

The Association of Consumer Support Organisations (ACSO) submission to the Legal Services Board consultation 'Draft strategy for legal services regulation and draft business plan 2021-22'

The Association of Consumer Support Organisations (ACSO) welcomes the opportunity to respond to the Legal Services Board (LSB) [consultation](#) on its draft strategy for legal services regulation and draft business plan for 2021-22.

ACSO was established in January 2019 to represent the interests of consumers in the civil justice system and the reputable, diverse range of organisations who are united in providing the highest standards of service in support of those consumers. Its role is to engage with policymakers, regulators, industry and the media to ensure there is a properly functioning, competitive and sustainable civil justice system for all consumers.

We commend the LSB's decision to develop a strategy for the regulation of legal services as a whole, rather than just for the LSB. The provision of legal services is of fundamental importance to a well-functioning society and economy. As the landscape of the legal services sector continues to change as a result of legislative, regulatory and technological developments, it is essential that access to justice is maintained and consumer rights are protected. We consider the LSB's draft strategy to plan to be an important step in helping to ensure there is a properly functioning justice system and ACSO looks forward to supporting the LSB in meeting its outlined objectives.

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

Furthering the three strategic themes identified by the LSB, *fairer outcomes*, *stronger confidence* and *better services* will help to ensure that the consumer is at the heart of legal services. In particular, we welcome the interconnectedness of the three themes, which means the progression of one is likely to further the others. For example, *better services* will lead to *fairer outcomes*, thereby serving to *improve consumer confidence*.

Consumers often require legal services at a point of some personal distress, such as to resolve a landlord or housing dispute, or to alleviate future distress, such as the writing of a will or probate. Furthermore, the professional advice given to a consumer and the outcome of a claim can have significant financial and personal consequences. For this reason, it has been widely recognised that consumers are likely to have difficulty making sophisticated choices, or to seek and consider alternative offers available in the legal services sector.¹ Measures that serves to ease the consumer experience, improve their confidence and ensure they are receiving the highest-quality service should be supported.

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?

¹ Competition and Markets Authority (CMA), [Legal services market study: final report](#), 15 December 2016, p.45.

The LSB is right to address the responsible use of technology as a sector challenge. Legal technology, or *LawTech*, has long been recognised as a disruptive force in the provision of legal services.² Its development and adoption offer a myriad of benefits for both consumers and providers, including increased efficiency, reduced costs and a means to resolve the problem of incomplete or asymmetric information. However, alongside the many opportunities it provides, there exist parallel problems to safeguard against. This includes the exclusion of those without the right IT and literacy skills, as well as complex issues such as data protection, for both individuals and groups.

Of particular concern is the risk of consumer detriment caused by the development and adoption of advanced technology, or artificial intelligence (AI), which is designed to provide legal services without any human interaction. AI may be unable to identify and meet the needs of consumers who have difficulty using legal services, or who may be at risk of acting against their own best interests. As technology becomes ever-more advanced, it is essential that regulators, policymakers, government and providers share insights and learnings on how best to safeguard consumer interests and encourage the responsible use of technology.

Traditionally, regulators have been too reactive in their approach to LawTech, providing guidance and looking to alter the regulatory framework when a problem arises, as opposed to anticipating issues and leading the sector. A reactive approach causes commercial uncertainty around LawTech products and services, and halts the provision of efficient, cheaper services to consumers. The Solicitors Regulation Authority (SRA) alongside other regulators such as the Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEx) have recently demonstrated a more active commitment to research and evidence gathering on issues related to LawTech and its adoption.³ However, a coordinated approach from across the regulatory framework is likely to be far more successful in supporting the responsible use of technology that meets the needs of consumers, including the most vulnerable in our society. As such, we support the LSB's proposal to use its conveyancing power to help the regulatory bodies build their own regulatory approaches and capabilities so that they can provide technology developers and legal service providers with the necessary information, advice, oversight and confidence to pursue innovation and meet regulatory standards.⁴ The focus upon these issues is timely given the recent large-scale adoption of technological solutions spurred by the outbreak of COVID-19 and the need to deliver services remotely.

