



LSB Strategy and Business Plan Consultation

Law Society Response

February 2021



Executive Summary

1. The Law Society is responding to the consultation in its representative capacity as the independent professional body that supports and represents 200,000 solicitors from England & Wales.
2. We welcome the Legal Services Board's (LSB) strategy consultation and are pleased to see that the "*golden thread*"¹ of the strategy and its three strategic themes; fairer outcomes, stronger confidence and better services, broadly align with the Law Society's priorities which we outlined in our earlier submission².
3. Like the LSB, the Law Society is committed to ensuring that legal services meet society's needs. We work tirelessly with our members to promote access to justice, uphold the rule of law, maintain high professional standards, reduce barriers to diversity and inclusion, and promote innovation and technology in the sector. These issues are also identified by the LSB as the most important priorities for the sector.
4. The LSB has developed a strategy for the whole sector. Each actor in the legal services landscape will need to play its part in ensuring legal services meet society's needs. The professions, and, in particular solicitors, will play a pivotal role in delivery of this strategy. For the strategy to have its desired impact, the LSB will need to understand the perspectives and experience of the professions. As the representative body for solicitors, we can deliver engagement with the profession. We are particularly keen to work closely with the LSB and others to progress diversity and inclusion in the profession and to enhance access to justice through the use of technology and innovation in the legal sector. We have significant ongoing work programmes in these areas and the insight of our members will be essential to making sustainable changes across the sector.
5. The strategy's success will rely on the collective efforts and actions of many stakeholders, and the LSB should encourage coordinated working. It will be essential that all stakeholders are clear about their respective roles to avoid duplication, gaps, inefficiencies or confusion, to ensure everyone is playing to their strengths and to maintain each organisation's independence, so as to adequately hold each other to account. In particular, it will be vital that the LSB provides clarity on where its role begins and ends, especially its core role in relation to frontline regulators.
6. The LSB is developing its strategy at a time of crisis in the justice system and the legal services sector. The social and economic impact of the pandemic, the UK's withdrawal from the EU and many years of severe under-funding of the justice system, mean that the demand for some legal advice is high but legal service providers' future is uncertain. The challenging economic climate, with the extended period of lockdown and rising business costs (higher professional indemnity insurance, investment in technology, compliance with new regulations) are increasing financial pressures for many law firms and practitioners. On top of the economic pressures, our members shoulder a significant regulatory burden

¹ Reshaping legal services. A draft strategy for the sector, Legal Services Board, December 2020, p. 7.

² Law Society submission to the Legal Services Board on developing a strategy for legal services, August 2020; <https://www.lawsociety.org.uk/topics/regulation/lsb-legal-services-market-strategy>

and wider regulatory requirements. A lack of access to justice becomes an ever-increasing problem which undermines the rule of law, with many providers, especially in the legal aid sector, facing an extremely challenging operating environment.

7. We encourage the LSB to focus its strategy on the key priorities in this context. This will include the promotion of access to justice, innovation and diversity in the professions, but will also involve ensuring regulatory certainty and stability and the maintenance of public protections, to aid recovery of the sector post-pandemic, rather than “re-shaping” legal services and the regulatory landscape. This will help the sector and the profession to evolve and best allow them to fulfil their role in promoting access to justice and the rule of law, and facilitating economic activity.
8. While we broadly welcome the strategy, we think it could better reflect the extent of the crisis and the challenges the sector is likely to face in years ahead if it were to:
 - a. **Focus on the biggest challenges**, including Challenges 1 (access to justice), 2 (fair outcomes for disadvantaged people), 3 (diverse and inclusive profession), 4 (high quality legal services and strong ethics), 8 (innovation) and 9 (use of technology), and the strength and independence of the professions. It is particularly important that the LSB prioritises, since our members, whose resources are stretched, are funding the work of the LSB and others.
 - b. **Strike a better balance across the regulatory objectives**, particularly by doing more to encourage an independent, strong and effective legal profession, to increase public understanding of the citizen’s rights and duties, to uphold the rule of law and to protect and promote the public interest. The sector is experiencing the enormous shock of the social, economic and legal changes which we are currently living through. At the same time the legal profession and established legal processes are under attack. A strong and effective profession should be promoted by a period of certainty, stability and recovery, and a clear commitment to support lawyers in their duties to clients and courts, and their work on supporting the rule of law. This would also help maintain the international standing of the profession and the jurisdiction. For these reasons, we consider that Challenge 6 (redrawing the regulatory landscape) should be removed from the strategy. Regulatory reform should not be an end in itself. We believe that the LSB should include a priority in relation to the achievement of a strong, resilient, internationally respected and independent profession. We also believe that a commitment to promoting a broad cross-sectoral strategy for public legal education should form part of the strategy.
 - c. **Adhere to the LSB’s core remit by doing more to oversee regulators’ performance and ensure high professional standards**. We would urge the LSB to analyse further the roles and responsibilities of all parties, and especially to say how it will fulfil its core statutory function under the Legal Services Act. The challenges highlighted in the draft strategy reflect many of the issues affecting the provision of legal services, but they cannot be fixed by the LSB or indeed by regulation. As the oversight regulator, in setting out its own plans, the LSB should identify whether and how it can effectively address each of the regulatory objectives and where action is most appropriate by others, such as the front line regulators, the Government and/or the profession and the Law Society. There is a particular need for improved clarity in relation to the respective roles of the LSB and the SRA, to make regulation transparent and accountable for the profession,

and easier to understand for the public. We would like to see a stronger articulation of how the LSB's statutory functions can contribute to the delivery of the strategic priorities. This would produce a more effective strategy and, improve accountability so that responsibility would be clearly laid with those who have power to fix problems. It will also improve efficiency, by ensuring complementary activity, avoiding duplication and, in so doing, reducing cost. In particular, we would like the LSB to say more about how it will ensure high professional standards in education and training, competence and regulatory compliance, to protect the public interest and maintain the world class status of our legal profession.

- d. **Focus on impact.** The draft strategy document (page 9) sets out outcomes the LSB expects to achieve over 10 years, the inclusion of which we support.³ However, we recommend the LSB publishes details on how it intends to measure the effectiveness and efficiency of its work, including key performance indicators (KPIs) and impact measures. These should be divided into shorter three and five year timeframes, with specific outcomes for these periods. This would help to deliver greater transparency and accountability for the LSB's work and thereby increase confidence of the public and regulated professions in the oversight regulator.
- e. **Based on a solid understanding of context.** We note that the proposed strategy is informed by the LSB's State of Legal Services 2020 report, which gives the LSB's view on ten years of legal services regulation under the Legal Services Act 2007. However, given the aim is for this to be a ten-year strategy, we would have expected horizon scanning of wider environmental, economic and political challenges (e.g. climate change, globalisation, the UK withdrawal from the EU) which will impact directly on the sector and the profession over the longer term.

