

Reshaping legal services

A draft strategy for the sector

December 2020

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The sector and our role in it

The legal services sector

The legal sector is of great public importance. People often need legal services at important or stressful moments in their lives. This might involve a major purchase, buying a home, relationship issues, resolving a dispute, getting injured, being arrested or facing deportation.

The legal services sector makes a vital contribution to the UK economy. Consumer spending on legal services makes an important contribution to economic growth, but all industries, charities, local and central government, and other types of users, also rely on legal services. Legal services are integral to our way of life, protecting citizens' rights and freedoms, and supporting people to challenge decisions made by public bodies. Critically, legal services are central to upholding the rule of law and supporting the effective administration of justice.

Our legal system has global influence. English law is used as the basis for resolving disputes in large parts of the world and this jurisdiction remains a dispute resolution centre of choice. Our legal professionals' expertise is much valued overseas, contributing strongly to exports. Other jurisdictions are taking inspiration from our regulatory model – a permissive regime allowing a range of business models and independent regulation – to liberalise their markets.

Legal services are provided by a wide range of professionals and businesses, with solicitors and barristers used the most by consumers. Licensed conveyancers, chartered legal executives, costs lawyers, notaries, patent attorneys, trademark attorneys and probate practitioners regulated by accountancy bodies also provide legal services. Legal businesses range in size and type from large corporate law firms to high-street practices, barristers' chambers and sole traders.

Immigration advisers, insolvency practitioners and claims management companies also provide legal services that are regulated but these fall under separate statutory regimes.

The sector also includes unregulated businesses. They mainly provide services in areas like will-writing, employment and family law. These businesses are subject to general consumer law and may belong to trade associations that set rules for their members to follow.

A range of not-for-profit organisations provide advice on legal issues. These include citizens advice bureaux, law centres, university law clinics, trade unions, among others.

Legal services in England and Wales



The regulatory framework

The Legal Services Board (LSB) is the oversight regulator of legal services in England and Wales. We are independent from both the legal profession and government.

The LSB operates within a statutory framework set through Parliament – the Legal Services Act 2007 ('the Act') – which describes our functions and gives us our powers. The Act sets out eight regulatory objectives¹ that we share with the organisations we oversee. The regulation of legal professionals is carried out by 15 approved regulators and regulatory bodies and the LSB holds these bodies to account in meeting their obligations under the Act.

We also oversee the Office for Legal Complaints (OLC) – the board of the Legal Ombudsman – and have certain functions in relation to the Solicitors Disciplinary Tribunal.

Our core functions include overseeing the regulators' performance, setting the annual fees that practitioners pay them and approving changes to their rules and other arrangements. We ensure that regulation of legal services is carried out independently of the organisations that represent providers. We also collect evidence on legal needs and the operation of the market. In all our work, we consider how best to promote the regulatory objectives.

The Legal Services Consumer Panel (LSCP) represents the interests of consumers in the sector. The Panel is set up and maintained by the LSB but operates independently.

Certain rules specify that some legal activities (known as the 'reserved' legal activities) can only be carried out by individuals or firms authorised by one of the regulators we oversee. We can make recommendations to the Lord Chancellor that he alter this list of activities.

¹ The eight regulatory objectives are: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen's legal rights and duties; and promoting and maintaining adherence to the professional principles.

The approved regulators and regulatory bodies

Approved regulator	Regulatory body	Regulated profession
Law Society	Solicitors Regulation Authority	Solicitors
Bar Council	Bar Standards Board	Barristers
Chartered Institute of Legal Executives	CILEx Regulation	Chartered Legal Executives
Chartered Institute of Trade Mark Attorneys	Intellectual Property Regulation Board	Trade Mark Attorneys
Chartered Institute of Patent Attorneys		Patent Attorneys
-	Council for Licensed Conveyancers	Licensed Conveyancers
Association of Costs Lawyers	Costs Lawyer Standards Board	Costs Lawyers
-	Master of the Faculties	Notaries
Association of Chartered Certified Accountants		Chartered Accountants (for practice of probate activities)
Institute of Chartered Accountants in England and Wales		

LSB's leadership role in delivering the strategy

As an oversight body, the LSB has an important leadership role in the regulation of legal services in England and Wales. We can contribute by:

- **deploying regulatory incentives and levers** that can accelerate change
- **policy change making the tools available** for consumers and innovators to use
- **using our convening role** to shape public debate and foster collaboration

Our **core regulatory functions**, which include the regulatory performance framework and our statutory decisions work, underpin the delivery of the strategy and support the delivery of its aims. As we review how we operate these functions, we will make sure they are aligned with the new strategy. For example, we intend to review our regulatory performance framework in 2021-22. Reviews are underway of how we assess applications by regulators relating to practising certificate fees and changes to their regulatory arrangements.

The strategy principally focuses on the role of regulation in the sector, but we will play an **active role in discussions on relevant wider public policy issues**. For example, the publicly funded legal sector is a source of great concern to many and if unmet need is to truly be addressed, reform is needed. Similarly, reforms to systems of criminal, civil and

administrative justice are matters of public policy. Ultimately, the extent to which public funding is made available within the justice system is a political decision made by Governments. Nevertheless, where these issues bear on our statutory objectives, we will inform the debate by providing evidence to decision-makers.

We live in a transformational environment caused by demographic and societal shifts, developments in technology and the Covid-19 pandemic, where changes in practice unthinkable less than a year ago have become the new normal. This makes it more important than ever to pursue a **data-driven approach** to understand the consequences of these changes, test whether interventions are needed, evaluate what type of interventions work best, and to involve and engage service users in policy design. Therefore, we plan to invest further in our market intelligence and research function and maintain our focus on communicating the findings of research.

We will embed a **segmented approach** that identifies the different needs and experience of citizens, consumers and legal professionals in line with our public sector equality duty.

