

Legal Services Board

LSB Strategy and Business Plan consultation

A response by  
CILEx Regulation (CRL)

5 February 2021

## **Introduction**

This response represents the views of CILEx Regulation (CRL), the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing 20,000 qualified and trainee Fellows and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice.

**Any questions relating to this consultation response can be directed to Stuart Dalton, Director of Policy, Governance and Enforcement ([stuart.dalton@cilexregulation.org.uk](mailto:stuart.dalton@cilexregulation.org.uk)).**

# Proposed LSB Strategy and Business Plan - consultation response

## SUMMARY

1. CILEx Regulation broadly welcomes the LSB's ten-year strategy, and in particular:
  - the recognition that the legal services market is not working as well as it could for consumers;
  - the emphasis on equality, diversity and inclusion;
  - the support for greater partnership and collaboration amongst legal regulators.
2. However, CILEx Regulation would like to see more emphasis on:
  - tackling the barriers to effective competition, notably through LSB using its convening power to tackle the failing PII market;
  - a cross-sector approach to Equality, Diversity and Inclusion (EDI) tackling barriers in particular to social mobility in the legal profession, tackling unfounded perceptions of hierarchies between different types of lawyers and focussing on the differential experience of those using legal services;
  - tackling the risks of the non-regulated market with greater priority, and in particular exploring how access to redress for consumers can be improved; and
  - greater emphasis on understanding the long-term impact of the COVID pandemic both on the profession, and the way consumers interact with it.
3. On the LSB's proposed budget, we do not think the LSB has made the case for the increases proposed given the severe economic pressures facing both the legal profession and regulators in the coming months.

## Questions

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

4. We support the three strategic themes. We agree with the LSB's assessment that to overcome these challenges will require a cross-sector, collaborative approach.
5. Following the conclusions of Professor Mayson's report and the CMA's review, there is not a better time to push for change. In fact, we would view it as a lost opportunity if this moment were not seized. The LSB has an important leadership role to play even if reform is not universally popular. With this in mind, the LSB will need to drive collaboration and use its convening powers actively to tackle some of the longstanding blockages.

6. We welcome in principle being judged on how well we encourage innovation as this is an area where encouraging sharing of ideas and collaboration makes sense. Whilst technology is a focus, there are broader innovation opportunities that collaboration would assist with beyond technology.
7. For the golden thread we suggest the following amendment: Reshaping legal services to better meet society's changing needs. The rationale is about it being optimal for legal service provision of tomorrow and by the end of the ten years which will become ever more technology-based in line with other consumer services rather than just meeting current society norms and expectations. Equally, we agree legal services needs to be re-shaped, including creating parity between lawyers as well as consumers understanding who is qualified to deal with their legal needs.
8. We agree a ten-year strategy makes sense. We also welcome the strategy setting out what success looks like at the end of this period. We would welcome the LSB setting out Key Performance Indicators which would enable all parties to better chart progress.
9. Recognising the government does not plan major reform to the Act, we welcome expanding redress relating to the unregulated legal services provider sector and also support Professor Stephen Mayson's proposals for a mandatory register.
10. Page 5 only identifies Chartered Legal Executives and misses that we regulate CILEx Practitioners. Please can this be corrected.

**Q2 – Do you have any comments on the nine challenges that we have identified for the sector?**

11. We support the nine challenges identified but would like to see more prominence given to:
  - addressing authorisation and competition barriers;
  - social mobility and consumer elements of equality, diversity and inclusion (EDI);
  - tackling the risks of the non-regulated market with greater priority, and in particular exploring how access to redress for consumers can be improved; and
  - COVID.

Topics needing more prominence in the strategy

12. Problems with competition barriers and insurance is an enduring bottleneck to firms of different or non-traditional character setting up to invigorate and innovate the market. This constraint on an effective market is one of the most serious barriers to competition and therefore needs to be much higher on the LSB's agenda. PII is mentioned on p.23 of the strategy but resolving the major competition issues caused by a failing market needs to be given much more focus in the strategy.