Consultation Questions

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

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

- 9. We agree with the three strategic themes and are committed to working closely with the LSB and other stakeholders to achieve fairer outcomes, stronger confidence and better services. Many of the challenges proposed under the themes reflect the Law Society's priorities and those of the profession. We broadly support the priorities under Challenges 1, 2, 3, 4, 8 and 9.
- 10. We consider access to justice (Challenge 1) to be the key priority for the sector and we are pleased that the LSB recognises that a properly funded legal aid system is a vital component of a fair justice system, and *"barriers to access go beyond cost, embracing issues of the complexity of the law, legal capability and service design"*.⁴

³ Reshaping legal services. Draft strategy for the sector, LSB, December 2020, p. 9.

⁴ Reshaping legal services. A draft strategy for the sector, Legal Services Board, December 2020, p.11.

11. Challenge 2 also remains a major focus for the profession and the Law Society. Last year we published the Law Under Lockdown⁵ report, highlighting the impact of Covid-19 on access to justice and legal safeguards for vulnerable people and updated guidance on vulnerable clients. We are keen to share our insight with the LSB and other stakeholders to advance work in this area. An important aspect of this work will be to establish a clear definition of 'vulnerability' and also recognise close links between vulnerability and poverty and its impact on accessing legal services.
12. We agree that Challenge 3 should be a significant priority for the sector, and support the inclusion, in the strategy, of diversity and inclusion in the profession. This is good in its own right, and is key to driving excellence in the profession and delivering accessible and good quality legal services to diverse communities. The Law Society has undertaken substantial work in this area and can help the LSB understand the lived experience of our members. We want to see a more joined up approach and closer partnership working between frontline regulators, representative bodies and other stakeholders to prevent duplication.
13. We support Challenge 4 and consider it a high priority. This is an area where the LSB's own role will be key to delivery of the strategy. The LSB should outline in more detail how it plans to fulfil its core statutory role as an oversight regulator. We have repeatedly called on the LSB to prioritise its core oversight function, and hold frontline regulators to account for putting in place a regime that protects the public and promotes strength in the sector. This is particularly important at a time of uncertainty when people need to have trust in the rule of law, the administration of justice and the profession. This function is also vital to help the economic recovery and international standing of the profession and the jurisdiction. This is an area in the strategy seriously lacking specific content which, because of the LSB's delivery role, should be filled.
14. Challenges 8 & 9 also broadly align with the Law Society's priorities, but we want to see a more joined up approach and closer partnership working between frontline regulators, representative bodies and other stakeholders to prevent duplication. The Law Society plays an active role in promoting technological innovation in the legal sector and helping our members assess and make the most of lawtech opportunities, which can enhance the way they work and the service they provide to clients. We are keen on continuing to work with the LSB and others in this area and bring our members' insight and engagement.
15. Given the more urgent pressures facing the sector and the need for prioritisation, we do not consider some of the workstreams proposed under Challenge 5 to be priorities. We are concerned that the LSB proposes to undertake work to extend the remit of the Legal Ombudsman (LeO) to unregulated providers at a time when the ombudsman experiences performance issues with a backlog of existing complaints in relation to regulated providers. The immediate priority should be to help the LeO to improve performance. As for the proposal to build a better understanding of the unregulated sector and risks to consumers, we do support this work in principle, but we query whether it should be carried out entirely by the LSB, rather than the Government or other bodies. The LSB is the oversight regulator for the regulated sector and is funded by the regulated professions. If there are problems in the unregulated part of the market that need addressing, it should not be the sole

⁵ Law Under Lockdown, Law Society, 25 September 2020; <https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>

responsibility of the profession to fund this work. While the LSB has a role to play and can contribute to the evidence gathering, this work should be Government led.

16. In relation to Challenge 6, we do not consider the redrawing of the regulatory landscape and reform of the justice system to be ends in themselves. The workstreams currently under Challenge 6 fit better under other challenges. For example, work on regulatory performance framework and LeO should be delivered as part of Challenge 4, and work on the LSB's input into policy reviews of the criminal, civil and administrative justice systems fits better under Challenge 1. It is particularly inappropriate that reform of the regulatory landscape should be proposed as an end in itself, at a time when the sector needs regulatory stability after a period of unprecedented change. Therefore, we propose that Challenge 6 should be removed.
17. Regarding challenges which are missing, we believe that the LSB should include a priority in relation to the achievement of a strong, resilient, internationally respected and independent profession. Under this, the LSB could include workstreams aimed at seeking to understand which parts of the legal sector are currently struggling, especially sole practitioners and law firms in the legal aid sector. For example, there are challenges with recruitment in light of the Crown Prosecution Service competition. The LSB could add real value by working with other stakeholders to identify urgent gaps in funding and front-line service delivery, especially in particular practice-areas, such as legal aid related work, and particular regions. Monitoring the current health of the market and emerging trends from the post-Covid environment will be crucial to inform appropriate support measures to aid the sector's recovery and growth. This will in turn allow the sector to play its part in promoting access to justice and upholding the rule of law. In addition, the LSB can ensure that professional standards and proportionate regulation are maintained, particularly in light of the new UK and EU trade and cooperation agreement. It will be important to ensure that the pre-eminent position of solicitors in England & Wales globally is not adversely affected, either economically or in terms of reputation. The LSB could also speak out to support lawyers in their duties to clients and courts, and their work on supporting the rule of law when the legal profession and established legal processes are under attack.
18. Public legal education should also play a more prominent role in addressing the sector's challenges related to access to justice, respect for the rule of law and consumer protection. The LSB could play an important role in promoting the adoption of a cross-sectoral strategy aimed at helping people to understand and address their legal problems, making them aware that legal advice is available and affordable, and educating people about the rule of law, the justice system and how they can be involved. PLE can also contribute to advancing equality outcomes. Although there are some initiatives in the area, run by law firms, charities and universities, more strategic and coordinated approach is needed. An important plank of this will involve embedding legal and justice issues in children's standard education, thus giving them the life tools, they will need to navigate an increasingly complex society. The LSB should encourage others who have responsibilities in this area, including the Government, judiciary, universities and schools, and the voluntary sector, to work together in the delivery of this important public policy objective.