Our approach to the strategy

The challenges facing the sector

To develop this strategy, we have reflected on ten years of legal services regulation so far. Through a process of evidence gathering and analysis, stakeholder engagement and public engagement, we have identified **a series of key challenges for the sector to address**.

We set out these challenges in our **State of Legal Services 2020** report.

The **golden thread of the strategy** is the need to reshape legal services to better meet society's needs. We have grouped the challenges facing the sector under **three strategic themes**: fairer outcomes, stronger confidence and better services.

Strategy for the sector – in a nutshell

GOLDEN THREAD	Reshaping legal services to better meet society's needs		
STRATEGIC THEMES	Fairer outcomes	Stronger confidence	Better services
CHALLENGES	Lowering unmet legal need across large parts of society	Ensuring high quality legal services and strong professional ethics	Empowering consumers to obtain high quality and affordable services
	Achieving fairer outcomes for people experiencing greater disadvantage	Closing gaps in consumer protection	Fostering innovation that designs services around consumer needs
	Dismantling barriers to a diverse and inclusive profession at all levels	Reforming the justice system and redrawing the regulatory landscape	Supporting responsible use of technology that commands public trust

A strategic direction for the sector

We think these challenges are deep-rooted and can only be fully addressed in the long-term. Therefore, this document sets a **ten-year strategic direction for the sector, with a particular focus on the role of regulation.**

The strategy suggests **the destination we should aim for** and explains the benefits for citizens, the public, consumers, legal professionals, and society if these challenges are met.

To help reach this destination, against each of the challenges we identify **priority areas of focus for the sector over the next three years.** We also set out how the **LSB could contribute** towards advancing these priorities over the next three years.

Specific workstreams and deliverables will be set out in the LSB's **annual business plans.**

Meeting these challenges will require a **cross-sector approach involving collaboration** between the wide range of actors that work in the sector and have an interest in its success. This includes government, regulators, professional leaders, legal businesses, among others. We cannot commit others to specific aims or actions, but seek to persuade stakeholders of our proposed agenda for change based on our analysis of the available evidence. As part of our consultation on the strategy, we invite individuals and organisations to step forward and identify where they can make a positive difference to this common agenda.

The framework for this strategy

Timeframe	Purpose
2021-31	10-year strategic direction <ul style="list-style-type: none">• Sets the long-term destination, strategic themes and challenges to address
2021-24	3-year strategic priorities <ul style="list-style-type: none">• Identifies priority areas of focus• Invites sector leaders to say how they will contribute• Describes where the LSB will contribute
2021-22	Annual business plans <ul style="list-style-type: none">• Sets specific plans and deliverables for LSB

The destination – in 10 years...

The legal services market may look very different ten years from now, most likely in ways that none of us can anticipate today. What shape the market takes in future is much less important than that the market delivers legal services that better meet society's needs.

These are the sorts of outcomes we expect to see if these changes meet our aims of fairer outcomes, stronger confidence and better services.

- Surveys show that unmet legal has greatly reduced and outcomes and experience of legal services is much more equal across the population.
- A strong publicly funded safety net for citizens needing financial support to access legal services reinforced by a strong third sector and sustainable provider base.
- Most households have a legal expenses insurance policy or other mechanisms enabling them to access a wide range legal services free at the point of need.
- Opportunities have been taken to simplify the law and citizens use alternatives to court-based mechanisms to resolve disputes as the norm
- England and Wales is world-leading on international measures of the rule of law.
- Citizens know their rights and duties, understand legal services better and easily navigate the market to choose legal services providers with confidence.
- Consumers can easily compare the cost and quality of different legal services providers and what services they deliver. Using comparison tools is the norm.
- There is healthy competition and a culture of innovation across the market.
- Legal professional are as diverse as the communities they serve. This is true for all levels of the professions – from new entrants to senior leaders, and in the judiciary.
- There is a genuinely inclusive culture where the diversity of thought that people with varied life experiences and circumstances bring is championed.
- All lawyers are equipped to meet the needs of the diverse communities they serve.
- Legal services are routinely delivered using trusted technology which enables consumers to have more choice in how they access legal services.
- Digital infrastructure and technological skills are a core part of the skills that legal professionals develop and maintain in the course of their careers.
- The scope of regulation mirrors the key risks to consumers and the public interest.
- Consumers of all backgrounds have ready access to the services they need, are satisfied with the service they receive and can easily access quick and fair redress.
- The legislative framework is clear, modern, agile and fit for purpose.

Priorities for the sector in 2021-24

In the next pages we suggest priorities for the sector to focus on over the next three years. Each of the priorities is listed under one of the nine challenges set out above, but in practice many of them contribute to multiple challenges and their associated strategic themes.

