

Business Plan 2016/17

Consultation response document

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Acronyms for organisations used

BC – Bar Council

BSB – Bar Standards Board

CILEx – Chartered Institute of Legal Executives

CILEx Regulation

CIPA – Chartered Institute of Patent Attorneys

CMA – Competition and Markets Authority

CLC – Council for Licensed Conveyancers

CLSB – Costs Lawyer Standards Board

GIRES – Gender Identity Research and Education Society

ICAEW – Institute of Chartered Accountants in England and Wales

LeO – Legal Ombudsman

LSB – Legal Services Board

LSCP – Legal Services Consumer Panel

OLC – Office for Legal Complaints

SDT – Solicitors Disciplinary Tribunal

SRA – Solicitors Regulation Authority

TLS – The Law Society

Introduction

1. On 20 January 2016, the Legal Services Board (LSB) published a consultation on its draft Business Plan for 2016/17. The document was news released and sent by email to regulators and representative bodies, consumer and citizen groups, professional groups, other regulators, the judiciary and a variety of other interested parties. The consultation closed on 19 February 2016.
2. We held a workshop with stakeholders during the consultation period. The attendees all submitted written responses which reflect the views given in the workshop. We are grateful for the contributions received.
3. This paper highlights key points from the responses received to the consultation and the material changes made to the Business Plan since consultation.

The responses

4. We asked for comments and suggestions on all aspects of our draft Business Plan and we received 13 responses to our consultation. The overall tenor of responses was supportive of the direction and of the outcomes the LSB is looking to deliver for consumers, the public and the profession. There was a good degree of support for all aspects of the work proposed in the Plan.
5. All of the responses this year, along with high-level commentary, provided views on a number of projects across the strategic elements as well as opinions on the research proposals, Legal Services Consumer Panel (LSCP) commission and the proposed budget for 2016/17. None of the responses received were single issue responses.
6. All respondents have consented to their responses being published on our website and these have been published alongside this consultation response document. Annex A lists both the consultation respondents and the organisations represented at the workshop.
7. We are grateful for each organisation that took time to consider our proposals and to respond or to attend our workshops. All of the points made have been considered carefully and taken into account as we have finalised our Plan for 2016/17. Our Business Plan 2016/17 is now available on our website.
8. In considering the responses, we have taken into account that the number we received is small and that they are primarily from bodies who either have a role in representing the profession or who are subject to LSB's oversight. Contributions from outside of this group were limited.

Summary of key changes made to the Plan

9. Since the draft Plan was published, we have reviewed and refined our proposals. As a result, and informed by consultation, the following significant changes have been made:

- Our operating budget for 2016/17 has been reduced to £3,998k. This represents a £150k reduction to the figure we consulted upon and is a £300k reduction from our 2015/16 budget
- This additional saving means we will be reducing our budget for externally commissioned research from £250k to £100k
- We will not be pursuing work to review transitional protections from alternative business structure (ABS) licensing for special bodies in 2016/17 and will consider this work again as part of our planning for 2017/18
- We will not be proceeding with further work to extend the scope of regulation or regulatory protections into the unregulated sector
- The work we propose to undertake regarding the benefits and risks attached to the changing shape of regulation will be tightly focused on the potential risks arising from the increasingly complex legal services landscape.

Summary of responses

10. In addition to responses on our Plan in general, we were pleased to receive submissions that addressed, in detail, aspects of the work we plan to do. These responses will be used to inform those areas of work as they develop and are not set out in detail here.
11. The following pages address the range of points raised by respondents and our response to them where needed. There are a few common themes, however, which we consider useful to address at the outset

Common theme 1: Proportionality and ‘one size does not fit all’

12. CLSB raised concerns about a perceived ‘one size fits all’ approach to regulation. It argued that the LSB needs to focus oversight resources on to areas of key risk and to deliver a significantly reduced burden on the regulated communities where risk is minimal or non-existent. BSB echoed their hope that the ethos of proportionality would be applied to oversight.
13. CLC urged LSB to ensure that there would be no disproportionate burdens or obstacles for legal services providers and no overlap of regulation.

