



BIRMINGHAM LAW SOCIETY

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**Response to Legal Services Board Consultation on draft
strategy for the legal services sector and draft LSB
business plan 2021-22**

January 2021

Response of the Consultation Committee of the Birmingham Law Society to the Consultation on draft strategy for the legal services sector and draft LSB business plan 2021-22

This response has been prepared by the Consultation Committee of the Birmingham Law Society. The Society is the largest local law society with some 5,000 members from all branches of the legal profession and who practise in all aspects of law. The response represents the collective view of the Consultation Committee whose members include specialists in legal services professional regulation.

Q1 – Do you have any comments on the three strategic themes that we have identified?

All three strategic themes are supported by the Birmingham Law Society in general terms as laudable objectives. We recognise, however, that these themes are high-level broad brush objectives incapable of being measured.

As a core objective, the LSB should focus upon the performance of the Legal Ombudsman (“the LeO”). The inefficiency and weakness of the LeO and the regulation of it by the LSB is a serious concern.

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?

More needs to be done to establish the extent of the unmet legal need to which the LSB refers, plus then to identify where and how it is possible in the legal sector to seek to meet some or all of that need. We also question whether it is the responsibility of the LSB as regulator of 15 legal service regulators to try and plug the gap left by years of underinvestment in legal aid by successive governments of both political persuasions. Is dealing with unmet legal need with its link to affordability the responsibility of Government rather than the LSB? Should the LSB be managing the sector as opposed to shaping the sector?

Ensuring high quality (or indeed a return to higher levels of quality) of legal services and strong professional ethics will need greater emphasis on entry qualification, ongoing effective training and an understanding of what quality looks like. The LSB should consider whether a return to frontline regulators scrutinising and monitoring continuing professional education would be useful as opposed to the current “laissez-faire/DIY” approach.

Mistrust of technology is still embedded in some parts of society. Algorithms used by HM Government in summer 2020 were not great for confidence. Concerns around the proliferation of digital crime and fraud, especially as many more now have to rely on digital platforms to work from home, are also a problem yet to be resolved.

We would urge the LSB to focus on its core statutory role as regulator of the frontline regulators and avoid trying to reshape the legal services landscape. For example, the challenge of reforming the justice system and redrawing the regulatory landscape is such a broad and ambitious challenge. There is a risk that the LSB will be accused of “mission creep”

if it tries to take on too much. It is preferable to complete a few projects successfully i.e., radically improve the performance of the LeO than to fail on many fronts.

In our view, the challenge that should be No 1 on the LSB's list is "Ensuring high quality legal services and strong professional ethics" – this seems to us to be the core statutory role of an oversight regulator. Many of the other objectives are ancillary and perhaps should appear on a wish list. We caution the LSB against setting unrealistic goals especially at this very difficult time for the legal services sector and indeed for the economy.

Q3 – How can you/ your organisation contribute to overcoming the sector wide challenges we have identified?

BLS represents over 5000 lawyers in the West Midlands, one of the largest legal communities outside London. As such, it has reach and credibility both in representation, education, and training, as well as pro bono work.

Q4– Do you have any comments on the suggested areas of priority for the sector 2021-24?

The backlog and associated shortfall of capable resource within the LeO is an ongoing concern, as it undermines public faith in the regulator (in its broadest sense) being able to meet their needs. The proposal to extend the jurisdiction of the LeO to the unregulated sector needs careful consideration. First, the LeO is presently incapable of servicing complaints from the regulated sector so would it be able to cope with additional work? Secondly, the LeO is funded by the regulated sector. Is it fair and equitable for the regulated sector to fund complaints handling for the unregulated sector? The cost of doing so would ultimately be passed on to the consumer.

Consumer usage of price comparison sites is reported to be lower than expected. Consumers of all goods and services use online to search for and compare, so doing it for legal services should no longer be unusual.

Commoditisation of some legal services has occurred for years, such as fixed price conveyancing and wills. They are not always the simple products that consumers may think or be led to believe, but they can be more predictable than those such as litigation.

Regulation provides an opportunity for providers to distinguish themselves from unregulated and maybe uninsured sectors. Consumers can then choose in the market, just as they can with other goods and services.

The High Court Beckwith decision gives the LSB cause to reflect on the role of regulators in the personal conduct and personal lives of lawyers.

Technology has the potential to conflict with the fundamental bedrock rules of law, client confidentiality and legal professional privilege. AI is not without risk. Data has in the past been collected by insurers and brokers to help risk management for lawyers and to price indemnity insurance products in that market.

Digital exclusion is an issue. The example of home schooling in Covid is just one aspect. It is a false assumption that those who may be in the category of consumers and not yet consuming legal services, will adopt digital platforms.

Covid is causing an increase in demand for wills being written according to The Times Saturday 09 January 2021 has Farewell the online will writing service seeing a 267% increase in 2020, mainly the under 40s. Sadly there will also be an increase in probate work.

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?

Yes, but the LSB could and should better identify and communicate what the support of the sector looks like, especially beyond the Covid pandemic.

Is the unmet legal need, that the LSB identifies, able to be met by a sector that, in parts, is unable to trade or alternatively by consumers that cannot afford legal expenses insurance at a time when all discretionary spend has been cut back?

Basic legal needs require more and better definition by the LSB, plus the LSB needs urgently to focus on the LeO to seek to restore confidence.

Q6 – Do you see any areas of joint working between the LSB and you/ your organisation?

Yes. BLS has critical mass and strength in the depth and variety of its legal and specialist committees, as well as its Council and membership.

The LSB should also consider working with the Law Society on research to avoid duplication and minimise cost.

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

We agree. Covid in particular has yet to reveal how deep and long lasting an impact it will have on the economy, on employment, on the shape of all sectors within the legal community. It is the wrong time to begin on a root and branch review of the regulation of the profession.

More pressing than a review of reserved work may be issues such as education and training for lawyers in the Covid and post Brexit world. There will be a different and greater emphasis on digital law and virtual delivery of legal services, rather than face to face advice, plus the inevitable changes in the market post Covid and post Brexit.

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

The LSB should continue to identify and define what is meant by the LSB when it refers to unmet legal need. This is key to whether the term is confined to affordability or whether there are other factors involved. Robust evidence is required.

Also, we are not convinced that the LSB should be using its resources to research the unregulated sector. More important is to research the health of the regulated sector such as the High Street firm, the criminal legal aid practices, and the like – all of which are more likely to be important to the general public than the unregulated sector in terms of volume alone.

Q9 – Do you have any comments on our proposed budget for 2021/22?

Yes

In view of Covid and the inevitable long tail financial harm caused by the high cost to UK PLC of furlough and similar support schemes, plus the likelihood of tax rises and the inevitable damage to the legal services market, the LSB should consider prioritising its work for 2021/2022 and containing its expenditure. 2021 is not the year to be asking for a budget increase. It is a request for another time.

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?

No except that closer relationships and work with junior lawyers who are the future of the profession would be timely and worthwhile.

25 January 2021

Inez Brown

President

Birmingham Law Society