Plan in which they would welcome collaboration with the LSB.

#### **Response**

102. We are committed to working openly and collaboratively on our policy development and research activity. We are grateful for specific expressions of interest and offers of support, which we will follow up directly with the organisations concerned. The individual responses have been passed on to the relevant teams at the LSB.

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

### **(Question 8)**

#### **General Comments**

103. One significant equality issue identified as arising from our proposed work is that of digital exclusion. CILEx and CLC both expressed concern that the move towards digital solutions brings increasing risk to vulnerable consumers accessing justice.

104. CILEx Regulation asked the LSB to remain mindful of the fact that increased costs of regulation get passed on to the professions. The Law Society stated that it would like to see our work in assessing equality implications translated into our decision-making on rule change applications, specifically regarding the SQE and handbook changes.

### **Response**

105. We are grateful for comments and suggestions in this area, which we will factor into our work. We have noted in this response document areas of work, such as regulatory performance, where diversity will be a prominent feature of our plans.
106. We agree that technology is not a panacea that can fill the access to justice gap and that vulnerable users are at risk of being left behind or otherwise disadvantaged. Equally, Covid-19 is illustrating the importance of technology to maintaining the delivery of legal services and public services in the justice system. These are issues that we will continue to address in our policy work on technology.
107. Equality dimensions will be an important facet of our review of the materials and processes we use for statutory decisions. As well as rule change applications, we are paying increased attention to these matters in other decisions, such as our function to consider budget applications from the OLC and SDT.

## **Annex A - Consultation respondents and workshop attendees**

### **Consultation respondents**

Bar Council  
Bar Standards Board  
Bingham Centre for Rule of Law  
Chartered Institute of Legal Executives  
CILEx Regulation  
Council for Licensed Conveyancers  
Elevate  
Intellectual Property Regulation Board  
Junior Lawyers Division of Law Society  
Law Society  
Legal Beagles (partly confidential response)  
Legal Ombudsman  
Legal Services Consumer Panel  
Nottingham Law School  
Society of Licensed Conveyancers  
Solicitors Regulation Authority

There were two other fully confidential responses.

### **Organisations represented at the Business Plan consultation workshop**

Bar Council  
Bar Standards Board  
Competition and Markets Authority  
Council for Licensed Conveyancers  
Hook Tangaza  
Law Society  
Law Superstore/Really moving  
Legal Beagles  
Legal Ombudsman

Legal Services Consumer Panel

Ministry of Justice

Society of Will Writers

Solicitors Disciplinary Tribunal

Solicitors Regulation Authority