Response

14. We are aware of the risk of adopting a one size fits all approach to regulation and proportionality underpins our approach to all oversight regulation.

Common theme 2: Joint working and the need to avoid duplication of work

15. A number of respondents expressed an interest in working with LSB on a range of activities listed in the Plan.
16. LeO would welcome the opportunity for joint working on some of LSB’s projects and would specifically like a joint strategic workshop to help with their strategy development. GIRES is anticipating joint work around the equality and diversity programme, noting in particular the need for transgender issues to be better understood in the legal environment.

17. CILEx highlighted the importance of engaging with other stakeholders on projects as the work proposed on emerging market risks could also be included within the CMA market study and work done by the Civil Courts Structure Review. CLC also suggested that any work on exploring unregulated services may duplicate work by the CMA.

Response

18. We welcome the enthusiasm shown by many of stakeholders for the work within our Business Plan and will be making those connections as work proceeds.

General comments on the draft Business Plan

19. LeO expressed satisfaction with the overall shape and direction of the business plan and believed the objectives are the right areas to focus on.
20. ICAEW observed that without an indication of whether work carried out in year one of the Strategy was completed, carried over, closed down etc, it was difficult to assess whether the work proposed for 2016/17 is feasible. It would also like to see a definition of 'public interest' and a justification of each project in light of this definition.
21. BSB highlighted a wording issue around the discussion of the regulatory objectives and better regulation principles, suggesting that the current phrasing suggests undue regulation by government rather than independent bodies.
22. TLS noted that the LSB's commitment to deregulation was in line with the current government's agenda.
23. The continuation of the work streams as first defined and set out in our Strategy 2015-18 was broadly welcomed as constructive and a valuable use of resources by ICAEW, SRA, BSB, and CILEx Regulation. ICAEW, however, would have liked to see statutory responsibilities obviously prioritised over the other two work streams and the BC were concerned that the Plan did not signal a clear trajectory of LSB scaling back its operation or phasing itself out.

Response

24. We were pleased to see broad support for the continuing focus on our three strategic themes. With regard to prioritisation, we are clear that all aspects of our Plan are within our statutory remit as provided for by the Legal Services Act 2007. With regard to a 'scaling back' of operations, we have always been clear that the LSB must deliver its statutory remit and respond to the prevailing regulatory and market context it has a remit to oversee. Our budget for financial year 2010/11 was £4,931m and in 2016/17 it will be £3,998k – a reduction of almost £1m (close to 20%) in six years. This is a clear indication of the LSB's commitment to securing efficiencies and avoidance of mission creep.

Work on breaking down regulatory barriers

General comments

25. SDT stated that the plan seemed to view innovation as entirely positive and regulation as entirely negative. It claim that the vital purpose of regulation is to protect consumers. ICAEW and BC noted a similar theme, stating that the need to promote market development, reduce regulation, and encourage innovation should not be at the expense of consumer protection.
26. SRA noted that it shared many of the same aims as LSB in this area.

Response

27. We agree that protection of the interests of consumers and the public is an important outcome for regulation. We balance these interests alongside the broader list of regulatory objectives and other desirable outcomes for society such as service innovation and growth.

Improving scrutiny of regulatory costs and identifying opportunities for savings

28. BC supported this project, suggesting that BSB is expanding into areas that are more correctly the responsibility of BC, and therefore BSB could reduce their costs by limiting their activities in these areas.
29. BSB also supported this project but suggested that as their costs have been clearer and more transparent than the other regulators, any recommendations from this project should be proportionate and tailored to each regulator.
30. CILEx Regulation welcomed this project and invited the LSB to review its costs and identify any potential savings which the organisation could make.
31. CLC felt that it would not be possible to undertake a meaningful review of the costs of regulation unless a decision is made as to what activities should be regulated and what the appropriate level of oversight is for each of these.
32. TLS and BC suggested that the burden of complying with regulation should be taken into account when calculating the cost of regulation. TLS felt that application of process around regulation also offers opportunity to save cost, and that there is value in measuring the costs imposed on business by regulatory activities.