Reshaping legal services to better meet society's needs	Fairer outcomes	Stronger confidence	Better services
CHALLENGE 1 Lowering unmet legal need across large parts of society			
Reduce financial barriers to access	✓		
Reduce non-financial barriers to access	✓	✓	✓
Develop a legal support strategy for small businesses	✓	✓	✓
CHALLENGE 2 Achieving fairer outcomes for people experiencing greater disadvantage			
Create a fairer market for citizens in vulnerable circumstances	✓	✓	✓
Measure outcomes for citizens in vulnerable circumstances	✓	✓	✓
CHALLENGE 3 Dismantling barriers to a diverse and inclusive profession at all levels			
Strengthen the evidential base on diversity and inclusion	✓	✓	✓
Improve evaluation of diversity and inclusion initiatives	✓	✓	
Address issues of retention and progression as well as entry	✓	✓	✓
CHALLENGE 4 Ensuring high quality legal services and strong professional ethics			
Ensure education and training evolves to meet changing expectations		✓	✓
Ensure legal professionals remain competent throughout their careers		✓	✓
CHALLENGE 5 Closing gaps in consumer protection			
Align regulation to risk so that the public is properly protected		✓	
Deliver universal access to redress across the market		✓	✓
Increase public understanding of the consumer protections in place		✓	
CHALLENGE 6 Reforming the justice system and redrawing the regulatory landscape			
Make reforms so that regulation remains fit for purpose	✓	✓	
Improve complaints handling		✓	✓
CHALLENGE 7 Empowering consumers to obtain high quality and affordable services			
Enhance transparency by providers on price and quality	✓	✓	✓
Facilitate tools enabling consumers to easily compare providers	✓	✓	✓
Reduce complexity – 'Simple Legal Products'?	✓	✓	✓
CHALLENGE 8 Fostering innovation that designs services around consumer needs			
Keep regulation under review so that it does not impede innovation		✓	✓
Create a regulatory environment that fosters innovation		✓	✓
CHALLENGE 9 Supporting responsible use of technology that commands public trust			
Develop more and better open data	✓	✓	✓
Ensure emerging uses of technology are ethical and 'socially acceptable'		✓	
Deliver effective regulation of services using emerging technologies	✓	✓	✓
Reduce digital exclusion and maintain alternatives for essential services	✓		

Fairer outcomes

Challenge 1

Lowering unmet need prevalent across society

Priorities for the sector in 2021-24

Various priorities across this strategy can help to reduce unmet legal need, including stimulating more innovation, empowering consumers and reforms to the justice system. Many activities that regulators can pursue, such as those helping consumers to exercise choice, can help to reduce unmet legal need. However, activities that have a more direct impact, including legal aid, funding of advice agencies and the operation of the courts, are more typically matters of public policy. Further, there needs to be a degree of realism about how far a better functioning legal services market can deliver greater access to justice.

Reduce financial barriers to access

A properly funded legal aid system, strong third sector and sustainable provider base are all vital components of a fair justice system. Current government reviews of legal aid, as well as the Justice Committee inquiry into the future of legal aid, are important opportunities to reach new settlements both for citizens in accessing support and on the remuneration of providers. Further, legal services are unaffordable for many in society, not just low income households.

There needs to be a shift in mindset to seeing the justice system as a benefit not a cost to society, and where the whole system costs of legal issues are properly recognised in public spending priorities. At the same time, the legal sector needs to get better at quantifying these impacts, evaluating what works and demonstrating the benefits of interventions.

The sector also needs to consider solutions that could make legal services available more affordably at the point of need or help consumers to manage the cost. For example, legal needs are often unexpected, and few consumers meet the costs from disposable income. Yet few providers enable consumers to pay by instalments or use credit, which would help them manage these payments. Legal expenses insurance is rarely used to pay for legal services, even though millions of households have policies. Unbundled legal services (where consumers and lawyers share the work) have not become as widespread as expected. These are avenues that could potentially contribute to reducing financial barriers to access.

Reduce non-financial barriers to access

While cost is an insurmountable obstacle for many people, barriers to access go beyond cost, embracing issues of the complexity of the law, legal capability and service design.

The Ministry of Justice's Legal Support Strategy set a new path for overhauling the legal support system. Its emphasis on early intervention, solutions like legal support hubs and focus on innovation was welcome; it will be important to fully implement this programme.

Public policy can help to remove unnecessary non-financial barriers to access in other ways. Recent examples include making changes to the law that remove some of the underlying complexity behind legal issues (e.g. 'no fault' divorce, electronic signatures) and using technology to simplify legal processes (e.g. online applications for power of attorney). Models of dispute resolution like ombudsmen and similar have transferred the cost of resolving consumer problems to industry and could be applied in a wider range of disputes.

One barrier to access for many citizens is a simple lack of knowledge about how the legal system works and who they can turn to for help. This is where a facility like the Legal Choices digital platform, properly funded and supported across the sector, has a critical role. Following a redevelopment programme, Legal Choices is attracting higher visitor traffic and is developing new products. There may be potential to explore the connections between Legal Choices and the Ministry of Justice programme on early legal support and advice.

Develop a legal support strategy for small businesses

Small businesses are the backbone of the economy, making up 99% of all businesses, and around half of all business turnover in the private sector. How small businesses deal with legal issues is crucial to the UK's economic prosperity.

Like individuals, issues of legal capability, affordability and service design also hinder small businesses accessing legal services. Covid-19 has exacerbated longstanding challenges like late payments and increased legal need in areas like employment and premises.

The creation of the Small Business Commissioner and policy initiatives aiming to create a responsible payment culture are making inroads on specific issues like late payments. However, the challenges facing small businesses in dealing with a range of legal issues go far wider, including access to affordable advice and systems for resolving disputes.

Small businesses would benefit from a vision and action plan for legal support equivalent to that developed by the Ministry of Justice for citizens. This should be underpinned by data on their legal needs and experience and requires coordination across government departments.

How LSB could contribute to this priority in 2021-24

- Continue our programme of legal needs research
- Explore whether and how legal expenses insurance could help to reduce unmet legal need by convening discussions and adding our voice to the debate
- Make the case for a legal support strategy for small businesses underpinned by fresh LSB research on the legal needs and experience of these consumers
- Play a more active role in public policy issues (where these relate to our statutory objectives and we can add relevant insight)
- Our idea for 'simple legal products' would also contribute (see Better Services)

Priorities for the sector in 2021-24

Vulnerability, in a broad sense, refers to any situation in which an individual may be unable to engage effectively and is at a particularly high risk of getting a poor deal². Vulnerability can arise from the specific context of a market and affect a broad range of people. Alternatively, vulnerability can be associated with personal characteristics such as physical disability, poor mental health or low incomes, which may result in individuals with those characteristics facing particularly severe, persistent problems. Some legal needs are directly related to personal characteristics, for example issues relating to mental capacity.

