

Draft strategy for legal services regulation and draft business plan 2021-22

A consultation on our proposed strategy for the sector and on our proposed business plan for 2021-22

This consultation will close on 5 February 2021

This consultation paper will be of interest to, among others:

Approved regulators

Regulatory bodies

Providers of legal services

Legal Professionals

Legal representative bodies

Legal advisory organisations

Other third sector organisations

Non departmental public bodies

Consumer groups

Law schools/universities

Academics

Accountancy bodies

Potential new entrants to the market

Think tanks

Political parties

Government departments

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Foreword



As we reach the end of our 2018-21 strategic period, we decided not just to create another corporate strategy for the LSB, but rather to develop a strategy for sector.

This reflects that the sector faces significant challenges that can only be tackled if its participants work together in pursuit of a common agenda. Good regulation can help to meet these challenges, but they demand solutions that reach beyond regulation.

While this draft strategy identifies where we think the LSB can make a difference, we also invite others – both those who know us well, and others who are less familiar with us – to say how they could help advance this agenda in a shared endeavour.

In developing this strategy, we have reflected carefully on ten years of legal services regulation since the Legal Services Act 2007 came into force. Through an extensive programme of public and stakeholder engagement, we heard a wide range of views on key priorities that the sector should focus on in the years ahead. These ranged from public funding of legal services, to strengthening consumer protection and removing barriers to access, progression, and retention within the profession.

Alongside challenges, we also heard about opportunities that the sector must grasp. While the long-term impacts of Covid-19 are still unfolding, the ability the sector has demonstrated in dealing with the pandemic at pace and at scale is cause for pride. The pandemic is increasing legal need making the contribution of legal services to society ever more important. Harnessing this ability will continue to be important in helping the sector to recover from the effects of Covid-19 and to reshape itself to meet the changing needs of the society it serves. This flexibility can help ensure that people are able to access they legal services they need – both online and in-person.

Reshaping legal services to better meet the needs of society is the golden thread in this strategy for the sector. It is a consumer-focused strategy that builds on the progress made following ten years of legal services regulation and lays out a path to navigating the many and varied challenges facing the sector over the next ten years. If everyone plays their part, it should lead to fairer outcomes for lawyers and the society they serve, strengthen confidence in regulation, and lead to better services.

A strategy must translate into a plan of action, and in our draft business plan for 2021-22, we lay out our proposed work plans for the coming year. Our focus will be to begin to lay the foundations for long-term, sustainable change within the sector, including building diversity and inclusion into our regulatory performance framework, exploring different approaches to reducing unmet legal need and promoting a more strategic approach to addressing consumer vulnerability.

In considering where to focus in 2021-22, we have considered whether to embark on a statutory review of the reserved legal activities. Our initial view is that now is not the right time for such a review, but that there is value in mapping what is happening in the unregulated sector and considering the implications of technological change for the scope of regulation. We welcome your views on our proposed approach.

I look forward to hearing your views on both the draft strategy for the sector and our next annual business plan.

Have we identified the right aims and priorities? How can you contribute to this shared agenda, and where can we work together?

Dr Helen Phillips, Chair

Executive summary

- 1. In our 2020/21 business plan we laid out our ambitious plan to develop a new strategy for legal services regulation. Our vision was to develop a strategy for the entire sector and not just for the Legal Services Board.
- 2. This consultation document marks the culmination of months of work. This work has included a significant programme of stakeholder and public engagement. We met with a wide variety of individuals and organisations, held evidence gathering sessions on core themes, and hosted an online summit-style event with the sector's leaders and key influencers. For the first time, we asked citizens to suggest what our priorities should be.
- 3. As part of our strategy development work, we published an evidence-based account of the legal services sector over the last ten years. Our **State of Legal Services 2020** report shows that there is much for the sector to take pride in and to build upon. It also shows that the sector continues to face challenges. We have categorised these challenges under three strategic themes: fairer outcomes, stronger confidence, and better services.
- 4. The challenges we have identified suggest a need for long-term, sustainable change. Our ten-year strategic direction sets out the destination that we think the sector should work towards. To help reach this destination, we have identified priority areas of focus over the next three years. This is set out in our draft strategy for the sector, at **Annex A**.
- 5. Meeting these challenges will require a collaborative approach across the sector and have an interest in its success. As part of this consultation on the strategy, we are inviting individuals and organisations to step forward and identify where they can make a positive difference to this common agenda.
- 6. The LSB has a key role in addressing the challenges as the oversight regulator for the legal services sector. We set how we will begin to do this in our draft Business Plan 2021-22, set out at **Annex B.**