Response

33. We welcome these observations on the work proposed in this area and they will be considered as the next phase of this work is scoped. The regulatory framework is not static, and all regulators, including the LSB must continuously have regard to regulatory best practice which requires a focus on minimising regulatory burdens, including the burden of regulatory cost.

Identifying ways on which legislation needs to change to keep pace with the development of a modern, vibrant, diverse, high quality legal services sector

34. BC noted their firm opposition to any move towards further regulatory independence. It stated that there was no convincing evidence of BSB being hampered by BC as specified under the Act. It suggested that it makes no sense to look at independence without a wholesale review of the Act.
35. CIPA and TLS supported independence of regulation from representative interests and welcomed the opportunity to engage with the LSB on this issue. TLS further stated that perhaps even more important is the legal professions' independence from government.

Response

36. Whilst some of the comments received in response to the work proposed in this appear might more appropriately be directed towards the Ministry of Justice, which is expected to consult on the independence of regulation in legal services, we welcome the willingness of respondents to engage with LSB as it develops its own position on options for future reforms. In the meantime, LSB will remain alert to the important principle of independence of regulation from representative interests, as highlighted by its 2013 investigation into the Bar Council's failure to act at all times in a manner compatible with the principle of regulatory independence.

Making sure that regulation does not unnecessarily deter entry, innovation and investment

37. BC claimed that many regulatory barriers have already been removed through initiatives carried out by the approved regulators. These changes should have time to 'bed in' and have their impacts assessed before any more work is done in this area. It also stated that there was no evidence for the assertion that the market is moving away from traditional structures, especially in regards to the Bar. BC also felt that the research for this project, 'the investor perspective', went beyond the core purpose of the LSB.
38. TLS felt this was a particularly interesting area in the context of the CMA review and would be interested in the findings. BSB also supported any research in this area and welcomed the opportunity for joint working.
39. CILEx Regulation invited LSB to engage with regulators to facilitate changes to regulatory arrangements on run-off cover.

Response

40. In light of the reduction on our research budget, we do not propose to commission external research in this area although we will still be looking at the perspective of investors who have a unique view of the potential barriers to entry imposed by regulation.
41. With regard to the proposal from CILEx Regulation, we reviewed its report on run-off cover when it was published in December 2015. At that time we did not accept the particular and specific recommendations it made to LSB, but committed to examine the issue it raised around run-off insurance cover in more detail. Following this, and in the light of discussions with CILEx Regulation and other regulators, it is our view that

collaborative action between regulators is likely to resolve the issue in a timely and proportionate manner. Given the prospect of regulators working together to identify solutions, and the absence of sufficient evidence to support the LSB taking specific action on this topic, we will not pursue this work stream in 2016/17.

Reviewing transitional protection for special bodies

42. BC, BSB, LeO and TLS welcomed this project and looked forward to seeing further details. TLS felt that where these bodies directly compete with the commercial market, it is more difficult to see why there should be differences in arrangements and it feels there is unsatisfactory protection for clients in this situation.

Response

43. Our expectation had been that we would be able to commence work to review the position regarding the transitional protections for special bodies in Autumn 2016. After careful consideration, and whilst we will remain alert to developments in the sector, we have concluded that there is no pressing need for a review to be scheduled in late 2016. This work will be paused and the position reviewed again for our 2017/18 Plan. One reason is that we are aware that some approved regulators are exploring options for special bodies themselves. We need to monitor whether this is successful. This decision also takes into account the need for legislative reform to deliver real change for consumers and providers of these services.