The legal aid system is meant to provide a safety net for the most vulnerable in society. As noted above, current policy reviews provide opportunities for government to make sure that this safety net catches all those who for financial or other reasons are most in need of help.

Create a fairer market for citizens in vulnerable circumstances

The way that markets operate, services are designed, and providers behave, can all lead to outcomes that are worse for some people than for others. This unfairness in markets is often avoidable and may result from lack of understanding on the part of service providers. There is a role for professional leadership to raise awareness and provide practical support since relatively small changes can often make a big difference to reducing vulnerability.

However, some providers cause harm by not accounting for vulnerabilities in their service delivery or in the worst cases by exploiting a person's inability to protect themselves. Regulation can help to ensure fairer treatment of people in vulnerable circumstances. This includes through the education and training system, codes of conduct, risk assessment, supervision and enforcement. Complaints and disciplinary bodies should also take account of vulnerability in their decisions and offer practical support for people using their services.

In other parts of the economy, regulators have developed practice in better identification of people in vulnerable circumstances³ and strategies⁴ that focus on making sure firms treat their customers fairly and embed vulnerability considerations into their culture, policies and processes. Since legal services are diverse vulnerability will arise in different ways across the market. While there are some universal principles, each regulator needs to understand how vulnerability can occur in their operating contexts and take appropriate steps.

Measure outcomes for citizens in vulnerable circumstances

The LSB's legal needs research shows the value of a data driven approach to track where certain groups are less well served by legal services. This needs to be supplemented by qualitative research that allows deeper, real-world insights into how people in vulnerable circumstances experience legal services. Segmentation and research of this kind should become a routine feature of policymaking in the sector. This is a necessary step to tailoring policy responses to help avoid or minimise disproportionate impacts for these citizens.

² CMA, Consumer vulnerability: challenges and potential solutions, February 2019.

³ <https://www.ukrn.org.uk/wp-content/uploads/2020/09/UKRN-Vulnerable-Consumers-Guide.pdf>

⁴ <https://www.fca.org.uk/firms/treating-vulnerable-consumers-fairly>

This principle needs to be embedded throughout regulatory processes and there is a need to demonstrate how these considerations inform priorities and decision-making. Equality impact assessments are one example of a tool that can help; however, they are not used as much as they should be, and the analysis is often patchy or incomplete. This may reflect a lack of understanding of vulnerability in the market.

How LSB could contribute to this priority in 2021-24

- Promote a more strategic approach to vulnerability in how citizens access and use legal services
- Carry out case study style research with specific groups of citizens
- Through our statutory decisions work, ensure that vulnerability considerations are properly factored into regulators' activities
- Play a more active role in public policy issues (where these relate to our statutory objectives and we can add relevant insight)

Challenge 3

Dismantling barriers to a diverse and inclusive profession at all levels

Priorities for the sector in 2021-24

Improving diversity and inclusion needs to be a significant priority for the sector. The involvement of a wide range of actors, including professional leadership, is needed to make real and faster progress. The role of regulation in this space is very different today than it was a few years ago. Regulators now take a greater interest in the personal conduct of legal professionals – for example, relating to social media posts, sexual harassment and bullying – than in the past. We expect the role of regulators to continue to evolve in this respect.

Strengthen the evidential base on diversity and inclusion

Having a sound understanding of the composition of the profession is a crucial foundational basis for the sector to target its efforts and to demonstrate that actions are having an impact. Much comparative progress has been made in terms of data gathering, but weaknesses and gaps remain. For example, social mobility has not featured strongly in the evidence base, and it is only recently that intersectionality has begun to be considered. It is also challenging to build a sector-wide picture due to differences in data collection practices.

As well as improving statistical information, there is a need to build a richer picture of the lived experience of legal professionals. Studies focusing on gender and disability have provided powerful evidence that has served as a call to action. There is a need to improve the evidence in relation to other aspects, including on race and socio-economic background.

An important gap in knowledge is the absence of measures to understand any differential impact on protected characteristics within disciplinary and enforcement procedures. Unless this is measured, the sector cannot state with confidence that problems do not exist. A good first step is that the SRA and BSB are carrying out historical analysis of their data.

Improve evaluation of diversity and inclusion initiatives

There have been many well-intentioned initiatives that aim to improve diversity and inclusion, but evaluation is rare, and this makes it much harder to know what moves the dial the most. It is crucial that all those responsible for such initiatives, including regulators, focus on designing evaluation approaches which assess impact and monitor progress over time.

More broadly, the sector needs to be more inclusive in the way that it develops policy and does this transparently so that it can be held to account. Demonstrating analysis of the effect of activities on the protected characteristics is a legal requirement under the Equality Act, not just a matter of good practice. As noted above, equality impact assessments can assist with this, but their use is patchy, and standards of analysis could be improved.

Address issues of retention and progression as well as entry

While the make-up of the profession better reflects society than ten years ago, as much attention needs to be paid to issues of retention and progression as that of entry. In the State of Legal Services 2020 report, we described how some legal professionals face a range of barriers that combine to favour people from some groups and exclude others at senior levels of the profession, including, but certainly not limited to, the judiciary. Those barriers include preferences for “elite” educational institutions, working practices and cultures that exclude, unfounded perceptions of “hierarchy” between different types of legal professional, and “homophily” (a tendency to prefer people similar to ourselves).

The legal sector needs effective programmes to achieve a diverse and inclusive profession from entry right through to senior levels. To do so, it needs to identify the barriers to entry and progression, and better understand the causes of attrition, that face specific groups.

