

ARAG's submission to the Legal Services Board consultation 'Draft strategy for legal services regulation and draft business plan 2021-22' – LEI question

As a company founded on the principle of access to justice, ARAG 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.

ARAG Mission

ARAG are committed to access to justice for all.

“To enable everybody, not just those who can afford it, to assert their legal rights. We remain committed to equal opportunities for all” (Heinrich Fassbender 1935, founder of ARAG)

In the interests of full disclosure, ARAG UK is a member of the Association of Consumer Support Organisations (ACSO) so have already contributed to their response. However this is a subject we feel passionate about so would like to add our own voice to these discussions, in particular the role that Legal Expenses Insurance (LEI) can play in shaping the provision of legal services in the UK.

Who are ARAG UK?

ARAG is a leading provider of legal insurance and legal services in the UK, having made rapid progress in achieving a strong market presence since launching in late 2006.

ARAG UK are part of a wider international group (ARAG SE), who have evolved into a versatile and quality insurer with a focus on legal insurance since forming 85 years ago and now operate successfully in 19 countries worldwide.

Focusing equal importance on both BTE and ATE legal protection and assistance products demonstrates that we can gain access to customers through very different distribution channels. These sectors, that include insurers, brokers and solicitors, are the foundation of our business.

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?

The new proposed workstream for the LSB relating to legal expenses insurance (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 identified in the ACSO response:

- LEI - a purchasable product through which policy holders can access legal advice and representation with legal costs and expenses being covered by the policy - has

significant potential to increase access to justice and reduce unmet legal need.¹ On this point, ARAG would welcome clarity on what the LSB regard as “unmet legal needs”. For example, what type of legal issues would feature here.

- Moreover, considering the ongoing reforms within the civil justice system, including the implementation of the Civil Liability Act (CLA), the value of LEI to the consumer is likely to increase significantly.
- 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.² 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”*. Whilst the “Jackson report” presented in January 2010 led to LASPO which saw After-the-event (ATE) LEI removed as a recoverable premium, there has been no discernible increase in demand for LEI. Something more radical therefore needs to be done here as quite clearly BTE LEI did not fill this void.
- Consumer awareness and usage of LEI is highly unlikely to increase without the promotion of its value. Such promotion could manifest itself in a multitude of different channels, supported by the UK government, regulators, ombudsmen, commercial organisations and others. This should hopefully bring about a change in culture as seen in many European countries where LEI is seen as an essential purchase.

Countries where access to justice prevails best generally have legal systems that encourage fixed fees. This also is attractive to LEI as it facilitates greater cost predictability, produces simple comparable products that appeals to a wide audience this giving volume big data sustainability. Alternatively, LEI without fixed fees creates greater uncertainty and thus more risk which discourages innovation. It also drives savings from economies of scale that encourages the creation of panel law firms that is a constant unwelcome feature for most non-panel law firms in the UK. Fixed fees therefore improve the ability for all law firms to compete on an equal basis, with the main competitive factors then becoming quality and service.

- We support the LSB’s aim for most 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.

LEI can certainly help in improving access to justice, but it needs to be able to distribute through more channels than the present BTE insurance add-on method. Pioneering expansion has had some success through law firms distributing ATE but recent legislation, LASPOA and CLA, has impaired this continuing.

¹ International Bar Association (IBA), [Legal Expenses Insurance and Access to Justice](#), 23 September 2019, p.5.

² Sir Jackson, R., [Review of Civil Litigation Costs: final report](#), December 2009, p.76.

LEI penetration has slowed and even reduced in the last few years due to the emergence of comparison sites which drives buyers down the cheapest route, at the expenses of the add-ons. More recent estimates put LEI take-up at between 35%-40%. Stand-alone products would provide some answers to these limitations but there are challenges with this distribution. Unlike in other European countries there is currently no stand-alone LEI offering available in the UK market due mainly to the poor experience suffered by legal expense insurers who withdrew these products in the 1990's.

Another area identified for further work in 2021-22 is *“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.”*

In that respect ARAG have the following concerns around the concept of simple legal products:

- Product design needs to be focused on the specific demands and needs identified for a particular market sector. What may be a “basic legal need” for one may therefore be irrelevant for another. For example, a self-employed person would not need Employment protection, a tenant would not need property cover. Simple legal products may therefore not reflect specific demands & needs of individual customers.
- There is a danger that standardised simple legal products may impede innovation within the LEI industry and hinder adaptation to ever changing industry needs.
- Standardisation of LEI products would put greater emphasis on price as a differential, as opposed to quality, service and appropriateness of cover.

Whilst we wholeheartedly agree with the concept of easy to understand legal products, ARAG's view is that standardisation of such products may therefore not be in best interests of the consumer. We would however be keen to engage in this discussion.

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

As a successful, innovative, independent quality provider of LEI both in the UK and internationally, ARAG can offer unique insight into the LEI market and customer behaviour, with a particular focus on access to justice for small businesses and individuals.

We would welcome the opportunity to work with the LSB in the following areas:

- Ongoing regular engagement with the LSB on all matters relating to its activity on LEI matters.
- Co-ordinate activity on increasing consumer awareness and uptake of LEI to address the “unmet need”.

- Support the LSB's approach to shaping and gathering its own insights into LEI.

Please do not hesitate to contact me if there are any queries arising from this submission or if further information is required.

Regards

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