ACSO has produced a report on *technology and innovation* within the legal sector, due to be published shortly. The aim of the report is to understand better how technology and innovation is changing the way legal services are being sought, structured and delivered. Qualitative and quantitative data has been collected to enable us to make observations on the future of the market, alongside recommendations on how the sector can successfully navigate potential challenges. We would welcome the opportunity to discuss the findings of

² Although various definitions of LawTech, or *legal technology*, exist they are broadly similar in nature. Throughout this response we use the definition provided by the Law Society: "LawTech is the term [used] to describe technologies that aim to support, supplement or replace traditional methods for delivering legal services, or that improve the way the justice system operates". The Law Society, [What is lawtech?](#), 05 June 2019.

³ Bar Standards Board (BSB), [BSB Strategic Plan 2019-2022](#), 01 April 2019. P.12.

⁴ Legal Services Board (LSB), [Reshaping legal services: A draft strategy for the sector](#), December 2020, p.27

our report with the LSB and invite it to participate in the *ACSO Technology and Innovation Working Group*. This group, comprised of ACSO members and others with an interest in technology and innovation in civil justice, will help provide insight, share best practice and explore how cooperation can benefit consumers and those who support them through a modernised justice system.

On the need to *empower consumers to obtain high quality and affordable services*, greater transparency is required on the price, service and quality of legal services. Since the Competition and Markets Authority's (CMA) 2016 legal services market study, which found consumers generally lack the experience and information they need to engage confidently with providers, there has been a renewed focus upon transparency across the sector as a whole.⁵

In its subsequent review of its legal services market study, the CMA noted that all regulatory bodies have taken steps to introduce minimum requirements for price and service transparency. However, it should be noted that a number of regulators have been slow to introduce and enforce rules. For instance, the Solicitors Regulation Authority's (SRA) Transparency Rules came into force in November 2019, two years after the CMA made its initial recommendations, meaning it is difficult to measure the impact of these changes only a relatively short period afterwards.⁶

In general, there has been an increase in the availability of information on the price of legal services. For example, research from the CMA and the LSB found that the proportion of providers surveyed that displayed their prices on their websites has increased from 11 per cent in 2017 to 73 per cent in 2020.⁷ However, progress remains slow. It is interesting to note that while 77 per cent of consumers find it easy to understand the information provided on the price of legal service, only 6 per cent of consumers found the price of a service on the provider's website.⁸

There is a particular lack of information on the quality of legal services. For consumers who lack specialist legal knowledge, many rely upon personal recommendations or what the Legal Services Consumer Panel (LSCP) terms 'quality markers' to assess quality upfront, rather than more concrete measures such as success rates and customer reviews.⁹ These 'quality markers' include a visually appealing website, empathetic and engaged staff, and the experience and/or specialism of the provider in question.¹⁰

As we have stressed in our engagement with both the SRA and the Legal Ombudsman Service (LeO), context is critical. For example, complaints data provided by LeO does not reflect the

⁵ Competition and Markets Authority (CMA), [Legal services market study: final report](#), 15 December 2016, p.4.

⁶ Solicitors Regulation Authority (SRA), [SRA Transparency Rules](#), November 2019.

⁷ Legal Services Board (LSB), [Prices of Individual Consumer Legal Services in England and Wales 2020: Wave 3 of a survey of prices for commonly used legal services](#), September 2020, p.15.

⁸ Legal Services Consumer Panel (LSCP), [Tracker Survey 2020: How consumers are choosing legal services](#), August 2020, p.2 -7.

⁹ Legal Services Consumer Panel (LSCP), [Consumers feedback on quality indicators in legal services](#), 20 July 2020, p.2

¹⁰ Legal Services Consumer Panel (LSCP), [Consumers feedback on quality indicators in legal services](#), 20 July 2020, p.2

size of firm by turnover or case volumes. This makes the numbers of complaints meaningless as they will generally show that larger firms generate a higher number of complaints overall, even if not in relative terms. Data without contextualisation cannot be considered a useful tool to determine the quality of a legal service.

Additional transparency measures should be considered that are built around a fresh understanding of how consumers choose legal services and what quality indicators are most valuable. These could include industry 'kitemarks' that give consumers assurance that the product or service conforms to appropriate standards, or clear technical and business management standards as required, especially in less commoditised areas of the market. This agenda should be driven by a single body that is equipped with the powers necessary to corral regulators around a shared and consumer-focused agenda. We believe the LSB is ideally placed to fulfil this role and urge the LSB to develop it further.

The SRA, working alongside the Council for Licensed Conveyancers and CILEx Regulation, plans to launch a pilot scheme which aims to improve the information available to the public when choosing a legal services provider.¹¹ ACSO is involved in the ongoing, albeit nascent, stakeholder group discussions with the SRA as to what information is likely to be of the most value to consumers and how comparison website and online review platforms can be encouraged. We look forward to continuing this work with the SRA and would welcome the opportunity to engage further with the LSB on ways to improve transparency within the sector.