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

19. Many of the challenges identified by the LSB reflect the Law Society's current strategic priorities and we are keen to contribute. These areas relate to access to justice, diversity and inclusion, professional standards and regulatory compliance, and LawTech. We have well established programmes of work in these areas, in line with our representative and public interest role, and are keen to continue to work with the LSB. For the strategy to have its desired impact, the LSB will need to understand the perspectives and experience of the professions. As the representative body for solicitors, we can facilitate the LSB's engagement with the profession. We would encourage the LSB to ensure they have a firm understanding of the breadth and depth of our work on these issues prior to proposing new workstreams in order to help prevent duplication and potentially reduce costs.
20. In addition to these, much of our work relates to upholding the rule of law, supporting economic value and viability of members' businesses and promoting the international practice of law, areas which are currently not reflected in the LSB's strategy. Since the pandemic and the UK's withdrawal from the EU, these have become key areas of our work. We also have a priority programme of work to respond to the coronavirus crisis by influencing policy-makers and providing guidance and advice to members. We are focusing our work on four themes:
- member safety
 - business continuity
 - implications of the pandemic for regulatory compliance, and
 - implications of the pandemic for the rule of law.
21. Below we outline our work which aims to tackle the pressing challenges facing the sector.

Access to Justice

22. Access to legal services for those who need them, and especially people experiencing greater disadvantage, is a fundamental requirement of an effective legal system. Campaigning for access to justice remains a key priority for the Law Society and our work can help to address Challenges 1&2. Our key focus is currently on influencing court reform, securing more investment in the criminal justice system and early legal advice, as well as addressing legal aid deserts.
23. We also actively support and facilitate our members' involvement in pro bono initiatives to help people with no means to access justice. Since the pandemic there has been an unprecedented demand for pro bono advice. Our members have responded to the challenge with a huge amount of important free legal advice to individuals, charities and community groups throughout England and Wales. However, challenges remain to sustain viability of pro bono services and these cannot be considered as a substitution of legal aid.
24. In addition, we continue work on public legal education to reduce non-financial barriers to access, by increasing public awareness of their legal rights and how to access legal advice. We provide information about the role of legal professionals, how to access free legal help, how to make a complaint about a solicitor, and information about the most common legal issues. We also run the "Find a Solicitor" website, a free online search tool that people can use to find a solicitor in their area. There are over 600,000 visits to the website each month, generating 49,000 enquiries to firms, and nearly 7,000 consumer

calls to our helpline. The Law Society also provides funding to Young Citizens and LawWorks.

25. Last year we published Law Under Lockdown, a report to highlight the impact of Covid-19 on access to justice and legal safeguards for vulnerable people.⁶ Our recently updated guidance on meeting the needs of vulnerable clients, also encourages our members to factor vulnerability into the provision of legal services.⁷ In our guidance we separate out different categories of vulnerability:
- Clients who have capacity to make decisions and give instructions but need extra support to do this because of mental and/or physical disabilities.
 - Clients who lack mental capacity to make decisions and provide instructions, for whom solicitors must follow a range of statutory and other safeguards.
 - Clients who are vulnerable to undue influence, undue pressure or duress (who may or may not have mental capacity to make decisions and provide instructions).
26. As part of the guidance we provide case study examples for solicitors working with vulnerable clients, and we suggest the LSB takes account of this work prior to commencing the case study style research.⁸

Equality, Diversity and Inclusion

27. The Law Society has included 'Creating a modern, diverse and inclusive profession' as a priority theme in its business plan for 2020/21, which mirrors Challenge 3. Within this there are three key objectives: widening access to the profession and advancing social mobility; improving data collection, use of evidence and evaluation; and challenging and supporting the solicitors' profession to drive change.
28. We are collaborating with other relevant bodies or organisations, where appropriate, to maximise the impact that we have. For example, we intend to work with the SRA on improving data collection, ensuring consistency in messaging and use, and improving disclosure. We are also working with the SRA on the roll out of SQE, meeting with them regularly to ensure that D&I is properly considered. We have also worked together with the Social Mobility Commission on the development of a toolkit for professional services, along with the SRA.
29. We will be providing more guidance to member firms and organisations on how to evaluate diversity and inclusion interventions this year and will be more actively monitoring the impact of our current and future activities to advance diversity and inclusion and social mobility.
30. The Law Society has gathered insight into the lived experiences and barriers to making progress on diversity and inclusion. This has been through the Women in Leadership in Law programme, our collaborative ongoing work with the Legally Disabled project and our Lawyers with Disabilities Division, and our recent Race for Inclusion research. Each of these projects has also developed recommendations and guidance and we have hosted events and convened roundtables to disseminate the findings and recommendations,

⁶ Law Under Lockdown, Law Society, 25 September 2020; <https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>

⁷ <https://www.lawsociety.org.uk/topics/client-care/meeting-the-needs-of-vulnerable-clients>

⁸ <https://www.lawsociety.org.uk/topics/client-care/working-with-vulnerable-clients-case-studies>

share learning and build momentum for action across the profession. We intend to continue to play this convening role in the coming year with member firms and organisations. We will be carrying out a survey of experiences of LGBT+ lawyers to develop further insights and qualitative evidence on LGBT+ diversity and inclusion. Over the next year, we are also consciously seeking to include intersectional perspectives and experiences in our member engagement on diversity and inclusion, and to monitor the impact of the Covid-19 crisis on diversity and inclusion and social mobility.

31. We will also continue to engage with and support members with lived experience and share insights by working with our women lawyers, ethnic minority lawyers, lawyers with disabilities, and LGBT+ lawyers division.
32. What we learnt from these projects is the vital importance of involving members in this work. This is an important principle for the LSB strategy. We are a membership body with interaction between our members and staff. We all contribute to the LSB objectives on diversity and inclusion and we are keen to work together with the LSB on addressing these issues, particularly by ensuring the profession's perspectives are taken into account.

Strong professional ethics and regulatory compliance

33. One of our key functions as the representative body is to support members in adherence to high professional standards to ensure clients have access to high quality legal services, which can help to address Challenges 4&7. We provide guidance, advice, training and awareness-raising to the profession to ensure compliance, especially in the light of the recent regulatory overhaul (SRA Standards and Regulations, SRA Transparency Rules, anti-money laundering regulations). We also help the profession to maintain high professional standards and have a separate strand of work on promoting ethics and professional standards. As part of this work, we are providing a range of products and services that assist our members to better understand their professional obligations and make better ethical judgements.
34. In parallel we carry out work related to education and training for those seeking to enter the profession. For example, the Law Society has worked with the SRA through the development of the new solicitors qualifying examination (SQE) to represent the profession's views and ensure the best possible system of education and training. This work will continue as the SRA moves into the implementation phase, particularly with a view to ensuring that remaining concerns around equality, diversity and inclusion are addressed in a clear and transparent way. We will support the profession and those seeking to enter the profession through the publication of guidance and advice, by reviewing the SRA's guidance and advice and through engagement with stakeholders throughout the next period of planning and implementation.

Technology and innovation

35. We recognise the importance of technology in the legal services sector and the justice system and we are running a comprehensive programme of work in this field to influence legal, regulatory and ethical debates about the role of emerging technologies, including artificial intelligence and machine-learning, which addresses many of the priorities identified under Challenges 8&9. The work enables us to gain a better understanding of technology and its practical application in legal practice and in the justice system. By doing so we can support firms in the take up of new technologies, and also help members to comply with IT-related professional obligations and regulatory requirements, such as data

protection and cyber security. We also push for more investment in Lawtech and work closely with Lawtech start-ups and other tech commercial providers.