13. In addition to the issue of being able to access any insurance, legal services providers also face significantly increased costs in relation to PII. Premiums have increased considerably in 2020. It is important to understand which type of firms are being impacted by these increases as it has the potential to exacerbate unmet legal need if alternatives are not considered. One option is to bring stakeholders together to consider possible alternatives to the current gold standard PII which is required. We recognise there is a trade-off between a reduction in the requirements which could theoretically impact consumer protection against an increase in the availability of legal services to more of the market. We recommend that LSB take the lead in identifying what options are available. CRL would be very happy to collaborate in this work.
14. Whilst the LSB is to be applauded for the focus on EDI, we think more prominence needs to be given to social mobility and addressing consumer diversity concerns.
15. Talented people struggle to enter the profession or progress in the profession for a range of unjust reasons such as gender and race. However, one of these unacceptable barriers is barely covered in the strategy; namely social mobility. The legal profession is one of the last bastions of out-dated social hierarchy. Talented people from less advantaged social backgrounds will continue to struggle at the end of this 10 year strategy unless more prominence is given to tackling social mobility. That would be inexcusable.
16. Currently talented people do not get jobs or progress because they did not go to the right school or university or speak with the right accent. If the importance of social mobility is overlooked then we believe that progress on other areas of diversity improvement will suffer because the issues are inextricably linked. For example, many BAME lawyers will continue to experience prejudice if social mobility is not promoted. The current lack of social mobility contributes to barriers to innovation where too many legal firms prefer to stick to out-dated and inefficient practices, structures and thinking. Equally, it is heartening to see what is possible in other high skill professions such as the progress in the medical profession with doctors.
17. In addition, we would like to see more EDI focus on the consumer. The LSCP's January 2021 report highlights the differential experience of BAME consumers. We support the LSCP in wanting more focus on how consumers from different backgrounds and with different characteristics access the legal market..
18. We also strongly think the Strategy should give more emphasis to the very different circumstances we are all facing following the impact of the COVID Pandemic. The strategy would benefit from setting out the impact of COVID and what changes have been made as a result to the strategy to reassure that COVID has been fully taken into account. We refer you to our response to the proposed budget (question 9 below) as an example of where it would be helpful to set out how the impact of COVID has been taken into account, particularly for the early years of the strategy. One solution would be a COVID impact assessment.

#### Comments on the nine challenges

19. We welcome and support providing better redress for the unregulated sector. However we do not agree that recourse to the Legal Ombudsman should be considered as the only solution. The difficulties LeO are facing are well known, and we think LSB should evaluate the range of other possibilities of ADR that exist rather than assume that expanding the remit of the LeO is the only or best solution.
20. Regarding authorisation by role, CRL currently authorises individuals and firms on the basis of specialism as defined by reservation/regulated activity. However, before this is adopted CRL would recommend looking at authorisation by role rather than title. The current legislative regime has been written on the basis of title-based authorisation and it would take significant work in our view to unpick that and replace it with specialist authorisation. CRL is currently considering the limitations of its current approach to authorisation by role and may make some amendments to the schemes in operation to ensure practitioners are not disadvantaged. This should also be taken into account when reviewing reserved legal activities. For example, the need for some conveyancing in practice of probate.
21. In relation to improving access, the discussion at the LSB strategy event had some focus on the need for more social welfare lawyers. It is possible that the new CRL education standards could assist with supply of specialist lawyers in this area and could also link with University Law Clinics to create lawyers qualified cost-effectively in this area. Sarah Chambers mentioned the possibility of a round table to discuss issues of unmet legal need and we would welcome being part of that discussion. The discussions also raised a suggestion that a small additional levy could be imposed on the profession to raise a charitable fund to assist the third sector.
22. Whilst this is flagged as a potential solution to increasing access to legal advice. There are some caveats:
- Making sure the advice is of good quality
  - Ensuring the price of the insurance does not rise as individuals increasingly access it, which would be counter-productive
  - It will not help the most vulnerable who are unlikely to hold insurance policies which have this as an option
23. Whilst there are some merits in standardising products and pricing we think there are a number of practical issues that need to be addressed. For instance, who would take responsibility when the client purchases a standard/simple product when the client actually needs more complex advice? At what point is the discussion with the client on their needs, would they feel they are being upsold over and above the standard price? We think there needs to be more information on the proposal before we could support it further.
24. CILEx Regulation supports additional developments to the transparency required from law firms in order to improve the consumer experience. The development of quality indicators is the next step in this process. A clear and agreed definition of 'quality' is necessary before proper progress can be made on their development

as well as understanding how success is measured once a quality indicator tool is implemented.

