



The Law
Society

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

Junior Lawyers Division response
February 2021

Draft strategy for legal services regulation and draft business plan 2021/2022: Consultation

A response from the Junior Lawyers Division

Introduction

- i. The Junior Lawyers Division ("JLD") is a division of the Law Society of England and Wales with an independent representative voice. The JLD is one of the largest communities within the Law Society, with over 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course ("LPC") students, LPC graduates, trainee solicitors, solicitor apprentices and solicitors up to (and including) five years' qualified.
- ii. The JLD welcomes the opportunity to respond to the Legal Services Board ("LSB") draft Strategy and Business Plan 2021/2022 Consultation (the "Consultation"), which includes a list of questions to which it has responded below. We have commented below on the specific aspects of the Consultation which impact upon junior lawyers.

Question 1: Do you have any comments on the three strategic themes that we have identified?

1. The LSB offers three strategic themes for the legal profession over the next 10 years. These are better services, including fostering innovation and the use of technology; fairer outcomes, including dismantling barriers to diversity & inclusion within the profession; and stronger confidence, including strong professional ethics.
2. In terms of the first theme, better services, the LSB believes transparency of quality of service remains the area where the least progress has been made since the CMA's 2016 review. Their focus now is to identify what information consumers would find most helpful. The LSB says it will act accordingly once those areas have been identified, and considers there may be potential for developing a suite of simple legal products to improve consumer engagement. The JLD questions this because every client/consumer has different needs and requirements; and therefore it is not always practicable or efficient to encourage the use of simple legal products.
3. The LSB also notes that legal services regulators need to build-up their own technology regulation capabilities regarding 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. The LSB states that a joined-up approach across regulators would be beneficial as otherwise this frustrates innovators. However, the JLD believes this is difficult to achieve in practice and would like the LSB to elaborate on how they intend to encourage a joined-up approach between regulators. In addition, the LSB discusses that the pandemic has increased the use of technology, which has been a positive outcome, however, some technology has hindered legal advances. Therefore, the LSB would like to review all technologies to determine which are effective within the legal profession, and the JLD thinks this is a sensible approach. It does, however, remain

contemplative of the remit of the LSB, and wary of the risk that it strays too far into a technological landscape it does not have the experience or capacity to effectively navigate.

4. In terms of the second theme, fairer outcomes, one of the focus points from the Consultation is a properly funded legal aid system - particularly as the Government is currently reviewing the funding to legal aid. The JLD thinks this is extremely important. A properly funded legal aid system should ensure that the solicitors and the legal professionals specialising in legal aid are paid adequately. In practice, this will involve a pay increase, as the current level of pay is insufficient and has resulted in very few junior solicitors entering the profession. Should action not be taken to encourage more junior solicitors into areas funded by legal aid, there will not be enough solicitors to provide advice to all who need it.
5. In addition, 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 and the JLD looks forward to seeing how this will work in practice.
6. The LSB discusses the creation of the Small Business Commissioner and policy initiatives aiming to create a responsible payment culture, and are making inroads on specific issues like late payments. The JLD thinks this is a sensible approach, but does not see how this is related to fairer outcomes and further information in this regard is necessary.
7. The LSB also considers vulnerability and how 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 LSB wants to support such individuals within the legal profession, and the JLD agrees with this.
8. The LSB states that the legal sector needs effective programmes to achieve a diverse and inclusive profession from entry through to senior levels. To do so, it says it needs to identify the barriers to entry and progression, and better understand the causes of attrition, that face specific groups. The JLD also agrees with this and would like to assist in any way it can to help identify the barriers for those specific groups who fall within the JLD's membership.
9. In terms of the final theme, stronger confidence, one of the key points made by the LSB is that it believes 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. The JLD considers this would be beneficial for clients in the legal sector.
10. The LSB also considers that all regulatory bodies, through better collaboration, 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. The JLD would like to reiterate that this might be difficult for the LSB to achieve in practice and would like the LSB to elaborate on how they intend to encourage a joined-up approach between regulators.

Question 2: 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?

11. Overall, there is a concern that the LSB's strategy is too broad. The JLD's view is that the LSB needs to focus on stability and tackling the challenges brought by Covid, Brexit and government cuts, instead of radical reform of legal services and regulation. The challenges which the legal profession is likely to face over the next 10 years, such as the impact of the above issues but also climate change and increased globalisation, should be considered in more depth in the LSB's report.
12. The solicitors' profession is also currently going through substantial change, considering the switch from the LPC to the Solicitors Qualifying Exams ("SQE") which was approved by the LSB in Autumn 2020. Instead of focusing on further reform, the legal profession needs to focus on ensuring that the changes which have been planned and implemented are successful, rather than being reinvented. The JLD has repeatedly raised particular concerns that, in attempting to widen access to the profession, the introduction of the SQE will compound the issue of a two-tiered legal system due to the likely cost of the preparation courses, and that individuals with protected characteristics, such as those with a disability or from a BAME background, may be further disadvantaged (evidenced from the results of the 3 SQE Pilot 1). The JLD notes that the LSB relied on assurances from the SRA that these areas would be monitored following implementation and the JLD considers that continued improvements must be driven by the data that is generated.
13. It is unclear from the Consultation how it is proposed that the justice system is reformed. Changes to the justice system can be implemented under other, defined, themes.
14. As part of lowering the unmet legal need across large parts of the society, the LSB must recognise the impact that legal aid cuts are having on certain parts of the profession – albeit it is accepted that this must also be addressed through public policy funding decisions. In particular, there are very few solicitors entering the profession at the junior end of legal aid practice, and those who have entered are stretched to capacity, which risks these practice areas becoming unsustainable in the long term – and that the public, including some of the most vulnerable in society, will not be able to access legal services when they are needed most.
15. In order to properly dismantle barriers to a diverse and inclusive profession at all levels, the JLD considers that the LSB should also consider wellbeing and resilience of members of the profession. These issues often indirectly affect the diversity of the profession, for example allowing mothers to work flexibly may assist with career progression, and should be explicitly considered. The JLD also considers that the LSB should have proper regard to the disproportionately negative impact remote learning/training in the current landscape is likely to have on those from lower socio-economic backgrounds, which could pose a further barrier to entry to the profession for those individuals.