International

36. Now more than ever, it is imperative to uphold the standing of the English and Welsh jurisdictions and the UK legal profession. The UK's withdrawal from the EU poses a challenge to the global standing of the UK jurisdiction, particularly as changes are being implemented at the same time as the economic and social impacts of Covid-19 are being felt.
37. We work to promote English and Welsh law and expertise internationally and run a number of international promotion campaign. We also work on behalf of our members to reduce barriers facing UK solicitors entering and working in overseas markets, and to establish and maintain links with international counterparts. Since the UK has left the EU single market and customs union and the EU-UK Trade and Cooperation Agreement (TCA) does not replicate the benefits of the EU lawyers and mutual recognition of professional qualifications directives, this work has become even more important, and will include building on the TCA to support our members working across Europe.
38. An important aspect of our work focuses on international development and human rights. We believe that the legal profession in general, and solicitors specifically, have a clear role to play in championing the values and concepts of justice, fairness, equity and legitimacy. We aim to promote internationally the values and principles that underpin the legal profession by supporting the legal profession in upholding the rule of law, advocating access to justice and promoting and protecting human rights.
39. Given our ongoing work on promoting the services of English and Welsh solicitors internationally, we are keen to work closely with the LSB and other stakeholders to ensure stability, high standards and the good standing of the profession and legal system in the context of the UK's new relationship with the EU. We note this is an area not reflected at all in the strategy which we consider needs to be addressed.

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

Reduce financial barriers to access

40. We support the inclusion of this priority. This is a significant challenge for the sector, but one that can only be partially resolved by the sector itself. We agree with the LSB that the main problems with legal aid must be addressed through public policy funding decisions to ensure the sustainability of legal aid.
41. The strategy identifies measures to reduce financial barriers to access to justice, including the current Government reviews of legal aid. Whilst the Government's Criminal Legal Aid Review and the Civil Sustainability Review do provide an opportunity to address issues of financial barriers, both in terms of client access to legal aid and ensuring that legal aid is a viable proposition for providers, we also need to be realistic about what these reviews are likely to achieve. We have particular concerns about the Civil Sustainability Review which, following the Government spending review, is likely to be more limited in scope than previously envisaged. The current civil and crime means test review is also important

in its potential to increase legal aid eligibility for those who, notwithstanding low incomes or modest capital, are currently deemed to be too well off to qualify.

42. We also support the LSB's perspective that whole system costs of not providing access to legal advice should be taken into account rather than just looking at the cost of legal aid provision to the Ministry of Justice (MoJ).
43. With regard to increasing financial accessibility to non-legal aid clients, we believe that more data is required regarding provision of credit by providers. Our understanding is that in some areas, such as family law, a significant number of providers do offer some form of credit provision to clients. It would however be helpful to have more information about what is available and the extent to which these facilities are offered to clients.
44. We also have reservations about the extent to which legal expenses insurance (LEI) can increase access to the legal services that clients need. Whilst these policies are widely offered as add-ons to home and motor insurance, our understanding is that they are usually limited in scope and do not usually provide cover for some of the most common legal issues such as family law and social welfare law areas. We also doubt whether people facing welfare benefits or housing problems (e.g. disrepair, possession proceedings and homelessness) can afford such insurance products. We note that the possibility of promoting LEI in order to increase access to justice has already been explored but with little impact because it was found that, unlike in other jurisdictions (Germany, Australia), there is no such tradition in the UK. Prior to considering this work the LSB should look at the available research to save duplication of time and effort when there are so many other areas which need resourcing.
45. The unbundling of legal services is an area which on the face of it, might offer potential to reduce costs to consumers. However, there is understandable reticence on the part of many solicitors to provide unbundled services. Concerns are largely centred around problems of limiting retainers and the risks of incurring liability for issues which the provider is not aware of, where client instructions are to advise or represent on discrete aspects of a case. Additionally, some providers consider that the support some clients require means that there is little potential for costs savings and that unbundled services can be more difficult to provide than a full case service. That said, for certain clients and case types there could be potential for unbundling to become more widely available, but this might entail the need to review the relevant regulatory requirements, and further consideration of how providers can protect themselves against the liabilities that can arise at common law. The potential knock-on effect on the cost of professional indemnity insurance (PII) will need to be considered, as due to the economic climate, the cost of PII and premiums is already high and expected to rise.

Reduce non-financial barriers to access

46. We are in broad agreement with the ideas behind this section but would caution that the MoJ proposals on legal support are currently unclear and it is uncertain how effective they might be. In these circumstances we consider it is problematic to base a strategy on the MoJ legal support proposals at the present time. We would further add that legal support and other signposting mechanisms can only be considered to be effective if they result in people being able to pursue their legal rights either through access to a professional adviser or by enabling them to do so themselves. Being aware of one's rights is clearly positive, but it does not resolve the issue of being able to access professional specialist advice and representation.

Develop a legal support strategy for small businesses

47. We would like to see more details of what specifically this work entails. The LSB State of Legal Services 2020 Evidence Compendium⁹ states that 1.8m small business experience legal problems each year but only a quarter gets professional help. However, we note that most of the legal needs of small businesses fall within a category of non-reserved activities (e.g. trading, tax) which can be provided by both regulated professions and unregulated providers. This suggests that regulation of lawyers is unlikely to address this issue. Prior to developing a legal support strategy for small business, the LSB needs to gain a greater understanding of what the underlying barriers are and look at wider economic solutions, which could inform strategies to better meet those needs.

People experiencing greater disadvantage

48. We support the inclusion of this work. Ensuring fairer outcomes for clients in vulnerable circumstances is already a major focus for the profession. Given the work we have already done in this area, outlined in Q3, we would like to see a more joined up approach. The LSB proposes to carry out case study style research with specific groups of citizens, but we would like to ensure that the LSB is aware that the Law Society has published case study examples in our guidance on vulnerable clients and duplication should be avoided.