How LSB could contribute to this priority in 2021-24

- Complete work to critically analyse the current approaches regulators are taking on understanding barriers to progress and evaluation. This will help us to identify good examples of evaluation and initiatives that are having a positive impact
- Review our expectations of regulators in relation to diversity and inclusion, including our statutory guidance and regulatory performance standards
- Convene and co-produce work on matters including approaches to design and evaluation of interventions; collation and use of data; and the lived experience of legal professionals
- Through our statutory decisions work ensuring that diversity considerations are properly factored into regulators' decision making

Stronger confidence

Challenge 4

Ensuring high quality legal services and strong professional ethics

Priorities for the sector in 2021-24

Ensure education and training evolves to meet changing expectations

The systems of education and training for solicitors and barristers have been the subject of major reform over the last period. The objectives of these reforms have included resetting expectations of the minimum standards that society expects of lawyers, reducing the cost of training and addressing disparities in outcomes between students of different backgrounds. Next, the initial focus in these parts of the market will be on implementation and evaluation. At the same time, these reforms are not panacea for all education and training issues.

While there are unlikely to be such major reforms to education and training in the near future, these systems must continue to evolve to meet changing expectations of legal professionals. For example, there is a live debate on what regulators can do to ensure that legal education addresses the challenges presented by technology so that lawyers have the knowledge and skills required to shape and use technology to deliver legal services effectively and ethically. Other strands in this strategy, for example in relation to vulnerability, promoting a stronger sense of professionalism and building a more inclusive culture in the profession, may also have implications for the delivery of education and training.

Ensure legal professionals remain competent throughout their careers

Lawyers help to keep us safe, protect our liberty, enforce our rights. They come to our aid when the stakes are highest and during the most stressful moments in our lives. Therefore, when the public use legal services, they need to know that the professionals helping them are competent – not just upon qualification, but throughout their careers. As well as protecting people from harm, this is about public trust and confidence in legal services.

During 2020/21 the LSB has been gathering information about current approaches to competence assurance in legal services and other sectors. Our stakeholder engagement has identified a view that more checks and balances may be needed. There is some support for sector-wide additional competence checks to provide more meaningful assurance that legal professionals are meeting the standards of minimum competence embedded in the regulators' existing rules. There is also some support for targeted additional competence checks in areas where there is evidence of an increased risk of harm to consumers.

The focus will now shift from evidence gathering to identifying specific solutions.

How LSB could contribute to this priority in 2021-24

- Complete our review of ongoing competence and implement the findings
- Our statutory decisions and PCF approvals work contributes by ensuring that the right consumer protection safeguards are in place and that regulatory bodies have sufficient resources to perform their role
- Hold regulators to account for their performance through our regulatory performance framework

Challenge 5

Closing gaps in consumer protection

Priorities for the sector in 2021-24

The issues in this section relate to long unresolved issues about the scope of regulation. The State of Legal Services 2020 report sets out why we consider the legislative framework would ideally be overhauled. However, there are opportunities to strengthen protections within the existing system and by making minor changes to the Legal Services Act 2007.

Align regulation to risk so that the public is properly protected

There are fewer legal activities that only regulated providers can offer than most people think. Just six activities can only be provided by individuals or entities authorised by one of the regulatory bodies. Anyone can set up in business to offer the remaining activities, which include providing general legal advice, writing a will or negotiating terms on a divorce. Currently, the unregulated market is thought to be small, but growing – and this growth could accelerate as it becomes more common for legal services to be delivered online.

This is not necessarily a problem if the list of ‘reserved legal activities’ matches up well to areas where there is greatest risk of harm to consumers and the public interest. In fact, there is evidence that unregulated providers are more innovative and cheaper than other firms – regulating these activities unless justified could take away these benefits. Balanced against this, there is evidence that consumer satisfaction with unregulated providers is lower than for regulated firms. Which legal activities should be regulated has not recently been reviewed, but the Act includes a mechanism to change what falls in and out of scope. This involves the LSB carrying out investigations and potentially making recommendations to the Lord Chancellor that he make alterations to the list of reserved legal activities.

We are keen to hear views on how these issues can be progressed, including the merits of the LSB carrying out a statutory review of the reserved legal activities.

Deliver universal access to redress across the market

Currently, consumers may only complain to the Legal Ombudsman if the provider they use is authorised by one of the regulatory bodies. If consumers wish to complain about an unregulated provider, unless that provider voluntarily submits to an independent redress scheme, their only recourse is through the courts. Going to court can be intimidating and is unaffordable for many consumers. By contrast, the Legal Ombudsman is free for consumers to use and the emphasis is on resolving disputes speedily and with minimum formality.

We consider that public confidence would be enhanced if consumers could complain to the Legal Ombudsman about any provider in the market. This would close an important gap in consumer protection and help unregulated businesses to compete more effectively. Such a step would require primary legislation and there are a series of issues that would first need to be resolved; this includes addressing the complaints backlog at the Legal Ombudsman.

Increase public understanding of the consumer protections in place

As noted above, there is a mismatch between public expectations and which legal activities are regulated. Surveys also show that many consumers do not check if their provider is regulated, often because of these false assumptions. Many unregulated firms provide an excellent service, but consumers are less well protected when using them should things go wrong. Recently, some regulatory bodies have introduced tools making it easier for people to check whether legal professionals and entities are regulated. A facility will soon be launched on the Legal Choices platform enabling the public to search for disciplinary records.

These are welcome developments, but it could still be made easier for the public to obtain basic information about legal services providers and their regulatory records. We think there is merit in the sector revisiting a recommendation from the Competition and Market Authority (CMA) market study in 2016 to develop a single professional register, which people could access through Legal Choices. This could join up various 'official' information about regulated professionals and entities in one location.

Subject to government appetite to provide universal access to redress, this could be linked to government interest in proposals to develop a register of unregulated providers.