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

As recognised by the LSB, a cross-sector, collaborative approach is required to meet the identified challenges.¹² Since we were established in 2019, we have advanced our reach and strengthened our relationships with leading stakeholders from across the UK justice system. This includes with the Ministry of Justice, the Justice Select Committee, CMA, Financial Conduct Authority (FCA), Financial Ombudsman Service (FOS) and LeO, to name but a few.

Our focus upon consumer rights and interests has been a uniting factor across parties within the justice system and has enabled us to overcome the adversarialism that tends to be characteristic of the sector. It is for this reason that ACSO has been best placed to facilitate industry discussions with a broad mix of stakeholders on complex matters, including alternative dispute resolution (ADR) mechanisms and effective ways to progress claims during the Covid-19 pandemic. In regard to the latter, our progressive engagement with the Association of British Insurers (ABI), major UK insurers and both claimant and defendant law firms led to the formulation and implementation of the ACSO/ABI Statement of Intent.¹³

The network of relationships we have established across the justice system has enabled ACSO to facilitate roundtable events with leading stakeholders. Most recently, we have held

¹¹ Solicitors Regulation Authority (SRA), [Improving comparison information for consumers](#), 03 February 2021.

¹² Legal Services Board (LSB), [Reshaping legal services: A draft strategy for the sector](#), December 2020, p.8.

¹³ The Association of Consumer Support Organisations (ACSO), [ACSO/ABI Statement of Intent for progressing claims during the Covid-19 crisis](#), 27 April 2020.

roundtables to aid the CMA in its review of the legal services sector, and for the SRA on fee caps/restrictions for claims management companies. We would welcome the opportunity to arrange similar events for the LSB with the aim of gathering industry views and further the objectives outlined in its draft strategy.

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

The suggested areas of priority for 2021-21 all appear sensible and well considered. In particular, we welcome the LSB's proposal to conduct contemporary research on the legal needs and experiences of consumers and small businesses. We recommend that focus is given to vulnerable consumers in order to ensure that legal service providers are able to meet their needs effectively.

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?

We agree with the six proposed new workstreams. In particular, and of direct relevance to our work, we believe there is great merit in pursuing the workstreams regarding legal expenses insurance (LEI); legal support for small businesses; protecting vulnerable consumers and simple legal products.

The new proposed workstream for the LSB relating to LEI is to: *"Explore whether and how legal expenses insurance can help to reduce unmet legal need by convening discussions and adding our voice to the debate."*

As ACSO has previously raised in its formal and informal engagement with the LSB, LEI - a purchasable product through which policy holders can access legal advice and representation with some or all of the expenses covered by the policy - has significant potential to increase access to justice and reduce unmet legal need.¹⁴ Moreover, in light of the ongoing reforms within the civil justice system, including the implementation of the 2018 Civil Liability Act (CLA), the value of LEI to the consumer is likely to increase significantly.

The complex nature of many legal issues, combined with the effort and expertise required to resolve them, means professional help is often required by consumers even for minor claims – both individuals and commercial small to medium enterprises (SMEs). However, such help is often unaffordable for large parts of the population or is believed to be unaffordable and therefore not considered.

Research by the SRA found that 63 per cent of people do not believe that professional legal advice is affordable for ordinary people.¹⁵ LEI can provide access to legal services and legal helpline advice for those who might not afford or access them otherwise. Legal helplines that are unable to advise consumers on their problems will signpost to another appropriate organisation. In particular, LEI is of significant value to those the International Bar Association

¹⁴ International Bar Association (IBA), [Legal Expenses Insurance and Access to Justice](#), 23 September 2019, p.5.

¹⁵ Solicitors Regulation Authority (SRA), [Research and Analysis: the changing legal services market](#), p.16.

(IBA) has termed the *forgotten middle* – consumers who lack the disposable income to purchase legal services but who do not qualify for legal aid.¹⁶

The benefits of LEI have been identified by Sir Rupert Jackson, who has stated LEI would increase access to legal help as the civil justice sector continues to undergo extensive reforms.¹⁷ In its response to Sir Rupert’s report, the government was supportive of his view and stated it “would welcome a change in culture so that there is greater use of existing before-the-event (BTE) policies and the development of the market to expand BTE insurance coverage”.¹⁸ In addition, the Civil Justice Council (CJC) Working Group concluded that BTE has a considerable role in “improving access to justice in the current legal landscape” and without it, “the landscape would be much more inhospitable”.¹⁹

While there have been numerous supportive statements made in relation to promoting greater awareness and uptake of LEI products, there has been little to no tangible industry stakeholder activity either individually or collectively to explore, support and advance how LEI may expand its reach to address the persisting access to justice gap in the UK’s legal services sector.