Diversity and inclusion

49. We welcome this work. The priority areas identified on diversity and inclusion in the draft strategy mirror priority areas the Law Society has also identified: building the evidence base, improving evaluation, and addressing retention and progression. This will be an area where it is important to avoid duplication, gaps, inefficiencies and confusion.
50. The Law Society believes it is important when building the evidence base that the impact of the Covid-19 crisis on diversity, inclusion and social mobility in the sector is prioritised. We need to encourage and support the sector to take action to prevent any lasting negative impacts and to build on any opportunities for lasting positive change.
51. The need to focus on retention and progression, particularly in large law firms, is something that was clearly identified in our recent Race for Inclusion research and in roundtables that we convened in 2020 focused on the experiences of Black solicitors. These pointed to the need for culture change, fairer allocation of work opportunities, more structured access to mentoring and sponsorship, and the potential for targets to help address retention and progression gaps. The earlier Women in Leadership in Law project and Legally Disabled project reached similar conclusions, and also identified the potential disadvantages that come from working in non-traditional ways, for example, part time or remotely. What we have also learnt from these projects is the importance of working with our members and getting their lived experience, insights and expertise. As the membership body for solicitors, we can help facilitate engagement with the profession.
52. Finally, we believe socio-economic diversity and inclusion should be a clear priority for the sector. Those from lower socio-economic backgrounds remain significantly under-represented in the legal professions, for example, solicitors are almost three times more likely to have attended an independent, fee-paying school than the wider population, and half of senior partners in leading law firms were privately educated. The impact of the Covid-19 crisis could potentially worsen or hinder progress too and have a lasting scarring

⁹ The State of Legal Services 2020 Evidence Compendium, Legal Services Board, 2020.

impact on the current cohort of school and university students. As an oversight regulator, the LSB should also look at any inequality in impact of regulatory activity.

High quality legal services and strong professional ethics

53. We support work on ensuring high quality legal services and professional ethics. Given that this is an area where the LSB's own role will be key to delivery of the strategy, the LSB should, in our view, outline here more specific details on how it plans to fulfil its statutory role as the oversight regulator. We note the LSB mentions work on holding regulators to account, statutory decisions and PCF approvals but limited information is provided on what exactly this work would entail. This is in contrast to priorities set out with regard to other challenges which are well defined. We also note the absence of any reference to the LSB's oversight of the Legal Complaints Office (OLC) in this section. Given Legal Ombudsman's performance problems, this should be a key priority under this challenge.
54. We have recommended a Challenge in relation to ensuring a strong, resilient, independent and internationally respected legal profession. In the absence of this, the LSB could incorporate some of our proposed workstreams under this challenge. We note the LSB proposes extensive work on building a better understanding of the unregulated sector, but there is limited work laid out on gathering insight on regulated professions, aside for maintaining LSB's existing datasets on Covid-19 and the health of the market. We would encourage the LSB to better understand the challenges and pressures faced by the regulated professions working across different parts of the sector, including law firms, sole practitioners, junior lawyers and in-house solicitors. In particular, the LSB needs to take account of the notable changes in the makeup of the profession, with a growing proportion of in-house solicitors and a significant number of small practices and sole practitioners. The LSB should also consider the issue of wellbeing and resilience of the profession, especially pressures faced by junior lawyers. The LSB should explore "fitness to practice rules" that can deal with wellbeing and mental health issues outside a disciplinary process. For example, the LSA gives powers to the SRA to implement such a system, which would be in the interests of the public and the profession to do.
55. Aside from more in depth monitoring of the current state of the market, the LSB should also carry out horizon scanning of wider long-term trends such as climate change, globalisation, ageing population, and their impact on the sector and the profession, to better inform future training and competence needs and other regulatory issues.
56. This will help the sector and the professions to flourish and best allow them to fulfil their role of promoting access to justice, upholding the rule of law and facilitating economic activity. This would be in line with the LSA's objective of encouraging an independent, strong, diverse and effective legal profession.
57. With regard to the SQE, the LSB's role should be to ensure that the SRA makes the most of the opportunities it believes the SQE provides, through proper and prompt review (of the exams and the operation of Qualifying Work Experience), continued stakeholder engagement and publication of information and data which will enable students, providers of legal education and employers to actively and positively engage. The LSB set out a number of expectations in its decision on the SQE and focus should be given to ensure that these are met both in spirit as well as letter, as a proper opportunity to fulfil the benefits of the SQE.

Align regulation to risk so that the public is properly protected

58. We agree that there is merit in building a better understanding of the unregulated sector and potential risk to consumers. We note the recent CMA 2020 progress review recommended to the MoJ to establish a mandatory public register for unauthorised providers and to look at how consumer redress can be extended to these providers. However, there is still a lack of evidence of consumer detriment and risks in specific areas of practice which is needed to inform what the best solution looks like. Given that legal services are so broad in scope, before moving to the creation of a register, work needs to be undertaken to better understand and identify who the providers are, what specific legal services they provide, what are the concrete consumer risks and the level of consumer harm as well as future trends. The CMA 2016 market study recommended that the MoJ should work with other bodies to build evidence on unauthorised providers in the legal sector, but no evidence gathering has been conducted since the CMA 2016 study.
59. The evidence gathering exercise should also collect more robust insight on the existing consumer protections, available redress mechanisms and self-regulatory schemes. This is particularly important because some sector specific regulations may already exist (e.g. immigration services, insolvency, claims management, tax agents) alongside voluntary arrangements. This would help to prevent regulatory duplication which could have a knock-on effect on the overall cost of providing such services and potentially limit access to justice.
60. The insight should provide a basis to inform any measures on closing consumer protection gaps and a future review of reserved activities. However, while we support in principle mapping out the unregulated sector, we question whether this should be carried out entirely by the LSB, rather than the Government or other bodies.

Deliver universal access to redress across the market

61. We agree with the overall principle that consumers should have access to redress and are keen to engage with the LSB, the MoJ and other stakeholders on developing appropriate redress provisions for consumers. However, we are concerned about expanding the remit of the Legal Ombudsman (LeO) to unregulated businesses. LeO has struggled to keep on top of the complaints brought to it about regulated providers and has substantial backlogs in its Pre-assessment pool (current estimate for the year ending March 2021 is 5,000.). As the oversight regulator, the LSB will be fully aware of the acute challenges the Ombudsman is facing and the immediate priority should be on improving LeO's performance, rather than expanding its potential jurisdiction.
62. Significant expansion of LeO's jurisdiction to unauthorised providers would also inevitably require a significant increase in funding. This would no doubt have a direct impact on the regulated professions, with likely implications for rising costs to the profession, which is currently financing a substantial proportion of LeO's cost. Given the current significant economic challenges faced by many law firms, this would be highly challenging for firms to absorb, and have implications for client fees. Instead, we suggest more cost effective and/or tailored options for redress, including alternative dispute resolution, also considered by the CMA 2020 progress review.
63. Prior to considering appropriate redress provisions, robust research needs to be undertaken to understand specific areas of consumer risk and the size of the unregulated market it intends to cover.