Tackling unmet legal need

General comments

44. BC urged LSB to avoid focusing entirely on the ability of legal service providers to meet this need gap, stressing that the ability of consumers to access legal services is powerfully shaped by government policy also.
45. ICAEW suggested that the LSB considers the experiences of small and medium-sized enterprises (SMEs) when accessing legal services as well as vulnerable consumers. TLS echoed this as it felt that there are complex reasons why consumers do not access legal services, it is not always because they are vulnerable.
46. BSB were supportive of the projects being undertaken in this work stream and noted they will also be working on exploring the unregulated sector, emerging market risks and vulnerable consumers.

Response

47. We have noted all of these points and will consider them as we proceed with work in this area, bearing in mind our remit.

Encouraging market entry by comparison websites by unlocking regulatory data and helping consumers to choose and use legal services

48. CILEx welcomed this project as an important piece of work.
49. ICAEW felt that further research was needed on how consumers use comparison websites.

50. TLS, CILEx Regulation and BC felt that there is already a lot of data made available to consumers from the regulators and whilst TLS supported the suggestion that consumers need reliable information, it argued that it needed to be in conjunction with consumer education measures. It argued that regulatory data alone is insufficient to provide a reliable indicator of quality.
51. GIRES observed that releasing information on any disciplinary for transphobic discrimination would be of great value to a transgender consumer.

Response

52. We welcome the support for this work and note the points of caution about sole reliance on data without context. We will consider these points further as this work progresses.

Identifying the reach, benefits and risks of unregulated services

53. Many respondents took an interest in LSB's proposals to identify the reach, benefits and risks of unregulated services. Whilst there was widespread recognition of the importance of full market understanding, there were some words of caution from TLS about the use of funds from the regulated community to assist potential competitors to regulated providers.
54. CILEx Regulation and LeO both supported this project and looked forward to exploring the scope for voluntary arrangements. BC also supported this project and suggested that this work focused on McKenzie Friends.
55. ICAEW expressed concern with the term 'unregulated' as often legal service providers can be regulated by a different body, eg an accountancy regulator.
56. TLS and CILEx raised concerns about the standards LeO would apply to unregulated service providers. TLS and CILEx were concerned that voluntary redress arrangements with LeO would give them a veneer of legitimacy that may mislead the public and that even with redress available, it would not change the fact that they are not regulated and therefore offer consumers less protection.

Response

57. It is clear that this is an area that remains of considerable interest to all involved in legal services provision. We will shortly be publishing the outcome of the work we have done in 2015/16 to explore this area. In light of the findings, we do not expect to proceed further at this present time with additional work to extend the scope of regulation or regulatory protections. This decision takes into account the need for legislative reform to deliver real change for consumers and providers of these services and we look forward with interest to the outcome of the CMA's market study.

Responding to emerging market risks

58. CILEx advised that the CMA study should inform work in this area and therefore LSB should dedicate less resource here, otherwise there would be an unjustifiable duplication of effort. It also advised that Civil Courts Structure Review have also done work in this area.

59. CILEx Regulation supported this project and stated that it is continually working to identify emerging risks and keep abreast of new developments in the sector.
60. BSB supported research in this area and welcomed the opportunity for joint working.

Response

61. In light of feedback received, this work will be timed to align with and take account of the work of the CMA market study.

Understanding how vulnerable consumers access legal services

62. GIREs, whilst cautioning against automatically labelling members of the transgender community as vulnerable, supported this work and suggested this project should include research on why transgender individuals are reluctant to instruct solicitors.
63. BC, LeO, SDT, TLS, BSB, SRA and CILEx Regulation supported this project and welcomed it as an opportunity for joint working.

Response

64. We welcome the support for this project and look forward to working with others as we scope the areas for focus.

Performance, evaluation and oversight

General comments

65. TLS felt that it was essential that both LSB and the regulators have as full an understanding as possible of the impact of any potential regulatory change before making decisions.
66. ICAEW and TLS felt that this work stream should be considered LSB's key function.