How LSB could contribute to this priority in 2021-24

- Build a better understanding the unregulated sector and risks to consumers
- Consider a statutory review of the reserved legal activities and/or explore use of our s163 powers to enter voluntary arrangements to support self-regulation
- Support work to create a single professional register
- Work with government and OLC to expand access to redress
- Review our s112 rules and guidance on consumer redress

Challenge 6

Reforming the justice system and redrawing the regulatory landscape

Priorities for the sector in 2021-24

As well as issues of regulation set out below, public confidence in legal services is also affected by the performance of the wider justice system. The State of the Legal Services 2020 report describes concerns about our justice system; these predated Covid-19, but the effects of the pandemic have put them under greater strain. Regulation can influence the operation of the justice system, for example through ensuring the quality of advocacy.

Make reforms so that regulation remains fit for purpose

Regulatory bodies can only perform effectively if their legislative framework is fit for purpose. The LSB, CMA and the Mayson Review are among those that have called for reforms to the Legal Services Act 2007. The LSB's view is that only major reform can fully address issues with the scope of regulation, the independence of regulation and the institutional landscape. Ultimately, governments must consider the desirability of reforms in legal services against other priorities. In doing so, they might consider the benefits well-functioning legal services deliver, not only for their direct users, but for our economy and society.

In the absence of legislative reform, this strategy for the sector sets out opportunities for making incremental changes. These include altering the list of reserved legal activities and extending protections for consumers using unregulated providers. There may be scope for regulatory bodies to move away from 'all or nothing' approaches and pursue activity-based regulation which is more closely tailored to risk. As some are already doing, the approved regulators and their regulatory bodies have the freedom to put in place greater institutional separation than the minimum legal requirements. Through better collaboration, regulatory bodies can tackle common challenges in a more joined up way and mask the complexity of the institutional landscape. Examples highlighted in this strategy include helping innovators to navigate the rules, the Legal Choices platform and a single professional register.

Beyond making changes to rules and structures, other parts of this strategy highlight the need for cultural change. This includes practical steps that regulatory bodies can take to help foster innovation and strengthen their consumer focus.

Improve complaints handling

As noted in the State of the Legal Services 2020 report, the ability of consumers to complain to a single, fully independent ombudsman scheme is an important element of delivering public confidence in legal services. However, public and professional confidence in the Legal Ombudsman is being eroded due to significant caseload backlogs, which predate Covid-19. These performance problems extend back many years and reflect underlying weaknesses in the organisation. Under new leadership, the best outcome is that the Legal Ombudsman can turn the situation around and rebuild confidence. The scale of the challenge, which is made more difficult by the pandemic, means this recovery will not be easy or be achieved rapidly.

But it will be important soon to see clear evidence of a sustained improvement trajectory. The sector needs a dispute resolution model that can deliver timely and effective redress for consumers. Ultimately, and this should only be a last resort, if it becomes evident that the Legal Ombudsman cannot improve, alternatives to the current model must be contemplated.

Performance recovery is important in the context of proposals to widen access to the Legal Ombudsman for consumers using unregulated providers. It would be preferable to have a single statutory consumer redress scheme covering the whole sector. Should the government pursue such proposals, it will be some time before the necessary legislative steps are completed. By this time, we hope the Legal Ombudsman will be able to take on this additional caseload. However, improving consumer protection should not depend on the Legal Ombudsman's recovery, which requires consideration of other options in parallel.

The Office for Legal Complaints (OLC) is consulting separately on its plans for the Legal Ombudsman scheme. In addition to performance issues, this includes a welcome focus on a prevention agenda. This includes using complaints as a learning tool to help the sector raise standards and sharing data on its decisions to support consumer choice. It will be important to advance in these areas alongside improving the scheme's performance.

Other priorities in relation to complaints that emerge from our State of Legal Services 2020 report include maintaining a focus on signposting consumers to redress mechanisms and continuing to improve standards of first-tier complaints handling.

How LSB could contribute to this priority in 2021-24

- Build on and strengthen the LSB's regulatory performance framework
- Support the OLC to improve the Legal Ombudsman's performance
- Engage in policy reviews of the criminal, civil and administrative justice systems where these relate to our statutory objectives and we can add relevant insight

Better services

Challenge 7

Empowering consumers to obtain high quality and affordable services

Priorities for the sector in 2021-24

We have engaged closely with the CMA in their progress review. The priorities set out below will be refined further once the CMA has reported.

The LSB has made a commitment to publish a statutory policy statement under section 49 of the Act that would set out our expectations of what the regulators should be doing to improve consumer engagement in the market. The statutory policy statement will set the direction for regulators on many of the issues set out in the sections that follow.

Enhance transparency by providers on price and quality

There is encouraging evidence that more price information is available and that consumers are engaging with this. However, a quarter of consumers still report difficulty in finding price information and shopping around has increased only marginally. Further, the measures introduced by the regulators two years ago are not yet delivering stronger price competition. Some providers publish wide ranges of likely prices, with extremes of low and high prices that give little indication of where the actual cost is likely to be. This does not meet the spirit of the rules or give helpful information to prospective customers.

Transparency of quality of service remains the area where least progress has been made since the CMA's 2016 review, but policy options are now actively being explored. The LSCP has identified three types of information that consumers might find useful: 'objective data' (figures and evidence from independent authorities); independent consumer feedback; and background information about a provider's work and experience. The focus now is to identify what information consumers would find most helpful, work out how best to generate this information and then open-up the best channels for them to receive this information.

It will be important to ensure that the rules made by regulators are followed by providers and appropriately enforced where this is not the case.

Facilitate tools enabling consumers to easily compare providers

Closely linked to the issues above, digital comparison tools – such as customer feedback mechanisms and price comparison services – are one of the channels for getting information to consumers on the price and quality of different services in the market. It had been hoped that the transparency measures introduced following the CMA's 2016 review would help to stimulate such tools, but the evidence suggests they remain little used by consumers.