Background

- 8. The LSB is the independent body responsible for overseeing the regulation of legal services in England and Wales. We are independent of both government and the profession. We are funded by the legal profession. We oversee the 15 approved regulators and regulatory bodies for the different regulated providers of legal services, the Office for Legal Complaints (OLC) and the Solicitors Disciplinary Tribunal (SDT). Further detail on our role, powers and approach is included in the draft strategy.
- 9. In our 2020/21 business plan, we laid out our plan to develop an ambitious strategy for legal services regulation in England and Wales. To achieve this, we engaged in an extensive programme of stakeholder engagement, commissioned research with members of the public and reflected on ten years of legal services regulation.
- 10. Through our programme of stakeholder engagement, we heard a wide range of views on the key challenges and opportunities facing the legal services sector. Our engagement included:
 - Bilateral meetings with over 70 organisations
 - Four evidence sessions to hear perspectives from grassroots organisations and national consumer organisations, and experts on technology and diversity and inclusion
 - A summit-style event with more than 40 sector leaders and influencers to share our evidence and hear views on what the strategy should focus on.
- 11. We also asked citizens to give views through our new Public Panel a standing group of members of the public who we engage with to inform policy development so that we could better understand their needs and priorities. More information on this research is available here.
- 12. We published our **State of Legal Services 2020** report in November. In this we reflected on ten years of legal services regulation in England and Wales. This report offers a frank, evidence-based assessment of the legal services sector. We identified many key achievements within the sector over the last decade, including the growth in Alternative Business Structures (ABS), the wider choice now available to consumers and the fact that England and Wales remains a dispute resolution centre of choice internationally.
- 13. Despite these considerable successes, the fact remains that the basic legal needs of large sections of society are failing to be met. This partly reflects that it continues to be difficult for people to know when they have a legal

problem and to engage with the legal services market and shop around. It also reflects policy decisions taken over a long period relating to the publicly-funded legal sector.

Progress under existing 2018-21 strategy and our five-year policy objectives

- 14. Our 2018-21 corporate strategy set out the following strategic objectives:
 - Promoting the public interest through ensuring independent, effective, and proportionate regulation
 - Making it easier for all consumers to access the services they need and get redress
 - Increasing innovation, growth and the diversity of services and providers.
- 15. Over the last three years, we have made good progress against these strategic objectives. For example, we have:
 - Set out new requirements to guarantee regulatory independence and appropriate separation between regulatory and representative functions in our revised Internal Governance Rules and accompanying statutory guidance, which came into effect on 23 July 2020
 - Assessed action plans by regulators following the Competition and Market Authority's 2016 market study and overseen reforms that have increased transparency for consumers
 - Published assessments of the performance of the regulators against our regulatory performance framework, and monitored regulators' progress against their actions to improve their performance
 - Approved major changes in relation to education and training, freeing up legal professionals to practise in different business models and ensuring a civil standard of proof is used by all disciplinary tribunals
 - Consulted on revisions to the practising certificate fees (PCF) Rules and Guidance, following a two-year review and engagement with approved regulators and regulatory bodies
 - Continued our market intelligence work and research into the legal services market including our large-scale legal needs surveys, and research on technology, innovation and prices