Increase public understanding of the consumer protections

64. As for the proposal of creating a single professional register accessible through Legal Choices, prior to considering this, we recommend that the LSB should undertake a cost benefit analysis, with a projection of measurable benefits for consumers. The SRA and other regulators already have well established professional registers. The Law Society also runs the Find a Solicitor Service; a free service for anyone looking for information about organisations or people providing legal services in England and Wales that are regulated by the SRA. Find a Solicitor takes data held by the SRA, which we adapt and add additional information to, and present through an easy-to-use search. A more effective use of the profession's levy would be on improving consumer awareness of the existing schemes, through sign posting, social media and wider public legal education initiatives. A new register of different regulated professions could have a counterintuitive effect - increase consumer confusion and add extra cost for frontline regulators and the profession.
65. We also strongly object to linking the professional register with a register of unregulated providers, should such register be developed in the future. Consumer awareness of regulation is low, and many believe all providers are regulated to the same level. For example, the Law Society consumer research found that many consumers did not clearly understand the differences between the terms solicitor and lawyer. When asked about regulation, many assumed the existence of some form of regulation but were unaware of who was regulated or what regulation meant. These findings were also confirmed by the Legal Needs Survey which found a majority of people lacking basic knowledge about regulation and their rights. Therefore, such a move would be likely to increase confusion causing consumer detriment.

Make reforms so that regulation remains fit for purpose

66. We do not consider that redrawing the regulatory landscape is an appropriate goal for the current strategy. As we stated earlier, in the current economic climate the sector needs stability and certainty. The UK's withdrawal from the EU poses a challenge to the global standing of the UK jurisdiction, and regulatory certainty is essential to securing agreements with other jurisdictions on practising rights for the UK professions and continuous trading of our legal services in the EU and globally.

Improve complaints handling

67. We support work on improving LeO's performance issues but are concerned by the idea of widening LeO's remit to unregulated providers. The priority for the LSB should be to support LeO in addressing backlog issues and resolving complaints in a timely manner. It is acknowledged that LeO, like all organisations, is operating in a very challenging environment with the Covid-19 pandemic. However, we note performance issues existed before the pandemic and we question how much of LeO's current difficulties are a direct result of the effects of Covid-19 crisis, as opposed to management and operational issues. We are also concerned by a proposal of budget increase (19%). Any increase in the budget is likely to have an impact on practising certificate fees. There is little appetite in the profession for any such measures, particularly in the current economic climate. The Office for Legal Complaints (OLC) business plan 2021/22 consultation sets out ambitious goals for LeO to reduce the backlog and increase the number of complaints it resolves. Therefore, the immediate focus of the LSB should be on improving LeO's performance,

and not on the potential expansion of its jurisdiction. We have detailed our concerns in our response to the OLC business plan consultation.¹⁰

Enhance transparency by providers on price and quality

68. Regarding proposals of enhanced measures on quality indicators we note that there are already well-established quality marks in the legal sector that provide quality assurance to clients. For example, the SRA digital badge introduced in 2018, builds on the recognition of the solicitor brand as a mark of quality, and provides assurance to clients that the provider is regulated and offers enhanced consumer protection. Given low levels of consumer awareness of the regulatory status of legal services providers, it is an important quality indicator for clients.
69. The Law Society also offers accreditation to law firms in specific areas of law, for example Lexcel and CQS. The firm accreditations are drivers of quality in service, excellence in client care and practice management. They provide quality assurance to clients that the firm has reached the requisite standards to be accredited, and are also recognised by stakeholders in the field as indicators of quality and risk management.
70. Identifying meaningful quality indicators for consumers within the legal sector presents challenges for the following reasons:
- Many consumers may find it difficult to distinguish between the quality of service delivered and the quality of the legal advice.
 - There is an inherent difficulty for consumers judging quality of legal advice compared to other markets, for example judging the quality of food products, hotels or other travel services.
 - The quality or otherwise of legal services delivered may only become apparent some time or even years after the service has been provided.
 - Certain practice areas may present particular challenges when attempting to use consumer views to generate quality indicators. For instance, criminal defence services often attract unwarranted complaints of poor quality by defendants following conviction.
71. The regulatory system and minimum entry standards alongside accreditations already provide assurance around quality of legal advice, and improving awareness of these amongst consumers is likely to be a more cost-effective solution than developing indicators of the quality of advice at the firm level. The level of repeat business which a firm achieves can also be an indication of quality, and it may be fruitful to consider ways in which this can be recorded across the profession.
72. We are open to considering other practical measures that could help to enhance awareness of quality among clients, and await further details of the LSB's policy statement on consumer engagement.
73. Prior to considering any regulatory interventions more work needs to be undertaken to determine the level of consumer engagement with quality indicators, the type of indicators that would be useful for clients, and practical and cost-effective to deliver at firms' level. We are already engaging with the SRA on their pilot on quality indicators, and are keen to

¹⁰ <https://www.lawsociety.org.uk/campaigns/consultation-responses/office-of-legal-complaints-business-plan-and-budget-2021-22>

get involved in work of the LSB and other stakeholders in the process of implementation of the CMA progress review recommendations on enhanced transparency measures.

Facilitate tools enabling consumers to easily compare providers

74. The LSB should apply, in our view, a similar approach to digital comparison tools (DCTs) and customer review sites, and develop a better understanding of DCTs, including various challenges and risks associated, before considering specific measures. As the LSB acknowledges, there are some inherent features of the legal market which can make it difficult for these tools to thrive, and we do not consider forcing such tools through regulation is likely to succeed. The LSB also needs to look at appropriate consumer safeguards for people using such tools to enhance consumer trust and take up. For example, regulators such as Ofcom and Ofgem developed accreditation schemes for DCTs in the telecoms and energy markets.
75. There is a question over the extent to which the outlined measures are likely to succeed in enhancing consumer engagement, without addressing the root of the problem, which is low public awareness of legal issues, and because of that, public legal education should to be factored in the mix of possible tools. This is particularly important with regard to vulnerable clients. Experience of other markets shows that people in vulnerable circumstances are less likely to engage with digital tools, and the pandemic has also exposed the digital divide in society. It is important that there is a properly funded, co-ordinated public legal education campaign, making the most disadvantaged in our society aware of available help, including that they may be eligible for legal aid, and signposting them to relevant services and providers.

Reduce complexity – ‘Simple Legal Products’

76. We support this idea in principle but the LSB needs to ensure that any simplified legal products and processes maintain appropriate safeguards to protect against fraud and abuse in wills, legal powers of attorney (LPAs) and probate. To better inform the work on simple products we suggest the LSB engages with the Office of the Public Guardian in relation to their ‘Modernising LPAs’ project as well as the Probate Registries and UK Finance. This could help to develop a more joined up approach, especially to probate issues, and inspire public confidence in the probate system.