25. The CMA report provides some options for how quality could be defined and we are content to use this as a starting point for discussion. However, in the development of a definition care must be taken not to disadvantage start-up firms from a quality assessment or to exacerbate the problem of access to justice by using overly simplistic measures which may be misconstrued. For example, in healthcare, publication of death rates provided an incomplete measure as it failed to take into account the willingness of a doctor to offer treatment to higher risk patients. Similarly, care must be taken to ensure that law firms are not disincentivised from taking on higher risk cases because it may negatively impact on a reputation score if the case is lost.
26. In relation to ongoing competence there is a proposal to consider targeting enhanced supervision to the riskiest parts of the profession. Care needs to be taken that the outcome is not to increase costs to these parts of the profession which are also likely to be the least well remunerated and focused on areas of vulnerable consumers.
27. We ask that the outcome of the review of the regulatory performance regime keeps in mind proportionality for regulators. The Legal Services Act created a number of small and medium sized regulators without significant internal resources. Whilst recognizing that in an ideal world good regulation costs what it costs, the regulatory framework should also reflect the legislative intent and reality until that legislation is changed.
28. CILEx Regulation supports the need to develop regulatory approaches to legal technology. We agree this needs a cross-sector approach. We would expect regulation of those providing legal services but there remains a question of if and how you need to regulate the technology/technology providers. There is the danger that regulating the technology rather than the legal service provider stifles innovation and risks reducing competition to the consumers' detriment.

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

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

29. We have answered questions 3 and 6 together.
30. The strategy makes a crucial point about culture. CILEx Regulation agree with the LSB on the need to develop the right culture. Genuine collaborative intent is not just important but fundamental if we are to make meaningful and prompt progress. It is interesting that the strategy chooses not to mention the point emphasised in the state of legal services review about the pace of change and need to turn up the dial. We would support this being included.

31. Philosophically and culturally CILEx Regulation support the need for change and collaboration being a key part of the solution. So we intend to be an active voice of support when encouraging, facilitating and participating in collaboration.
32. We would go further and be interested in discussion around shared priorities between regulators.
33. We believe there are a number of areas where there is not just the potential but the imperative to collaborate. Our priorities for immediate action are diversity, legal technology and research.
34. There are opportunities of pooling/co-ordinating research and developing sector-wide data to get to common understandings, maximise insights and identify areas where further insights would help.
35. With regards to regulating the unregulated sector, further research is needed to understand the issue and where the detriment lies. If the case is made for such regulation then if it is to be deliverable we agree with Professor Mayson that it needs to be low cost, proportionate and risk-based.
36. Some of the biggest challenges in diversity relate to barriers to progression and dismantling barriers to a diverse and inclusive profession at all levels which require a cross-sector approach. CILEx Regulation plays a crucial part in creating avenues for those less-advantaged and from non-traditional backgrounds to enter the legal profession. We will continue to champion this.
37. However, to make address the barriers to progress requires a cross-sector approach. For example, virtually all of our regulated members work in organisations regulated by other regulators so our ability to tackle the inequalities they face is severely hampered by a lack of a cross-sector approach. Therefore, we believe a cross-sector approach is crucial to make swift and meaningful improvements. We would commit to being an active contributor.
38. We are also keen to explore more sensitive areas of collaboration too, such as shared services. But to make progress, based on our experiences to date where we have raised sharing services with other regulators, we would suggest that initial areas of collaboration focus on areas that are less controversial to build up a shared purpose and trust and then looking at more sensitive areas like shared services once this has been achieved.
39. We would actively contribute to a review of reserved activities, should it happen.
40. Collaboration will need to involve the membership bodies given a lot of the challenges presented in the strategy are as much membership matters as regulatory matters.
41. If in ten years the same issues relating to a level playing field and authorisation barriers still exist, it is hard to envisage that key elements in the strategy and the regulatory objectives (such as competition) will be delivered. This is why we



believe achieving a cross-sector approach will be crucial to the success of strategy.

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

42. We strongly support the intention the “Address issues of retention and progression as well as entry”. We would ask that socio-economic factors linked to social mobility are included beyond the nine protected characteristics.
43. We support all the measures on page 15 relating to equality. With regards to “Convene and co-produce work on matters including approaches to design and evaluation of interventions; collation and use of data; and the lived experience of legal professionals”. We support these steps but would encourage the LSB to be bolder in aiming for shared priorities with regulators harnessing their resources to collectively achieve equality progress. As stated above, it is incredibly hard for CILEx Regulation to address the equality-related progression barriers CILEx members face when virtually all CILEx members work in organisations regulated by other legal services regulators.
44. As set out above, we welcome extending redress but want LSB to consider carefully all the options available and not assume only the Legal Ombudsman can do this work.
45. We support in principle developing a single professional register, but only if it provides a meaningful steer to consumers that those on the register are competent. Without a means of regulating all those on the register there is a danger of giving a false sense of confidence to consumers that being on the register implies providers are regulated and those not fit to practice are removed from the register.
46. We agree with the CMA’s assessment that there has not been the hoped-for progress on quality indicators. Therefore, we support the LSB leading on quality indicators.