- 16. In our 2019-20 business plan, we set out three five-year policy objectives that we described as key markers of our success in achieving our 2018-21 strategic aims. These are:
 - Appropriate frameworks for continuing assurance of professional competence throughout the careers of the people they regulate
 - The LSB perceived as being at the forefront of enhancing public legal education
 - Access to legal services increased through the promotion of responsible technological innovation that carries public trust
- 17. Our work in pursuit of these policy objectives has included:
 - Launching an ongoing competence project to build an evidence base on the current approaches to competence assurance in the legal services sector and other sectors.
 - Producing a report on the influence of legal capability at different stages of resolving legal issues.
 - Developing an information resource (in the form of a series of podcasts and commissioned papers) to help frontline regulators to develop their regulatory approaches to technology.
- 18. We have assimilated our ongoing work in pursuit of these policy objectives in our new priorities for the sector.
- 19. Full details of our work are set out in our annual reports for each year, which are available here.

Draft strategy 2021-24

- 20. At Annex A, we have included a draft strategy for the sector. Informed by the rich evidence we collected through our stakeholder and public engagement, and our State of Legal Services 2020 report, we have identified three interrelated strategic themes: fairer outcomes, stronger confidence and better services. Sitting beneath these themes are nine specific challenges that the sector needs to address.
- 21. These are deep-rooted issues, so the themes and challenges form a ten-year strategic direction for the sector. To galvanise action, we have suggested a series of priority areas of focus for the sector in 2021-24. The strategy also

- sets out how the LSB can contribute to these priorities. On public policy issues, where these issues bear on our statutory objectives, we will inform the debate by providing evidence to decision-makers.
- 22. Our strategy development work has taken place against the backdrop of the Covid-19 pandemic. This is increasing legal need and compounding the difficulties that many vulnerable citizens experience in accessing services. It is also causing huge disruption for the sector and creating challenges for many law firms and legal professionals. The pandemic reinforces the need for fairer outcomes, stronger confidence, and better services. We take heart from the ability that the legal services sector has demonstrated in adapting to change, both in pace and scale.

GOLDEN	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

- Q1 Do you have any comments on the three strategic themes that we have identified?
- Q2 Do you have any comments on the nine challenges that we have identified for the sector? Are there any important sector challenges that we have not addressed?
- 23. Overcoming these challenges calls for a cross-sector, collaborative approach between the wide range of actors that have an interest in the sector's success. We will use our convening powers to bring interested parties together to help overcome common challenges through collective solutions.
- 24. Overcoming these challenges will also rely on individual efforts. We recognise that 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.
- Q3 How can you/ your organisation contribute to overcoming the sectorwide challenges we have identified?
- Q4– Do you have any comments on the suggested areas of priority for the sector 2021-24?

Draft business plan 2021-22

- 25. At Annex B, we have included a draft business plan for 2021-22. This sets out the work that we plan to complete in the first year of the strategy.
- 26. In our 2020-21 business plan we acknowledged the need for our work plans to remain flexible to the needs of the legal services sector as the Covid-19 pandemic began to take hold. This capacity for flexibility will continue to be a feature of our work approach in 2021-22. The duration of the pandemic and its full effects on the legal services sector are still unknown, and we will continue to support the sector accordingly. The CMA's forthcoming review of progress on the recommendations in its 2016 legal services market study may also point to additional areas of work that we may want to prioritise.