16. The JLD also believes the LSB should consider the difficulty in properly supervising junior solicitors in the current landscape, and the disadvantageous effect that this is likely to have on junior solicitors when it comes to both retention and progression.

Question 3: How can you/ your organisation contribute to overcoming the sector-wide challenges we have identified?

17. The JLD is committed to addressing a number of the challenges identified by the LSB. In particular, the JLD's focus for the upcoming year includes improving access to the profession (including supporting members through the introduction of the SQE to qualify as a solicitor), supporting junior lawyers facing barriers to progression, continuing to promote resilience and wellbeing in the profession (including supporting members through issues arising from the pandemic), protection of junior lawyers (including continuing to raise awareness of bullying and sexual harassment issues in the workplace) and access to justice.
18. The JLD has a close relationship with its members through its regular meetings with the national committee representatives across the country. It represents and supports junior lawyers by consulting with members and representing their views in consultations. The JLD raises issues which affect the most junior in the profession and which may otherwise go unheard or unconsidered. This is vital to ensure that the legal services are reshaped as a whole, not just at the top.
19. In particular, the JLD is working on the following:
- 19.1. Covid-19: The JLD is working with the Law Society to release guidance on remote working to ensure that the new technology is used responsibly, and to ensure that junior solicitors are still properly trained, despite the remote circumstances.
- 19.2. Equality, Diversity and Inclusion: The JLD is working with the Law Society to ensure that the SQE is properly implemented and that the profession maintains its high standards, despite the changing direction towards deregulation of the legal training process. This involves ensuring the qualifying work experience is properly considered, as there is currently a risk that a two-tier system of training will develop depending on the quality of the qualifying work experience undertaken, which could end up worsening the disparity between big and small firms, rather than levelling the playing field. The JLD will continue to support junior lawyers as the SQE is introduced, to ensure adequate protection of those hoping to enter our profession and to ensure that continued improvements to the SQE are driven by the data we anticipate being generated, including monitoring the impact of the changes on BAME and disabled candidates.
- 19.3. Strong professional ethics and regulatory compliance: The JLD is concerned to ensure that the entire profession is consistently regulated, rather than having separate standards for experienced solicitors (who are able to afford representation or are covered by insurance) and junior solicitors (who are not able to access representation as easily and are unlikely to be covered by insurance). The JLD is supportive of a survey undertaken by Leigh Day to assess this problem and address it as appropriate.

Question 4: Do you have any comments on the suggested areas of priority for the sector 2021-2024?

20. We have responded to this within our above responses.

Question 5: Do you agree with our proposal to pursue these workstreams? Is there anything missing that you think we should focus on in 2021-22?

21. We have responded to this within our above responses.

Question 6: Do you see any areas of joint working between the LSB and you/your organisation?

22. The JLD has detailed the scope of its work within its response to Question 3 and would be willing to work with the LSB as appropriate.

Question 7: Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?

23. The JLD agrees with the LSB's proposal not to undertake a review of reserved activities in 2021-22. Given the difficulties facing the profession as a result of Covid-19, Brexit and years of legal aid cuts by the government, the review would require substantial resources which are more urgently needed elsewhere.

Question 8: Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?

24. The LSB should ensure that it connects with all other relevant bodies when considering data for an issue, to ensure that the work is coordinated (which is likely to generate a larger reach), and that work is not duplicated.

Question 9: Do you have any comments on our proposed budget for 2021/22?

25. The JLD agrees with the LSB's proposed budget for 2021-22. The sector faces considerable challenges as a result of Brexit and Covid-19, which have compounded many other issues already facing the sector. These challenges need to be properly tackled. It is agreed that the LSB should strengthen its approach to demonstrating value for money to ensure its funds are being used appropriately.

Question 10: 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?

26. The JLD have addressed this, as appropriate, above.

The JLD welcomes the opportunity to respond to consultations such as this one, and hopes that the issues outlined above are taken into consideration.

The views expressed in this consultation response are those of the Junior Lawyers Division and do not necessarily reflect the views of the Law Society of England and Wales or any other organisation unless stated.