One contemporary example is found in the CLA, the implementation of which will lead an increase in the ‘small claims limit’ for road-traffic collision personal injury claims, meaning between 90–95 per cent of claimants will no longer be able fund the pursuit of their claim by recovery of their legal costs from the at-fault party.²⁰ As such, there is a high probability that motor LEI products and services will have greater utility for consumers seeking fair compensation and treatment. In its 2019 impact assessment of the CLA, the MOJ estimated that 50 per cent of road traffic collision claimants with lawyers will be funded by a BTE product, and that the number of claims with non-BTE funded legal representation will decrease from 45 per cent to 20 per cent.²¹

However, consumer awareness and usage of LEI is highly unlikely to increase without the promotion of its increased utility post reform. Such promotion could manifest itself in various different channels, supported by the UK government, regulators, ombudsmen, commercial organisations and others.

In the UK, 8.6 million adults (approximately 17 per cent) are estimated to hold LEI policies, although in comparison to many other countries, particularly Germany and Sweden, its uptake and use is not widespread.²² There are a number of possible reasons for this, not least

¹⁶ International Bar Association (IBA), [Legal Expenses Insurance and Access to Justice](#), 23 September 2019, p.5.

¹⁷ Sir Jackson, R., [Review of Civil Litigation Costs: final report](#), December 2009, p.76.

¹⁸ Ministry of Justice (MoJ), [Proposals for Reform of Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Justice Jackson’s Recommendations](#), November 2010, p.91.

¹⁹ Civil Justice Council, [The Law and Practicalities of Before-the-Event \(BTE\) insurance: An information study](#), November 2017, p.12.

²⁰ The Association of Consumer Support Organisations, [ACSO: Impact of the Civil Liability Act on the consumer within the motor legal expenses insurance market](#), 31 December 2020, p.1.

²¹ Ministry of Justice, [Impact Assessment: Civil Liability Act 2019: Reforming the Soft Tissue Injury \(‘whiplash’\) Claims Process](#), January 2019, p.19.

²² Financial Conduct Authority (FCA), [Understanding the financial lives of UK adults: findings from the FCA’s Financial Lives Survey 2017](#), October 2017, p.178.

a lack of consumer awareness of the product and what it can provide. This is particularly so given that LEI policies are often included in bundles with other insurance products or are brought at the same time as an add-on, meaning many consumers may not be aware they have LEI coverage.²³

We support the LSB's aim for the majority of households having "*an LEI policy or other mechanisms enabling them to access a wide range of legal services free at the point of need*" within the next decade.²⁴ We would only highlight that there is an ongoing trend of declining home ownership in the UK, as such the challenge is to meet the needs of the households, not just home-owners.²⁵

Echoing the sentiments expressed by the UK government, the increase in the take-up and use of LEI policies can only be achieved through a "*change in culture*" to ensure greater consumer awareness of LEI and its benefits. This will require collaboration across the legal and financial services sector, including with LEI distributors and manufacturers, consumers bodies, regulators, ombudsman, government, commercial organisations and policymakers.

LEI not only provides a means of funding legal aid, but it is also an enabler for the consumer to access the legal market. It is well documented by both the CMA and the LSB that legal services are notoriously difficult to purchase. A high proportion of consumers are intimidated in how they access legal advice, do not necessarily know the type of expert they require and suffer with the aforementioned lack of transparency around cost and service. LEI cover ordinarily provides consumers with a triage of their issues through a helpline and connects them with the right expert at the point they have a claim. Insurers usually require strict service standards from their legal panel, including transparency as to cost and indemnity against the policy as well as collating consumer feedback on the legal service they received. A greater use of LEI within the market could drive better behaviour in the legal sector as a whole, in addition to providing consumers with easier access to legal advice.

ACSO is already engaged with the relevant industry stakeholders, as listed above, and can support the LSB's alignment of these various ongoing discussions. The LSB holds a position of significant importance in helping to coordinate this culture change across the legal sector and determine what barriers exist to the greater implementation, uptake and use of LEI across the UK.