Continuing workstreams for LSB in 2021-22

- 27. We plan to continue work in 2021-22 in line our statutory functions and which supports the three strategic themes, including:
 - Diversity and inclusion: Review our statutory guidance and build diversity and inclusion into our regulatory performance framework.
 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.
 - Consumer engagement: Consider and implement recommendations from the CMA progress review. This includes developing a statutory statement of policy and taking forward work on quality indicators.
 - Technology and innovation: Continue our policy work on technology and innovation, including: research with our Public Panel on public attitudes to technological innovation; and using our convening role to consider how open and accessible data can be embedded across the sector.
 - Ongoing competence: Finalise our work to understand if regulators have appropriate frameworks for continuing assurance of professional competence in place, including consulting on potential policy options.
 - Regulatory performance, statutory decisions and oversight of OLC and SDT: Continuing to discharge our statutory functions, monitor the regulators' performance and oversee the OLC and SDT.
- 28. In addition, in line with commitments we have made publicly:
 - Regulatory performance framework review: Build on and strengthen our regulatory performance framework aligning this to the strategic challenges facing the sector.
 - Changes to regulatory arrangements process review: Complete our review of our processes for these applications.

Proposed new workstreams for LSB in 2021-22

29. We will use our role as oversight regulator to convene conversations, socialise ideas and foster collaboration. This will enable common challenges to be met with common solutions. We will also use our resources to generate evidence and insight that helps to identify these.

- 30. We have identified six areas that we believe merit further work in 2021-22:
 - Scope of regulation: Build a better understanding of the unregulated sector and engage with possible work led by government to expand redress.
 - **Legal expenses insurance**: Explore whether and how legal expenses insurance can help to reduce unmet legal need by convening discussions and adding our voice to the debate.
 - Legal support for small businesses: Consider how to better enable small businesses to access legal support through research on the legal needs of small businesses. Make the case for a legal support strategy for small businesses informed by the research.
 - Citizens in vulnerable circumstances: Carry out case study research to understand the experiences of citizens in vulnerable circumstances, focusing on how access to and delivery of services is best enabled.
 Promote a strategic approach to understanding vulnerability and better measurement of outcomes.
 - Policy framework assessment: Ensure that the LSB's policy framework adequately addresses the core strategic challenges facing the sector.
 - Simple legal products: Work with government to explore the potential for developing a suite of easy to understand and easy to compare products that meet basic legal needs.
- 31. Our aim for 2021-22 is to lay the foundations for achieving long-term, sustainable change within the sector. We welcome views on whether the proposed areas of work will help to reshape legal services to deliver fairer outcomes, stronger confidence, and better services.
 - Q5 Do you agree with our proposal to pursue these workstreams? Is there anything missing that you think we should focus on in 2021-22?
 - Q6 Do you see any areas of joint working between the LSB and you/ your organisation?

Review of reserved legal activities – call for views

- 32. The Legal Services Act 2007 ('the Act') specifies that some legal activities¹ (known as the 'reserved' legal activities) can only be carried out by individuals or firms authorised by one of the regulators overseen by the LSB. We can make recommendations to the Lord Chancellor that he alter this list of activities. This involves carrying out investigations according to procedural steps that are set out in Schedule 6 to the Act.
- 33. We are interested in hearing views on whether we should carry out a review of the reserved legal activities. The possible reasons for doing so include that the current list of reserved activities is an 'accident of history' and that there has not been a recent, evidence-based assessment of the benefits or risks created by those activities. There is also a 'regulatory gap' as providers wishing only to provide non-reserved legal activities to the public, and who are not otherwise authorised or licensed for reserved work, cannot be brought within the scope of sector-specific regulation. Another reason for carrying out a review is that the size of the unregulated sector, although small, is growing. It is anticipated to grow further as more legal services are delivered online. Covid-19 has led to an acceleration in online services.
- 34. The arguments against carrying out a review include that the processes involved are lengthy, and there is no guarantee that the Lord Chancellor will accept the LSB's recommendations. It has been argued that the model of reserved activities is an inherently flawed basis for legal services regulation. Adding to the list of reserved activities could therefore 'bake in' these flaws across a wider portion of the market. Further, a review may be badly timed given disruption caused by factors including EU exit and Covid-19. Also, developments in technology are fast evolving and it may be sensible to wait to see how these unfold further before starting a review.
- 35. There are a series of contextual factors to consider. These include that the government does not plan major reform to the Act, although it is considering expanding access to redress and Professor Stephen Mayson's proposals for a mandatory register. The SRA has implemented reforms that allow solicitors to work in unregulated businesses. The SRA has also signalled interest in moving away from its current 'all or nothing' approach to regulation in favour of an activity-based approach. The CMA may comment on whether a review of the reserved legal activities is desirable in its progress review.
- 36. Section 163 of the Act enables the LSB to make 'voluntary arrangements' to improve self-regulation. This could include giving advice on best regulatory

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¹ The reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities; probate activities; notarial activities; and the administration of oaths.

