

Sent by email only to consultations@legalservicesboard.org.uk



5 February 2021

Dear Sir/Madam,

Consultation: The LSB's draft Strategy and Business Plan for 2021/22

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Legal Services Board's (LSB) draft Strategy and Business Plan for 2021/22.

We hope you find our comments useful, but more importantly, we hope that they influence the final draft.

Reflections on the consultation questions:

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

The Panel applauds the extensive stakeholder engagement undertaken by the LSB to inform its draft strategy and believes the LSB is proposing a sensible strategy for the sector. We continue to encourage the LSB to engage with stakeholders in the implementation phase to ensure the support of the regulators, representative bodies and consumer groups.

We endorse the central focus of the strategy, i.e. the need to reshape legal services to better meet society's needs, and the three strategic themes: fairer outcomes, stronger confidence and better services. Therefore, we have decided to align our strategic priorities over the next three years to those proposed by the LSB for the sector. In this way we can contribute, support and challenge the vision in a complementary manner.

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?

We welcome the focus on increasing diversity on the demand side and we recognise that the sector has made significant inroads at entry level. However, these changes need to be reflected at senior levels as well.

For a fundamental shift to take place, the strategy also needs to address the concerns and needs of the diverse range of consumers the legal sector serves. Our recent report¹ highlights the discrepancies in the experience of ethnic minority consumers compared to White British consumers despite shopping around and using unbundling

¹ LSCP, The experiences of BAME groups using legal services, January 2021.

and online services more. This has been a consistent trend. To date none of our recommendations in this area have been taken forward, we now ask the LSB and others to give careful consideration to our findings and our recommendations.

We would also like to see regulators work harder to deliver more meaningful quality and price transparency. There has been limited progress on price transparency, but almost none at all on quality indicators. This will benefit all consumers and especially ethnic minority consumers, given the limited availability of fixed fees in specialised areas of law that they are more likely to use.

In our view, challenge one (lowering unmet legal need across large parts of society) rightly identifies reducing financial barriers to access as a priority. Those financial barriers are widespread and deep-seated, and it may take 10 years to fully address them. On that basis we believe that more specific actions to address this would be required in both the three years strategy and the 2021/22 Business Plan. The specific actions would form a stepped plan to bring about identifiable improvements in access to legal services.

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 Panel agrees with the area of focus over the next year. We were pleased to see that the LSB was given a more active role in overseeing and coordinating the activity of the regulatory bodies further to the CMA's Review,² particularly in developing quality indicators and a single digital register. We look forward to these steps being implemented in the near future.

The Panel also looks forward to the LSB finalising its work on ongoing competence. We have engaged extensively with the LSB on this matter, as we believe this would assist regulators to have appropriate frameworks in place for continuing assurance of professional competence.

Under the consumer engagement workstream, the Panel would like to see the LSB adopt a sector-wide approach that will encourage regulators to make consumer engagement an essential part of their policy development. Our recent Consumer Impact Report³ recommended that regulators develop effective and well-resourced consumer engagement strategies, which are reviewed regularly at board level. This will enable high quality evidence-based decisions informed by a rich understanding of consumer needs, experience, and behaviour. The regulators can make use of the newly established public panel as part of this. We are still of the opinion that the regulators are not consumer focused enough on their regulatory activities.

On legal expenses insurance, we remain unconvinced that this will help consumers access justice. Firstly, the scope of such insurance is limited. The Financial Ombudsman⁴ (FOS) recently said that legal expenses insurance is mainly used for personal injury, contracts for goods or services, property and employment. And even within these areas, there are limits to its effectiveness.

² CMA, Review of the legal services market study in England and Wales, December 2020.

³ LSCP, Consumer Impact Report, March 2020.

⁴ <https://www.financial-ombudsman.org.uk/businesses/complaints-deal/insurance/legal-expenses-insurance>

Legal expenses insurance does not cover a wide range of legal areas that consumers use, especially areas that are less transactional or areas that we know are in desperate need of improved access, e.g. immigration, housing or welfare matters.

Furthermore, several assessments about the effectiveness of legal expenses insurance have found it wanting. Complaints received by FOS⁵ indicate its limited effectiveness, and they are generally about:

- insurers deciding not to meet the expenses of the legal action
- disagreements about the prospect of a successful outcome
- an insurer's solicitor handling a claim badly
- insurers rejecting claims because the policyholder did not notify them about an event that gave rise to legal proceedings.

Even without these problems, there is scant evidence that legal expenses insurance offers good value for money.

We accept that the LSB is not suggesting that legal expenses insurance will address all unmet legal needs, but given the LSB's limited resources and the growing need to deal with the consequences of the pandemic, we would suggest that options that address immediate vulnerabilities should be prioritised instead of legal expenses insurance.

If the LSB chooses to explore this workstream, we strongly recommend reviewing the extensive body of work done by other organisations on the use of legal expenses insurance.

Regarding the LSB's plan to undertake research to understand the experiences of citizens in vulnerable circumstances, we recommend liaising with Citizens Advice to access their vast pool of data on access to and delivery of legal services. This will give the LSB a head start in its research efforts and avoid duplicating resources.

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

As mentioned above, the Panel has decided to align its future strategic priorities to those proposed by the LSB for the sector. Therefore, the Panel would welcome the opportunity to contribute and collaborate in all the workstreams identified by the LSB.

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

We note the rationale for holding a statutory review of reserved legal activities, however, we are not convinced that this is the right time to conduct such an exercise. The Panel's view is that the risks of undertaking such a comprehensive review outweighs the possible benefits, especially given the current pandemic and the UK's departure from the European Union. An extensive review whilst other more pressing needs demand the regulator's time, would not be a cost-effective use of its limited resources.

⁵ <https://www.financial-ombudsman.org.uk/businesses/complaints-deal/insurance/legal-expenses-insurance>

For now, we recommend that the LSB focus its attention and resources on expanding access to redress for unregulated users of legal services and explore further how Professor Mayson's proposal for a mandatory register could be implemented.

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

In previous strategy responses we have consistently said that the LSB must focus on being proactive and creative when consulting with consumer groups, charities and advice groups. The engagement must also be designed around these groups' capacity to engage and ensure their voice is not lost in the clamour for attention by more vocal stakeholders.

We are pleased to see some of this in action, however, it is now time that the LSB devises solutions in partnership with these organisations. This goes beyond engagement. In these times, partnerships in developing solutions are vital for seeing us through the challenges ahead.

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

The Panel considers the budget increase of 4.4% to be modest and necessary for the additional work outlined in the consultation document.

I hope you find these comments helpful. Please contact Lau Ciocan, Consumer Panel Associate, with any enquiries.

Yours sincerely,



Sarah Chambers

Chair

Legal Services Consumer Panel