**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?**

47. We think it important that the LSB work programme for 2021/22 gives much more prominence to tackling the authorisation barriers and social mobility points made above . We recognise that this will mean the deferral or dropping of items in the current work programme.
48. We would welcome the LSB’s People diversity strategy being shared with regulators to see if there is any learning or ideas for our own People strategy.
49. The Business Plan would be more effective if it provided indicative timelines for activities to help planning by regulators. This would help regulators plan to have the resources in place for work needed to be done by regulators to help deliver the activities. Otherwise, regulators are left in the position to respond to different

requests at the same time from different parts of the LSB, which can create avoidable capacity pressures and affect the quality of responses.

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

50. We support a review of reserved legal activities in line with the CMA's recommendation. However, following clarifications from the LSB that its intention are for a review is a "not now, rather than a not ever", we understand and accept the LSB's rationale for not proceeding with a review in 2021-22, particularly mindful of the impact of COVID, and our wish to prioritise more immediate issues such as the PII market and barriers to social mobility.
51. We agree that greater research is needed to understand the unregulated market to identify the genuine issues which will in turn identify the best solutions. But we would not support a long delay in launching a full review of reserved legal activities.
52. Without expanded regulation (proportionate, affordable, risk-based) for the unregulated market it will significantly undermine the efficacy a single register and any broader redress that is introduced.
53. Whilst we agree legislative reform is preferred and cleaner, we share the LSB's view that legislative reform is unlikely to be a priority for Government. This means we need to do the best we can within the existing legislative framework.
54. If the review does not identify ways to adequately protect consumers of currently unregulated services, then it provides a greater case for legislative change.
55. If the government introduces a mandatory registration scheme then the argument for re-prioritising the review of reserved activities increases, because a register with significant high risk areas unregulated undermines the point of a register. If lawyers and legal service providers cannot be 'struck off' for being unfit to practice, then a register risks being just a list of names, misleading consumers that those on the register are all fit to practice.

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

56. We welcome the excellent insights data the LSB is starting to produce. We strongly support the development of data sets and insights as a valuable use of LSB time. There is an opportunity for broader LSB/regulator discussions on what are the most crucial sector-wide data sets and frequency. Such discussions could aid collaborative shared understanding between regulators.
57. We recognise the point made on P.14 of the strategy that there are challenges to producing cross-sector equality data but we maintain that equality data should be a priority, particularly given the importance of EDI in the strategy.

58. We would like to see sector-wide data on the cost and accessibility of PII.
59. With regards to research on the unregulated market, we would support this given the focus in the Mayson and CMA reports, particularly if the LSB choose not to review reserved activities. It would also be interesting to understand international research on the growth of legal technology service provision.
60. There is the opportunity to develop data sets tracking progressing against the three objectives and nine challenges.
61. Whilst the public panel is a great solution, it needs to be affordable for regulators to be used.

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

62. CRL's view is that the LSB has not made a strong enough case for the proposed increase in its budget. Given the current difficult climate in which we are all operating, we would want to see much more information on the proposed use of the additional budget.
63. This is not a knee-jerk reaction. CRL supported the LSB's increasing its budget last year. However, circumstances have changed drastically with COVID. We do not believe it would be responsible or reasonable to be increasing budgets when the LSB's funding is paid for by the regulated community at such a time of exceptional hardship for the legal profession. The LSB needs to anticipate how any increase will be received by the legal profession. Therefore, our starting position is none of us, LSB included, should be looking to increase its resource requirements given COVID. If an increase is absolutely essential, it needs to be very clear why and what for. But that case has not been made.
64. Given CRL has not increased our PCF for 5 years, such a large proposed increase in the LSB budget does increase the risk of our needing to increase our PCF, which is something we wish to avoid at all costs, particularly given the hardships caused by COVID.
65. CRL's Board specifically asked that this response highlight that there is a level of inconsistency of standards given the level of detail expected from regulators in PCF applications, yet the equivalent information is not supplied by the LSB. The LSB should hold itself to the same evidential standards it expects of regulators.
66. The documents do not set out what is priority and what is most important within the strategy and business plan. The documents do not set out what the LSB would do if you did not get the 4.4% increase to understand the impact.
67. Furthermore, if the LeO's remit is extended to cover the unregulated market, how this is to be funded must be considered. It is also noted that the LSB's response to the CMA report indicates that further resources will be required to implement the findings and this makes advance notice to frontline regulators even more important.

68. We ask the LSB share their three-year budget and what the LSB's longer term budget intentions are. It would help to understand how much further the LSB intends to increase its budget and for what purposes and over what period. This would aid us greatly in budget sign off and planning.

**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?**

69. Yes. We welcome the significant focus on equality, diversity and inclusion in the strategy.

70. In addition, we refer you to our above equality points, particularly relating to need for more consideration being given to social mobility and consumer equality.