- practice, or the contents of codes of practice. However, by definition, uptake would be voluntary and this would not have the force of a mandatory register.
- 37. Our initial view is that the arguments against a review outweigh the benefits, so we are not minded to conduct a statutory review at this stage. However, we see value in building our understanding of the unregulated sector and considering the implications of technology for the scope of regulation. The knowledge we would develop through this work could support a possible review of the reserved legal activities in future. We also propose to explore use of our 'voluntary arrangements' powers, although the need to do so clearly depends on any proposals that government might bring forward to create a mandatory registration scheme for unregulated providers.
- 38. Should we decide to carry out a statutory review of the reserved legal activities this would be a substantial undertaking that would require additional resources. We recognise the economic pressures on the profession and that the focus on the unregulated sector potentially raises fairness issues for those who pay the levy. Depending on the scale and scope of such a review, we would discuss with government how this work could be funded.

Q7 – Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?

Market intelligence

- 39. The focus of our market intelligence activity in 2021-22 will be to support our new strategic themes of fairer outcomes, stronger confidence and better services. To do this, we will focus our work on three areas:
 - Datasets: We will exploit our existing datasets to generate insight. This will include maintaining and enhancing our interactive dashboards on Covid-19 and the health of the market, and to continue to make our survey findings interactive.
 - Public Panel: In 2020-21, we established a public panel to enable us to engage more directly with members of the public, and so that we can ensure our policy development process is directly informed by public needs. In 2021-22, we plan to carry out case studies on consumer vulnerability with the Public Panel members, and to understand the social acceptability of developments in technology.
 - Research: We plan on carrying out desk research to map the unregulated sector and may wish to commission surveys relating to the CMA's progress review recommendations. We also plan on

carrying out the fourth edition of our Small Business Legal Needs Survey, and work exploring data trusts in support of our technology and innovation policy work.

Q8 – Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?

Enabling services and behaviours

- 40. Our work is underpinned by our internal enabling services, including:
 - Governance and Assurance, including public appointments, regularly reviewing our governance policies and procedures to ensure that they remain fit for purpose and proportionate, risk management and performance reporting.
 - People Services, including recruitment, retention, performance management, and investing in our people capability with initiatives on Learning & Development, diversity, well-being and ways of working. These are particularly important initiatives while we continue working remotely.
 - Communications and engagement, including delivering a programme of stakeholder engagement to support our business plan.
 - ICT, Legal and Finance services.
- 41. Further detail on our enabling services is available in our draft business plan.
- 42. Our delivery approach is enabled by four behaviours:
 - Lead: We set the agenda, and through our convening power, we bring different people together to push for change
 - Innovate: We are creative in our approach to ensuring regulation evolves and benefits everyone in society
 - Transform: We use evidence to inform our work and to show its impact, because we are committed to making a difference for consumers
 - **Communicate**: We value openness, listen, share knowledge and promote the regulatory objectives.