Even so, survey data suggests that more consumers are searching online for providers. There is also anecdotal evidence that existing comparison tools are seeing a spike in traffic following the pandemic and that geography is less of a factor influencing choice of provider. Although there remain some inherent features of legal services that make it difficult for these tools to thrive in this market, it is possible that changing market conditions, facilitation by regulators and enhanced transparency by providers, could tip the balance.

Yet, the ability of consumers to access price and quality information should not depend on commercial actors succeeding. It would be preferable for the market to develop solutions, but in the absence of this it may be necessary for regulators to support consumers directly.

Reduce complexity – ‘Simple Legal Products’?

Consumers tend to successfully reach providers for the most serious issues they face, but the sector too often fails to meet their low-value, basic legal needs.

There may be potential for developing a suite of ‘simple legal products’ to improve consumer engagement. The idea draws on the principles behind ‘simple financial products’ developed by the Sargeant Review ten years ago. There are parallels between legal and financial services in terms of barriers to engaging consumers. These include the public not understanding the benefits of managing their legal affairs and low public legal education, lack of transparency and difficulty comparing offers, and the wide range and complexity of available services. Greater simplicity could help to build consumer trust and engagement, encouraging people to shop around and drive stronger competition in the market.

The essence of idea is to develop a small range of easy to understand and easy to compare standardised products that would meet people’s basic needs. These would “do what they say on the tin”. The starting point would be to define the features of each product (such as a simple will or uncontested divorce). Providers would be able to market these services with a ‘simple legal products’ badge. In return, they could be asked to commit to certain conditions, like offering fixed fees and listing these services on digital comparison tools.

These products would not meet everyone’s needs, but they could meet the needs of many consumers underserved by the market. As part of the consultation on our strategy, we would be interested to hear views on the merits of this idea. If it is attractive in principle, we would expect government to take the lead in establishing the feasibility of such an approach.

How LSB could contribute to this priority in 2021-24

- Consider and implement the CMA progress review recommendations
- Develop a statutory statement of policy on consumer engagement
- Identify specific solution(s) on quality indicators
- Use our convening role to explore the merits of ‘simple legal products’

Challenge 8

Fostering innovation that designs services around consumer needs

Priorities for the sector in 2021-24

The disruptive effect of the pandemic, developments in technology and a more competitive market should create a more fertile climate for innovation in legal services. Regulators are often seen as inhibiting innovation, but they can also help to unlock it.

Traditionally, regulators have supported innovation by removing unnecessary rules and promoting competition. More recently, regulators across the economy are exploring how they can support innovation through tools like sandboxes. Regulators are focused on creating the conditions that enables innovation to thrive; they do not design solutions or pick winners. Yet, increasingly, regulators are assuming a role where they proactively foster innovation.

Keep regulation under review so that it does not impede innovation

A key focus of the last decade of legal services regulation has been on permitting a wider range of business structures and encouraging external investment. Legal professionals have been freed up to operate in a broader range of areas of law and work in different ways, while rules have been removed that added unnecessary cost and risked stifling innovation. This has been successful to the extent that survey data suggests providers consider regulation to be less of a barrier to innovation and there is a more competitive environment than before.

Even so, four in ten law firms still identified legislative and regulatory factors as constraints on innovation. Changes in legislation affecting the services they deliver, requirements on client confidentiality and data protection, professional indemnity insurance requirements, anti-money laundering and keeping up with changes in regulations were identified as issues. Regulations may impose necessary and proportionate constraints on innovation to protect consumers. Some of the factors identified lie outside the control of legal services regulators, although as with other areas of public policy, they can add their voice to the debate.

Acknowledging the need to avoid constant change that can deter entry and innovation, it is incumbent on regulators to keep their arrangements under regular review. An example is professional indemnity insurance (PII) as a priority area of focus. PII is an important element of maintaining public confidence in legal services but is typically the single biggest cost of regulation and premiums are rising sharply this year. Initiatives to reform PII regulatory arrangements for solicitors have been fraught, but there are also issues in other parts of the market, for example where there is a sole or small number of PII providers.

Create a regulatory environment that fosters innovation

Despite efforts to remove barriers to entry and reduce unnecessary regulation, our survey data shows that overall levels of innovation in the market have remained static.

Notwithstanding the need to keep regulation under review, there is evidence that the main regulatory barriers that do exist tend to be 'soft' ones like navigating the regulatory system.

The sector's regulators can help to overcome these soft barriers by supporting new entrants with information, sandboxes, innovation funds, strategies and similar initiatives. The SRA and Nesta Legal Access Challenge showed how creative approaches by regulators can actively facilitate innovation that delivers access to justice benefits. Similarly, the Lawtech Sandbox pilot administered by Tech Nation enables innovators to engage in a coordinated way with multiple regulators in a single forum: the Regulatory Response Unit.

As well as a way for regulators to foster innovation, sandboxes can help regulators and innovators understand the risks a product or service may involve. This can 'de-risk' the product or service, reduce regulatory uncertainty, and protect consumers. Regulatory sandboxes can help create that safe 'test' environment that new technologies need. However, to maintain public confidence, regulatory sandboxes should adhere to certain principles.

How LSB could contribute to this priority in 2021-24

- Incorporate the role of the regulatory bodies in fostering innovation within our regulatory performance framework
- Track levels of innovation and use of technology through our research programme
- Articulate a set of good practice principles for regulatory sandboxes
- Consider innovation as part of our work on the scope of regulation
- Our statutory decisions work makes an important contribution to removing unnecessary regulation while maintaining essential protections for consumers

Challenge 9

Supporting responsible use of technology that commands public trust

Priorities for the sector in 2021-24

Technology is now an increasing facet of how legal services are delivered. The challenge facing the sector is how the risks inherent to new technologies and innovation are managed to ensure any new solutions operate effectively and in the public interest. The priorities set out in this strategy focus on some of the main building blocks involving a regulatory dimension that will help technology to fulfil its transformative potential.