Our core deliverable: discharging our regulatory duties

67. ICAEW felt that this is LSB's key function and should be prioritised above all else.

Holding the regulators to account for their performance

68. CIPA, TLS and CILEx Regulation supported this work.
69. BC felt that regulation needs to be proportionate to the regulatory risk posed. It argues that given that BSB-regulated entities and ABS do not hold client money, this sets them apart from other entities. The risk posted to the public is lower and the level of regulation should reflect that.
70. CLC suggested that LSB should concentrate resources on the review of legal services regulation, not on the performance of legal regulators and costs of regulation.
71. BSB suggested that LSB work with regulators to ensure all processes are proportionate and risk based, and cautioned against the LSB imposing its view in place of that of the regulators. It further suggested the LSB could reduce costs by

giving careful consideration to the necessity and value of what it requires of the frontline regulators.

Response

72. Our work to hold the regulators to account for their performance is at the very heart of our statutory remit. We recognise that there are differences of views on the way in which this important work should be approached and we will be reflecting on the outcome of the performance reviews conducted in 2015/16 as we plan for the future. Feedback from participants in the process will be central to that.

Making sure regulation is undertaken independently from representative interests

73. CIPA, BSB, SRA, CILEX Regulation, TLS and CLC welcomed a focus on independence by LSB between representative and regulatory bodies.
74. TLS also stated that regulation should be wholly free from government intervention.

Response

75. We welcome the support received to this continuing work.

Diversity – the role of regulators in driving improvement

76. GIRES welcomed this project and suggested that all legal service providers and their support staff should be trained on issues affecting transgender individuals.
77. BC argued that the task of promoting diversity was better suited to it rather than to BSB and urged LSB to ensure that the focus on diversity remains on regulatory duties and not on promotion of best practice as undertaken by BC.

Response

78. Respondents' comments are noted. Statutory requirements relating to diversity are included in the Act and also the Equality Act, which applies to the approved regulators as well as the LSB.

Undertaking our statutory responsibilities in relation to OLC

79. LeO supported this work and committed to working in partnership with the LSB and MoJ on governance issues.
80. BSB and TLS welcomed this aspect of LSB's oversight. The BSB expressed a hope that the review of governance protocols will reflect the principle that, like all legal services regulation, OLC needs to be independent of government.
81. CLC felt that LSB should concentrate on making sure that LeO successfully applied to become an approved ADR entity.

Response

82. This work is an important aspect of our statutory responsibilities and we will continue to deliver these in line with the requirements of the Act. With regard to any application by OLC to become an ADR entity, LSB will perform its functions as a competent authority but the decision on whether or not to apply is for OLC alone.

Identifying the benefits and risks and the changing shape of legal services regulation

83. CILEx and CILEx Regulation raised a potential issue with run-off insurance and argued that it is a potential barrier to the exercise of choice of regulator.
84. BC argued that regulatory arbitrage is not a risk and any inconsistencies should be explored and managed by the frontline regulators, not LSB.
85. BSB raised the point that sometimes the differences between regulations exist for very specific reasons. Any changes to regulatory arrangements must be carefully considered for adverse impacts.
86. TLS supported this work and are particularly interested in the issue of successor practices. It did however caution against a 'race to the bottom' in terms of standards applied.

Response

87. We welcome these comments and will reflect on them as we develop our understanding of the changing shape of regulation. Paragraph 41, above, gives further details regarding our position on the run-off insurance work mentioned here at paragraph 83.

Market information: research planned

General comments

88. The research detailed in the Business Plan was widely supported. Any comments relating to a piece of research with a corresponding project have been mentioned under the appropriate heading above.
89. As mentioned above, there were many offers from the responders for joint working on research projects for 2016/17 and encouragement for LSB taking a lead role in co-ordinating research and intelligence gathering.
90. CLC also welcomed the research plan and stated that given the resource demands of carrying out detailed research, this should be a core role for the LSB. It also recommended LSB working closely with frontline regulators to define research to make sure that findings are of immediate practical benefit.
91. ICAEW recommended working closely with the CMA to avoid duplication in any area, following which the LSB could focus on the gaps found through the CMA market study. It also cautioned against an emphasis on research being at the expense of delivering change.
92. BC supported the research plan as a requirement for evidence-based policy making.
93. Several responders expressed an interest in seeing more detailed proposals on the research projects proposed.