Draft budget

- 43. Our proposed annual budget for 2021-22 is £4.098m. This would represent an increase of 4.4%, or £175k, on last year's budget (2020/21 £3.923m) and equates to approximately £1 on practising certificate fees per authorised person.
- 44. Adjusting for inflation, this will bring us in line with our budget in 2017-18 and remains considerably lower than when we were established.
- 45. The proposed budget assumes that we do not carry out a statutory review of the reserved legal activities and that our core functions do not change.
- 46. Our budget reflects the resources we need to meet our strategic objectives. We have undertaken a rigorous exercise to develop detailed projections of our 2021-22 proposed costs. These reflect our planned business activities, headcount resource requirements, changes to business operations and take account of further opportunities for efficiency savings. We plan to increase our investment in research, which stakeholders tell us they find useful and insightful. We will also increase our stakeholder engagement activities to enable us to widen our influence and collaboration both within and outside the sector.
- 47. Although the actual financial impact on each authorised person of this increase is modest, we are mindful of the economic pressures on the sector and the exceptional circumstances resulting from Covid-19. At the same time, our State of Legal Services 2020 report has highlighted that the sector faces considerable challenges and is not meeting society's needs. Meeting these challenges successfully requires additional resources for regulatory activity. However, if this investment leads to more consumers using legal services and better regulation, this should benefit the sector as well as society.
- 48. We plan to strengthen our approaches to measuring the impact of our work on outcomes for society and demonstrating value for money.
- Q9 Do you have any comments on our proposed budget for 2021/22?

Equality Act assessment

- 49. The LSB embraces its obligations under the Equality Act 2010.² Some of the ongoing activities in this consultation (for example, our continued work on diversity and inclusion, ongoing competence and consumer engagement), and some of our proposed work (for example, on scope of regulation and vulnerability) is likely to have an impact on individuals with protected characteristics to varying degrees. We will actively consider those impacts in line with our Public Sector Equality Duty³ as we go through the process of carrying out those activities. Equally, we will consider those impacts carefully when carrying out our statutory decisions work, which includes applications for changes to regulatory arrangements, and approval of the PCF and budgets of the OLC and SDT.
- 50. We would welcome any comments respondents may have on any equality issues they believe arise from our proposed business plan. We also welcome any comments and suggestions on wider issues and interventions that we should have regard to in relation to diversity and inclusion.

Q10: Do you have any comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2021/22? Are there any wider equality issues and interventions that you want to make us aware of?

Next Steps

- 51. This consultation will close on 5 February 2021. During the consultation, we will host a stakeholder engagement session to provide an opportunity for stakeholders to discuss the draft strategy and the draft business plan, and to ask any further questions.
- 52. Once the consultation has closed, we will consider all feedback received and make any resulting amendments to the strategy and business plan. We will publish our responses to the consultation, alongside the final strategy and business plan, by the end of March 2021.

³ <u>Public Sector Equality Duty</u>: public authorities have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It also requires that public authorities have due regard to the need to: eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The LSB is a public authority listed in Schedule 19 of the Equality Act 2010.

Questions

- Q1 Do you have any comments on the three strategic themes that we have identified?
- Q2 Do you have any comments on the nine challenges that we have identified for the sector?
- Q3 How can you/ your organisation contribute to overcoming the sectorwide challenges we have identified?
- Q4– Do you have any comments on the suggested areas of priority for the sector 2021-24?
- Q5 Do you agree with our proposal to pursue these workstreams? Is there anything missing that you think we should focus on in 2021-22?
- Q6 Do you see any areas of joint working between the LSB and you/ your organisation?
- Q7 Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?
- Q8 Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?
- Q9 Do you have any comments on our proposed budget for 2021/22?
- Q10 Do you have any comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2021/22? Are there any wider equality issues and interventions that you want to make us aware of?

How to Respond

- 53. We welcome views and comments on all aspects of our draft strategy and draft business plan by 5pm on Friday 5 February 2021.
- 54. We would prefer to receive responses electronically (in MS Word format or PDF).
- 55. Responses should be sent to:

E-mail: consultations@legalservicesboard.org.uk

- 56. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.
- 57. If you want to discuss any aspect of this consultation, or need advice on how to respond, please contact the LSB by telephone (020 7271 0050) or by one of the methods described above.

Complaints

58. Complaints or queries about the LSB's consultation process should be directed to the Consultation Co-ordinator, at the following e-mail address: consultations@legalservicesboard.org.uk