These priorities include: opening up more and better data as the raw material underpinning innovation; ensuring that technology is used in ways that are socially acceptable; the role of

regulators in fostering innovation balanced with delivering sufficient consumer protection; ensuring regulatory frameworks are fit for purpose; and issues of digital exclusion.

Develop more and better open data

Data is a core theme of this strategy. Data is an important driver for technological innovation. Data helps legal businesses to improve their services. Regulators increasingly use data to inform risk-based approaches. Digital comparison tools need data to help consumers compare the price and quality of legal businesses. Data allows the public to know how well the justice system is performing and hold decision-makers to account. Data also underpins policymakers' ability to evaluate what interventions are working well or less well. So, data is the building block to identifying sector-wide and specific challenges, developing solutions to those challenges and understanding if solutions are working in the public interest.

More, and better, data needs to be collected in the legal services sector, and made available to better enable innovation. Tools such as artificial intelligence depend on access to large quantities of good quality data, such as court judgments, contracts and other legal documents. However, this information may be considered commercially confidential and issues client of confidentiality and legal professional privilege need to be considered. Concerns have been expressed about an overconcentration of ownership of the industry's data assets: if this is concentrated in the hands of a few it may have a negative effect on the overall development of legal AI, and on competition between developers.

These issues need to be explored so that data is unlocked as a force for good. Data trusts and data institutions to steward and govern the sharing of data can increase access to data to maximise its societal and economic value, while limiting and mitigating potential harm.

Ensure emerging uses of technology are ethical and socially acceptable

New technological innovations, including artificial intelligence applications like algorithmic decision-making, automated document assembly and chatbots, as well as developments such as blockchain, have the potential to transform how legal services are provided.

Some of these technologies are well-established and have gained public trust, for example tools which automate the process of making a will are increasingly popular with consumers. However, other emerging uses of technology in legal services are more controversial. Algorithms are starting to be used to split assets in a divorce and predict which court cases will win or lose. It has been predicted that for simple civil cases based on documents court judges are likely to be phased out and replaced by artificial intelligence systems.

Should artificial intelligence play a bigger role in the delivery of legal services, especially where this substitutes for human involvement, it needs to proceed in ways that are 'socially acceptable'. It is important to know where the 'red lines' are – where a use of technology is unconscionable to society. This means engaging with the public and legal professionals as policy approaches are designed. In the absence of trust, neither consumers nor legal professionals are likely to engage with services that could be beneficial. Moreover, these developments have wider implications for the rule of law and the public interest.

Deliver effective regulation of services using emerging technologies

How regulators respond to developments in technology will be an important factor in the future delivery of legal services. As with other types of innovation, regulators should keep their rules under review and take practical steps to foster technological innovation. They can provide technology developers and legal businesses with information, advice, oversight, and ultimately confidence to pursue innovation that meets regulatory requirements.

Although advanced technologies like AI remain relatively immature, legal services regulators need to build up their own technology regulation capabilities and consider the implications of these developments now. These implications include the knowledge and skills that legal professionals need, and what standards and controls, if any, are required to address ethical concerns and deliver sufficient consumer protection. A joined-up approach across regulators would be beneficial as otherwise this frustrates innovators and risks creating different standards for technologies that involve the same legal activities.

The current regulatory framework created by the Act also poses challenges. Clearly, the legislation was designed prior to recent developments in technology that are fast changing the face of legal services. Positively, its permissive nature is more conducive to technological innovation than in some other jurisdictions. However, the scope of regulation creates issues, for example the focus on reserved legal activities and professional titles means technology developers and suppliers outside of England and Wales are excluded. Covid-19 has further accelerated online delivery of legal services, making it more urgent to consider the best responses, both within the current framework and via legislative reform.

Reduce digital exclusion and maintain alternatives for essential services

Technology has tremendous potential to unlock access to justice, but it can also weaken it. Government ambitions and initiatives, such as the HMCTS Reform programme, have cemented the importance of technology in delivering public services. As these processes move online, policymakers have needed to carefully consider risks of digital exclusion, including by maintaining alternatives for essential services. The Covid-19 pandemic has left little option but to deliver a wider range of justice services using technology. This has raised public policy questions about the appropriateness of using technology in different situations, for example the use of remote hearings in family cases and for jury trials. Once the pandemic is over, questions need to be resolved about where technology should continue to be used, and where we need to continue to offer choice in how services are accessed.

Covid-19 has also accelerated online delivery of legal services. In many cases this may lead to better services that are cheaper, more convenient and easier to use. However, it might also show the limits of using technology to engage with consumers, particularly where they are vulnerable or do not have access to technology themselves. Although regulators do not confront the same sets of issues as in public policy, issues of digital exclusion – and the ability to use digital services successfully – are a dimension of vulnerability that could lead to outcomes that are worse for some consumers than for others. As such, this should inform a strategic approach to consumer vulnerability by regulators.

How LSB could contribute to this priority in 2021-24

- Carry out research on the social acceptability of developments in technology with LSB's Public Panel
- Support the development of cross-regulator open data standards and approaches, including a consideration of the sector's data assets
- Consider how our regulatory performance framework can be used to assess the capability and capacity of regulatory bodies to respond to developments in technology
- As part of work on the scope of regulation, consider how a risk-based approach to regulation could better enable innovation and use of technology
- Use our convening power to help the regulatory bodies build their own regulatory approaches and capabilities so that they can provide technology developers and legal services providers with information, advice, oversight, and ultimately confidence to pursue innovation and meet regulatory standards.
- Consider establishing an advisory panel for regulatory bodies to consult on issues of technology and innovation
- Use technology in the discharge of our regulatory and statutory functions