Keep regulation under review so that it does not impede innovation

77. We support the LSB’s objective on keeping regulation under review so that it does not impede innovation. Removing regulatory barriers to make legal services more effective will ultimately benefit consumers and the justice system. Some factors that the LSB and relevant regulators should take into account are:
- Most current LawTech products are aimed at assisting back-office processes, products and models, with e-Discovery and legal research being the most popular, followed by contract management tools. These aim to make services more affordable to clients or for the non-profit organisations to make their operations more efficient (indirectly by reducing costs or saving time).
 - The regulation of LawTech is difficult due to its cross-border nature and the number of stakeholders working in this field. Particularly, we have identified some regulatory overlap between the ICO and the SRA and some tension between domestic regulation of legal services and international initiatives to set standards for legal technology.
 - Investing in LawTech now will lay the foundations for the UK’s long-term prosperity and a positive regulatory environment can help to enhance its contribution. Our

research shows that the adoption of new technologies could reduce the cost of legal services to UK business users by £350 million by 2030 , and double productivity growth in the legal sector, and every £1 of productivity saving in the legal services sector in 2020 could generate between £3.30 and £3.50 of additional GDP for the UK in 2050.

78. Regulation tends to lag behind technological developments, therefore a regular review by an expert community would be positive. The Law Society would like to work together with the LSB on reviewing LawTech developments because this is in the interests of its members and the public.

Create a regulatory environment that fosters innovation

79. In order for the regulatory environment to not hinder innovation it should:

- Enable users /operators of LawTech (law firms) to adopt technology that does not trigger any regulatory breach.
- Incentivise practitioners to become aware and competent on LawTech and the benefits for their practice.
- Inform LawTech developers on the complexities of legal services regulation and solicitors' professional duties.

80. We agree that the sector's regulators can help to overcome soft barriers by supporting new entrants with information and support on how to navigate legal services regulation and the complexity of its system.

81. However, we disagree that the LSB's role should support new entrants through initiatives such as sandboxes, innovation funds and similar initiatives. There are other stakeholders, such as LawTechUK, the LawTech Delivery Panel, the SRA and the City of London LawTech Sounding Board and incubators, which already fulfil this function. The LSB could be a participant in these initiatives but leading them will inevitably require a judgment on the merits of a specific LawTech product or service on behalf of the LSB which is, in our view, outside the remit of the LSB.

Reducing digital exclusion

82. We agree with the LSB's analysis on the risks of remote hearings and online courts and particularly with its assessment on 'reducing digital exclusion and maintaining alternatives for essential services'.

83. Access to justice is central for the rule of law to operate effectively and technology is a means for its delivery. Law Society's research has shown that innovation and technology have the ability to increase legal empowerment and access to justice. However, with the increased prevalence of digitised legal information and services, there is a risk that those who do not possess the means or know-how to access the digital space will be left behind. If people cannot access the internet, either due to inadequate hardware, software or internet connection, or if those with legal needs do not have the necessary legal, digital, language or physical capabilities, there is a risk that access to justice will be exclusive and qualified. Any policy change to the accessibility of the courts is likely to impact on those who might find it difficult to access online services or computers. This would include the elderly, users in rural areas, those with learning difficulties and low-income households. Therefore, the underlying causes of digital exclusion should be factored in and inform the development of an appropriate strategic approach. In the past year we have seen significant benefits on the use of virtual hearings in commercial cases and the Business

and Property Courts were well equipped to deliver justice virtually and effectively. However, in other areas the courts were less well-equipped, at the outset, to deliver fair and effective justice delivered remotely. These issues will need to be kept under close review and to form part of the robust evaluation that needs to take place. It will be important to ensure that evaluation measures not just the practical accessibility of online courts and remote hearings but also the justice outcomes of such new approaches to the delivery of justice.

84. Online courts (and court modernisation) are to be welcomed, to the extent that they increase access, streamline case management and can be more cost efficient, so long as they do not impair the quality of justice. However, they need to be accompanied by:
- appropriate alerts on the systems about when and how to contact a lawyer;
 - alternatives for those who do not find online procedures accessible (e.g. owing to lack of equipment, limited internet access, poor digital skills, disability);
 - contingency plans for when systems fail.
85. The use of remote hearings should be considered on a case by case basis and should only happen when the court is satisfied that justice can be served via a remote hearing, weighing the importance and urgency of the hearing against factors suggesting justice might be better served through a physical hearing. Such factors include:
- the nature of the proceedings (e.g. technical and administrative proceedings are likely to be more suitable than those which involve witnesses giving evidence);
 - the type of parties to the case (e.g. those involving more sophisticated parties and/or legal entities are likely to be more suitable than those involving individuals with characteristics indicating vulnerability e.g. age, disability, English as a second language, experience of trauma) representation.
86. Before decisions are made to use remote hearings more permanently for particular cases or categories of cases, the experience prior to and during the pandemic must be thoroughly evaluated and consistent well-functioning platforms, policies and procedures must be in place. There are some types of hearing, such as fact-finding or final hearings in complex family cases, which are inherently unsuited to video hearings. There are other types of cases, such as initial remand hearings in criminal cases, which should in our view be handled face to face, but which during the pandemic have often had to be dealt with remotely. There will be no one size fits all answer, and the right approach will depend on the nature of the case, the parties, the witnesses and the evidence involved.

Deliver effective regulation of services using emerging technologies

87. We urge caution on the LSB's future work considering a response to online delivery of services and legal technology via legislative reform.
88. Regulatory interventions risk stifling innovation. There has been a significant increase of LawTech products and services in the market sponsored by incubators and accelerators such as the Law Society and Barclays LawTech lab. Government support has also encouraged the sector to grow. Since 2018, there has been public investment of £11.2

million for LawTech which led to the creation of LawTechUK. The number of start-ups tracked by TR and Legal Geek has tripled since 2017.¹¹

89. Legislative and/or regulatory change leading to registration or regulation of LawTech providers, developers or users might affect this booming sector. To enable LawTech and legal services to maintain their industry-leading position in the face of growing competition, market liberalisation and disruption caused by Covid-19, it is essential that the flexibility of the legal services sector is maintained in order to navigate the challenges that continue to emerge.

Ensure emerging uses of technology are ethical and socially acceptable

90. We urge caution on the LSB's analysis of 'socially acceptable' uses of legal technology. As we highlighted in our response to Professor Mayson's review, although some initiatives might be underway to develop technology which provides legal services without human involvement, our research suggests that these are in quite early stages and not developed or widespread. Chatbots, pre-populated contracts and predictive analytics could be considered under this category. Further thought is required on the implications of these for the public interest rather than social acceptability. In particular such issues as explainability of automated decisions, potential bias and impact on privacy need to be considered, as highlighted in our report on the use of algorithms in the criminal justice system.

91. Best practice should be developed for the legal services sector, where established legal ethics are front and centre in the design, development, procurement and use of LawTech.

Develop more and better open data

92. We agree with the LSB's assessment of the need to consider legal professional privilege and commercially sensitive information in open data initiatives. This consideration should also be taken into account in developing any cross-regulator open data standards or assessing the sector's data assets.