94. CILEx queried whether all reports are put into the public domain. It also suggested doing research into the difficulty of returning to the legal profession after a career break. It suggested that regulators should be required to monitor and collect statistics on this.

Response

95. Original research, evidence gathering and analysis has always been at the heart of the LSB's activities. We remain committed to these principles and continue to hope that the same commitment will be shown by others with an interest in this sector.
96. In 2016/17, LSB will be taking a different approach to its research programme, driven in part by our resources, which will see a reduction in our external research budget. We will therefore be commissioning less original research than set out in our draft plan. As a consequence we will be looking for opportunities for partnership in research commissioning as well as reviewing our library of research commissioned to date and seeing how much more we can extract from it. We will also be doing more internal desk based and qualitative research.
97. All LSB research is published. Unusually among regulators we also publish the underlying raw data for our quantitative surveys, which we consider makes us an exemplar of good practice in relation to the transparency of our evidence base.

Legal Services Consumer Panel commission

General comments

98. BC, SRA, TLS, CILEx and CILEx Regulation expressed an interest in the information remedies commission given to the LSCP and welcomed the opportunity to engage with the Panel.
99. SRA also suggested that any recommendations needed to be realistic and achievable in the current environment.
100. CLC felt this area was full of complexities and would like further information on the scope of advice from the LSCP before commenting further. It also felt the LSCP should work with front line regulators on this commission. CILEx would also like more clarification around the term 'information remedies' and BC would prefer more clarification around which parts of the legal services sector would be included.
101. GIREs supported this commission and hoped that it might help explain why transgender individuals are reluctant to instruct a solicitor.
102. ICAEW stated that existing evidence suggests that there may be limits to the benefits of increased information for consumers.

Response

103. The comments confirm our view that this is an important commission and we will be asking the LSCP to undertake this work during 2016/17.

Delivering our plan: Budget

General comments

104. CILEx, SRA and CLC welcomed the LSB drive to reduce its costs through efficiency savings.
105. ICAEW, TLS and CILEx Regulation commended LSB on reductions made to the budget but raised concerns that these cuts may affect LSB's ability to undertake its duties as an oversight regulator. TLS went on to suggest that LSB should consider whether all of the work it proposes in the next year is necessary to fulfil its statutory role. It cautioned again against duplicating work of the frontline regulators.
106. BC were also pleased to see a reduction of costs but felt that staff costs seemed disproportionately high.
107. BSB suggested that the budget in the Plan be broken down further and detail what proportion of the budget goes on each of the three strategic elements.

Response

108. The comments of stakeholders are welcome. We believe that in a period where regulatory costs are rightly under careful scrutiny, we need to ensure that we undertake our functions in the most cost effective manner. We have strived to reduce our costs without impacting on our ability to undertake our statutory duties and to achieve our goal of helping modernise the legal services sector for the benefits of consumers. This year's budget and our business plan will; achieve those aims.

Annex A

Organisations represented at the Business Plan consultation workshop

Chartered Institute of Legal Executives (CILEx)

CILEx Regulation

Council for Licensed Conveyancers (CLC)

Gender Identity Research and Education Society (GIRES)

Solicitors Disciplinary Tribunal (SDT)

The Law Society (TLS)

Consultation respondents

Bar Council

Bar Standards Board

Chartered Institute of Legal Executives

CILEx Regulation

Chartered Institute of Patent Attorneys

Council for Licensed Conveyancers

Costs Lawyer Standards Board

Gender Identity Research and Education Society

Institute of Chartered Accountants in England and Wales

Legal Ombudsman

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Solicitors Regulation Authority

The Law Society