As such, we agree with the LSB's proposal to explore whether and how LEI could help to reduce unmet legal need by convening discussions and adding its voice to the debate.²⁶ ACSO would be pleased to provide any additional advice or evidence as required by the LSB.

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

²³ Note, LEI products can also be acquired as an 'add on' to other insurance policies at no additional purchase cost.

²⁴ The Legal Services Board (LSB), [Reshaping legal services: A draft strategy for the sector](#), December 2020, p.9.

²⁵ Office for National Statistics (ONS), [Living longer: Changes in housing tenure over time](#), 10 February 2020.

²⁶ Legal Services Board, [Reshaping legal services: a draft strategy for the sector](#), December 2020, p.12.

ACSO has and continues to engage with the LSB on a range of matters pertaining to the rights of consumers within the civil justice system, with a particular focus upon LEI and its potential to increase access to justice for small businesses and individuals. In regard to LEI, we look forward to continuing this working relationship by supporting the LSB in the following areas:

- (i) Ongoing regular engagement with the LSB on all matters relating to its activity on LEI matters. This includes our continued involvement of the LSB in the ACSO LEI Working Group;
- (ii) Co-ordinated activity on increasing the consumer awareness and uptake of LEI to address the unmet need, as well as improving market behaviours and standards to improve consumer outcomes. This can best be achieved through aligning the LSB's interests with other key industry stakeholders with whom ACSO engages, such as the MOJ, FOS, CMA, FCA, SRA and Defaqto.
- (iii) Provide contemporary and deep insights held by ACSO and our members on the current and future LEI market, including trends, risks, opportunities, market dynamics, barriers to entry, value measures and consumer behaviours.
- (iv) Arrange workshops with ACSO and senior personnel from within our membership to facilitate the provision of additional insights and learnings.
- (v) Support the LSB's approach to shaping and gathering its own insights.
- (vi) Facilitate discussions between the LSB and legal expense insurers to ensure that any proposals to develop and extend LEI within the market are feasible and deliverable.
- (vii) Involvement in ACSO's ongoing activity to improve consumer value measures and the comparison of LEI products, thereby serving to improve transparency standards and improve competition on price, service and quality.

ACSO represents the interests of consumers within the justice system, both individuals and small and medium-sized enterprises. We support the LSB's proposal to conduct further research on how support can best be provided to the small business community. In agreement with the consultation document and supporting papers, more needs to be done to address the unmet needs of small businesses, not least owing to the size of the sector (in regard to both the number of SMEs and their contribution to the UK economy) which is forecast to undergo considerable growth.

ACSO has an active working group which focuses on the needs of vulnerable consumers within the justice system and aims to provide a coherent and consistent voice on behalf of those consumers. In addition, ACSO has recently established a *Technology and Innovation* working group which brings together ACSO members and others with a commercial interest in technology to share insight, promote best practice and explore how cooperation can benefit consumers in a modernised civil justice system. We would welcome the inclusion of the LSB within the ongoing workstreams of both groups and are pleased to provide further evidence or advice as required.

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

Yes, it appears sensible not to undertake a statutory review of reserved legal activities in 2021-22, not least as the government is considering expanding access to redress following recommendations made by the CMA and Professor Stephen Mayson.²⁷ However, given the continued growth in the size of the unregulated sector, which is expected to continue as more legal services are delivered online, we urge the LSB regularly to review and consider the most appropriate time to do so.

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's intention to focus its market intelligence activity on *datasets*, its *public panel* and *desk research* will enable the collection and collation of a broad range of insights. In addition to the outlined focus, we urge the LSB to engage with regulators, ombudsman services and other relevant stakeholder to order to share learnings and insights. The ACSO membership is comprised of a broad range of organisations including law firms, barristers' chambers, rehabilitation providers, claims management companies, and LEI providers, among others. As such, we are able to contribute advice or evidence as required by the LSB.

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

In the absence of detailed cost analysis, we are unable to make an informed statement on the LSB's proposed budget for 2021/22. However, subject to the analysis required, we support the principles outlined in the consultation document and the need to ensure the justice system functions to the benefit of consumers.

Q.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?

We cannot foresee any equality issues that may arise from the LSB's proposed business plan for 2021/22.

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²⁷ Professor Mayson, S., [Reforming Legal Services: Regulation beyond the echo chambers](#), Centre for Ethics & Law, University College London, 11 June 2020, p.16.