93. The Law Society has supported LawTechUK and the Ministry of Justice's efforts on court data as a way to deliver more effective and transparent justice outcomes. As part of our access to justice and legal technology work we have called for a data trust to be developed in support of the advice sector.

94. Several stakeholders have called any bodies publishing open data to establish a public repository of information sharing agreements. It is our view that, without this mechanism, a lack of transparency impacts public trust, the sustainability and success of any open data initiatives.

95. With regard to other points we particularly support the LSB's priorities of:

- considering establishing an advisory panel for regulatory bodies to consult on issues of technology and innovation. The Law Society would welcome the opportunity to be part of this panel;
- using technology in the discharge of their regulatory and statutory functions.

¹¹ <https://www.legalgeek.co/startup-map/#startupmap>

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?

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

96. The business plan proposes a continuation of the current significant workstreams, including work on diversity and inclusion, consumer engagement, technology and innovation and ongoing competence, alongside work on delivering the LSB's core statutory function of monitoring regulatory performance, discharging, statutory decisions and oversight of the Office for Legal Complaints.
97. We have a concern that rolling out many new programmes of work could be over stretching LSB's resource and therefore it should prioritise its oversight function and work on the issues where the LSB can add real value.
98. We support work on ongoing competence, diversity and inclusion, and technology and innovation, and some aspects of the work proposed on the scope of regulation, specifically related to carrying our research to map the unregulated sector, to inform the future regulatory approach in these areas, though as mentioned earlier, this work should be Government led.
99. In terms of missing areas, we believe that given the current challenging environment in the sector, it is essential that the LSB contributes to efforts of the Government, Law Society and other stakeholders to support a strong, independent legal profession. The LSB could add real value by working with other stakeholders to identify urgent gaps in funding and front-line service delivery, especially in particular practice-areas, such as legal aid related work, and particular regions. Monitoring the current health of the market, alongside possible trends emerging from the post-Covid environment, in which law firms and practitioners will operate in, will also be vital to inform appropriate support measures to aid the sector's recovery and growth. The current economic climate has a knock-on effect on insurance costs, and wider regulatory requirements (tax, anti-money laundering) are putting more financial pressures on legal providers, and it is important that the LSB, regulators and others take these matters into account as they develop their plans and positions.
100. The LSB can play an important role in ensuring that professional standards and proportionate regulation are maintained, particularly in light of the new UK and EU trade and cooperation agreement. It will be important to ensure that the pre-eminent position of solicitors in England and Wales globally is not adversely affected, either economically or in terms of reputation. While there is a growing demand for English law from developing markets, we continue to face international competition from European jurisdictions. The growth of Singapore and Southeast Asia jurisdictions is putting additional pressure on England and Wales as the jurisdiction of choice for international business. The LSB therefore could usefully look to work with the Government and the Law Society to promote the London commercial courts and English and Welsh law and ensure that competitive position of our jurisdiction is maintained under the UK-EU Trade and Cooperation Agreement.
101. As for areas of potential joint working, we would like to see better, more transparent and organised cross working between the LSB, frontline regulators, professional bodies and others on issues related to consumer engagement, diversity and inclusion, and

lawtech. Especially there is a need for improved clarity of roles between the LSB and the SRA to make regulation transparent and accountable to the profession, and easier to understand for the public. Given that many stakeholders are already working in these areas, the LSB should clearly articulate how, given its responsibilities as the oversight regulator, it can advance the issues, and where it would be able to add real value others cannot. This should ensure clarity, accountability and prevent duplication.

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

102. We agree with the LSB's proposal not to undertake a review of reserved activities at this stage. Given the signification challenges the sector is currently facing as the result of Covid-19 and the UK exit from the EU, the review would be highly disruptive and bring more uncertainty, at the time when the profession and law firms need a period of regulatory stability.
103. The Law Society strongly supports the existing reserved areas because they are in the public interest. Given solicitors professional duties to the courts and to clients, the current reserved activities play a vital role in supporting the rule of law by enabling the effective administration and maintenance of the justice system. They also support the proper functioning of markets and systems that are of fundamental importance to the economy.
104. However, any future review should give consideration to other areas of high risk which are currently non-reserved, where there is increased evidence of consumer harm. That is why we support the proposal to gather more evidence on the unregulated sector, which in our view should inform consideration of whether specific practice areas, outside the current list of reserved activities, should be brought within the scope of regulation. For example, in 2012 the LSB gathered evidence of consumer detriment from unregulated will-writers and recommended to the Lord Chancellor to include wills within the scope of reserved activities, a proposal the Law Society supported. However, with an increasingly aging population other high-risk areas such as estate administration, lasting powers of attorney and trusts, call for regulatory attention and should also be included in the scope of any evidence gathering.
105. We are willing to engage with the Government and LSB in the mapping exercise of the unregulated sector by facilitating meetings with our specialist subject committees covering practice areas where unregulated providers may operate alongside the regulated professions.

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

106. We support the LSB's plans to use market intelligence to ensure the delivery of its strategic workstreams is informed and underpinned by robust evidence.
107. We agree with the proposal to carry out desk-based research to map out the unregulated sector, but this work should be Government led. However, we also suggest that the LSB should develop more robust evidence on the health of the sector and wider market trends post-Covid, which are likely to have a bearing on law firms and practitioners.

108. While we support the LSB in placing value on evidence and research, the LSB should ensure savings are maximised by avoiding research duplication, ensuring a joined-up approach to intelligence gathering by working closely with frontline regulators and other stakeholders. For example, we see synergies between the Law Society and the LSB in gathering insight on Covid-19 and health of the market as well as law tech and EDI, and would welcome the opportunity to work together wherever possible. This can prevent work duplication and lead to reduction in operational cost.

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

109. The consultation proposes a 4.4% budget increase, which the LSB is partly planning to invest in research and stakeholder engagement. While the budget increase appears to be modest, we question the appropriateness of the rising cost of the LSB, financed by regulated professions, at the time when so many firms are struggling financially during the pandemic. We think costs can be reduced by prioritising workstreams. For example, the Law Society reduced its budget by 10% as part of its member support package in response to the Covid-19 crisis but made sure we still deliver on core areas for the profession. As outlined earlier, we suggest the LSB prioritise its work more effectively to deliver within its means, in order not to put extra regulatory costs on the profession which could result in the knock-on effect on clients. For example, some of the work proposed under the Business Plan 2021/22 such as legal expense insurance and simple business products, in principle may be appropriate, but not in a climate of a significant change and disruption in the sector, and can be pushed back till the following year.

110. Given that the pandemic means that most engagement is conducted remotely, which can substantially reduce cost, we would question whether significant costs need to be allocated to stakeholder engagement activity.

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?

111. We have addressed the question in response to Q2, Q3, Q4 and Q5